

1 **CRIME VICTIM RESTITUTION AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad R. Wilson**

5 Senate Sponsor: Lyle W. Hillyard

7 **LONG TITLE**

8 **General Description:**

9 This bill makes changes in the composition of restitution orders and the priority for
10 distribution of restitution payments.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ includes reasonable expenses for participation in the adjudicative process as
- 14 pecuniary damages; and
- 15 ▶ makes technical corrections.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 [77-27-5](#), as last amended by Laws of Utah 2010, Chapter 110

23 [77-27-6](#), as last amended by Laws of Utah 2005, Chapter 96

24 [77-38-3](#), as last amended by Laws of Utah 2013, Chapters 196 and 445

25 [77-38a-102](#), as last amended by Laws of Utah 2015, Chapter 147

26 [77-38a-302](#), as last amended by Laws of Utah 2013, Chapter 74

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

29 Section 1. Section [77-27-5](#) is amended to read:

30 **77-27-5. Board of Pardons and Parole authority.**

31 (1) (a) The Board of Pardons and Parole shall determine by majority decision when and
32 under what conditions, subject to this chapter and other laws of the state, persons committed to
33 serve sentences in class A misdemeanor cases at penal or correctional facilities which are under
34 the jurisdiction of the Department of Corrections, and all felony cases except treason or
35 impeachment or as otherwise limited by law, may be released upon parole, pardoned, ordered
36 to pay restitution, or have their fines, forfeitures, or restitution remitted, or their sentences
37 commuted or terminated.

38 (b) The board may sit together or in panels to conduct hearings. The chair shall
39 appoint members to the panels in any combination and in accordance with rules promulgated
40 by the board, except in hearings involving commutation and pardons. The chair may
41 participate on any panel and when doing so is chair of the panel. The chair of the board may
42 designate the chair for any other panel.

43 (c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole,
44 pardon, or commutation granted or sentence terminated, except after a full hearing before the
45 board or the board's appointed examiner in open session. Any action taken under this
46 subsection other than by a majority of the board shall be affirmed by a majority of the board.

47 (d) A commutation or pardon may be granted only after a full hearing before the board.

48 (e) The board may determine restitution as provided in Section 77-27-6 and Subsection
49 77-38a-302(5)(d)~~(ii)~~(iii)(A).

50 (2) (a) In the case of original parole grant hearings, rehearings, and parole revocation
51 hearings, timely prior notice of the time and location of the hearing shall be given to the
52 defendant, the county or district attorney's office responsible for prosecution of the case, the
53 sentencing court, law enforcement officials responsible for the defendant's arrest and
54 conviction, and whenever possible, the victim or the victim's family.

55 (b) Notice to the victim, his representative, or his family shall include information
56 provided in Section 77-27-9.5, and any related rules made by the board under that section.
57 This information shall be provided in terms that are reasonable for the lay person to

58 understand.

59 (3) Decisions of the board in cases involving paroles, pardons, commutations or
60 terminations of sentence, restitution, or remission of fines or forfeitures are final and are not
61 subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a
62 civil judgment, including restitution as provided in Section 77-27-6.

63 (4) This chapter may not be construed as a denial of or limitation of the governor's
64 power to grant respite or reprieves in all cases of convictions for offenses against the state,
65 except treason or conviction on impeachment. However, respites or reprieves may not extend
66 beyond the next session of the Board of Pardons and Parole and the board, at that session, shall
67 continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the
68 offense as provided. In the case of conviction for treason, the governor may suspend execution
69 of the sentence until the case is reported to the Legislature at its next session. The Legislature
70 shall then either pardon or commute the sentence, or direct its execution.

71 (5) In determining when, where, and under what conditions offenders serving sentences
72 may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted,
73 or their sentences commuted or terminated, the board shall consider whether the persons have
74 made or are prepared to make restitution as ascertained in accordance with the standards and
75 procedures of Section 77-38a-302, as a condition of any parole, pardon, remission of fines or
76 forfeitures, or commutation or termination of sentence.

77 (6) In determining whether parole may be terminated, the board shall consider the
78 offense committed by the parolee, the parole period as provided in Section 76-3-202, and in
79 accordance with Section 77-27-13.

80 Section 2. Section 77-27-6 is amended to read:

81 **77-27-6. Payment of restitution.**

82 (1) When the Board of Pardons and Parole orders the release on parole of an inmate
83 who has been sentenced to make restitution pursuant to Title 77, Chapter 38a, Crime Victims
84 Restitution Act, or whom the board has ordered to make restitution, and all or a portion of
85 restitution is still owing, the board may establish a schedule, including both complete and

86 court-ordered restitution, by which payment of the restitution shall be made, or order
87 compensatory or other service in lieu of or in combination with restitution. In fixing the
88 schedule and supervising the paroled offender's performance, the board may consider the
89 factors specified in Section 77-38a-302.

90 (2) (a) The board may impose any court order for restitution.

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

95 (c) Except as provided in Subsection (2)(d), the board shall make all orders of
96 restitution within 60 days after the termination or expiration of the defendant's sentence.

97 (d) If, upon termination or expiration of a defendant's sentence, the board has
98 continuing jurisdiction over the defendant for a separate criminal offense, the board may defer
99 making an order of restitution until termination or expiration of all sentences for that
100 defendant.

101 (3) The board may also make orders of restitution for recovery of any or all costs
102 incurred by the Department of Corrections or the state or any other agency arising out of the
103 defendant's needs or conduct.

104 (4) If the defendant, upon termination or expiration of the sentence owes outstanding
105 fines, restitution, or other assessed costs, or if the board makes an order of restitution within 60
106 days after the termination or expiration of the defendant's sentence, the matter shall be referred
107 to the district court for civil collection remedies. The Board of Pardons and Parole shall
108 forward a restitution order to the sentencing court to be entered on the judgment docket. The
109 entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil
110 judgment.

111 Section 3. Section 77-38-3 is amended to read:

112 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**
113 **notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact**

114 **order.**

115 (1) Within seven days of the filing of felony criminal charges against a defendant, the
116 prosecuting agency shall provide an initial notice to reasonably identifiable and locatable
117 victims of the crime contained in the charges, except as otherwise provided in this chapter.

118 (2) The initial notice to the victim of a crime shall provide information about electing
119 to receive notice of subsequent important criminal justice hearings listed in Subsections
120 [77-38-2\(5\)\(a\)](#) through (f) and rights under this chapter.

121 (3) The prosecuting agency shall provide notice to a victim of a crime:

122 (a) for the important criminal justice hearings, provided in Subsections [77-38-2\(5\)\(a\)](#)
123 through (f), which the victim has requested[-]; and

124 (b) for restitution requests to be submitted as provided in Subsection [77-38a-302\(5\)\(d\)](#).

125 (4) (a) The responsible prosecuting agency may provide initial and subsequent notices
126 in any reasonable manner, including telephonically, electronically, orally, or by means of a
127 letter or form prepared for this purpose.

128 (b) In the event of an unforeseen important criminal justice hearing, listed in
129 Subsections [77-38-2\(5\)\(a\)](#) through (f) for which a victim has requested notice, a good faith
130 attempt to contact the victim by telephone shall be considered sufficient notice, provided that
131 the prosecuting agency subsequently notifies the victim of the result of the proceeding.

132 (5) (a) The court shall take reasonable measures to ensure that its scheduling practices
133 for the proceedings provided in Subsections [77-38-2\(5\)\(a\)](#) through (f) permit an opportunity for
134 victims of crimes to be notified.

135 (b) The court shall also consider whether any notification system it might use to
136 provide notice of judicial proceedings to defendants could be used to provide notice of those
137 same proceedings to victims of crimes.

138 (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give
139 notice to the responsible prosecuting agency of any motion for modification of any
140 determination made at any of the important criminal justice hearings provided in Subsections
141 [77-38-2\(5\)\(a\)](#) through (f) in advance of any requested court hearing or action so that the

142 prosecuting agency may comply with its notification obligation.

143 (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and
144 Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

145 (b) The board may provide notice in any reasonable manner, including telephonically,
146 electronically, orally, or by means of a letter or form prepared for this purpose.

147 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give
148 notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through
149 (f) only where the victim has responded to the initial notice, requested notice of subsequent
150 proceedings, and provided a current address and telephone number if applicable.

151 (9) (a) Law enforcement and criminal justice agencies shall refer any requests for
152 notice or information about crime victim rights from victims to the responsible prosecuting
153 agency.

154 (b) In a case in which the Board of Pardons and Parole is involved, the responsible
155 prosecuting agency shall forward any request for notice it has received from a victim to the
156 Board of Pardons and Parole.

157 (10) In all cases where the number of victims exceeds 10, the responsible prosecuting
158 agency may send any notices required under this chapter in its discretion to a representative
159 sample of the victims.

160 (11) (a) A victim's address, telephone number, and victim impact statement maintained
161 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice
162 Services, Department of Corrections, and Board of Pardons and Parole, for purposes of
163 providing notice under this section, is classified as protected as provided in Subsection
164 63G-2-305(10).

165 (b) The victim's address, telephone number, and victim impact statement is available
166 only to the following persons or entities in the performance of their duties:

167 (i) a law enforcement agency, including the prosecuting agency;

168 (ii) a victims' right committee as provided in Section 77-37-5;

169 (iii) a governmentally sponsored victim or witness program;

- 170 (iv) the Department of Corrections;
- 171 (v) the Utah Office for Victims of Crime;
- 172 (vi) the Commission on Criminal and Juvenile Justice; and
- 173 (vii) the Board of Pardons and Parole.

174 (12) The notice provisions as provided in this section do not apply to misdemeanors as
175 provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section
176 77-38-2.

177 (13) (a) When a defendant is charged with a felony crime under Sections 76-5-301
178 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections
179 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding
180 aggravated exploitation of prostitution, the court may, during any court hearing where the
181 defendant is present, issue a pretrial criminal no contact order:

182 (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise
183 communicating with the victim directly or through a third party;

184 (ii) ordering the defendant to stay away from the residence, school, place of
185 employment of the victim, and the premises of any of these, or any specified place frequented
186 by the victim or any designated family member of the victim directly or through a third party;
187 and

188 (iii) ordering any other relief that the court considers necessary to protect and provide
189 for the safety of the victim and any designated family or household member of the victim.

190 (b) Violation of a pretrial criminal no contact order issued pursuant to this section is a
191 third degree felony.

192 (c) (i) The court shall provide to the victim a certified copy of any pretrial criminal no
193 contact order that has been issued if the victim can be located with reasonable effort.

194 (ii) The court shall also transmit the pretrial criminal no contact order to the statewide
195 domestic violence network in accordance with Section 78B-7-113.

196 Section 4. Section 77-38a-102 is amended to read:

197 **77-38a-102. Definitions.**

198 As used in this chapter:

199 (1) "Conviction" includes a:

200 (a) judgment of guilt;

201 (b) a plea of guilty; or

202 (c) a plea of no contest.

203 (2) "Criminal activities" means:

204 (a) any offense of which the defendant is convicted; or

205 (b) any other criminal conduct for which the defendant admits responsibility to the
206 sentencing court with or without an admission of committing the criminal conduct.

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

208 (4) "Diversion" means suspending criminal proceedings prior to conviction on the
209 condition that a defendant agree to participate in a rehabilitation program, make restitution to
210 the victim, or fulfill some other condition.

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

212 (6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet
213 incurred, including those which a person could recover in a civil action arising out of the facts
214 or events constituting the defendant's criminal activities and includes the fair market value of
215 property taken, destroyed, broken, or otherwise harmed, and losses including lost earnings,
216 including those and other travel expenses reasonably incurred as a result of participation in
217 criminal proceedings, and medical and other expenses, but excludes punitive or exemplary
218 damages and pain and suffering.

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

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

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

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

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

237 (12) (a) "Reward" means a sum of money:

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

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

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

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

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

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

251 Section 5. Section **77-38a-302** is amended to read:

252 **77-38a-302. Restitution criteria.**

253 (1) When a defendant is convicted of criminal activity that has resulted in pecuniary

254 damages, in addition to any other sentence it may impose, the court shall order that the
255 defendant make restitution to victims of crime as provided in this chapter, or for conduct for
256 which the defendant has agreed to make restitution as part of a plea disposition. For purposes
257 of restitution, a victim has the meaning as defined in Subsection 77-38a-102(14) and in
258 determining whether restitution is appropriate, the court shall follow the criteria and procedures
259 as provided in Subsections (2) through (5).

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

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

264 (b) "Court-ordered restitution" means the restitution the court having criminal
265 jurisdiction orders the defendant to pay as a part of the criminal sentence [~~at the time of~~
266 ~~sentencing or within one year after sentencing~~].

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

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

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

273 (5) (a) For the purpose of determining restitution for an offense, the offense shall
274 include any criminal conduct admitted by the defendant to the sentencing court or to which the
275 defendant agrees to pay restitution. A victim of an offense that involves as an element a
276 scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by
277 the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

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

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

- 282 (ii) the cost of necessary medical and related professional services and devices relating
283 to physical or mental health care, including nonmedical care and treatment rendered in
284 accordance with a method of healing recognized by the law of the place of treatment;
- 285 (iii) the cost of necessary physical and occupational therapy and rehabilitation;
- 286 (iv) the income lost by the victim as a result of the offense [~~if the offense resulted in~~
287 ~~bodily injury to a victim~~];
- 288 (v) [~~up to five days of~~] the individual victim's reasonable determinable wages that are
289 lost due to theft of or damage to tools or equipment items of a trade that were owned by the
290 victim and were essential to the victim's current employment at the time of the offense; and
- 291 (vi) the cost of necessary funeral and related services if the offense resulted in the death
292 of a victim.
- 293 (c) In determining the monetary sum and other conditions for court-ordered restitution,
294 the court shall consider:
- 295 (i) the factors listed in Subsections (5)(a) and (b);
- 296 (ii) the financial resources of the defendant, as disclosed in the financial declaration
297 described in Section [77-38a-204](#);
- 298 (iii) the burden that payment of restitution will impose, with regard to the other
299 obligations of the defendant;
- 300 (iv) the ability of the defendant to pay restitution on an installment basis or on other
301 conditions to be fixed by the court;
- 302 (v) the rehabilitative effect on the defendant of the payment of restitution and the
303 method of payment; and
- 304 (vi) other circumstances that the court determines may make restitution inappropriate.
- 305 [~~(d) (i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete~~
306 ~~restitution and court-ordered restitution, and shall make all restitution orders at the time of~~
307 ~~sentencing if feasible, otherwise within one year after sentencing.~~]
- 308 (d) (i) The prosecuting agency shall submit all requests for complete restitution and
309 court ordered restitution to the court at the time of sentencing if feasible, otherwise within one

310 year after sentencing.

311 (ii) If a defendant is placed on probation pursuant to Section [77-18-1](#):

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

313 (B) the time period for determination of complete restitution and court ordered

314 restitution may be extended by the court upon a finding of good cause, but may not exceed the

315 period of the probation term served by the defendant.

316 (iii) If the defendant is committed to prison:

317 [~~(ii) Any~~] (A) any pecuniary damages that have not been determined by the court

318 within one year after sentencing may be determined by the Board of Pardons and Parole[-]; and

319 [~~(e) The~~] (B) the Board of Pardons and Parole may, within one year after sentencing,

320 refer an order of judgment and commitment back to the court for determination of restitution.