

RESTITUTION REVISIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to restitution.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses restitution owed by a defendant to an individual for financial support that a deceased or incapacitated victim had a legal obligation to provide to the individual at the time of the defendant's criminal conduct; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 63M-7-503**, as last amended by Laws of Utah 2021, Chapter 260
- 77-18-114**, as last amended by Laws of Utah 2022, Chapters 323, 359
- 77-18-118**, as last amended by Laws of Utah 2022, Chapter 359
- 77-27-6.1**, as enacted by Laws of Utah 2021, Chapter 260
- 77-32b-103**, as last amended by Laws of Utah 2022, Chapters 328, 359



28 77-38b-102, as last amended by Laws of Utah 2022, Chapter 359

29 77-38b-202, as enacted by Laws of Utah 2021, Chapter 260

30 77-38b-205, as enacted by Laws of Utah 2021, Chapter 260

31 77-38b-303, as last amended by Laws of Utah 2022, Chapter 359

32 ENACTS:

33 77-38b-206, Utah Code Annotated 1953



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

36 Section 1. Section 63M-7-503 is amended to read:

37 **63M-7-503. Restitution -- Reparations not to supplant restitution -- Assignment**
38 **of claim for restitution judgment to Reparations Office.**

39 (1) A reparations award may not supplant an order for restitution under Title 77,
40 Chapter 38b, Crime Victims Restitution Act, or under any other provision of law.

41 (2) The court may not reduce an order for restitution based on a reparations award.

42 (3) (a) (i) If a victim receives a reparations award and the office is assigned the victim's
43 claim for restitution, or a portion of the victim's claim for restitution, under Section
44 63M-7-519, the office may file with the sentencing court a notice of restitution listing the
45 amounts or estimated future amounts of payments made or anticipated to be made to or on
46 behalf of the victim.

47 (ii) The office may provide a notice of restitution to the victim or victim's
48 representative before or at sentencing.

49 (iii) The office's failure to provide notice under Subsection (3)(a)(i) or (ii) does not
50 invalidate the imposition of the judgment or an order for restitution if the defendant is given the
51 opportunity to object and be heard as provided in this part.

52 (b) (i) Any objection by the defendant to the imposition or amount of restitution under
53 Subsection (3)(a)(i) shall be:

54 (A) made at the time of sentencing; or

55 (B) made in writing within 20 days after the day on which the defendant receives the
56 notice described in Subsection (3)(a) and filed with the court and a copy mailed to the office.

57 (ii) Upon an objection, the court shall allow the defendant a hearing on the issue.

58 (iii) After a hearing under Subsection (3)(b)(ii), the court shall:

59 (A) enter an order for restitution in accordance with Section [77-38b-205](#); and
 60 (B) identify the office as an assignee for the order for restitution.
 61 (iv) Subject to the right of the defendant to object, the amount of restitution sought by
 62 the office may be updated and the office identified as an assignee of an order for restitution in
 63 accordance with the time periods established under [~~Subsection [77-38b-205\(5\)](#)~~] Section
 64 [77-38b-205](#).

65 (4) If no objection is made or filed by the defendant under Subsection (3), the court
 66 shall upon conviction and sentencing:

67 (a) enter an order for restitution in accordance with Section [77-38b-205](#); and
 68 (b) identify the office as an assignee for the order for restitution.

69 (5) (a) If the notice of restitution is filed after sentencing but during the term of
 70 probation or parole, the court shall:

71 (i) modify any order for restitution to include expenses paid by the office on behalf of
 72 the victim in accordance with [~~Subsection [77-38b-205\(5\)](#)~~] Section [77-38b-205](#); and

73 (ii) identify the office as an assignee of the order for restitution.

74 (b) If an order for restitution has not been entered, the court shall:

75 (i) enter an order for restitution in accordance with Section [77-38b-205](#); and

76 (ii) identify the office as an assignee of the order for restitution.

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

78 **77-18-114. Unpaid balance at termination of sentence -- Past due account --**

79 **Notice -- Account or judgment paid in full -- Effect of civil accounts receivable and civil**
 80 **judgment of restitution.**

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

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

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

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

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

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

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

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

96 (2) If a criminal accounts receivable for the defendant is more than 90 days past due
97 and the court has ordered that a defendant does not owe restitution to any victim, or the time
98 period [~~in Subsection 77-38b-205(5) has passed~~] for entering an order for restitution has passed
99 under Section 77-38b-205 and the court has not ordered restitution, the court may:

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

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

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

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

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

112 (5) The Office of State Debt Collection shall notify the court when a civil judgment of
113 restitution or a civil accounts receivable is satisfied.

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

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

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

120 (7) A criminal accounts receivable, a civil accounts receivable, and a civil judgment of

121 restitution are not subject to the civil statutes of limitation and expire only upon payment in
122 full.

123 (8) (a) If a defendant asserts that a payment was made to a victim or third party for a
124 civil judgment of restitution, or enters into any other transaction that does not involve the
125 Office of State Debt Collection, and the defendant asserts that the payment results in a credit
126 towards the civil judgment of restitution for the defendant:

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

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

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

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

137 **77-18-118. Continuing jurisdiction of a sentencing court.**

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

139 (a) if the defendant is on probation as described in Subsection [77-18-105\(3\)\(c\)](#);

140 (b) if the defendant is on probation and the probation period has terminated under
141 Subsection [77-18-105\(7\)](#), to require the defendant to continue to make payments towards a
142 criminal accounts receivable until the defendant's sentence expires;

143 (c) within the time periods described in [~~Subsection [77-38b-205\(5\)](#)~~] Section
144 [77-38b-205](#), to enter or modify an order for a criminal accounts receivable in accordance with
145 Section [77-32b-103](#);

146 (d) within the time periods described in [~~Subsection [77-38b-205\(5\)](#)~~] Section
147 [77-38b-205](#), to enter or modify an order for restitution in accordance with Section [77-38b-205](#);

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

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

152 (g) if a defendant files a petition for remittance under Subsection 77-32b-106(1) within
153 90 days from the day on which the defendant's sentence is terminated, to determine whether to
154 remit, in whole or in part, the defendant's criminal accounts receivable; and

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

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

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

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

161 Section 4. Section 77-27-6.1 is amended to read:

162 **77-27-6.1. Payment of a criminal accounts receivable -- Failure to enter an order**
163 **for restitution or create a criminal accounts receivable -- Modification of a criminal**
164 **accounts receivable -- Order for recovery of costs or pecuniary damages.**

165 (1) When an offender is committed to prison, the board may require the offender to pay
166 the offender's criminal accounts receivable ordered by the court during the period of
167 incarceration or parole supervision.

168 (2) If the board orders the release of an offender on parole and there is an unpaid
169 balance on the offender's criminal accounts receivable, the board may modify the payment
170 schedule entered by the court for the offender's criminal accounts receivable in accordance with
171 Section 77-32b-105.

172 (3) (a) If the sentencing court has not entered an order of restitution for an offender
173 who is under the jurisdiction of the board, the board shall refer the offender's case to the
174 sentencing court, within the time periods described in [~~Subsection 77-38b-205(5);~~] Section
175 77-38b-205, to enter an order for restitution for the offender in accordance with Section
176 77-38b-205.

177 (b) If the sentencing court has not entered an order to establish a criminal accounts
178 receivable for an offender who is under the jurisdiction of the board, the board shall refer the
179 offender's case to the sentencing court, within the time periods described in [~~Subsection~~
180 77-38b-205(5);] Section 77-38b-205, to enter an order to establish a criminal accounts
181 receivable for the offender in accordance with Section 77-32b-103.

182 (4) (a) If there is a challenge to an offender's criminal accounts receivable, the board

183 shall refer the offender's case to the sentencing court, within the time periods described in
184 [~~Subsection 77-38b-205(5);~~] Section 77-38b-205, to resolve the challenge to the criminal
185 accounts receivable.

186 (b) If a sentencing court modifies a criminal accounts receivable after the offender is
187 committed to prison, the sentencing court shall provide notice to the board of the modification.

188 (5) The board may enter an order to recover any cost incurred by the department, or the
189 state or any other agency, arising out of the offender's needs or conduct.

190 Section 5. Section **77-32b-103** is amended to read:

191 **77-32b-103. Establishment of a criminal accounts receivable -- Responsibility --**
192 **Payment schedule -- Delinquency or default.**

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

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

199 (c) Subject to Subsection [~~77-38b-205(5);~~] 77-38b-205(8), if the court does not create a
200 criminal accounts receivable for a defendant under Subsection (1)(a), the court shall enter an
201 order to establish a criminal accounts receivable for the defendant at the time the court enters
202 an order for restitution under Section 77-38b-205.

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

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

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

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

209 (b) for all other cases:

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

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

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

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

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

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

225 (ii) the financial resources of the defendant, as disclosed in the financial declaration
226 under Section 77-38b-204 or in evidence obtained by subpoena under Subsection
227 77-38b-402(1)(b);

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

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

232 (v) the rehabilitative effect on the defendant of the payment of restitution and method
233 of payment; and

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

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

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

241 (6) (a) If a defendant is incarcerated in a county jail or a secure correctional facility, as
242 defined in Section 64-13-1, or the defendant is involuntarily committed under Section
243 62A-15-631:

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

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

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

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

252 Section 6. Section **77-38b-102** is amended to read:

253 **77-38b-102. Definitions.**

254 As used in this chapter:

255 (1) "Civil accounts receivable" means the same as that term is defined in Section
256 [77-32b-102](#).

257 (2) "Civil judgment of restitution" means the same as that term is defined in Section
258 [77-32b-102](#).

259 (3) (a) "Conviction" means:

260 (i) a plea of:

261 (A) guilty;

262 (B) guilty with a mental illness; or

263 (C) no contest; or

264 (ii) a judgment of:

265 (A) guilty; or

266 (B) guilty with a mental illness.

267 (b) "Conviction" does not include:

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

269 (ii) a diversion agreement; or

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

271 (4) "Criminal accounts receivable" means the same as that term is defined in Section
272 [77-32b-102](#).

273 (5) "Criminal conduct" means:

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

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

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

277 (6) (a) "Defendant" means an individual who has been convicted of, or entered into a
278 plea disposition for, criminal conduct.

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

282 (7) "Deceased or incapacitated victim" means an individual whose death or
283 incapacitation is proximately caused by the criminal conduct of the defendant.

284 [~~7~~] (8) "Department" means the Department of Corrections.

285 (9) (a) "Dependent" means an individual for whom a deceased or incapacitated victim
286 had a legal obligation to provide dependent support at the time of the criminal conduct by the
287 defendant.

288 (b) "Dependent" includes:

289 (i) a child:

290 (A) who is younger than 18 years old; and

291 (B) for whom a deceased or incapacitated victim is the adoptive or biological parent or
292 legal guardian;

293 (ii) an unborn child who has a parent-child relationship with a deceased or
294 incapacitated victim in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act; or

295 (iii) an incapacitated individual for whom a deceased or incapacitated victim is the
296 adoptive or biological parent or legal guardian.

297 (10) "Dependent support" means the financial obligation of an individual to provide for
298 the needs of a dependent, including food, clothing, health care, safety, or shelter.

299 [~~8~~] (11) "Diversion agreement" means an agreement entered into by the prosecuting
300 attorney and the defendant that suspends criminal proceedings before conviction on the
301 condition that a defendant agree to participate in a rehabilitation program, pay restitution to the
302 victim, or fulfill some other condition.

303 (12) "Incapacitated" or "incapacitation" means the individual is:

304 (a) mentally or physically impaired to the extent that the individual is permanently
305 unable to gain employment and provide basic necessities, including food, clothing, health care,
306 safety, or shelter; and

307 (b) reliant on a parent, legal guardian, or other relative or person to provide basic
308 necessities for the individual.

309 (13) "Legal guardian" means an individual appointed by a court to make decisions
310 regarding a child or an incapacitated individual.

311 (14) "Life expectancy" means the number of months an individual is or was expected
312 to live considering medical records and experiential data for the individual.

313 [~~(9)~~] (15) "Office" means the Office of State Debt Collection created in Section
314 63A-3-502.

315 [~~(10)~~] (16) "Party" means the prosecuting attorney, the defendant, or the department
316 involved in a prosecution.

317 [~~(11)~~] (17) "Payment schedule" means the same as that term is defined in Section
318 77-32b-102.

319 [~~(12)~~] (18) (a) "Pecuniary damages" means all demonstrable economic injury, losses,
320 and expenses regardless of whether the economic injury, losses, and expenses have yet been
321 incurred.

322 (b) "Pecuniary damages" does not include punitive damages or pain and suffering
323 damages.

324 [~~(13)~~] (19) "Plea agreement" means an agreement entered between the prosecuting
325 attorney and the defendant setting forth the special terms and conditions and criminal charges
326 upon which the defendant will enter a plea of guilty or no contest.

327 [~~(14)~~] (20) "Plea disposition" means an agreement entered into between the
328 prosecuting attorney and the defendant including a diversion agreement, a plea agreement, a
329 plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any
330 other jurisdiction or where charges are dismissed without a plea.

331 [~~(15)~~] (21) "Plea in abeyance" means an order by a court, upon motion of the
332 prosecuting attorney and the defendant, accepting a plea of guilty or of no contest from the
333 defendant but not, at that time, entering judgment of conviction against the defendant nor
334 imposing sentence upon the defendant on condition that the defendant comply with specific
335 conditions as set forth in a plea in abeyance agreement.

336 [~~(16)~~] (22) "Plea in abeyance agreement" means an agreement entered into between the
337 prosecuting attorney and the defendant setting forth the specific terms and conditions upon

338 which, following acceptance of the agreement by the court, a plea may be held in abeyance.

339 ~~[(17)]~~ (23) "Restitution" means the payment of pecuniary damages to a victim.

340 (24) "Unborn child" means a human fetus or embryo in any stage of gestation from
341 fertilization until birth.

342 ~~[(18)]~~ (25) (a) "Victim" means any person who has suffered pecuniary damages that are
343 proximately caused by the criminal conduct of the defendant.

344 (b) "Victim" includes:

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

347 (ii) the estate of a deceased victim;

348 (iii) a dependent; and

349 ~~[(iii)]~~ (iv) a parent, spouse, or sibling of a victim.

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

351 Section 7. Section **77-38b-202** is amended to read:

352 **77-38b-202. Prosecuting attorney responsibility for collecting restitution**
353 **information -- Depositing restitution on behalf of victim.**

354 (1) If a prosecuting attorney files a criminal charge against a defendant, the prosecuting
355 attorney shall:

356 (a) contact any known victim of the offense for which the criminal charge is filed, or
357 person asserting a claim for restitution on behalf of the victim; and

358 (b) gather the following information from the victim or person:

359 (i) the name of the victim or person; and

360 (ii) the actual or estimated amount of restitution.

361 (2) (a) When a conviction, a diversion agreement, or a plea in abeyance is entered by
362 the court, the prosecuting attorney shall provide the court with the information gathered by the
363 prosecuting attorney under Subsection (1)(b).

364 (b) If, at the time of the plea disposition or conviction, the prosecuting attorney does
365 not have all the information under Subsection (1)(b), the prosecuting attorney shall provide the
366 defendant with:

367 (i) at the time of plea disposition or conviction, all information under Subsection (1)(b)
368 that is reasonably available to the prosecuting attorney; and

369 (ii) any information under Subsection (1)(b) as the information becomes available to
370 the prosecuting attorney.

371 (c) Nothing in this section shall be construed to prevent a prosecuting attorney, a
372 victim, or a person asserting a claim for restitution on behalf of a victim from:

373 (i) submitting information on, or a request for, restitution to the court within the time
374 periods described in [~~Subsection 77-38b-205(5)~~] Section 77-38b-205; or

375 (ii) submitting information on, or a request for, restitution for additional or substituted
376 victims within the time periods described in [~~Subsection 77-38b-205(5)~~] Section 77-38b-205.

377 (3) (a) The prosecuting attorney may be authorized by the appropriate public treasurer
378 to deposit restitution collected on behalf of a victim into an interest-bearing account in
379 accordance with Title 51, Chapter 7, State Money Management Act, pending the distribution of
380 the funds to the victim.

381 (b) If restitution is deposited into an interest-bearing account under Subsection (3)(a),
382 the prosecuting attorney shall:

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

385 (ii) if all victims have been made whole and funds remain in the account, distribute any
386 remaining funds to the Division of Finance, created in Section 63A-3-101, to deposit to the
387 Utah Office for Victims of Crime.

388 (c) Nothing in this section prevents an independent judicial authority from collecting,
389 holding, and distributing restitution.

390 Section 8. Section ~~77-38b-205~~ is amended to read:

391 **~~77-38b-205. Order for restitution.~~**

392 [~~(1)(a)(i)~~] (1) If a defendant is convicted, as defined in Section 76-3-201, the court
393 shall order a defendant, as part of the sentence imposed under Section 76-3-201, to pay
394 restitution to all victims:

395 [~~(A)~~] (a) in accordance with the terms of any plea agreement in the case; or

396 [~~(B)~~] (b) for the entire amount of pecuniary damages that are proximately caused to
397 each victim by the criminal conduct of the defendant.

398 [~~(i)~~] (2)(a) In determining the amount of pecuniary damages under Subsection

399 [~~(1)(a)(i)(B)~~] (1)(b), the court shall consider all relevant facts to establish an amount that fully

400 compensates a victim for all pecuniary damages proximately caused by the criminal conduct of
401 the defendant.

402 (b) If the court determines that the defendant owes pecuniary damages to a dependent
403 for dependent support under Subsection (2)(a), the court shall establish the amount of
404 dependent support owed to the dependent in accordance with Section [77-38b-206](#).

405 ~~[(iii)]~~ (3) The court shall enter the determination of the amount of restitution under
406 Subsection ~~[(1)(a)(ii)]~~ (2) as a finding on the record.

407 ~~[(b)]~~ (4) If a court enters a plea in abeyance or a diversion agreement for a defendant
408 that includes an agreement to pay restitution, the court shall order the defendant to pay
409 restitution in accordance with the terms of the plea in abeyance or the diversion agreement.

410 ~~[(2)]~~ (5) (a) Upon an order for a defendant to pay restitution under Subsection (1), the
411 court shall:

412 (i) enter an order to establish a criminal accounts receivable as described in Section
413 [77-32b-103](#); and

414 (ii) establish a payment schedule for the criminal accounts receivable as described in
415 Section [77-32b-103](#).

416 ~~[(3)]~~ (6) If the defendant objects to the order for restitution or the payment schedule,
417 the court shall allow the defendant to have a hearing on the issue, unless the issue is addressed
418 at the sentencing hearing for the defendant.

419 ~~[(4)]~~ (7) (a) For a defendant who is sentenced after July 1, 2021, if no restitution is
420 ordered at sentencing, the court shall schedule a hearing to determine restitution, unless the
421 parties waive the hearing in accordance with Subsection ~~[(4)(b)]~~ (7)(b).

422 (b) The parties may only waive a hearing ~~[under Subsection (4)(a)]~~ if:

423 (i) the parties have stipulated to the amount of restitution owed; or

424 (ii) the prosecuting attorney certifies that the prosecuting attorney has consulted with
425 the victim, including the Utah Office for Victims of Crime, and the defendant owes no
426 restitution.

427 (c) The court may not enter an order for restitution without a statement from the
428 prosecuting attorney that the prosecuting attorney has consulted with the victim, including the
429 Utah Office for Victims of Crime.

430 (d) If the court does not enter an order for restitution in a hearing under Subsection

431 [~~(4)~~(a)] (7)(a), the court shall:

432 (i) state, on the record, why the court did not enter an order for restitution; and

433 (ii) order a continuance of the hearing.

434 [~~(5)~~] (8) A court shall enter an order for restitution in a defendant's case no later than
435 the earlier of:

436 (a) the termination of the defendant's sentence; or

437 (b) (i) if the defendant is convicted and imprisoned for a first degree felony, within
438 seven years after the day on which the court sentences the defendant for the first degree felony
439 conviction;

440 (ii) except as provided in Subsection [~~(5)~~(b)(i)] (8)(b)(i), and if the defendant is
441 convicted of a felony, within three years after the day on which the court sentences the
442 defendant for the felony conviction; and

443 (iii) if the defendant is convicted of a misdemeanor, within one year after the day on
444 which the court sentences the defendant for the misdemeanor conviction.

445 [~~(6)~~] (9) (a) Upon a motion from the prosecuting attorney or the victim, the court may
446 modify an existing order of restitution, including the amount of pecuniary damages owed by
447 the defendant in the order for restitution, if the prosecuting attorney or the victim shows good
448 cause for modifying the order.

449 (b) A motion under Subsection [~~(6)~~(a)] (9)(a) shall be brought within the time periods
450 described in Subsection [~~(5)~~] (8).

451 Section 9. Section **77-38b-206** is enacted to read:

452 **77-38b-206. Calculating the amount of restitution owed for dependent support.**

453 For pecuniary damages owed to a dependent for dependent support under Section
454 77-38b-205, the court shall:

455 (1) establish a monthly amount of dependent support that is reasonably necessary for
456 the financial support of the dependent; and

457 (2) calculate the entire amount of pecuniary damages owed for dependent support by
458 multiplying the monthly amount established under Subsection (1) by:

459 (a) if the dependent is a child who is younger than 18 years old and is not an
460 incapacitated individual, the number of months until the dependent is 18 years old and is
461 graduated from high school; or

462 (b) if the dependent is an incapacitated individual, the life expectancy of:
463 (i) the deceased or incapacitated victim before the victim's death or incapacitation; or
464 (ii) the dependent if the court determines that the dependent's life expectancy is shorter
465 than the deceased or incapacitated victim's life expectancy under Subsection (2)(b)(i).

466 Section 10. Section **77-38b-303** is amended to read:

467 **77-38b-303. Civil action by a victim.**

468 (1) A provision under this part concerning restitution does not limit or impair the right
469 of a person injured by a defendant's criminal conduct to sue and recover damages from the
470 defendant in a civil action.

471 (2) (a) A court's finding on the amount of restitution owed by a defendant under
472 Subsection [~~77-38b-205(1)(a)(iii)~~] [77-38b-205\(3\)](#) may be used in a civil action pertaining to
473 the defendant's liability to a victim as presumptive proof of the victim's pecuniary damages that
474 are proximately caused by the defendant's criminal conduct.

475 (b) If a conviction in a criminal trial decides the issue of a defendant's liability for
476 pecuniary damages suffered by a victim, the issue of the defendant's liability for pecuniary
477 damages is conclusively determined as to the defendant if the issue is involved in a subsequent
478 civil action.

479 (c) (i) Except as provided in Subsection (2)(c)(ii), if a defendant is convicted of a
480 misdemeanor or felony offense, the defendant is precluded from subsequently denying the
481 essential allegations of the offense in a subsequent civil action brought against the defendant
482 for the criminal conduct underlying the offense.

483 (ii) Subsection (2)(c)(i) does not apply if the offense is a class C misdemeanor under
484 Title 41, Chapter 6a, Traffic Code, or the defendant entered a plea of no contest for the offense.

485 (3) (a) The sentencing court shall credit any payment in favor of the victim in a civil
486 action for the defendant's criminal conduct toward the amount of restitution owed by the
487 defendant to the victim.

488 (b) In a civil action, a court shall credit any restitution paid by the defendant to a victim
489 for the defendant's criminal conduct towards the victim against any judgment that is in favor of
490 the victim for the civil action.

491 (c) If a victim receives payment from the defendant for the civil action, the victim shall
492 provide notice to the sentencing court and the court in the civil action of the payment within 30

493 days after the day on which the victim receives the payment.

494 (d) Nothing in this section shall prevent a defendant from providing proof of payment
495 to the court or the office.

496 (4) (a) If a victim prevails in a civil action against a defendant, the court shall award
497 reasonable attorney fees and costs to the victim.

498 (b) If the defendant prevails in the civil action, the court shall award reasonable costs to
499 the defendant if the court finds that the victim brought the civil action for an improper purpose,
500 including to harass the defendant or to cause unnecessary delay or needless increase in the cost
501 of litigation.