

Representative Steve Eliason proposes the following substitute bill:

RESTITUTION REVISIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Todd D. Weiler

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:

This bill provides a coordination clause.

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



- 26 77-27-6.1, as enacted by Laws of Utah 2021, Chapter 260
- 27 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

34 **Utah Code Sections Affected by Coordination Clause:**

- 35 77-32b-103, as last amended by Laws of Utah 2022, Chapters 328 and 359
- 36 77-38b-205, as enacted by Laws of Utah 2021, Chapter 260
- 37 77-38b-303, as last amended by Laws of Utah 2022, Chapter 359



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

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

41 **63M-7-503. Restitution -- Reparations not to supplant restitution -- Assignment**
42 **of claim for restitution judgment to Reparations Office.**

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

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

46 (3) (a) (i) If a victim receives a reparations award and the office is assigned the victim's
47 claim for restitution, or a portion of the victim's claim for restitution, under Section
48 63M-7-519, the office may file with the sentencing court a notice of restitution listing the
49 amounts or estimated future amounts of payments made or anticipated to be made to or on
50 behalf of the victim.

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

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

56 (b) (i) Any objection by the defendant to the imposition or amount of restitution under

57 Subsection (3)(a)(i) shall be:

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

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

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

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

63 (A) enter an order for restitution in accordance with Section 77-38b-205; and

64 (B) identify the office as an assignee for the order for restitution.

65 (iv) Subject to the right of the defendant to object, the amount of restitution sought by
66 the office may be updated and the office identified as an assignee of an order for restitution in
67 accordance with the time periods established under [~~Subsection 77-38b-205(5)~~] Section
68 77-38b-205.

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

71 (a) enter an order for restitution in accordance with Section 77-38b-205; and

72 (b) identify the office as an assignee for the order for restitution.

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

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

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

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

79 (i) enter an order for restitution in accordance with Section 77-38b-205; and

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

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

82 **77-18-114. Unpaid balance at termination of sentence -- Past due account --**

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

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

87 (a) the board shall provide an accounting of the unpaid balance of the defendant's

88 criminal accounts receivable to the court if the defendant was on parole or incarcerated at the
89 time of termination; and

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

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

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

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

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

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

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

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

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

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

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

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

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

118 (6) When a fine, forfeiture, surcharge, cost, or fee is recorded in an order for a civil

119 accounts receivable on the civil judgment docket, or when restitution is recorded as an order
120 for a civil judgment of restitution on the civil judgment docket, the order:

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

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

124 (7) A criminal accounts receivable, a civil accounts receivable, and a civil judgment of
125 restitution are not subject to the civil statutes of limitation and expire only upon payment in
126 full.

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

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

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

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

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

141 **77-18-118. Continuing jurisdiction of a sentencing court.**

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

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

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

147 (c) within the time periods described in [~~Subsection [77-38b-205\(5\)](#)] Section
148 [77-38b-205](#), to enter or modify an order for a criminal accounts receivable in accordance with
149 Section [77-32b-103](#);~~

150 (d) within the time periods described in [~~Subsection 77-38b-205(5)~~] Section
151 77-38b-205, to enter or modify an order for restitution in accordance with Section 77-38b-205;

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

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

156 (g) if a defendant files a petition for remittance under Subsection 77-32b-106(1) within
157 90 days from the day on which the defendant's sentence is terminated, to determine whether to
158 remit, in whole or in part, the defendant's criminal accounts receivable; and

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

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

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

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

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

166 **77-27-6.1. Payment of a criminal accounts receivable -- Failure to enter an order**
167 **for restitution or create a criminal accounts receivable -- Modification of a criminal**
168 **accounts receivable -- Order for recovery of costs or pecuniary damages.**

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

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

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

181 (b) If the sentencing court has not entered an order to establish a criminal accounts
182 receivable for an offender who is under the jurisdiction of the board, the board shall refer the
183 offender's case to the sentencing court, within the time periods described in [~~Subsection~~
184 ~~77-38b-205(5);~~ Section 77-38b-205, to enter an order to establish a criminal accounts
185 receivable for the offender in accordance with Section 77-32b-103.

186 (4) (a) If there is a challenge to an offender's criminal accounts receivable, the board
187 shall refer the offender's case to the sentencing court, within the time periods described in
188 [~~Subsection 77-38b-205(5);~~ Section 77-38b-205, to resolve the challenge to the criminal
189 accounts receivable.

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

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

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

195 **77-32b-103. Establishment of a criminal accounts receivable -- Responsibility --**
196 **Payment schedule -- Delinquency or default.**

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

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

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

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

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

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

211 (ii) transfer the responsibility of receiving, distributing, and processing payments for

212 the criminal accounts receivable to the Office of State Debt Collection; and

213 (b) for all other cases:

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

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

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

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

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

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

229 (ii) the financial resources of the defendant, as disclosed in the financial declaration
230 under Section 77-38b-204 or in evidence obtained by subpoena under Subsection
231 77-38b-402(1)(b);

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

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

236 (v) the rehabilitative effect on the defendant of the payment of restitution and method
237 of payment; and

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

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

241 (5) If the court orders restitution under Section 77-38b-205, or makes another financial
242 decision, after sentencing that increases the total amount owed in a defendant's case, the

243 defendant's criminal accounts receivable balance shall be adjusted to include any new amount
244 ordered by the court.

245 (6) (a) If a defendant is incarcerated in a county jail or a secure correctional facility, as
246 defined in Section 64-13-1, or the defendant is involuntarily committed under Section
247 62A-15-631:

248 (i) all payments for a payment schedule shall be suspended for the period of time that
249 the defendant is incarcerated or involuntarily committed, unless the court, or the board if the
250 defendant is under the jurisdiction of the board, expressly orders the defendant to make
251 payments according to the payment schedule; and

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

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

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

257 **77-38b-102. Definitions.**

258 As used in this chapter:

259 (1) "Civil accounts receivable" means the same as that term is defined in Section
260 77-32b-102.

261 (2) "Civil judgment of restitution" means the same as that term is defined in Section
262 77-32b-102.

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

264 (i) a plea of:

265 (A) guilty;

266 (B) guilty with a mental illness; or

267 (C) no contest; or

268 (ii) a judgment of:

269 (A) guilty; or

270 (B) guilty with a mental illness.

271 (b) "Conviction" does not include:

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

273 (ii) a diversion agreement; or

274 (iii) an adjudication of a minor for an offense under Section 80-6-701.

275 (4) "Criminal accounts receivable" means the same as that term is defined in Section
276 77-32b-102.

277 (5) "Criminal conduct" means:

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

279 (b) any other criminal behavior for which the defendant admits responsibility to the
280 sentencing court with or without an admission of committing the criminal behavior.

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

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

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

288 [~~7~~] (8) "Department" means the Department of Corrections.

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

292 (b) "Dependent" includes:

293 (i) a child:

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

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

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

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

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

303 [~~8~~] (11) "Diversion agreement" means an agreement entered into by the prosecuting
304 attorney and the defendant that suspends criminal proceedings before conviction on the

305 condition that a defendant agree to participate in a rehabilitation program, pay restitution to the
306 victim, or fulfill some other condition.

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

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

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

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

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

317 [~~9~~] (15) "Office" means the Office of State Debt Collection created in Section
318 63A-3-502.

319 [~~10~~] (16) "Party" means the prosecuting attorney, the defendant, or the department
320 involved in a prosecution.

321 [~~11~~] (17) "Payment schedule" means the same as that term is defined in Section
322 77-32b-102.

323 [~~12~~] (18) (a) "Pecuniary damages" means all demonstrable economic injury, losses,
324 and expenses regardless of whether the economic injury, losses, and expenses have yet been
325 incurred.

326 (b) "Pecuniary damages" does not include punitive damages or pain and suffering
327 damages.

328 [~~13~~] (19) "Plea agreement" means an agreement entered between the prosecuting
329 attorney and the defendant setting forth the special terms and conditions and criminal charges
330 upon which the defendant will enter a plea of guilty or no contest.

331 [~~14~~] (20) "Plea disposition" means an agreement entered into between the
332 prosecuting attorney and the defendant including a diversion agreement, a plea agreement, a
333 plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any
334 other jurisdiction or where charges are dismissed without a plea.

335 [~~15~~] (21) "Plea in abeyance" means an order by a court, upon motion of the

336 prosecuting attorney and the defendant, accepting a plea of guilty or of no contest from the
337 defendant but not, at that time, entering judgment of conviction against the defendant nor
338 imposing sentence upon the defendant on condition that the defendant comply with specific
339 conditions as set forth in a plea in abeyance agreement.

340 ~~[(16)]~~ (22) "Plea in abeyance agreement" means an agreement entered into between the
341 prosecuting attorney and the defendant setting forth the specific terms and conditions upon
342 which, following acceptance of the agreement by the court, a plea may be held in abeyance.

343 ~~[(17)]~~ (23) "Restitution" means the payment of pecuniary damages to a victim.

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

346 ~~[(18)]~~ (25) (a) "Victim" means any person who has suffered pecuniary damages that are
347 proximately caused by the criminal conduct of the defendant.

348 (b) "Victim" includes:

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

351 (ii) the estate of a deceased victim;

352 (iii) a dependent; and

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

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

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

356 **77-38b-202. Prosecuting attorney responsibility for collecting restitution**
357 **information -- Depositing restitution on behalf of victim.**

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

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

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

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

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

365 (2) (a) When a conviction, a diversion agreement, or a plea in abeyance is entered by
366 the court, the prosecuting attorney shall provide the court with the information gathered by the

367 prosecuting attorney under Subsection (1)(b).

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

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

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

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

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

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

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

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

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

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

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

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

395 **77-38b-205. Order for restitution.**

396 [~~(1) (a) (i)~~]

397 (1) If a defendant is convicted, as defined in Section 76-3-201, the court shall order a

398 defendant, as part of the sentence imposed under Section [76-3-201](#), to pay restitution to all
399 victims:

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

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

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

404 ~~[(1)(a)(i)(B)]~~ (1)(b), the court shall consider all relevant facts to establish an amount that fully
405 compensates a victim for all pecuniary damages proximately caused by the criminal conduct of
406 the defendant.

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

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

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

415 ~~[(2)]~~ (5) (a) Upon an order for a defendant to pay restitution under Subsection (1), the
416 court shall:

417 (i) enter an order to establish a criminal accounts receivable as described in Section
418 [77-32b-103](#); and

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

421 ~~[(3)]~~ (6) If the defendant objects to the order for restitution or the payment schedule,
422 the court shall allow the defendant to have a hearing on the issue, unless the issue is addressed
423 at the sentencing hearing for the defendant.

424 ~~[(4)]~~ (7) (a) For a defendant who is sentenced after July 1, 2021, if no restitution is
425 ordered at sentencing, the court shall schedule a hearing to determine restitution, unless the
426 parties waive the hearing in accordance with Subsection ~~[(4)(b)]~~ (7)(b).

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

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

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

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

435 (d) If the court does not enter an order for restitution in a hearing under Subsection
436 ~~[(4)(a)]~~ (7)(a), the court shall:

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

438 (ii) order a continuance of the hearing.

439 ~~[(5)]~~ (8) A court shall enter an order for restitution in a defendant's case no later than
440 the earlier of:

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

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

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

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

450 ~~[(6)]~~ (9) (a) Upon a motion from the prosecuting attorney or the victim, the court may
451 modify an existing order of restitution, including the amount of pecuniary damages owed by
452 the defendant in the order for restitution, if the prosecuting attorney or the victim shows good
453 cause for modifying the order.

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

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

457 **77-38b-206. Calculating the amount of restitution owed for dependent support.**

458 For pecuniary damages owed to a dependent for dependent support under Section

459 [77-38b-205](#), the court shall:

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

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

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

467 (b) if the dependent is an incapacitated individual, the life expectancy of:

468 (i) the deceased or incapacitated victim before the victim's death or incapacitation; or

469 (ii) the dependent if the court determines that the dependent's life expectancy is shorter
470 than the deceased or incapacitated victim's life expectancy under Subsection (2)(b)(i).

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

472 **77-38b-303. Civil action by a victim.**

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

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

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

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

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

490 (3) (a) The sentencing court shall credit any payment in favor of the victim in a civil

491 action for the defendant's criminal conduct toward the amount of restitution owed by the
492 defendant to the victim.

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

496 (c) If a victim receives payment from the defendant for the civil action, the victim shall
497 provide notice to the sentencing court and the court in the civil action of the payment within 30
498 days after the day on which the victim receives the payment.

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

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

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

507 Section 11. **Coordinating H.B. 456 with H.B. 50 -- Technical and substantive**
508 **amendments.**

509 If this H.B. 456 and H.B. 50, Criminal Financial Obligation Amendments, both pass
510 and become law, the Legislature intends that the Office of Legislative Research and General
511 Counsel prepare the Utah Code database for publication by:

512 (1) amending the reference in Subsection [77-32b-103\(1\)\(c\)](#) in this bill from Subsection
513 [77-38b-205\(8\)](#) to Subsection [77-38b-205\(5\)](#);

514 (2) amending Section [77-38b-205](#) to read:

515 "(1) (a) [(†)] If a defendant is convicted, as defined in Section [76-3-201](#), the court shall
516 order a defendant, as part of the sentence imposed under Section [76-3-201](#), to pay restitution to
517 all victims:

518 [(A)] (i) in accordance with the terms of any plea agreement in the case; or

519 [(B)] (ii) for the entire amount of pecuniary damages that are proximately caused to
520 each victim by the criminal conduct of the defendant.

521 [~~(i)~~] ~~In determining the amount of pecuniary damages under Subsection (1)(a)(i)(B);~~

522 ~~the court shall consider all relevant facts to establish an amount that fully compensates a victim~~
523 ~~for all pecuniary damages proximately caused by the criminal conduct of the defendant.]~~

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

526 (b) If a court enters a plea in abeyance or a diversion agreement for a defendant that
527 includes an agreement to pay restitution, the court shall order the defendant to pay restitution to
528 all victims:

529 (i) in accordance with the terms of the plea in abeyance or the diversion agreement[-];

530 or

531 (ii) if the terms of the plea in abeyance include an agreement between the parties that
532 restitution will be determined by the court as described in Section 77-2a-3, for the entire
533 amount of pecuniary damages that are proximately caused to each victim by the criminal
534 conduct of the defendant.

535 (c) In determining the amount of pecuniary damages under Subsection (1)(a)(ii) or
536 (b)(ii), the court shall consider all relevant facts to establish an amount that fully compensates a
537 victim for all pecuniary damages proximately caused by the criminal conduct of the defendant.

538 (d) If the court determines that the defendant owes pecuniary damages to a dependent
539 for dependent support under Subsection (1)(a)(ii) or (b)(ii), the court shall establish the amount
540 of dependent support owed to the dependent in accordance with Section 77-38b-206.

541 (e) The court shall enter the determination of the amount of restitution under
542 Subsection (1)(a)(ii) or (b)(ii) as a finding on the record.

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

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

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

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

552 ~~[(4) (a) For a defendant who is sentenced after July 1, 2021, if no restitution is ordered~~

553 at sentencing, the court shall schedule a hearing to determine restitution, unless the parties
 554 waive the hearing in accordance with Subsection (4)(b).]

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

556 [(i) the parties have stipulated to the amount of restitution owed; or]

557 [(ii) the prosecuting attorney certifies that the prosecuting attorney has consulted with
 558 the victim, including the Utah Office for Victims of Crime, and the defendant owes no
 559 restitution.]

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

563 [(d) If the court does not enter an order for restitution in a hearing under Subsection
 564 (4)(a), the court shall:]

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

566 [(ii) order a continuance of the hearing.]

567 (4) If a court does not enter an order for restitution at sentencing, the court shall
 568 schedule a hearing to enter an order for restitution, unless:

569 (a) the court finds as a matter of law that there is no victim in the case; or

570 (b) the prosecuting attorney certifies to the court, on the record, that:

571 (i) the prosecuting attorney has consulted with all victims, including the Utah Office
 572 for Victims of Crime; and

573 (ii) all victims, including the Utah Office for Victims of Crime, are not seeking
 574 restitution.

575 (5) (a) A court shall enter an order for restitution in a defendant's case no later than the
 576 earlier of:

577 [(a)] (i) the termination of the defendant's sentence, including early termination of the
 578 defendant's sentence; or

579 [(b)(i)] (ii) (A) if the defendant is convicted and imprisoned for a first degree felony,
 580 within seven years after the day on which the court sentences the defendant for the first degree
 581 felony conviction; or

582 [(ii)] (B) except as provided in Subsection [(5)(b)(i)] (5)(a)(ii)(A), and if the defendant
 583 is convicted of a felony, within three years after the day on which the court sentences the

584 defendant for the felony conviction~~;~~ and].

585 ~~[(iii) if the defendant is convicted of a misdemeanor, within one year after the day on~~
586 ~~which the court sentences the defendant for the misdemeanor conviction.]~~

587 (b) A request for restitution that is made within the time period described in Subsection
588 (5)(a) tolls the time for which the court must enter an order for restitution under Subsection
589 (5)(a) but does not extend the term of the defendant's probation or period of incarceration.

590 (6) (a) If a court does not order restitution at sentencing or at a hearing described in
591 Subsection (4), the prosecuting attorney or the victim may file a motion for restitution within
592 the time periods described in Subsection (5).

593 (b) If the defendant receives notice and does not object to a motion for restitution, the
594 court may order restitution without a hearing.

595 (c) If the defendant receives notice and objects to a motion for restitution, the court
596 may schedule a hearing to determine whether restitution should be ordered if the prosecuting
597 attorney or the victim shows good cause.

598 ~~[(6)(a)]~~ (7) Upon a motion from the prosecuting attorney or the victim within the time
599 periods described in Subsection (5), the court may modify an existing order of restitution,
600 including the amount of pecuniary damages owed by the defendant in the order for restitution,
601 if the prosecuting attorney or the victim shows good cause for modifying the order.

602 ~~[(b) A motion under Subsection (6)(a) shall be brought within the time periods~~
603 ~~described in Subsection (5).]";~~

604 (3) omitting the change to the reference in Subsection [77-38b-303\(2\)](#) in this bill;

605 (4) omitting the change to the reference in Subsection [77-38b-303\(3\)](#) in H.B. 50; and

606 (5) amending the reference in Subsection [77-38b-303\(2\)](#) from Subsection

607 [77-38b-205\(1\)\(a\)\(iii\)](#) to Subsection [77-38b-205\(1\)\(e\)](#).