

## **Part 2**

### **Restitution Determination**

#### **77-38a-201 Restitution determination -- Law enforcement duties and responsibilities.**

Any law enforcement agency conducting an investigation for criminal conduct which would constitute a felony or class A misdemeanor shall provide in the investigative reports whether a claim for restitution exists, the basis for the claim, and the estimated or actual amount of the claim.

Enacted by Chapter 137, 2001 General Session

#### **77-38a-202 Restitution determination -- Prosecution duties and responsibilities.**

- (1) At the time of entry of a conviction or entry of any plea disposition of a felony or class A misdemeanor, the attorney general, county attorney, municipal attorney, or district attorney shall provide to the district court:
  - (a) the names of all victims, including third parties, asserting claims for restitution;
  - (b) the actual or estimated amount of restitution determined at that time; and
  - (c) whether or not the defendant has agreed to pay the restitution specified as part of the plea disposition.
- (2) In computing actual or estimated restitution, the attorney general, county attorney, municipal attorney, or district attorney shall:
  - (a) use the criteria set forth in Section 77-38a-302 for establishing restitution amounts; and
  - (b) in cases involving multiple victims, incorporate into any conviction or plea disposition all claims for restitution arising out of the investigation for which the defendant is charged.
- (3) If charges are not to be prosecuted as part of a plea disposition, restitution claims from victims of those crimes shall also be provided to the court.
- (4)
  - (a) The attorney general, county attorney, municipal attorney, or district attorney may be authorized by the appropriate public treasurer to deposit restitution collected on behalf of crime victims into an interest bearing account in accordance with Title 51, Chapter 7, State Money Management Act, pending distribution of the funds.
  - (b) In the event restitution funds are deposited in an interest bearing account as provided under Subsection (4)(a), the attorney general, county attorney, municipal attorney, or district attorney shall:
    - (i) distribute any interest that accrues in the account to each crime victim on a pro rata basis; and
    - (ii) if all crime victims have been made whole and funds remain, distribute any remaining funds to the state Division of Finance for deposit to the Utah Office for Victims of Crime.
  - (c) This section does not prevent an independent judicial authority from collecting, holding, and distributing restitution.

Amended by Chapter 131, 2011 General Session

#### **77-38a-203 Restitution determination -- Department of Corrections -- Presentence investigation.**

- (1)
  - (a) The department shall prepare a presentence investigation report in accordance with Subsection 77-18-1(5). The prosecutor and law enforcement agency involved shall provide

all available victim information to the department upon request. The victim impact statement shall:

- (i) identify all victims of the offense;
  - (ii) itemize any economic loss suffered by the victim as a result of the offense;
  - (iii) include for each identifiable victim a specific statement of the recommended amount of complete restitution as defined in Section 77-38a-302, accompanied by a recommendation from the department regarding the payment by the defendant of court-ordered restitution with interest as defined in Section 77-38a-302;
  - (iv) identify any physical, mental, or emotional injuries suffered by the victim as a result of the offense, and the seriousness and permanence;
  - (v) describe any change in the victim's personal welfare or familial relationships as a result of the offense;
  - (vi) identify any request for mental health services initiated by the victim or the victim's family as a result of the offense; and
  - (vii) contain any other information related to the impact of the offense upon the victim or the victim's family that the court requires.
- (b) The crime victim shall be responsible to provide to the department upon request all invoices, bills, receipts, and other evidence of injury, loss of earnings, and out-of-pocket loss. The crime victim shall also provide upon request:
- (i) all documentation and evidence of compensation or reimbursement from insurance companies or agencies of the state of Utah, any other state, or federal government received as a direct result of the crime for injury, loss, earnings, or out-of-pocket loss; and
  - (ii) proof of identification, including date of birth, Social Security number, drivers license number, next of kin, and home and work address and telephone numbers.
- (c) The inability, failure, or refusal of the crime victim to provide all or part of the requested information shall result in the court determining restitution based on the best information available.
- (2)
- (a) The court shall order the defendant as part of the presentence investigation to:
    - (i) complete a financial declaration form described in Section 77-38a-204; and
    - (ii) submit to the department any additional information determined necessary to be disclosed for the purpose of ascertaining the restitution.
  - (b) The willful failure or refusal of the defendant to provide all or part of the requisite information shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed information.
  - (c) If the defendant objects to the imposition, amount, or distribution of the restitution recommended in the presentence investigation, the court shall set a hearing date to resolve the matter.
  - (d) If any party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

Amended by Chapter 74, 2013 General Session

**77-38a-204 Financial declaration by defendant.**

- (1)
  - (a) The Judicial Council shall design and publish a financial declaration form to be completed by a defendant in a case where the prosecutor has indicated that restitution may be ordered.
  - (b) The financial declaration form shall:

- (i) require a defendant to disclose all assets, income, and financial liabilities of the defendant, including:
    - (A) real property;
    - (B) vehicles;
    - (C) precious metals or gems;
    - (D) jewelry with a value of \$1,000 or more;
    - (E) other personal property with a value of \$1,000 or more;
    - (F) bank account balances;
    - (G) cash;
    - (H) salary, wages, commission, tips, and business income;
    - (I) pensions and annuities;
    - (J) intellectual property;
    - (K) accounts receivable;
    - (L) accounts payable;
    - (M) mortgages, loans, and other debts; and
    - (N) restitution that has been ordered, and not fully paid, in other cases; and
  - (ii) state that a false statement made in the financial declaration form is punishable as a class B misdemeanor under Section 76-8-504.
- (2) A defendant shall, before sentencing, or earlier if ordered by the court, complete the financial declaration described in Subsection (1).

Enacted by Chapter 74, 2013 General Session