

1 **CRIMINAL RESTITUTION AMENDMENTS**

2 2001 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Sheryl L. Allen**

5 **This act modifies the Code of Criminal Procedure by creating the Crime Victims Restitution**  
6 **Act. The act defines terms and sets out procedures for collecting restitution from persons**  
7 **convicted of a crime and ordered by a court to pay restitution to their victims. The act**  
8 **requires input on the issue of restitution from law enforcement agencies, prosecutors, and**  
9 **the Department of Corrections. In addition, the defendant is required to provide**  
10 **information to the court to help the court determine restitution. The act also provides a**  
11 **mechanism by which a restitution order can be enforced through a civil action and declares**  
12 **that it is nondischargeable in bankruptcy. Priority, enforcement, and collection of**  
13 **restitution is also addressed.**

14 This act affects sections of Utah Code Annotated 1953 as follows:

15 AMENDS:

16 **77-18-1**, as last amended by Chapters 279 and 287, Laws of Utah 1999

17 ENACTS:

18 **77-38a-101**, Utah Code Annotated 1953

19 **77-38a-102**, Utah Code Annotated 1953

20 **77-38a-201**, Utah Code Annotated 1953

21 **77-38a-202**, Utah Code Annotated 1953

22 **77-38a-203**, Utah Code Annotated 1953

23 **77-38a-301**, Utah Code Annotated 1953

24 **77-38a-401**, Utah Code Annotated 1953

25 **77-38a-402**, Utah Code Annotated 1953

26 **77-38a-501**, Utah Code Annotated 1953

27 **77-38a-502**, Utah Code Annotated 1953



28 77-38a-503, Utah Code Annotated 1953

29 77-38a-504, Utah Code Annotated 1953

30 77-38a-601, Utah Code Annotated 1953

31 77-38a-602, Utah Code Annotated 1953

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

33 Section 1. Section 77-18-1 is amended to read:

34 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision**  
35 **-- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions --**  
36 **Restitution -- Termination, revocation, modification, or extension -- Hearings -- Electronic**  
37 **monitoring.**

38 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in  
39 abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a,  
40 Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

41 (2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime  
42 or offense, the court may suspend the imposition or execution of sentence and place the defendant  
43 on probation. The court may place the defendant:

44 (i) on probation under the supervision of the Department of Corrections except in cases  
45 of class C misdemeanors or infractions;

46 (ii) on probation with an agency of local government or with a private organization; or

47 (iii) on bench probation under the jurisdiction of the sentencing court.

48 (b) (i) The legal custody of all probationers under the supervision of the department is with  
49 the department.

50 (ii) The legal custody of all probationers under the jurisdiction of the sentencing court is  
51 vested as ordered by the court.

52 (iii) The court has continuing jurisdiction over all probationers.

53 (3) (a) The department shall establish supervision and presentence investigation standards  
54 for all individuals referred to the department. These standards shall be based on:

55 (i) the type of offense;

56 (ii) the demand for services;

57 (iii) the availability of agency resources;

58 (iv) the public safety; and

59 (v) other criteria established by the department to determine what level of services shall  
60 be provided.

61 (b) Proposed supervision and investigation standards shall be submitted to the Judicial  
62 Council and the Board of Pardons and Parole on an annual basis for review and comment prior to  
63 adoption by the department.

64 (c) The Judicial Council and the department shall establish procedures to implement the  
65 supervision and investigation standards.

66 (d) The Judicial Council and the department shall annually consider modifications to the  
67 standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

68 (e) The Judicial Council and the department shall annually prepare an impact report and  
69 submit it to the appropriate legislative appropriations subcommittee.

70 (4) Notwithstanding other provisions of law, the department is not required to supervise  
71 the probation of persons convicted of class B or C misdemeanors or infractions or to conduct  
72 presentence investigation reports on class C misdemeanors or infractions. However, the  
73 department may supervise the probation of class B misdemeanants in accordance with department  
74 standards.

75 (5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the  
76 defendant, continue the date for the imposition of sentence for a reasonable period of time for the  
77 purpose of obtaining a presentence investigation report from the department or information from  
78 other sources about the defendant.

79 (b) The presentence investigation report shall include a victim impact statement describing  
80 the effect of the crime on the victim and the victim's family. The victim impact statement shall:

81 (i) identify [~~the victim~~] all victims of the offense;

82 (ii) include a specific statement of the recommended amount of complete restitution as  
83 defined in Subsection 76-3-201(4), accompanied by a recommendation from the department  
84 regarding the payment of court-ordered restitution as defined in Subsection 76-3-201(4) by the  
85 defendant;

86 (iii) identify any physical injury suffered by the victim as a result of the offense along with  
87 its seriousness and permanence;

88 (iv) describe any change in the victim's personal welfare or familial relationships as a  
89 result of the offense;

90 (v) identify any request for psychological services initiated by the victim or the victim's  
91 family as a result of the offense; and

92 (vi) contain any other information related to the impact of the offense upon the victim or  
93 the victim's family and any information required by Section 77-38a-203 that is relevant to the trial  
94 court's sentencing determination.

95 (c) The presentence investigation report shall include a specific statement of pecuniary  
96 damages, accompanied by a recommendation from the department regarding the payment of  
97 restitution with interest by the defendant in accordance with Subsection 76-3-201(4).

98 (d) The contents of the presentence investigation report, including any diagnostic  
99 evaluation report ordered by the court under Section 76-3-404, are protected and are not available  
100 except by court order for purposes of sentencing as provided by rule of the Judicial Council or for  
101 use by the department.

102 (6) (a) The department shall provide the presentence investigation report to the defendant's  
103 attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review,  
104 three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation  
105 report, which have not been resolved by the parties and the department prior to sentencing, shall  
106 be brought to the attention of the sentencing judge, and the judge may grant an additional ten  
107 working days to resolve the alleged inaccuracies of the report with the department. If after ten  
108 working days the inaccuracies cannot be resolved, the court shall make a determination of  
109 relevance and accuracy on the record.

110 (b) If a party fails to challenge the accuracy of the presentence investigation report at the  
111 time of sentencing, that matter shall be considered to be waived.

112 (7) At the time of sentence, the court shall receive any testimony, evidence, or information  
113 the defendant or the prosecuting attorney desires to present concerning the appropriate sentence.  
114 This testimony, evidence, or information shall be presented in open court on record and in the  
115 presence of the defendant.

116 (8) While on probation, and as a condition of probation, the court may require that the  
117 defendant:

118 (a) perform any or all of the following:

119 (i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

120 (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

- 121 (iii) provide for the support of others for whose support he is legally liable;
- 122 (iv) participate in available treatment programs;
- 123 (v) serve a period of time, not to exceed one year, in a county jail designated by the  
124 department, after considering any recommendation by the court as to which jail the court finds  
125 most appropriate;
- 126 (vi) serve a term of home confinement, which may include the use of electronic  
127 monitoring;
- 128 (vii) participate in compensatory service restitution programs, including the compensatory  
129 service program provided in Section 78-11-20.7;
- 130 (viii) pay for the costs of investigation, probation, and treatment services;
- 131 (ix) make restitution or reparation to the victim or victims with interest in accordance with  
132 Subsection 76-3-201(4); and
- 133 (x) comply with other terms and conditions the court considers appropriate; and
- 134 (b) if convicted on or after May 5, 1997:
- 135 (i) complete high school classwork and obtain a high school graduation diploma, a GED  
136 certificate, or a vocational certificate at the defendant's own expense if the defendant has not  
137 received the diploma, GED certificate, or vocational certificate prior to being placed on probation;  
138 or
- 139 (ii) provide documentation of the inability to obtain one of the items listed in Subsection  
140 (8)(b)(i) because of:
- 141 (A) a diagnosed learning disability; or
- 142 (B) other justified cause.
- 143 (9) The department shall collect and disburse the account receivable as defined by Section  
144 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
- 145 (a) the parole period and any extension of that period in accordance with Subsection  
146 77-27-6(4); and
- 147 (b) the probation period in cases for which the court orders supervised probation and any  
148 extension of that period by the department in accordance with Subsection 77-18-1(10).
- 149 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon  
150 completion without violation of 36 months probation in felony or class A misdemeanor cases, or  
151 12 months in cases of class B or C misdemeanors or infractions.

152 (ii) (A) If, upon expiration or termination of the probation period under Subsection  
153 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section  
154 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench  
155 probation for the limited purpose of enforcing the payment of the account receivable.

156 (B) In accordance with Section 77-18-6, the court shall record in the registry of civil  
157 judgments any unpaid balance not already recorded and immediately transfer responsibility to  
158 collect the account to the Office of State Debt Collection.

159 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its  
160 own motion, the court may require the defendant to show cause why his failure to pay should not  
161 be treated as contempt of court.

162 (b) (i) The department shall notify the sentencing court, the Office of State Debt  
163 Collection, and the prosecuting attorney in writing in advance in all cases when termination of  
164 supervised probation will occur by law.

165 (ii) The notification shall include a probation progress report and complete report of details  
166 on outstanding accounts receivable.

167 (11) (a) (i) Any time served by a probationer outside of confinement after having been  
168 charged with a probation violation and prior to a hearing to revoke probation does not constitute  
169 service of time toward the total probation term unless the probationer is exonerated at a hearing  
170 to revoke the probation.

171 (ii) Any time served in confinement awaiting a hearing or decision concerning revocation  
172 of probation does not constitute service of time toward the total probation term unless the  
173 probationer is exonerated at the hearing.

174 (b) The running of the probation period is tolled upon the filing of a violation report with  
175 the court alleging a violation of the terms and conditions of probation or upon the issuance of an  
176 order to show cause or warrant by the court.

177 (12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing  
178 by the probationer or upon a hearing and a finding in court that the probationer has violated the  
179 conditions of probation.

180 (ii) Probation may not be revoked except upon a hearing in court and a finding that the  
181 conditions of probation have been violated.

182 (b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute

183 violation of the conditions of probation, the court that authorized probation shall determine if the  
184 affidavit establishes probable cause to believe that revocation, modification, or extension of  
185 probation is justified.

186 (ii) If the court determines there is probable cause, it shall cause to be served on the  
187 defendant a warrant for his arrest or a copy of the affidavit and an order to show cause why his  
188 probation should not be revoked, modified, or extended.

189 (c) (i) The order to show cause shall specify a time and place for the hearing and shall be  
190 served upon the defendant at least five days prior to the hearing.

191 (ii) The defendant shall show good cause for a continuance.

192 (iii) The order to show cause shall inform the defendant of a right to be represented by  
193 counsel at the hearing and to have counsel appointed for him if he is indigent.

194 (iv) The order shall also inform the defendant of a right to present evidence.

195 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

196 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall  
197 present evidence on the allegations.

198 (iii) The persons who have given adverse information on which the allegations are based  
199 shall be presented as witnesses subject to questioning by the defendant unless the court for good  
200 cause otherwise orders.

201 (iv) The defendant may call witnesses, appear and speak in his own behalf, and present  
202 evidence.

203 (e) (i) After the hearing the court shall make findings of fact.

204 (ii) Upon a finding that the defendant violated the conditions of probation, the court may  
205 order the probation revoked, modified, continued, or that the entire probation term commence  
206 anew.

207 (iii) If probation is revoked, the defendant shall be sentenced or the sentence previously  
208 imposed shall be executed.

209 (13) Restitution imposed under this chapter and interest accruing in accordance with  
210 Subsection 76-3-201(4) is considered a debt for willful and malicious injury for purposes of  
211 exceptions listed to discharge in bankruptcy as provided in Title 11 U.S.C.A. Sec. 523, 1985.

212 (14) The court may order the defendant to commit himself to the custody of the Division  
213 of Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of

214 sentence, only after the superintendent of the Utah State Hospital or his designee has certified to  
215 the court that:

- 216 (a) the defendant is appropriate for and can benefit from treatment at the state hospital;
- 217 (b) treatment space at the hospital is available for the defendant; and
- 218 (c) persons described in Subsection 62A-12-209(2)(g) are receiving priority for treatment  
219 over the defendants described in this Subsection (14).

220 (15) Presentence investigation reports, including presentence diagnostic evaluations, are  
221 classified protected in accordance with Title 63, Chapter 2, Government Records Access and  
222 Management Act. Notwithstanding Sections 63-2-403 and 63-2-404, the State Records Committee  
223 may not order the disclosure of a presentence investigation report. Except for disclosure at the  
224 time of sentencing pursuant to this section, the department may disclose the presentence  
225 investigation only when:

- 226 (a) ordered by the court pursuant to Subsection 63-2-202(7);
- 227 (b) requested by a law enforcement agency or other agency approved by the department  
228 for purposes of supervision, confinement, and treatment of the offender;
- 229 (c) requested by the Board of Pardons and Parole;
- 230 (d) requested by the subject of the presentence investigation report or the subject's  
231 authorized representative; or
- 232 (e) requested by the victim of the crime discussed in the presentence investigation report  
233 or the victim's authorized representative, provided that the disclosure to the victim shall include  
234 only information relating to statements or materials provided by the victim, to the circumstances  
235 of the crime including statements by the defendant, or to the impact of the crime on the victim or  
236 the victim's household.

237 (16) (a) The court shall consider home confinement as a condition of probation under the  
238 supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

239 (b) The department shall establish procedures and standards for home confinement,  
240 including electronic monitoring, for all individuals referred to the department in accordance with  
241 Subsection (17).

242 (17) (a) If the court places the defendant on probation under this section, it may order the  
243 defendant to participate in home confinement through the use of electronic monitoring as described  
244 in this section until further order of the court.



245 (b) The electronic monitoring shall alert the department and the appropriate law  
246 enforcement unit of the defendant's whereabouts.

247 (c) The electronic monitoring device shall be used under conditions which require:

248 (i) the defendant to wear an electronic monitoring device at all times; and

249 (ii) that a device be placed in the home of the defendant, so that the defendant's compliance  
250 with the court's order may be monitored.

251 (d) If a court orders a defendant to participate in home confinement through electronic  
252 monitoring as a condition of probation under this section, it shall:

253 (i) place the defendant on probation under the supervision of the Department of  
254 Corrections;

255 (ii) order the department to place an electronic monitoring device on the defendant and  
256 install electronic monitoring equipment in the residence of the defendant; and

257 (iii) order the defendant to pay the costs associated with home confinement to the  
258 department or the program provider.

259 (e) The department shall pay the costs of home confinement through electronic monitoring  
260 only for those persons who have been determined to be indigent by the court.

261 (f) The department may provide the electronic monitoring described in this section either  
262 directly or by contract with a private provider.

263 Section 2. Section **77-38a-101** is enacted to read:

264 **CHAPTER 38a. CRIME VICTIMS RESTITUTION ACT**

265 **Part 1. General Provisions**

266 **77-38a-101. Title.**

267 This chapter is known as the "Crime Victims Restitution Act."

268 Section 3. Section **77-38a-102** is enacted to read:

269 **77-38a-102. Definitions.**

270 As used in this chapter:

271 (1) "Conviction" includes a:

272 (a) judgment of guilt;

273 (b) a plea of guilty; or

274 (c) a plea of no contest.

275 (2) "Criminal activities" means any offense of which the defendant is convicted or any

276 other criminal conduct for which the defendant admits responsibility to the sentencing court with  
 277 or without an admission of committing the criminal conduct.

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

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

281a **h (5) "PARTY" MEANS THE PROSECUTOR, DEFENDANT, OR DEPARTMENT INVOLVED IN A**  
 281b **PROSECUTION.**

282 ~~[(5)] (6) h~~ "Pecuniary damages" means all special damages, but not general damages, which a  
 283 person could recover against the defendant in a civil action arising out of the facts or events  
 284 constituting the defendant's criminal activities and includes the money equivalent of property  
 285 taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical  
 286 expenses.

287 ~~h [(6)] (7) h~~ "Plea agreement" means an agreement entered between the prosecution and defendant  
 288 setting forth the special terms and conditions and criminal charges upon which the defendant will  
 289 enter a plea of guilty or no contest.

290 ~~h [(7)] (8) h~~ "Plea in abeyance" means an order by a court, upon motion of the prosecution and the  
 291 defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time,  
 292 entering judgment of conviction against him nor imposing sentence upon him on condition that  
 293 he comply with specific conditions as set forth in a plea in abeyance agreement.

294 ~~h [(8)] (9) h~~ "Plea in abeyance agreement" means an agreement entered into between the  
 295 prosecution and the defendant setting forth the specific terms and conditions upon which,  
 296 following acceptance of the agreement by the court, a plea may be held in abeyance.

297 ~~h [(9)] (10) h~~ "Plea disposition" means an agreement entered into between the prosecution and  
 298 defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement by  
 299 which the defendant may enter a plea in any other jurisdiction or where charges are dismissed  
 300 without a plea.

301 ~~h [(10)] (11) h~~ "Restitution" means full, partial, or nominal payment for pecuniary damages to a  
 302 victim, including ~~h~~ **PREJUDGMENT INTEREST**, ~~h~~ the accrual of interest from the time of sentencing,  
 302a insured damages, and  
 303 payment for expenses to a governmental entity for extradition or transportation and as further  
 304 defined by law.

305 ~~h [(11)] (12) h~~ "Screening" means the process used by a prosecuting attorney to terminate  
 306 investigative action, proceed with prosecution, move to dismiss a prosecution that has been

307 commenced, or cause a prosecution to be diverted.

308 h [(12)] (13) h (a) "Victim" means any person whom the court determines has suffered pecuniary  
 309 damages as a result of the defendant's criminal activities.

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

311 Section 4. Section **77-38a-201** is enacted to read:

312 **Part 2. Restitution Determination**

313 **77-38a-201. Restitution determination -- Law enforcement duties and responsibilities.**

314 Any law enforcement agency conducting an investigation for criminal conduct which  
 315 would constitute a felony or h CLASS A h misdemeanor shall provide in the investigative reports whether  
 316 a

317 claim for restitution exists, the basis for the claim, and the estimated or actual amount of the claim.

318 Section 5. Section **77-38a-202** is enacted to read:

319 **77-38a-202. Restitution determination -- Prosecution duties and responsibilities.**

320 (1) At the time of entry of a conviction (or entry of any plea disposition h OF A FELONY OR  
 321 CLASS A MISDEMEANOR h , the attorney

322 general, county attorney, h MUNICIPAL ATTORNEY, h or district attorney shall provide to the district  
 323a court:

324 (a) the names h [and addresses] h of all victims, including third parties, asserting claims for  
 325 restitution;

326 (b) the actual or estimated amount of restitution determined at that time; and

327 (c) whether or not the defendant has agreed to pay the restitution specified as part of the  
 328 plea disposition.

329 (2) In computing actual or estimated restitution, the attorney general, county attorney,  
 330a h MUNICIPAL ATTORNEY, h or

331 district attorney shall:

332 (a) use the criteria set forth in Section 77-38a-402 for establishing restitution amounts; and

333 (b) in cases involving multiple victims, incorporate into any conviction or plea disposition  
 334 all claims for restitution arising out of the investigation for which the defendant is charged.

335 (3) If charges are not to be prosecuted as part of a plea disposition, restitution claims from  
 336 victims of those crimes shall also be provided to the court.

337 Section 6. Section **77-38a-203** is enacted to read:

338 **77-38a-203. Restitution determination -- Department of Corrections -- Presentence**  
 339 **investigation.**

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



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

339 (i) identify all victims of the offense;

340 (ii) itemize any economic loss suffered by the victim as a result of the offense;

341 (iii) include for each identifiable victim a specific statement of the recommended amount  
342 of complete restitution as defined in Section 77-38a-402, accompanied by a recommendation from  
343 the department regarding the payment by the defendant of court-ordered restitution with interest  
344 as defined in Section 77-38a-402;

345 (iv) identify any physical, mental, or emotional injuries suffered by the victim as a result  
346 of the offense, and the seriousness and permanence;

347 (v) describe any change in the victim's personal welfare or familial relationships as a result  
348 of the offense;

349 (vi) identify any request for mental health services initiated by the victim or the victim's  
350 family as a result of the offense; and

351 (vii) contain any other information related to the impact of the offense upon the victim or  
352 the victim's family that the court requires.

353 (b) The crime victim shall be responsible to provide to the department upon request all  
354 invoices, bills, receipts, and other evidence of injury, loss of earnings, and out-of-pocket loss. The  
355 crime victim shall also provide upon request:

356 (i) all documentation and evidence of compensation or reimbursement from insurance  
357 companies or agencies of the state of Utah, any other state, or federal government received as a  
358 direct result of the crime for injury, loss, earnings, or out-of-pocket loss; and

359 (ii) proof of identification, including date of birth, Social Security number, drivers license  
360 number, next of kin, and home and work address and telephone numbers.

361 (c) The inability, failure, or refusal of the crime victim to provide all or part of the  
362 requested information shall result in the court determining restitution based on the best information  
363 available.

364 (2) (a) The court shall order the defendant as part of the presentence investigation to  
365 submit to the department any information determined necessary to be disclosed for the purpose of  
366 ascertaining the restitution.

367 (b) The willful failure or refusal of the defendant to provide all or part of the requisite  
368 information shall constitute a waiver of any grounds to appeal or seek future amendment or

369 alteration of the restitution order predicated on the undisclosed information.

370 (c) If the defendant objects to the imposition, amount, or distribution of the restitution  
371 recommended in the presentence investigation, or if the department is unable to determine the  
372 restitution for any reason, the court shall set a hearing date to resolve the matter.

373 (d) If any party fails to challenge the accuracy of the presentence investigation report at  
374 the time of sentencing, that matter shall be considered to be waived.

375 Section 7. Section **77-38a-301** is enacted to read:

376 **Part 3. Pretrial Preservation of Assets**

377 **77-38a-301. Pretrial preservation of assets.**

378 (1) Upon application of the prosecutor, the court may enter restraining orders or  
379 injunctions, require the execution of satisfactory performance bonds, or take any other action to  
380 preserve the availability of property which may be necessary to satisfy an anticipated restitution  
381 order issued under this chapter:

382 (a) upon the filing of a criminal complaint, an information, or indictment charging a  
383 violation ~~h [or a petition alleging delinquency] h~~ for which there is a substantial likelihood that  
384 restitution may be ordered and alleging that the property with respect to which the order is sought  
385 may, in the event of conviction, be necessary to satisfy an order of restitution under this chapter;

386 (b) prior to the filing of the indictment or information, if, after notice to persons appearing  
387 to have an interest in the property and after affording them an opportunity for a hearing, the court  
388 determines that:

389 (i) there is a substantial likelihood that the state will prevail on the underlying criminal  
390 charges ~~h [or allegation of delinquency] h~~ and that failure to enter the order will result in the property  
391 being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or  
392 otherwise made unavailable for restitution; and

393 (ii) the need to preserve the availability of the property or prevent its sale, distribution,  
394 exhibition, destruction, or removal through the entry of the requested order outweighs the hardship  
395 on any party against whom the order is to be entered; or

396 (c) an order entered under Subsection (a) is effective for no more than 90 days, unless  
397 extended by the court for good cause shown or unless an indictment or information as described  
398 in Subsection (b)(i) has been filed.

399 (2) A temporary restraining order may be entered upon application of the prosecutor

400 without notice or opportunity for a hearing, when an information or indictment has not yet been  
 401 filed with respect to the property, if the prosecutor demonstrates that there is a substantial  
 402 likelihood that the property with respect to which the order is sought appears to be necessary to  
 403 satisfy an anticipated restitution order under this chapter and that provision of notice would  
 404 jeopardize the availability of the property to satisfy any restitution order or judgment. **h** **THE**  
 404a **PROSECUTOR SHALL ESTABLISH THE VALUE OF THE PROPERTY LOST FOR WHICH RESTITUTION**  
 404b **WILL BE REQUIRED.** **h**

405 (3) The temporary order expires not more than ten days after it is entered unless extended  
 406 for good cause shown or unless the party against whom it is entered consents to an extension. A  
 407 hearing concerning an order entered under this section shall be held as soon as possible, and prior  
 408 to the expiration of the temporary order.

408a **h** **(4) DURING ANY HEARING PURSUANT TO THIS SECTION, THE COURT SHALL TAKE INTO**  
 408b **CONSIDERATION:**

408c **(a) THE PERSON'S NEED FOR ADEQUATE ASSETS FOR THE CARE OF HIS FAMILY; AND**

408d **(b) THE PERSON'S NEED FOR ADEQUATE ASSETS TO SECURE BAIL AND LEGAL**  
 408e **REPRESENTATION.**

408f **(5) ANY ORDER ISSUED BY THE COURT MAY NOT PRESERVE ASSETS IN EXCESS OF THE**  
 408g **VALUE ESTABLISHED BY THE PROSECUTOR.** **h**

409 **h** ~~**[(4) The court is not bound by the Utah Rules of Evidence regarding evidence it may**~~  
 410 ~~**receive and consider at any hearing held under this section.]**~~ **h**

411 Section 8. Section 77-38a-401 is enacted to read:

#### Part 4. Restitution Requirements

413 **77-38a-401. Restitution -- Convicted defendant may be required to pay.**

414 In a criminal action, the court may require a convicted defendant to make restitution.

415 Section 9. Section 77-38a-402 is enacted to read:

416 **77-38a-402. Restitution criteria.**

417 (1) When a defendant is convicted of criminal activity that has resulted in pecuniary  
 418 damages, in addition to any other sentence it may impose, the court shall order that the defendant  
 419 make restitution to victims of crime as provided in this subsection, or for conduct for which the  
 420 defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution,  
 421 a victim has the meaning as defined in Subsection 77-38a-102(12) and in determining whether  
 422 restitution is appropriate, the court shall follow the criteria and procedures as provided in  
 423 Subsections (2) through (5).

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

426 (a) "Complete restitution" means restitution necessary to compensate a victim for all losses

427 caused by the defendant.

428 (b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction  
429 orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

430 (c) Complete restitution and court-ordered restitution shall be determined as provided in



431 Subsection (5).

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

434 (4) If the defendant objects to the imposition, amount, or distribution of the restitution, the  
435 court shall at the time of sentencing allow the defendant a full hearing on the issue.

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

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

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

445 (ii) the cost of necessary medical and related professional services and devices relating to  
446 physical or mental health care, including nonmedical care and treatment rendered in accordance  
447 with a method of healing recognized by the law of the place of treatment;

448 (iii) the cost of necessary physical and occupational therapy and rehabilitation;

449 (iv) the income lost by the victim as a result of the offense if the offense resulted in bodily  
450 injury to a victim; and

451 (v) the cost of necessary funeral and related services if the offense resulted in the death of  
452 a victim.

453 (c) In determining the monetary sum and other conditions for court-ordered restitution, the  
454 court shall consider the factors listed in Subsections (5)(a) and (b) and:

455 (i) the financial resources of the defendant and the burden that payment of restitution will  
456 impose, with regard to the other obligations of the defendant;

457 (ii) the ability of the defendant to pay restitution on an installment basis or on other  
458 conditions to be fixed by the court;

459 (iii) the rehabilitative effect on the defendant of the payment of restitution and the method  
460 of payment; and

461 (iv) other circumstances which the court determines may make restitution inappropriate.

462 (d) The court may decline to make an order or may defer entering an order of restitution  
 463 if the court determines that the complication and prolongation of the sentencing process, as a result  
 464 of considering an order of restitution under this subsection, substantially outweighs the need to  
 465 provide restitution to the victim.

466 Section 10. Section **77-38a-501** is enacted to read:

467 **Part 5. Restitution Judgments**

468 **77-38a-501. Entry of judgment -- Interest -- Civil actions -- Lien.**

469 (1) Upon the court determining that a defendant owes restitution, the clerk of the court  
 470 shall enter an order of complete restitution as defined in Section 77-38a-402 on the civil judgment  
 471 docket and provide notice of the order to the parties.

472 (2) The order shall be considered a legal judgment, enforceable under the Utah Rules of  
 473 Civil Procedure. In addition, the department may, on behalf of the person in whose favor the  
 474 restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules  
 475 of Civil Procedure.

476 (3) If the defendant fails to obey a court order for payment of restitution and the victim or  
 477 department elects to pursue collection of the order by civil process, the victim shall be entitled to  
 478 recover reasonable attorney's fees.

479 (4) A judgment ordering restitution  ~~is~~   ~~[ constitutes a lien when recorded in a judgment ]~~   ~~is~~   
 479a **WHEN RECORDED IN A REGISTRY OF JUDGMENTS**  ~~is~~  docket  
 480  ~~is~~   ~~[ and ]~~   ~~is~~  shall  ~~is~~  **HAVE THE SAME AFFECT AND IS SUBJECT TO THE SAME RULES AS A**  
 480a **JUDGMENT IN A CIVIL ACTION.**  ~~[ be collectable in any manner provided by law.]~~   ~~is~~  Interest shall  
 480b accrue on the amount  
 481 ordered from the time of sentencing  ~~is~~  **, INCLUDING PREJUDGMENT INTEREST**  ~~is~~  .

482 (5) The department shall make rules permitting the restitution payments to be credited to  
 483 principal first and the remainder of payments credited to interest in accordance with Title 63,  
 484 Chapter 46a, Utah Administrative Rulemaking Act.

485  ~~is~~   ~~[(6) In any civil action brought by a victim to enforce the judgment, the defendant shall be~~  
 486  ~~entitled to offset any amounts that have been paid as part of court-ordered restitution to the victim.]~~   ~~is~~

487 Section 11. Section **77-38a-502** is enacted to read:

488 **77-38a-502. Nondischargeability in bankruptcy.**

489 Restitution imposed under this chapter and interest accruing in accordance with Subsection  
 490 77-38a-501(4) is considered a debt and may not be discharged in bankruptcy.

491 Section 12. Section **77-38a-503** is enacted to read:

492 **77-38a-503. Civil action by victim for damages.**

493 (1) Provisions in this part concerning restitution do not limit or impair the right of a person  
 494 injured by a defendant's criminal activities to sue and recover damages from the defendant in a  
 495 civil action. Evidence that the defendant has paid or been ordered to pay restitution under this part  
 496 may not be introduced in any civil action arising out of the facts or events which were the basis  
 497 for the restitution. However, the court shall credit any restitution paid by the defendant to a victim  
 498 against any judgment in favor of the victim in the civil action.

499 (2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability  
 500 for pecuniary damages of a victim, that issue is conclusively determined as to the defendant if it  
 501 is involved in a subsequent civil action.

502 Section 13. Section **77-38a-504** is enacted to read:

503 **77-38a-504. Priority.**

504 (1) If restitution to more than one person, agency, or entity is set at the same time, the  
 505 department shall establish the following priorities of payment:

506 (a) the crime victim;

507 (b) the Office of Crime Victim Reparations;

508 (c) any other government agency which has provided reimbursement to the victim as a  
 509 result of the offender's criminal conduct; and

510 (d) any insurance company which ~~h~~ [as] **HAS** ~~h~~ provided reimbursement to the victim as a  
 510a result of  
 511 the offender's criminal conduct.

512 (2) All money collected for court-ordered obligations from offenders by the department  
 513 will be applied first to victim restitution, absent the \$30 per month required to be collected by the  
 514 department under Section 64-13-21.

515 (3) Notwithstanding any other statutory provision or rule of procedure, any lien obtained  
 516 under Subsection 77-38a-501(1) shall maintain its priority indefinitely with no further action by  
 517 the victim or the victim's heirs.

518 Section 14. Section **77-38a-601** is enacted to read:

519 **Part 6. Enforcement and Collection**

520 **77-38a-601. Collection, default, and sanctions.**

521 When a defendant defaults in the payment of a judgment for restitution or any installment  
 522 ordered, the court, on motion of the prosecutor, parole or probation agent, victim, or on its own  
 523 motion may impose sanctions against the defendant as provided in Subsection 76-3-201(1).

524 Section 15. Section **77-38a-602** is enacted to read:

525 **77-38a-602. Collection from inmate offenders.**

526 In addition to the remedies provided in Section 77-38a-601, the department upon written  
527 request of the prosecutor, victim, or parole or probation agent, shall collect restitution from  
528 offender funds held by the department as provided in Section 64-13-23.

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**Legislative Review Note**

**as of 11-17-00 11:03 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**Committee Note**

The Judiciary Interim Committee recommended this bill.