

1 **CRIMINAL RESTITUTION CHANGES**

2 2001 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Terry R. Spencer**

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) plea of guilty; or

274 (c) 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 agrees to participate in a rehabilitation program, make restitution to the
281 victim, or fulfill some other condition.

282 (5) "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 (6) "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 (7) "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 (8) "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 (9) "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 (10) "Restitution" means full, partial, or nominal payment for pecuniary damages to a
302 victim, including the accrual of interest from the time of sentencing, insured damages, and
303 payment for expenses to a governmental entity for extradition or transportation and as further
304 defined by law.

305 (11) "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 (12) "Victim" means any person whom the court determines has suffered pecuniary
309 damages as a result of the defendant's criminal activities. "Victim" may not include a codefendant
310 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 misdemeanor shall provide in the investigative reports whether a
316 claim for restitution exists, the basis for the claim, and the estimated or actual amount of the claim.

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

318 **77-38a-202. Restitution determination -- Prosecution duties and responsibilities.**

319 (1) At the time of entry of a conviction or entry of any plea disposition, the attorney
320 general, county attorney, or district attorney shall provide to the district court:

321 (a) the names and addresses of all victims, including third parties, asserting claims for
322 restitution;

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

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

326 (2) In computing actual or estimated restitution, the attorney general, county attorney, or
327 district attorney shall:

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

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

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

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

334 **77-38a-203. Restitution determination -- Department of Corrections -- Presentence**
335 **investigation.**

336 (1) (a) The Department of Corrections shall prepare a presentence investigation report in
337 accordance with Subsection 77-18-1(5). The prosecutor and law enforcement agency involved

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

340 (i) identify all victims of the offense;

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

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

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

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

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

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

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

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

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

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

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

368 (b) The willful failure or refusal of the defendant to provide all or part of the requisite

369 information shall constitute a waiver of any grounds to appeal or seek future amendment or
370 alteration of the restitution order predicated on the undisclosed information.

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

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

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

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

378 **77-38a-301. Pretrial preservation of assets.**

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

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

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

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

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

398 (c) an order entered under Subsection (1)(a) is effective for no more than 90 days, unless
399 extended by the court for good cause shown or unless an indictment or information as described

400 in Subsection (1)(b)(i) has been filed.

401 (2) A temporary restraining order may be entered upon application of the prosecutor
402 without notice or opportunity for a hearing, when an information or indictment has not yet been
403 filed with respect to the property, if the prosecutor demonstrates that there is a substantial
404 likelihood that the property with respect to which the order is sought appears to be necessary to
405 satisfy an anticipated restitution order under this chapter and that provision of notice would
406 jeopardize the availability of the property to satisfy any restitution order or judgment.

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

411 (4) The court is not bound by the Utah Rules of Evidence regarding evidence it may
412 receive and consider at any hearing held under this section.

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

414 **Part 4. Restitution Requirements**

415 **77-38a-401. Restitution -- Convicted defendant may be required to pay.**

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

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

418 **77-38a-402. Restitution criteria.**

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

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

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

430 (b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction

431 orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

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

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

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

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

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

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

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

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

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

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

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

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

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

461 (iii) the rehabilitative effect on the defendant of the payment of restitution and the method

462 of payment; and

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

464 (d) The court may decline to make an order or may defer entering an order of restitution

465 if the court determines that the complication and prolongation of the sentencing process, as a result

466 of considering an order of restitution under this Subsection (5)(d), substantially outweighs the need

467 to provide restitution to the victim.

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

469 **Part 5. Restitution Judgments**

470 **77-38a-501. Entry of judgment -- Interest -- Civil actions -- Lien.**

471 (1) Upon the court determining that a defendant owes restitution, the clerk of the court

472 shall enter an order of complete restitution as defined in Section 77-38a-402 on the civil judgment

473 docket and provide notice of the order to the parties.

474 (2) The order shall be considered a legal judgment, enforceable under the Utah Rules of

475 Civil Procedure. In addition, the Department of Corrections may, on behalf of the person in whose

476 favor the restitution order is entered, enforce the restitution order as judgment creditor under the

477 Utah Rules of Civil Procedure.

478 (3) If the defendant fails to obey a court order for payment of restitution and the victim or

479 department elects to pursue collection of the order by civil process, the victim shall be entitled to

480 recover reasonable attorney's fees.

481 (4) A judgment ordering restitution constitutes a lien when recorded in a judgment docket

482 and shall be collectable in any manner provided by law. Interest shall accrue on the amount

483 ordered from the time of sentencing.

484 (5) The department shall make rules permitting the restitution payments to be credited to

485 principal first and the remainder of payments credited to interest in accordance with Title 63,

486 Chapter 46a, Utah Administrative Rulemaking Act.

487 (6) In any civil action brought by a victim to enforce the judgment, the defendant shall be

488 entitled to offset any amounts that have been paid as part of court-ordered restitution to the victim.

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

490 **77-38a-502. Nondischargeability in bankruptcy.**

491 Restitution imposed under this chapter and interest accruing in accordance with Subsection

492 77-38a-501(4) is considered a debt and may not be discharged in bankruptcy.

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

494 **77-38a-503. Civil action by victim for damages.**

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

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

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

505 **77-38a-504. Priority.**

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

508 (a) the crime victim;

509 (b) the Office of Crime Victim Reparations;

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

512 (d) any insurance company which has provided reimbursement to the victim as a result of
513 the offender's criminal conduct.

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

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

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

521 **Part 6. Enforcement and Collection**

522 **77-38a-601. Collection, default, and sanctions.**

523 When a defendant defaults in the payment of a judgment for restitution or any installment

524 ordered, the court, on motion of the prosecutor, parole or probation agent, victim, or on its own
525 motion may impose sanctions against the defendant as provided in Subsection 76-3-201(1).

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

527 **77-38a-602. Collection from inmate offenders.**

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

Legislative Review Note
as of 1-12-01 4:08 PM

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

Office of Legislative Research and General Counsel