

Statutes, Administrative Rules, and Court Rules

Related to Reparation and Restitution

(underlining = emphasis by Dept. of Corrections, Assn. of Prosecutors, Office for Victims of Crime)

Statutes

63M-7-501. Title.

This part is known as the "Utah Office for Victims of Crime" and may be abbreviated as the "UOVC."

63M-7-502. Definitions.

As used in this chapter: . . .

(31) "Restitution" means money or services an appropriate authority orders an offender to pay or render to a victim of the offender's conduct.

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

(1) A reparations award may not supplant restitution as established under Title 77, Chapter 38a, Crime Victims Restitution Act, or as established by any other provisions.

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

(3) If, due to reparation payments to a victim, the Utah Office for Victims of Crime is assigned under Section 63M-7-519 a claim for the victim's judgment for restitution or a portion of the restitution, the office may file with the sentencing court a notice of restitution listing the amounts or estimated future amounts of payments made or anticipated to be made to or on behalf of the victim. The Utah Office for Victims of Crime may provide a restitution notice to the victim or victim's representative prior to or at sentencing. The amount of restitution sought by the office may be updated at any time, subject to the right of the defendant to object. Failure to provide the notice may not invalidate the imposition of the judgment or order of restitution provided the defendant is given the opportunity to object and be heard as provided in this chapter. Any objection by the defendant to the imposition or amount of restitution shall be made at the time of sentencing or in writing within 20 days of the receipt of notice, to be filed with the court and a copy mailed to the Utah Office for Victims of Crime. Upon the filing of the objection, the court shall allow the defendant a full hearing on the issue as provided by Subsection 77-38a-302(4).

(4) If no objection is made or filed by the defendant, then upon conviction and sentencing, the court shall enter a judgment for complete restitution pursuant to the provisions of Subsections 76-3-201(4)(c) and (d) and identify the office as the assignee of the assigned portion of the judgment and order of restitution.

(5) If the notice of restitution is filed after sentencing but during the term of probation or parole, the court or Board of Pardons shall modify any existing civil judgment and order of restitution to include expenses paid by the office on behalf of the victim and identify the office as the assignee of the assigned portion of the judgment and order of restitution. If no judgment or order of restitution has been entered, the court shall enter a judgment for complete restitution and court-ordered restitution pursuant to the provisions of Sections 77-38a-302 and 77-38a-401.

63M-7-506. Functions of board.

(1) The Crime Victim Reparations and Assistance Board shall: . . .

(c) adopt rules to implement and administer this chapter pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may include setting of ceilings on reparations, defining of terms not specifically stated in this chapter, and establishing of rules governing attorney fees;

63M-7-513. Collateral sources.

(1) Collateral source shall include any source of benefits or advantages for economic loss otherwise reparable under this chapter which the victim or claimant has received, or which is readily available to the victim from:

- (a) the offender;
- (b) the insurance of the offender; . . .

(2) (a) An order of restitution shall not be considered readily available as a collateral source.

(b) Receipt of an award of reparations under this chapter shall be considered an assignment of the victim's rights to restitution from the offender.

(3) The victim shall not discharge a claim against a person or entity without the state's written permission and shall fully cooperate with the state in pursuing its right of reimbursement, including providing the state with any evidence in the victim's possession.

(4) The state's right of reimbursement applies regardless of whether the victim has been fully compensated for the victim's losses.

63M-7-519. Assignment of recovery -- Reimbursement.

(1) By accepting an award of reparations, the victim automatically assigns to the state, subject to the provisions of Subsection (2), all claims against any third party to the lesser of:

- (a) the amount paid by the state; or
- (b) the amount recovered from the third party.

(2) The board, with the concurrence of the director, may reduce the state's right of reimbursement if it is determined that:

(a) the reduction will benefit the fund; or

(b) the victim has ongoing expenses related to the offense upon which the claim is based and the benefit to the victim of reducing the state's right of reimbursement exceeds the benefit to the state of receiving full reimbursement.

(3) The state reserves the right to make a claim for reimbursement on behalf of the victim and the victim may not impair the state's claim or the state's right of reimbursement.

64-9b-5. Intent of Legislature.

It is the legislative intent, and inmates are encouraged, to use their personal earnings from jobs created under this chapter for the following:

(1) for restitution to the victims of the inmate's criminal offense, where applicable;

(2) for support of the inmate's family, where applicable;

(3) for the inmate's personal use; and

(4) for reimbursement of security, operational, and other costs incurred by the Utah Correctional Industries Division of the department in administering these projects.

64-13-20. Investigative services -- Presentence investigation reports.

(1) The department shall:

(a) provide investigative services and prepare reports to:

(i) assist the courts in sentencing;

(ii) assist the Board of Pardons and Parole in its decision-making responsibilities regarding offenders;

(iii) assist the department in managing offenders; and

(iv) assure the professional and accountable management of the department;

(b) establish standards for providing investigative services based on available resources, giving priority to felony cases; and

(c) employ staff for the purpose of conducting:

(i) thorough presentence investigations of the social, physical, and mental conditions and backgrounds of offenders; and

(ii) examinations when required by the court or the Board of Pardons and Parole.

(2) The department may provide recommendations concerning appropriate measures to be taken regarding offenders.

(3) (a) The presentence investigation reports prepared by the department are protected as defined in Section 63G-2-305 and after sentencing may not be released except by express court order or by rules made by the Department of Corrections.

(b) The reports are intended only for use by:

(i) the court in the sentencing process;

(ii) the Board of Pardons and Parole in its decisionmaking responsibilities; and

(iii) the department in the supervision, confinement, and treatment of the offender.

(4) Presentence investigation reports shall be made available upon request to other correctional programs within the state if the offender who is the subject of the report has been committed or is being evaluated for commitment to the facility for treatment as a condition of probation or parole.

(5) (a) The presentence investigation reports shall include a victim impact statement in all felony cases and in misdemeanor cases if the defendant caused bodily harm or death to the victim.

(b) Victim impact statements shall:

(i) identify the victim of the offense;

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

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

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

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

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

(6) If the victim is deceased; under a mental, physical, or legal disability; or otherwise unable to provide the information required under this section, the information may be obtained from the personal representative, guardian, or family members, as necessary.

(7) The department shall employ staff necessary to pursue investigations of complaints from the public, staff, or offenders regarding the management of corrections programs.

64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking -- POST certified parole or probation officers and peace officers -- Duties -- Supervision fee.

(1) (a) The department, except as otherwise provided by law, shall supervise sentenced offenders placed in the community on probation by the courts, on parole by the Board of Pardons and Parole, or upon acceptance for supervision under the terms of the Interstate Compact for the Supervision of Parolees and Probationers.

(b) Standards for the supervision of offenders shall be established by the department in accordance with sentencing guidelines, including the graduated sanctions matrix, established by the Utah Sentencing Commission, giving priority, based on available resources, to felony offenders and offenders sentenced pursuant to Subsection 58-37-8(2)(b)(ii).

(2) The department shall apply graduated sanctions established by the Utah Sentencing Commission to facilitate a prompt and appropriate response to an individual's violation of the terms of probation or parole, including:

(a) sanctions to be used in response to a violation of the terms of probation or parole; and

(b) requesting approval from the court or Board of Pardons and Parole to impose a sanction for an individual's violation of the terms of probation or parole, for a period of incarceration of not more than three consecutive days and not more than a total of five days within a period of 30 days.

(3) The department shall implement a program of graduated incentives as established by the Utah Sentencing Commission to facilitate the department's prompt and appropriate response to an offender's:

(a) compliance with the terms of probation or parole; or

(b) positive conduct that exceeds those terms.

(4) (a) The department shall, in collaboration with the Commission on Criminal and Juvenile Justice and the Division of Substance Abuse and Mental Health, create standards and procedures for the collection of information, including cost savings related to recidivism reduction and the reduction in the number of inmates, related to the use of the graduated sanctions and incentives, and offenders' outcomes.

(b) The collected information shall be provided to the Commission on Criminal and Juvenile Justice not less frequently than annually on or before August 31.

(5) Employees of the department who are POST certified as law enforcement officers or correctional officers and who are designated as parole and probation officers by the executive director have the following duties:

(a) monitoring, investigating, and supervising a parolee's or probationer's compliance with the conditions of the parole or probation agreement;

(b) investigating or apprehending any offender who has escaped from the custody of the department or absconded from supervision;

(c) providing investigative services for the courts, the department, or the Board of Pardons and Parole;

- (d) supervising any offender during transportation; or
- (e) collecting DNA specimens when the specimens are required under Section 53-10-404.

(6) (a) A monthly supervision fee of \$30 shall be collected from each offender on probation or parole. The fee may be suspended or waived by the department upon a showing by the offender that imposition would create a substantial hardship or if the offender owes restitution to a victim.

(b) (i) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the supervision fee and the circumstances under which an offender may request a hearing.

(ii) In determining whether the imposition of the supervision fee would constitute a substantial hardship, the department shall consider the financial resources of the offender and the burden that the fee would impose, with regard to the offender's other obligations.

(7) (a) The department shall establish a program allowing an offender on probation under Section 77-18-1 or on parole under Subsection 76-3-202(1)(a) to earn credits for the offender's compliance with the terms of the offender's probation or parole, which shall be applied to reducing the period of probation or parole as provided in this Subsection (7).

(b) The program shall provide that an offender earns a reduction credit of 30 days from the offender's period of probation or parole for each month the offender completes without any violation of the terms of the offender's probation or parole agreement, including the case action plan.

(c) The department shall maintain a record of credits earned by an offender under this Subsection (7) and shall request from the court or the Board of Pardons and Parole the termination of probation or parole not fewer than 30 days prior to the termination date that reflects the credits earned under this Subsection (7).

(d) This Subsection (7) does not prohibit the department from requesting a termination date earlier than the termination date established by earned credits under Subsection (7)(c).

(e) The court or the Board of Pardons and Parole shall terminate an offender's probation or parole upon completion of the period of probation or parole accrued by time served and credits earned under this Subsection (7) unless the court or the Board of Pardons and Parole finds that termination would interrupt the completion of a necessary treatment program, in which case the termination of probation or parole shall occur when the treatment program is completed.

(f) The department shall report annually to the Commission on Criminal and Juvenile Justice on or before August 31:

(i) the number of offenders who have earned probation or parole credits under this Subsection (7) in one or more months of the preceding fiscal year and the percentage of the offenders on probation or parole during that time that this number represents;

(ii) the average number of credits earned by those offenders who earned credits;

(iii) the number of offenders who earned credits by county of residence while on probation or parole;

(iv) the cost savings associated with sentencing reform programs and practices; and

(v) a description of how the savings will be invested in treatment and early-intervention programs and practices at the county and state levels.

64-13-23. Offender's income and finances.

The department may require each offender, while in the custody of the department or while on probation or parole, to place funds received or earned by him from any source into an account administered by the department or into a joint account with the department at a federally insured financial institution.

(1) The department may require each offender to maintain a minimum balance in either or both accounts for the particular offender's use upon discharge from the custody of the department or upon completion of parole or probation.

(2) If the funds are placed in a joint account at a federally insured financial institution:

(a) any interest accrues to the benefit of the offender account; and

(b) the department may require that the signatures of both the offender and a departmental representative be submitted to the financial institution to withdraw funds from the account.

(3) If the funds are placed in an account administered by the department, the department may by rule designate a certain portion of the offender's funds as interest-bearing savings, and another portion as noninterest-bearing to be used for day-to-day expenses.

(4) The department may withhold part of the offender's funds in either account for expenses of:

(a) incarceration, supervision, or treatment;

(b) court-ordered restitution, reparation, fines, alimony, support payments, or similar court-ordered payments;

(c) obtaining the offender's DNA specimen, if the offender is required under Section 53-10-404 to provide a specimen;

(d) department-ordered restitution; and

(e) any other debt to the state.

(5) (a) Offenders may not be granted free process in civil actions, including petitions for a writ of habeas corpus, if, at any time from the date the cause of action arose through the date the cause of action remains pending, there are any funds in either account which have not been withheld or are not subject to withholding under Subsection (3) or (4).

(b) The amount assessed for the filing fee, service of process and other fees and costs shall not exceed the total amount of funds the offender has in excess of the indigence threshold established by the department but not less than \$25 including the withholdings under Subsection (3) or (4) during the identified period of time.

(c) The amounts assessed shall not exceed the regular fees and costs provided by law.

(6) The department may disclose information on offender accounts to the Office of Recovery Services and other appropriate state agencies.

64-13-30. Expenses incurred by offenders -- Payment to department or county jail -- Medical care expenses and copayments.

(1) (a) The department shall establish and collect from each offender on a work release program the reasonable costs of the offender's maintenance, transportation, and incidental expenses incurred by the department on behalf of the offender.

(b) Priority shall be given to restitution and family support obligations.

(c) The offender's reimbursement to the department for the cost of obtaining the offender's DNA specimen under Section 53-10-404 is the next priority after Subsection (1)(b).

(2) The department, under its rules, may advance funds to any offender as necessary to establish the offender in a work release program.

(3) (a) The department or county jail may require an inmate to make a copayment for medical and dental services provided by the department or county jail.

(b) For services provided while in the custody of the department, the copayment by the inmate is \$5 for primary medical care, \$5 for dental care, and \$2 for prescription medication.

(c) For services provided outside of a prison facility while in the custody of the department, the offender is responsible for 10% of the costs associated with hospital care with a cap on an inmate's share of hospital care expenses not to exceed \$2,000 per fiscal year.

(4) (a) An inmate who has assets exceeding \$200,000, as determined by the department upon entry into the department's custody, is responsible to pay the costs of all medical and dental care up to 20% of the inmate's total determined asset value.

(b) After an inmate has received medical and dental care equal to 20% of the inmate's total asset value, the inmate is subject to the copayments provided in Subsection (3).

(5) The department shall turn over to the Office of State Debt Collection any debt under this section that is unpaid at the time the offender is released from parole.

(6) An inmate may not be denied medical treatment if the inmate is unable to pay for the treatment because of inadequate financial resources.

(7) When an offender in the custody of the department receives medical care that is provided outside of a prison facility, the department shall pay the costs:

(a) at the contracted rate; or

(b) (i) if there is no contract between the department and a health care facility that establishes a fee schedule for medical services rendered, expenses shall be at the noncapitated state Medicaid rate in effect at the time the service was provided; and

(ii) if there is no contract between the department and a health care provider that establishes a fee schedule for medical services rendered, expenses shall be 65% of the amount that would be paid under the Public Employees' Benefit and Insurance Program, created in Section 49-20-103.

(8) Expenses described in Subsection (7) are a cost to the department only to the extent that they exceed an offender's private insurance that is in effect at the time of the service and that covers those expenses.

(9) (a) The Public Employees' Benefit and Insurance Program shall provide information to the department that enables the department to calculate the amount to be paid to a health care provider under Subsection (7)(b).

(b) The department shall ensure that information provided under Subsection (9)(a) is confidential.

64-13-33. Restitution for offenses -- Debt collection.

(1) Following an administrative hearing, the department is authorized to require restitution from an offender for expenses incurred by the department as a result of the offender's violation of department rules. The department is authorized to require payment from the offender's account or to place a hold on it to secure compliance with this section.

(2) The department shall turn over to the Office of State Debt Collection any debt under this section that is unpaid at the time the offender is released from parole.

76-3-201.1. Collection of criminal judgment accounts receivable.

(1) As used in this section:

(a) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution to victims, third party claims, claims, reimbursement of a reward, and damages.

(b) "Criminal judgment accounts receivable" means any amount due the state arising from a criminal judgment for which payment has not been received by the state agency that is servicing the debt.

(2) (a) A criminal judgment account receivable ordered by the court as a result of prosecution for a criminal offense may be collected by any means authorized by law for the collection of a civil judgment.

(b) (i) The court may permit a defendant to pay a criminal judgment account receivable in installments.

(ii) In the district court, if the criminal judgment account receivable is paid in installments, the total amount due shall include all fines, surcharges, postjudgment interest, and fees.

(c) Upon default in the payment of a criminal judgment account receivable or upon default in the payment of any installment of that receivable, the criminal judgment account receivable may be collected as provided in this section or Subsection 77-18-1(9) or (10), and by any means authorized by law for the collection of a civil judgment.

(3) When a defendant defaults in the payment of a criminal judgment account receivable or any installment of that receivable, the court, on motion of the prosecution, victim, or upon its own motion may:

(a) order the defendant to appear and show cause why the default should not be treated as contempt of court; or

(b) issue a warrant of arrest.

(4) (a) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure to make a good faith effort to make the payment, the court may find that the default constitutes contempt.

(b) Upon a finding of contempt, the court may order the defendant committed until the criminal judgment account receivable, or a specified part of it, is paid.

(5) If it appears to the satisfaction of the court that the default is not contempt, the court may enter an order for any of the following or any combination of the following:

(a) require the defendant to pay the criminal judgment account receivable or a specified part of it by a date certain;

(b) restructure the payment schedule;

(c) restructure the installment amount;

(d) except as provided in Section 77-18-8, execute the original sentence of imprisonment;

(e) start the period of probation anew;

(f) except as limited by Subsection (6), convert the criminal judgment account receivable or any part of it to compensatory service;

(g) except as limited by Subsection (6), reduce or revoke the unpaid amount of the criminal judgment account receivable; or

(h) in the court, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(6) In issuing an order under this section, the court may not modify the amount of the judgment of complete restitution.

(7) Whether or not a default constitutes contempt, the court may add to the amount owed the fees established under Subsection 63A-3-502(4)(g) and postjudgment interest.

(8) (a) (i) If a criminal judgment account receivable is past due in a case supervised by the Department of Corrections, the judge shall determine whether to record the unpaid balance of the account receivable as a civil judgment.

(ii) If the judge records the unpaid balance of the account receivable as a civil judgment, the judge shall transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(b) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is past due, the court may, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the account receivable to the Office of State Debt Collection.

(c) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is more than 90 days past due, the district court shall, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the criminal judgment account receivable to the Office of State Debt Collection.

(9) (a) When a fine, forfeiture, surcharge, cost permitted by statute, fee, or an order of restitution is imposed on a corporation or unincorporated association, the person authorized to make disbursement from the assets of the corporation or association shall pay the obligation from those assets.

(b) Failure to pay the obligation may be held to be contempt under Subsection (3).

(10) The prosecuting attorney may collect restitution on behalf of a victim.

(11) (a) Criminal judgment accounts receivable are not subject to civil statutes of limitations and expire only upon payment in full.

(b) This Subsection (11) applies to all criminal judgment accounts receivable not paid in full on or before May 12, 2015.

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

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

(2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:

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

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

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

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

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

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

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

(i) the type of offense;

(ii) the results of a risk and needs assessment;

(iii) the demand for services;

(iv) the availability of agency resources;

(v) public safety; and

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

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

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

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

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

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

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

(b) The presentence investigation report shall include:

(i) a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family;

(ii) a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;

(iii) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1;

- (iv) recommendations for treatment of the offender; and
- (v) the number of days since the commission of the offense that the offender has spent in the custody of the jail and the number of days, if any, the offender was released to a supervised release or alternative incarceration program under Section 17-22-5.5.

(c) The contents of the presentence investigation report are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the report with the department. If after 10 working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

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

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

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

(a) perform any or all of the following:

- (i) pay, in one or several sums, any fine imposed at the time of being placed on probation;
- (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;
- (iii) provide for the support of others for whose support the defendant is legally liable;
- (iv) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the court;
- (v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;
- (vi) serve a term of home confinement, which may include the use of electronic monitoring;
- (vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section 76-6-107.1;
- (viii) pay for the costs of investigation, probation, and treatment services;

(ix) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

(x) comply with other terms and conditions the court considers appropriate; and

(b) if convicted on or after May 5, 1997:

(i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or

(ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:

(A) a diagnosed learning disability; or

(B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

(a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and

(b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).

(10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to Section 64-13-21 regarding earned credits.

(ii) (A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable. If the court retains jurisdiction for this limited purpose, the court may order the defendant to pay to the court the costs associated with continued probation under this Subsection (10).

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

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

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

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

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

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

(iii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation constitutes service of time toward a term of incarceration imposed as a result of the revocation of probation.

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

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

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

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

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

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

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

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

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

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

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

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

(iv) The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence.

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

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

(iii) If a period of incarceration is imposed for a violation, the defendant shall be sentenced within the guidelines established by the Utah Sentencing Commission pursuant to Subsection 63M-7-404(4), unless the judge determines that:

(A) the defendant needs substance abuse or mental health treatment, as determined by a risk and needs assessment, that warrants treatment services that are immediately available in the community; or

(B) the sentence previously imposed shall be executed.

(iv) If the defendant had, prior to the imposition of a term of incarceration or the execution of the previously imposed sentence under this Subsection (12), served time in jail as a condition of probation or due to a violation of probation under Subsection 77-18-1(12)(e)(iii), the time the probationer served in jail constitutes service of time toward the sentence previously imposed.

(13) The court may order the defendant to commit himself or herself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or the superintendent's designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

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

(a) ordered by the court pursuant to Subsection 63G-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;

(c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

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

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).

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

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

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

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

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

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

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

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

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

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

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

77-18-6. Judgment to pay fine or restitution constitutes a lien.

(1) (a) In cases not supervised by the Department of Corrections, the clerk of the district court shall:

(i) transfer the responsibility to collect past due accounts receivable to the Office of State Debt Collection when the accounts receivable are 90 days or more past due;

(ii) before transferring the responsibility to collect the past due account receivable to the Office of State Debt Collection, record each judgment of conviction of a crime that orders the payment of a fine, forfeiture, surcharge, cost permitted by statute, or fee in the registry of civil judgments, listing the Office of State Debt Collection as the judgment creditor; and

(iii) receive notification from the Office of State Debt Collection when a civil judgment ordered for payment of accounts receivable, as defined in Section 76-3-201.1, has been satisfied.

(b) (i) The clerk of court shall record each judgment of conviction that orders the payment of restitution to a victim in the registry of civil judgments, listing the victim, or the estate of the victim, as the judgment creditor.

(ii) The Department of Corrections shall collect the judgment on behalf of the victim as provided in Subsection 77-18-1(9).

(iii) The court shall collect the judgment on behalf of the victim as provided in Subsection 78A-2-214(2).

(iv) The victim may collect the judgment.

(v) The victim is responsible for timely renewal of the judgment under Section 78B-5-202.

(2) When a fine, forfeiture, surcharge, cost, fee, or restitution is recorded in the registry of civil judgments, the judgment:

(a) constitutes a lien;

(b) has the same effect and is subject to the same rules as a judgment for money in a civil action; and

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

77-27-6. Payment of restitution.

(1) When the Board of Pardons and Parole orders the release on parole of an inmate who has been sentenced to make restitution pursuant to Title 77, Chapter 38a, Crime Victims Restitution Act, or whom the board has ordered to make restitution, and all or a portion of restitution is still owing, the board may establish a schedule, including both complete and court-ordered restitution, by which payment of the restitution shall be made, or order compensatory or other service in lieu of or in combination with restitution. In fixing the schedule and supervising the paroled offender's performance, the board may consider the factors specified in Section 77-38a-302.

(2) (a) The board may impose any court order for restitution.

(b) In accordance with Subsection 77-38a-302(5)(d)(ii), the board may order that a defendant make restitution for pecuniary damages that were not determined by the court, unless the board applying the criteria as set forth in Section 77-38a-302 determines that restitution is inappropriate.

(c) Except as provided in Subsection (2)(d), the board shall make all orders of restitution within 60 days after the termination or expiration of the defendant's sentence.

(d) If, upon termination or expiration of a defendant's sentence, the board has continuing jurisdiction over the defendant for a separate criminal offense, the board may defer making an order of restitution until termination or expiration of all sentences for that defendant.

(3) The board may also make orders of restitution for recovery of any or all costs incurred by the Department of Corrections or the state or any other agency arising out of the defendant's needs or conduct.

(4) If the defendant, upon termination or expiration of the sentence owes outstanding fines, restitution, or other assessed costs, or if the board makes an order of restitution within 60 days after the termination or expiration of the defendant's sentence, the matter shall be referred to the district court for civil collection remedies. The Board of Pardons and Parole shall forward a restitution order to the sentencing court to be entered on the judgment docket. The entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil judgment.

77-37-1. Legislative intent.

(1) The Legislature recognizes the duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, the essential nature of citizen cooperation to state and local law enforcement efforts, and the general effectiveness and well-being of the criminal justice system of this state. In this chapter, the Legislature declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law in a manner no less vigorous than protections afforded criminal defendants.

(2) The Legislature finds it is necessary to provide child victims and child witnesses with additional consideration and different treatment than that usually afforded to adults. The treatment should ensure that children's participation in the criminal justice process be conducted in the most effective and least traumatic, intrusive, or intimidating manner.

77-37-2. Definitions.

In this chapter:

- (1) "Child" means a person who is younger than 18 years of age, unless otherwise specified in statute. The rights to information as extended in this chapter also apply to the parents, custodian, or legal guardians of children.
- (2) "Family member" means spouse, child, sibling, parent, grandparent, or legal guardian.
- (3) "Victim" means a person against whom a crime has allegedly been committed, or against whom an act has allegedly been committed by a juvenile or incompetent adult, which would have been a crime if committed by a competent adult.
- (4) "Witness" means any person who has been subpoenaed or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether any action or proceeding has commenced.

77-37-3. Bill of rights.

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, and Sections 62A-7-109.5, 77-38a-302, and 77-27-6. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24a-1 through 77-24a-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have the following rights:

(i) the right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the alleged sexual offender for HIV infection as provided in Section 76-5-502;

(ii) the right to be informed whether a DNA profile was obtained from the testing of the rape kit evidence or from other crime scene evidence;

(iii) the right to be informed whether a DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Utah Combined DNA Index System;

(iv) the right to be informed whether there is a match between a DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation; and

(v) the right to designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection (1)(j) and under Subsections (2) and (3).

(k) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing, absent a specific request received from the victim or the victim's designee.

(2) The law enforcement agency investigating a sexual offense may:

(a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the request of a victim or the victim's designee and is the designated agency to provide that information to the victim or the victim's designee;

(b) require that the victim's request be in writing; and

(c) respond to the victim's request with verbal communication, written communication, or by email, if an email address is available.

(3) The law enforcement agency investigating a sexual offense has the following authority and responsibilities:

(a) If the law enforcement agency determines that DNA evidence will not be analyzed in a case where the identity of the perpetrator has not been confirmed, the law enforcement agency shall notify the victim or the victim's designee.

(b) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, the law enforcement agency shall provide written notification of that intention and information on how to appeal the decision to the victim or the victim's designee of that intention.

(ii) Written notification under this Subsection (3) shall be made not fewer than 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

(c) A law enforcement agency responsible for providing information under Subsections (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the victim or the victim's designee, shall advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware.

(d) The law enforcement agency investigating the sexual offense is responsible for informing the victim or the victim's designee of the rights established under Subsections (1)(j)(ii) through (iv) and (2), and this Subsection (3).

(4) Informational rights of the victim under this chapter are based upon the victim providing the current name, address, telephone number, and email address, if an email address is available, of the person to whom the information should be provided to the criminal justice agencies involved in the case.

77-37-4. Additional rights -- Children.

In addition to all rights afforded to victims and witnesses under this chapter, child victims and witnesses shall be afforded these rights:

(1) Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.

(2) Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard.

(3) Child victims and witnesses have the right to have interviews relating to a criminal prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.

(4) Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure

that child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process.

(5) (a) Child victims have the right, once an investigation has been initiated by law enforcement or the Division of Child and Family Services, to keep confidential their interviews that are conducted at a Children's Justice Center, including video and audio recordings, and transcripts of those recordings. Except as provided in Subsection (6), recordings and transcripts of interviews may not be distributed, released, or displayed to anyone without a court order.

(b) A court order described in Subsection (5)(a):

(i) shall describe with particularity to whom the recording or transcript of the interview may be released and prohibit further distribution or viewing by anyone not named in the order; and

(ii) may impose restrictions on access to the materials considered reasonable to protect the privacy of the child victim.

(c) A parent or guardian of the child victim may petition a juvenile or district court for an order allowing the parent or guardian to view a recording or transcript upon a finding of good cause. The order shall designate the agency that is required to display the recording or transcript to the parent or guardian and shall prohibit viewing by anyone not named in the order.

(d) Following the conclusion of any legal proceedings in which the recordings or transcripts are used, the court shall order the recordings and transcripts in the court's file sealed and preserved.

(6) (a) The following offices and their designated employees may distribute and receive a recording or transcript to and from one another without a court order:

(i) the Division of Child and Family Services;

(ii) administrative law judges employed by the Department of Human Services;

(iii) Department of Human Services investigators investigating the Division of Child and Family Services or investigators authorized to investigate under Section 62A-4a-202.6;

(iv) an office of the city attorney, county attorney, district attorney, or attorney general;

(v) a law enforcement agency;

(vi) a Children's Justice Center established under Section 67-5b-102; or

(vii) the attorney for the child who is the subject of the interview.

(b) In a criminal case or in a juvenile court in which the state is a party:

(i) the parties may display and enter into evidence a recording or transcript in the course of a prosecution;

(ii) the state's attorney may distribute a recording or transcript to the attorney for the defendant, pro se defendant, respondent, or pro se respondent pursuant to a valid request for discovery;

(iii) the attorney for the defendant or respondent may do one or both of the following:

- (A) release the recording or transcript to an expert retained by the attorney for the defendant or respondent if the expert agrees in writing that the expert will not distribute, release, or display the recording or transcript to anyone without prior authorization from the court; or
- (B) permit the defendant or respondent to view the recording or transcript, but may not distribute or release the recording or transcript to the defendant or respondent; and
- (iv) the court shall advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be distributed, released, or displayed without prior authorization from the court.
- (c) A court's failure to advise a pro se defendant or respondent that a recording or transcript received as part of discovery is confidential and may not be used as a defense to prosecution for a violation of the disclosure rule.
- (d) In an administrative case, pursuant to a written request, the Division of Child and Family Services may display, but may not distribute or release, a recording or transcript to the respondent or to the respondent's designated representative.
- (e) (i) Within two business days of a request from a parent or guardian of a child victim, an investigative agency shall allow the parent or guardian to view a recording after the conclusion of an interview, unless:
 - (A) the suspect is a parent or guardian of the child victim;
 - (B) the suspect resides in the home with the child victim; or
 - (C) the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation.
- (ii) If the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation, the parent or guardian may petition a juvenile or district court for an expedited hearing on whether there is good cause for the court to enter an order allowing the parent or guardian to view the recording in accordance with Subsection (5)(c).
- (iii) A Children's Justice Center shall coordinate the viewing of the recording described in this Subsection (6)(e).
- (f) A multidisciplinary team assembled by a Children's Justice Center or an interdisciplinary team assembled by the Division of Child and Family Services may view a recording or transcript, but may not receive a recording or transcript.
- (g) A Children's Justice Center:
 - (i) may distribute or display a recording or transcript to an authorized trainer or evaluator for purposes of training or evaluation; and
 - (ii) may display, but may not distribute, a recording or transcript to an authorized trainee.

(h) An authorized trainer or instructor may display a recording or transcript according to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center or according to the authorized trainer's or instructor's scope of employment.

(i) (i) In an investigation under Section 53A-6-306, in which a child victim who is the subject of the recording or transcript has alleged criminal conduct against an educator, a law enforcement agency may distribute or release the recording or transcript to an investigator operating under State Board of Education authorization, upon the investigator's written request.

(ii) If the respondent in a case investigated under Section 53A-6-306 requests a hearing authorized under that section, the investigator operating under State Board of Education authorization may display, release, or distribute the recording or transcript to the prosecutor operating under State Board of Education authorization or to an expert retained by an investigator.

(iii) Upon request for a hearing under Section 53A-6-306, a prosecutor operating under State Board of Education authorization may display the recording or transcript to a pro se respondent, to an attorney retained by the respondent, or to an expert retained by the respondent.

(iv) The parties to a hearing authorized under Section 53A-6-306 may display and enter into evidence a recording or transcript in the course of a prosecution.

(7) Except as otherwise provided in this section, it is a class B misdemeanor for any individual to distribute, release, or display any recording or transcript of an interview of a child victim conducted at a Children's Justice Center.

77-38-2. Definitions.

For the purposes of this chapter and the Utah Constitution:

(1) "Abuse" means treating the crime victim in a manner so as to injure, damage, or disparage.

(2) "Dignity" means treating the crime victim with worthiness, honor, and esteem.

(3) "Fairness" means treating the crime victim reasonably, even-handedly, and impartially.

(4) "Harassment" means treating the crime victim in a persistently annoying manner.

(5) "Important criminal justice hearings" or "important juvenile justice hearings" means the following proceedings in felony criminal cases or cases involving a minor's conduct which would be a felony if committed by an adult:

(a) any preliminary hearing to determine probable cause;

(b) any court arraignment where practical;

(c) any court proceeding involving the disposition of charges against a defendant or minor or the delay of a previously scheduled trial date but not including any unanticipated proceeding to take an admission or a plea of guilty as charged to all charges previously filed or any plea taken at an initial appearance;

- (d) any court proceeding to determine whether to release a defendant or minor and, if so, under what conditions release may occur, excluding any such release determination made at an initial appearance;
- (e) any criminal or delinquency trial, excluding any actions at the trial that a court might take in camera, in chambers, or at a sidebar conference;
- (f) any court proceeding to determine the disposition of a minor or sentence, fine, or restitution of a defendant or to modify any disposition of a minor or sentence, fine, or restitution of a defendant; and
- (g) any public hearing concerning whether to grant a defendant or minor parole or other form of discretionary release from confinement.
- (6) "Reliable information" means information worthy of confidence, including any information whose use at sentencing is permitted by the United States Constitution.
- (7) "Representative of a victim" means a person who is designated by the victim or designated by the court and who represents the victim in the best interests of the victim.
- (8) "Respect" means treating the crime victim with regard and value.
- (9) (a) "Victim of a crime" means any natural person against whom the charged crime or conduct is alleged to have been perpetrated or attempted by the defendant or minor personally or as a party to the offense or conduct or, in the discretion of the court, against whom a related crime or act is alleged to have been perpetrated or attempted, unless the natural person is the accused or appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state.
- (b) For purposes of the right to be present, "victim of a crime" does not mean any person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment.
- (c) For purposes of the right to be present and heard at a public hearing as provided in Subsection 77-38-2(5)(g) and the right to notice as provided in Subsection 77-38-3(7)(a), "victim of a crime" includes any victim originally named in the allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty.

77-38-3. Notification to victims -- Initial notice, election to receive subsequent notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact order.

- (1) Within seven days of the filing of felony criminal charges against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges, except as otherwise provided in this chapter.
- (2) The initial notice to the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings listed in Subsections 77-38-2(5)(a) through (f) and rights under this chapter.

- (3) The prosecuting agency shall provide notice to a victim of a crime for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f), which the victim has requested.
- (4) (a) The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.
- (b) In the event of an unforeseen important criminal justice hearing, listed in Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceeding.
- (5) (a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for victims of crimes to be notified.
- (b) The court shall also consider whether any notification system it might use to provide notice of judicial proceedings to defendants could be used to provide notice of those same proceedings to victims of crimes.
- (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give notice to the responsible prosecuting agency of any motion for modification of any determination made at any of the important criminal justice hearings provided in Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the prosecuting agency may comply with its notification obligation.
- (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).
- (b) The board may provide notice in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.
- (8) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (f) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.
- (9) (a) Law enforcement and criminal justice agencies shall refer any requests for notice or information about crime victim rights from victims to the responsible prosecuting agency.
- (b) In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice it has received from a victim to the Board of Pardons and Parole.
- (10) In all cases where the number of victims exceeds 10, the responsible prosecuting agency may send any notices required under this chapter in its discretion to a representative sample of the victims.
- (11) (a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice Services, Department of Corrections, and Board of Pardons and Parole, for purposes of providing notice under this section, is classified as protected as provided in Subsection 63G-2-305(10).

(b) The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:

- (i) a law enforcement agency, including the prosecuting agency;
- (ii) a victims' right committee as provided in Section 77-37-5;
- (iii) a governmentally sponsored victim or witness program;
- (iv) the Department of Corrections;
- (v) the Utah Office for Victims of Crime;
- (vi) the Commission on Criminal and Juvenile Justice; and
- (vii) the Board of Pardons and Parole.

(12) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.

(13) (a) When a defendant is charged with a felony crime under Sections 76-5-301 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding aggravated exploitation of prostitution, the court may, during any court hearing where the defendant is present, issue a pretrial criminal no contact order:

- (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim directly or through a third party;
- (ii) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim or any designated family member of the victim directly or through a third party; and
- (iii) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member of the victim.

(b) Violation of a pretrial criminal no contact order issued pursuant to this section is a third degree felony.

(c) (i) The court shall provide to the victim a certified copy of any pretrial criminal no contact order that has been issued if the victim can be located with reasonable effort.

(ii) The court shall also transmit the pretrial criminal no contact order to the statewide domestic violence network in accordance with Section 78B-7-113.

77-38-4. Right to be present, to be heard, and to file an amicus brief on appeal -- Control of disruptive acts or irrelevant statements -- Statements from persons in custody.

- (1) The victim of a crime, the representative of the victim, or both shall have the right:
 - (a) to be present at the important criminal or juvenile justice hearings provided in Subsection 77-38-2(5);
 - (b) to be heard at the important criminal or juvenile justice hearings provided in Subsections 77-38-2(5)(b), (c), (d), (f), and (g);
 - (c) to submit a written statement in any action on appeal related to that crime; and
 - (d) upon request to the judge hearing the matter, to be present and heard at the initial appearance of the person suspected of committing the conduct or criminal offense against the victim on issues relating to whether to release a defendant or minor and, if so, under what conditions release may occur.
- (2) This chapter shall not confer any right to the victim of a crime to be heard:
 - (a) at any criminal trial, including the sentencing phase of a capital trial under Section 76-3-207 or at any preliminary hearing, unless called as a witness; and
 - (b) at any delinquency trial or at any preliminary hearing in a minor's case, unless called as a witness.
- (3) The right of a victim or representative of a victim to be present at trial is subject to Rule 615 of the Utah Rules of Evidence.
- (4) Nothing in this chapter shall deprive the court of the right to prevent or punish disruptive conduct nor give the victim of a crime the right to engage in disruptive conduct.
- (5) The court shall have the right to limit any victim's statement to matters that are relevant to the proceeding.
- (6) In all cases where the number of victims exceeds five, the court may limit the in-court oral statements it receives from victims in its discretion to a few representative statements.
- (7) Except as otherwise provided in this section, a victim's right to be heard may be exercised at the victim's discretion in any appropriate fashion, including an oral, written, audiotaped, or videotaped statement or direct or indirect information that has been provided to be included in any presentence report.
- (8) If the victim of a crime is a person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment, the right to be heard under this chapter shall be exercised by submitting a written statement to the court.
- (9) The court may exclude any oral statement from a victim on the grounds of the victim's incompetency as provided in Rule 601(a) of Utah Rules of Evidence.
- (10) Except in juvenile court cases, the Constitution may not be construed as limiting the existing rights of the prosecution to introduce evidence in support of a capital sentence.

77-38-7. Victim's right to a speedy trial.

- (1) In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant's or minor's right to a speedy trial.
- (2) The victim of a crime has the right to a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor and to prompt and final conclusion of the case after the disposition or conviction and sentence, including prompt and final conclusion of all collateral attacks on dispositions or criminal judgments.
- (3) (a) In ruling on any motion by a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy disposition of the case.
(b) If a continuance is granted, the court shall enter in the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

77-38-9. Representative of victim -- Court designation -- Representation in cases involving minors -- Photographs in homicide cases.

- (1) (a) A victim of a crime may designate, with the approval of the court, a representative who may exercise the same rights that the victim is entitled to exercise under this chapter, including pursuing restitution.
(b) Except as otherwise provided in this section, the victim may revoke the designation at any time.
(c) In cases where the designation is in question, the court may require that the designation of the representative be made in writing by the victim.
- (2) In cases in which the victim is deceased or incapacitated, upon request from the victim's spouse, parent, child, or close friend, the court shall designate a representative or representatives of the victim to exercise the rights of a victim under this chapter on behalf of the victim. The responsible prosecuting agency may request a designation to the court.
- (3) (a) If the victim is a minor, the court in its discretion may allow the minor to exercise the rights of a victim under this chapter or may allow the victim's parent or other immediate family member to act as a representative of the victim.
(b) The court may also, in its discretion, designate a person who is not a member of the immediate family to represent the interests of the minor.
- (4) The representative of a victim of a crime shall not be:

- (a) the accused or a person who appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct, a related crime or conduct, or a crime or act arising from the same conduct, criminal episode, or plan as the crime or conduct is defined under the laws of this state;
 - (b) a person in the custody of or under detention of federal, state, or local authorities; or
 - (c) a person whom the court in its discretion considers to be otherwise inappropriate.
- (5) Any notices that are to be provided to a victim pursuant to this chapter shall be sent to the victim or the victim's lawful representative.
- (6) On behalf of the victim, the prosecutor may assert any right to which the victim is entitled under this chapter, unless the victim requests otherwise or exercises his own rights.
- (7) In any homicide prosecution, the prosecution may introduce a photograph of the victim taken before the homicide to establish that the victim was a human being, the identity of the victim, and for other relevant purposes.

77-38-10. Victim's discretion.

- (1) (a) The victim may exercise any rights under this chapter at his discretion to be present and to be heard at a court proceeding, including a juvenile delinquency proceeding.
- (b) The absence of the victim at the court proceeding does not preclude the court from conducting the proceeding.
- (2) A victim shall not refuse to comply with an otherwise lawful subpoena under this chapter.
- (3) A victim shall not prevent the prosecution from complying with requests for information within a prosecutor's possession and control under this chapter.

77-38-11. Enforcement -- Appellate review -- No right to money damages.

- (1) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief, including prospective injunctive relief, may be brought against the individual and the governmental entity that employs the individual.
- (2) (a) The victim of a crime or representative of a victim of a crime, including any Victims' Rights Committee as defined in Section 77-37-5 may:
- (i) bring an action for declaratory relief or for a writ of mandamus defining or enforcing the rights of victims and the obligations of government entities under this chapter;
 - (ii) petition to file an amicus brief in any court in any case affecting crime victims; and
 - (iii) after giving notice to the prosecution and the defense, seek an appropriate remedy for a violation of a victim's right from the judge assigned to the case involving the issue as provided in Section 77-38-11.

(b) Adverse rulings on these actions or on a motion or request brought by a victim of a crime or a representative of a victim of a crime may be appealed under the rules governing appellate actions, provided that an appeal may not constitute grounds for delaying any criminal or juvenile proceeding.

(c) An appellate court shall review all properly presented issues, including issues that are capable of repetition but would otherwise evade review.

(3) (a) Upon a showing that the victim has not unduly delayed in seeking to protect the victim's right, and after hearing from the prosecution and the defense, the judge shall determine whether a right of the victim has been violated.

(b) If the judge determines that a victim's right has been violated, the judge shall proceed to determine the appropriate remedy for the violation of the victim's right by hearing from the victim and the parties, considering all factors relevant to the issue, and then awarding an appropriate remedy to the victim. The court shall reconsider any judicial decision or judgment affected by a violation of the victim's right and determine whether, upon affording the victim the right and further hearing from the prosecution and the defense, the decision or judgment would have been different. If the court's decision or judgment would have been different, the court shall enter the new different decision or judgment as the appropriate remedy. If necessary to protect the victim's right, the new decision or judgment shall be entered nunc pro tunc to the time the first decision or judgment was reached. In no event shall the appropriate remedy be a new trial, damages, attorney fees, or costs.

(c) The appropriate remedy shall include only actions necessary to provide the victim the right to which the victim was entitled and may include reopening previously held proceedings. Subject to Subsection (3)(d), the court may reopen a sentence or a previously entered guilty or no contest plea only if doing so would not preclude continued prosecution or sentencing the defendant and would not otherwise permit the defendant to escape justice. Any remedy shall be tailored to provide the victim an appropriate remedy without violating any constitutional right of the defendant.

(d) If the court sets aside a previously entered plea of guilty or no contest, and thereafter continued prosecution of the charge is held to be prevented by the defendant's having been previously put in jeopardy, the order setting aside the plea is void and the plea is reinstated as of the date of its original entry.

(e) The court may not award as a remedy the dismissal of any criminal charge.

(f) The court may not award any remedy if the proceeding that the victim is challenging occurred more than 90 days before the victim filed an action alleging the violation of the right.

(4) The failure to provide the rights in this chapter or Title 77, Chapter 37, Victims' Rights, shall not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney fees, or the costs of exercising any rights under this chapter.

77-38-12. Construction of this chapter -- No right to set aside conviction, adjudication, admission, or plea -- Severability clause.

- (1) All of the provisions contained in this chapter shall be construed to assist the victims of crime.
- (2) This chapter may not be construed as creating a basis for dismissing any criminal charge or delinquency petition, vacating any adjudication or conviction, admission or plea of guilty or no contest, or for a defendant to obtain appellate, habeas corpus, or other relief from a judgment in any criminal or delinquency case.
- (3) This chapter may not be construed as creating any right of a victim to appointed counsel at state expense.
- (4) All of the rights contained in this chapter shall be construed to conform to the Constitution of the United States.
- (5) (a) In the event that any portion of this chapter is found to violate the Constitution of the United States, the remaining provisions of this chapter shall continue to operate in full force and effect.
(b) In the event that a particular application of any portion of this chapter is found to violate the Constitution of the United States, all other applications shall continue to operate in full force and effect.
- (6) The enumeration of certain rights for crime victims in this chapter shall not be construed to deny or disparage other rights granted by the Utah Constitution or the Legislature or retained by victims of crimes.

77-38a-102. Definitions.

As used in this chapter:

- (1) "Conviction" includes a:
 - (a) judgment of guilt;
 - (b) a plea of guilty; or
 - (c) a plea of no contest.
- (2) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.
- (3) "Department" means the Department of Corrections.
- (4) "Diversion" means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program, make restitution to the victim, or fulfill some other condition.
- (5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

(6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet incurred, which a person could recover in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the fair market value of property taken, destroyed, broken, or otherwise harmed, and losses including lost earnings and medical expenses, but excludes punitive or exemplary damages and pain and suffering.

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

(8) "Plea disposition" means an agreement entered into between the prosecution and defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.

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

(10) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including prejudgment interest, the accrual of interest from the time of sentencing, insured damages, reimbursement for payment of a reward, and payment for expenses to a governmental entity for extradition or transportation and as may be further defined by law.

(12) (a) "Reward" means a sum of money:

(i) offered to the public for information leading to the arrest and conviction of an offender; and

(ii) that has been paid to a person or persons who provide this information, except that the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

(b) "Reward" does not include any amount paid in excess of the sum offered to the public.

(13) "Screening" means the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted.

(14) (a) "Victim" means any person or entity, including the Utah Office for Victims of Crime, who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

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

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.

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.

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.

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).

77-38a-301. Restitution -- Convicted defendant may be required to pay.

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

77-38a-302. Restitution criteria.

(1) When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, a victim has the meaning as defined in Subsection 77-38a-102(14) and in determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

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

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

(b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing.

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

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

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

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

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

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

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

- (iii) the cost of necessary physical and occupational therapy and rehabilitation;
 - (iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim;
 - (v) up to five days of the individual victim's determinable wages that are lost due to theft of or damage to tools or equipment items of a trade that were owned by the victim and were essential to the victim's current employment at the time of the offense; and
 - (vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim.
- (c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider:
- (i) the factors listed in Subsections (5)(a) and (b);
 - (ii) the financial resources of the defendant, as disclosed in the financial declaration described in Section 77-38a-204;
 - (iii) the burden that payment of restitution will impose, with regard to the other obligations of the defendant;
 - (iv) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
 - (v) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and
 - (vi) other circumstances that the court determines may make restitution inappropriate.
- (d) (i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete restitution and court-ordered restitution, and shall make all restitution orders at the time of sentencing if feasible, otherwise within one year after sentencing.
- (ii) Any pecuniary damages that have not been determined by the court within one year after sentencing may be determined by the Board of Pardons and Parole.
- (e) The Board of Pardons and Parole may, within one year after sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

77-38a-401. Entry of judgment -- Interest -- Civil actions -- Lien.

(1) Upon the court determining that a defendant owes restitution, the clerk of the court shall enter an order of complete restitution as defined in Section 77-38a-302 on the civil judgment docket and provide notice of the order to the parties.

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

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

(4) Notwithstanding Subsection 77-18-6(1)(b)(v) and Sections 78B-2-311 and 78B-5-202, a judgment ordering restitution when entered on the civil judgment docket shall have the same affect and is subject to the same rules as a judgment in a civil action and expires only upon payment in full, which includes applicable interest, collection fees, and attorney fees. Interest shall accrue on the amount ordered from the time of sentencing, including prejudgment interest. This Subsection (4) applies to all restitution judgments not paid in full on or before May 12, 2009.

(5) The department shall make rules permitting the restitution payments to be credited to principal first and the remainder of payments credited to interest in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

77-38a-403. Civil action by victim for damages.

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

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

77-38a-404. Priority.

(1) Restitution payments made pursuant to a court order shall be disbursed to victims within 60 days of receipt from the defendant by the court or department provided:

- (a) the victim has complied with Subsection 77-38a-203(1)(b);
- (b) if the defendant has tendered a negotiable instrument, funds from the financial institution are actually received; and
- (c) the payment to the victim is at least \$5, unless the payment is the final payment.

(2) If restitution to more than one person, agency, or entity is required at the same time, the department shall establish the following priorities of payment, except as provided in Subsection (4):

- (a) the crime victim;
- (b) the Utah Office for Victims of Crime;
- (c) any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct;
- (d) the person, entity, or governmental agency that has offered and paid a reward under Section 76-3-201.1 or 78A-6-117;
- (e) any insurance company which has provided reimbursement to the victim as a result of the offender's criminal conduct; and
- (f) any county correctional facility to which the defendant is required to pay restitution under Subsection 76-3-201(6).

(3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and surcharges are paid.

(4) If the offender is required under Section 53-10-404 to reimburse the department for the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after restitution to the crime victim under Subsection (2)(a).

(5) All money collected for court-ordered obligations from offenders by the department will be applied:

(a) first, to victim restitution, except the current and past due amount of \$30 per month required to be collected by the department under Section 64-13-21, if applicable; and

(b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection (4).

(6) Restitution owed to more than one victim shall be disbursed to each victim according to the percentage of each victim's share of the total restitution order.

77-38a-501. Default and sanctions.

(1) When a defendant defaults in the payment of a judgment for restitution or any installment ordered, the court, on motion of the prosecutor, parole or probation agent, victim, or on its own motion may impose sanctions against the defendant as provided in Section 76-3-201.1.

(2) The court may not impose a sanction against the defendant under Subsection (1) if:

(a) the defendant's sole default in the payment of a judgement for restitution is the failure to pay restitution ordered under Subsection 76-3-201(6) regarding costs of incarceration in a county correctional facility; and

(b) the sanction would extend the defendant's term of probation or parole.

77-38a-502. Collection from inmate offenders.

In addition to the remedies provided in Section 77-38a-501, the department upon written request of the prosecutor, victim, or parole or probation agent, shall collect restitution from offender funds held by the department as provided in Section 64-13-23.

77-38a-601. Preservation of assets.

(1) Prior to or at the time a criminal information, indictment charging a violation, or a petition alleging delinquency is filed, or at any time during the prosecution of the case, a prosecutor may, if in the prosecutor's best judgment there is a substantial likelihood that a conviction will be obtained and restitution will be ordered in the case, petition the court to:

(a) enter a temporary restraining order, an injunction, or both;

(b) require the execution of a satisfactory performance bond; or

(c) take any other action to preserve the availability of property which may be necessary to satisfy an anticipated restitution order.

(2) (a) Upon receiving a request from a prosecutor under Subsection (1), and after notice to persons appearing to have an interest in the property and affording them an opportunity to be heard, the court may take action as requested by the prosecutor if the court determines:

(i) there is probable cause to believe that a crime has been committed and that the defendant committed it, and that failure to enter the order will likely result in the property being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or otherwise be made unavailable for restitution; and

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

(b) In a hearing conducted pursuant to this section, a court may consider reliable hearsay as defined in Utah Rules of Evidence, Rule 1102.

(c) An order for an injunction entered under this section is effective for the period of time given in the order.

(3) (a) Upon receiving a request for a temporary restraining order from a prosecutor under this section, a court may enter a temporary restraining order against an owner with respect to specific property without notice or opportunity for a hearing if:

(i) the prosecutor demonstrates that there is a substantial likelihood that the property with respect to which the order is sought appears to be necessary to satisfy an anticipated restitution order under this chapter; and

(ii) provision of notice would jeopardize the availability of the property to satisfy any restitution order or judgment.

(b) The temporary order in this Subsection (3) expires not more than 10 days after it is entered unless extended for good cause shown or the party against whom it is entered consents to an extension.

(4) A hearing concerning an order entered under this section shall be held as soon as possible, and prior to the expiration of the temporary order.

Administrative Rules

Dept. of Corrections

R251-401-1. Authority and Purpose.

(1) This rule is authorized under Sections 63G-3-201, 64-13-10, and 64-13-21, of the Utah Code.

(2) The purpose of this rule is to define the UDC's policy regarding offenders' monthly supervision fees including criteria for the suspension or waiver of fees and the circumstances under which an offender may request a hearing.

R251-401-2. Definitions.

(1) "Board" means Board of Pardons and Parole.

(2) "Fee suspension" means temporary, time-limited suspension of required fee payment when inability to pay is a result of short-term, substantial hardship.

(3) "Fee waiver" means long-term waiver of fee payment when the substantial hardship causing an inability to pay is highly unlikely to change during the period of supervision.

(4) "Substantial hardship" means any condition which would cause gross monthly household income to be below the Federal Poverty Level.

(5) "UDC" means Utah Department of Corrections.

R251-401-3. Policy.

It is the policy of the Department that:

(1) in accordance with Section 64-13-21, of the Utah Code, offenders on probation or parole shall be assessed a monthly supervision fee of \$30.00 if the offense was committed after May 3, 1993;

(2) court- or Board-ordered supervision fees may be waived if the order would create a substantial hardship as determined by the supervising agent and a supervisor or if the offender owes restitution to a victim;

(3) if the offender disagrees with a non-hardship finding, the decision may be appealed up to the appropriate Regional Administrator, whose decision shall be binding;

(4) offenders required to pay supervision fees shall be provided with written procedures regarding the appeal process;

(5) former offenders who had a fee suspension or waiver when their supervision ended, shall not automatically assume the same status if placed on probation or parole again;

(6) offenders who obtain a suspension or waiver shall not be eligible for a refund of any fees previously paid; and

(7) eligible offenders shall reapply for a suspension or waiver of supervision fees each time they are placed on probation or parole.

Crime Victim Reparations

R270-1-1. Authorization and Purpose.

As provided in Section 63M-7-506 the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

R270-1-6. Reparation Awards.

Pursuant to Section 63M-7-503, reparation awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting

attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the Crime Victim Reparations Trust Fund.

R270-1-15. Subrogation.

A. Pursuant to Section 63M-7-519, subrogation monies collected from the perpetrator, insurance, etc., will be placed in the Crime Victim Reparations Trust Fund and will not be credited toward a particular victim or claimant award amount.

R270-1-16. Unjust Enrichment.

A. Pursuant to Subsection 63M-7-510(1)(d), the following criteria shall be used when considering claims involving possible unjust enrichment of an offender: . . .

4. Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to pay for the cost of the victim's recovery.

5. Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

R270-1-22. Sexual Assault Forensic Examinations.

A. Pursuant to Subsections 63M-7-502(21) and 63M-7-511(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by CVR in the amount of up to \$750.00 for a full examination which must include photo documentation. Pursuant to Section 63M-7-521.5, CVR may also pay for the cost of medication and/or pharmacological management and consultation provided for the purpose of obtaining free medications and 70% of the eligible hospital services and supplies. Payment to the hospital or other eligible facility for the rent or use of an examination room or space for the purpose of conducting a sexual assault forensic exam shall not exceed \$350.00. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations: . . .

12. Restitution for the cost of the sexual assault forensic examination may be pursued by CVR.

Board of Pardons

R671-313-1. Applicability.

(1) For purposes of this Rule and the decisions, determinations and orders of the Utah Board of Pardons and Parole (Board), acting under its powers as authorized by the Utah Constitution, commutation may mean the change or reduction of the severity of a crime; the change or reduction of an imposed sentence; or the change or reduction of the type or level of offense. Commutation is an act of clemency. Commutation is not a conditional or unconditional pardon.

(2) No person has a right, privilege or entitlement to commutation or clemency.

(3) Petitions for commutation of a death sentence shall be governed by applicable state constitutional provisions, statutes and Utah Administrative Code, Rule R671-312.

(4) All other petitions seeking commutation of a Utah conviction or sentence shall be governed by applicable state constitutional provisions and statutes, and by this administrative rule.

(5) As used in this Rule, "subject" means the person whose conviction(s) or sentence(s) are sought to be commuted by the filing of a commutation petition with the Board.

(6) Any person, individually or through counsel, who has been convicted of any felony, Class A misdemeanor or Class B misdemeanor offense in this State, may petition the Board for commutation of such conviction(s) or sentence(s) entered or imposed in this state, except for cases of treason or impeachment.

(7) The Utah Attorney General; Assistant Attorneys General, as authorized by the Attorney General; any County Attorney or District Attorney; or any Deputy County or District Attorney as authorized by their elected County or District Attorney; may petition the Board, on behalf of any convicted person, for commutation of any such conviction or sentence entered or imposed in this state, except for cases of treason or impeachment.

(8) Any document, pleading, notice, attachment or other item which is submitted as part of the commutation petition, response, or subsequent pleadings shall be delivered to and filed with the Board's Administrative Coordinator, at the Board's offices.

(9) A commutation petition, any response thereto, and any subsequent pleading, submission or document submitted to the Board for consideration in relation to a commutation petition are considered public documents, unless the document is determined by the Board to be controlled, protected or private, pursuant to any other statute, law, rule or prior case law.

(10) Any order issued by the Board relating to a commutation petition is a public document.

R671-313-2. Eligibility.

(1) No commutation petition regarding a traffic citation, an infraction or a Class C misdemeanor will be considered by the Board.

(2) No petition seeking a posthumous commutation of any offense will be considered by the Board.

(3) A petition for commutation may be filed with the Board anytime after the sentencing court has issued a Judgment and Commitment; a Sentence; or a Conviction. The Board may delay its consideration of any petition where there is or remains pending any appeal or post-conviction litigation regarding the conviction(s) or sentence(s) which are the subject of the commutation petition.

(4) Failure of any petitioner or counsel to comply with this Rule, any other Board rule or any Board directive or order, may result in the summary denial of the petition and cancellation of any scheduled hearing.

R671-313-3. Petition Requirements.

(1)(a) The commutation petition shall be signed under oath. If the petitioner is not the subject of the petition, the subject of the petition shall also sign the petition.

(b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.

(c) If the petitioner is represented by counsel, counsel shall comply in all respects with Utah Administrative Code, Rule R671-103 - Attorneys.

(2) The commutation petition shall include:

(a) the petitioner's name, address, telephone number and e-mail address;

(b) the subject's name, address, telephone number and e-mail address;

(c) the name, address, telephone number and e-mail address of any counsel representing the petitioner in the commutation proceeding;

(d) a certified copy of the Judgment, Conviction and Sentence for which commutation is petitioned;

(e) a statement specifying whether or not the conviction for which commutation is petitioned was appealed; and if so, a copy of any applicable appellate decision;

(f) a statement specifying whether or not the conviction for which commutation is petitioned was the subject of any complaint, petition or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeas corpus or any other extraordinary relief; and if so, a copy of all applicable final orders, rulings, determinations and appellate decisions regarding such litigation.

(g) a copy of all police reports, pre-sentence reports, post-sentence reports and court dockets for the convictions and/or sentence for which commutation is petitioned;

(h) a certified copy of the subject's Utah and NCIC criminal history reports (obtained from the Utah Department of Public Safety);

(i) a statement wherein the subject and petitioner certify that no criminal cases or charges are pending against the subject in any court. If the subject has any pending criminal cases or charges, the statement shall identify and explain all criminal cases or charges pending in any State, Federal or local court and the nature of the cases pending. If such proceedings are pending, the statement must identify the court in which such cases are pending; explain the nature of the proceedings and charges; and note the status of the proceedings.

(j) a statement of the reasons and grounds which petitioner believes support commutation.

(k) copies of all written evidence upon which petitioner intends to rely at the hearing, along with the names of all witnesses whom petitioner intends to call and a summary of their anticipated testimony.

(l) a statement specifying whether any of the stated reasons or grounds for commutation have been reviewed by a court(s); and shall include copy of any court decision entered or made by such a reviewing court;

(m) if the grounds for commutation are based upon post-conviction, newly discovered evidence, the petition shall include a statement explaining why such evidence is considered new, why the purportedly new evidence was not or could not have been reviewed during the judicial, appellate or post-conviction process, and why the purportedly new evidence is not currently subject to judicial review.

(3) If subject is currently on probation or parole, the petition shall include, as an attachment, a report from Adult Probation and Parole which summarizes and explains the subject's progress while under supervision; and which includes a detailed report of progress toward completing all supervision requirements, treatment requirements, alternative events while under supervision, and fulfillment of restitution, fine, fee and other financial obligations.

(4) If the subject is currently incarcerated, the petition shall include, as an attachment, an updated and current Institutional Progress Report from the Department of Corrections, which summarizes and explains the subjects progress while under supervision; and which includes a detailed report of progress toward completing all supervision requirements, treatment requirements, alternative events while under supervision, and fulfillment of restitution, fine, fee and other financial obligations.

(5) If the subject has ever applied for and been denied commutation, the petition shall set forth what, if any, new, significant and previously unavailable information exists which supports commutation and the reasons this information was not previously submitted to the Board, and why this information supports commutation.

(6) At any time following submission of a commutation petition, the Board may seek additional information from the petitioner, the subject or counsel.

R671-313-4. Petition Procedures.

(1)(a) Within six months of receipt of the petition, the Board may either deny the commutation petition without a hearing; request a response from the original prosecuting agency, Attorney General's Office, or the person whose conviction(s) or sentence(s) are sought to be commuted; or grant a commutation hearing in order to further consider the petition. The Board may, on its own motion, extend the time for preliminary consideration of the petition.

(b) There is no right to a commutation hearing, and the Board retains complete and absolute discretion to determine whether to grant a hearing on the commutation petition.

(2) The Board, after considering the commutation petition, may deny the petition without further pleadings, response, hearing or submissions. If the Board denies a commutation petition without hearing, it shall notify the petitioner and counsel, if represented, and the original prosecuting agency, either by mail or electronic mail.

(3) Upon receipt of a commutation petition, filed by the subject or counsel, the Board may request a response to the petition from the Attorney General, District Attorney, County Attorney or City Attorney whose office or agency originally prosecuted the count(s), charge(s) or case resulting in the conviction and sentence for which commutation is sought; and from any Attorney General, District Attorney, County Attorney or City Attorney whose office represented the prosecuting agency or office in relation to any appeal or post-conviction litigation regarding any conviction or sentence which is the subject of the commutation petition (hereinafter referred to as the "State's response").

(4) If requested prior to the Board scheduling a commutation hearing, the State's response shall be filed with the Board within sixty (60) days of the Board's request, and shall clearly specify whether the responding agency opposes or supports the relief requested in the petition. The State's response shall also include all statements and arguments which form the basis of any opposition to the petition; and shall include all written evidence; the names of all witnesses; and a summary of the anticipated testimony upon which the responding agency intends to rely to challenge or oppose the petition. Following receipt of the State's response, the Board may request either the subject or the State to provide additional information.

(5) The Board, after considering the original commutation petition, and any requested response, may grant a commutation hearing, or may deny the petition without further pleadings, response, hearing or submissions. If after receiving the State's response, the Board denies a commutation petition without hearing, it shall notify the petitioner, counsel, and responding counsel, either by mail or electronic mail.

(6) If the Board grants a commutation hearing:

(a) Within ten calendar days of receiving the Board's order granting a commutation hearing, the subject or his counsel shall serve a copy of the commutation petition and all attachments upon the Attorney General, District Attorney, County Attorney or City Attorney whose office or agency originally prosecuted the count(s), charge(s) or case resulting in the conviction for which commutation is sought.

(b) If any appeal from the conviction was filed, the subject or his counsel shall also serve a copy of the commutation petition and all attachments upon the Attorney General, District Attorney, County Attorney or City Attorney whose office represented the prosecuting agency or office in relation to the appeal.

(c) If any post-conviction litigation was pursued on behalf of the petitioner or which challenged the conviction or sentence for which commutation is petitioned, the subject or his counsel shall also serve a copy of the commutation petition and all attachments upon the Attorney General, District Attorney, County Attorney or City Attorney whose office represented State, county or municipality in relation to the post-conviction litigation.

(d) Proof and verification of all service of pleadings as required herein shall be filed with the Board within seven calendar days of accomplishing such service.

(7)(a) The original prosecuting agency, and any other office which represented the State, a county or a municipality in relation to the conviction, sentence, appeal or post-conviction litigation regarding the conviction or sentence which are the subject of the commutation petition may, within sixty (60) days of receiving a copy of the petition, file a response to the commutation petition with the Board.

(b) The State's response shall be delivered, either by mail, electronic mail or hand delivery to the petitioner and his counsel, if represented. Proof of such service shall be filed with the Board within seven calendar days of accomplishing such service.

(c) The State's response to the petition shall clearly specify if the responding agency opposes or supports the relief requested in the commutation petition. The response shall also include all statements and arguments which form the basis of any opposition to the commutation petition; and shall include all written evidence; the names of all witnesses; and a summary of the anticipated testimony upon which the responding agency intends to rely to challenge or oppose the petition. Following receipt of the State's response, the Board may request either the petitioner or the State to provide additional information.

(8) If the Board grants a commutation hearing, the Board Chair or designee will schedule and hold a pre-hearing conference at which time the Board, after hearing from the parties, will schedule the commutation hearing; identify and set the witnesses to be called; clarify the issues to be addressed; and take any other action deemed necessary and appropriate to conduct the commutation proceedings.

R671-313-5. Commutation Hearing.

(1) Pursuant to Utah Constitution, Art. VII, Section 12, and Utah Code Ann., Section 77-27-5, a commutation hearing must be held before the full Board.

(2) Notice of the commutation hearing shall be sent to the victim of, and the police agency which investigated the offenses for which commutation has been petitioned, pursuant to applicable statutes, rules or practices of the Board. Public notice of the commutation hearing will also be made via the Board's internet website, and the State of Utah Public Meeting and Notice website.

(3) If not otherwise called as a witness, a victim representative, as defined by Utah Administrative Code, Rule R671-203-1, shall be afforded the opportunity to attend the commutation hearing, and to present testimony regarding the commutation petition, in accordance with, and subject to the provisions of Administrative Rule R671-203-4(A-C, and F).

(4) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, the subject of the petition and the subject's counsel. The Utah Rules of Evidence do not apply to a commutation hearing.

(5) In conducting the commutation hearing:

(a) The Board will place all witnesses under oath and may impose a time limit on each party for presenting its case.

(b) The Board will record the commutation hearing in accordance with Utah Code Ann. Subsection 77-27-8(2).

(c) Administrative Rule R671-302 "News Media and Public Access to Hearings" will govern media and public access to the hearing.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

R671-313-6. Commutation Decision.

(1) The Board shall determine by majority decision whether and under what conditions, if any, to grant the petition, in whole or in part, and to commute a conviction or sentence.

(2) The decision of the Board regarding the grant or denial of commutation following a hearing shall be delivered by mail or electronic mail to the parties, and published by the Board in the same manner as other Board decisions.

(3) The decision of the Board will also be filed with the court which entered the sentence or conviction which are the basis of the commutation petition.

(4) If a sentence or conviction is commuted, the Board will also cause a copy of the commutation order to be delivered to the Utah Department of Public Safety -- Bureau of Criminal Information and the Federal Bureau of Investigation.

R671-403-1. General Provisions.

(1) If the Board determines that a court has previously ordered or determined restitution applicable to any conviction, or that restitution is owed to any victim as a result of the conduct for which an offender was convicted, or any related conduct as authorized by state law to be considered, the Board may order restitution:

(a) as a condition of parole;

(b) as a contingency to be satisfied prior to release from prison incarceration earlier than sentence expiration; or

(c) to be converted to a civil judgment, pursuant to the provisions of applicable state law.

(2) The Board may, pursuant to the provisions of state law, determine and order an offender to pay restitution at any time while the offender is under the Board's jurisdiction, when:

(a) restitution has been ordered by the sentencing court;

(b) pecuniary damages to a victim occurred as a result of the offender's criminal conduct but were not determined or ordered by the sentencing court;

(c) requested by the Department of Corrections (Department) or other criminal justice agency.

(d) pecuniary damages to any person or entity are caused by an offender's disciplinary violation, conduct, or behavior arising during incarceration;

(e) new information regarding restitution is submitted to the Board which was not available or considered at the time of sentencing or a prior restitution determination; or

(f) the Board determines a restitution order is otherwise appropriate.

(3) Restitution determinations shall be:

(a) based upon a preponderance of the evidence; and

(b) made by a majority vote of the Board.

(4) When determining restitution, the provisions of Utah Code Sections 77-38a-302(1) and 77-38a-302(5)(a)-(b) shall apply.

(5) The Board may determine and order restitution based upon:

(a) prior orders made by a sentencing court;

(b) prior orders involving the same crimes, events, or incidents made by a court in the case of a co-defendant;

(c) amounts and determinations included in pre-sentence reports; or

(d) information received regarding restitution claimed or owed that the Board determines is relevant and reliable.

R671-403-2. Court-Ordered Restitution.

(1) The Board shall affirm restitution ordered by a court in accordance with Utah Code section 77-38a-302.

(2) An offender shall resolve objections regarding restitution entered by a court with the applicable court.

(3) The Board is not an appellate authority or forum in which to litigate restitution amounts previously ordered by a court.

(4) An offender may submit evidence of payments, credits, or offsets for consideration by the Board when determining restitution.

(5) The offender bears the burden to prove the validity and amounts of all payments, credits, or offsets submitted for consideration.

(6) If restitution was not determined or ordered by the sentencing court, the Board may, within one year of the imposition of sentence, refer the case back to the court for determination of restitution.

R671-403-3. Restitution Included in Pre-Sentence Report.

(1) If any party fails to challenge the accuracy of the restitution determinations, amounts, or information contained in a presentence report at the time of sentencing, that matter shall be considered waived, pursuant to Utah Code section 78-38a-203(2)(d), and the Board may order restitution based upon the information in the presentence investigation report.

(2) An offender may submit evidence of payments, credits, or offsets for consideration by the Board when determining restitution.

(3) The offender bears the burden to prove the validity and amounts of all payments, credits, or offsets submitted for consideration.

R671-403-4. Initial Restitution Determination.

(1) If restitution is not determined and ordered by the Board pursuant to R671-403-2 or R671-403-3, the Board may make an initial determination of restitution based upon the totality of the information available, including:

(a) restitution determinations made by a court applicable to a co-defendant for the same criminal conduct or the same victim;

(b) statements made by a victim, offender, or co-defendant relating to restitution, including statements made as part of a pre-sentence report investigation;

(c) reports or calculations provided by the Department indicating the amount which should be ordered as restitution;

(d) statements made in any civil or criminal proceeding;

(e) statements made in documents provided to the Board; or

(f) statements made during Board hearings.

(2) When the Board determines an initial restitution amount, the Board or the Department shall:

(a) inform the offender of the initial restitution determination; and

(b) inform the offender that any objection to the initial restitution determination must be filed with the Board in accordance with this rule.

(c) If the offender agrees with, or does not object to, the initial restitution determination, that restitution amount shall be ordered by the Board.

(d) If the offender objects to the initial restitution determination, the offender shall inform the Board of the objection and request a restitution hearing.

(e) The offender's objection and request for a hearing shall be:

(i) submitted to the Board in writing within 30 days of the initial restitution determination;

(ii) accompanied by a clear, brief statement explaining the offender's objections;

(iii) refer to or be accompanied by an explanation of any evidence, documents, or the names and addresses of witnesses upon which the offender will rely to support the objection.

(f) Following receipt of an offender's objection which complies with this section, the Board may modify the initial restitution amount based upon the materials submitted by the offender, or may schedule a restitution hearing.

(g) An offender's objection and request for a restitution hearing may be denied if the Board finds that the material submitted by the offender is duplicative, erroneous, lacks relevance or reliability, or fails to state a reason why the initial restitution determination should be modified.

(h) Failure of an offender to file a timely objection or otherwise comply with the requirements of this section shall waive and forfeit an offender's ability to contest a restitution order by the Board based upon the initial restitution determination.

R671-403-5. Restitution Hearings - Informal Resolution of Objection.

(1) Following the receipt of a timely objection to an initial restitution determination, the Board may designate a hearing officer or other Board employee to informally, and without hearing, attempt to resolve the offender's concerns or objections.

(2) This informal resolution may involve correspondence or an interview or other meeting with the offender.

(3) If an offender's objections to an initial restitution determination are not resolved, the Board shall schedule a restitution hearing.

R671-403-6. Restitution Hearings - Procedure.

(1) Restitution hearings may be conducted by a Board member, hearing officer, or other designee of the Board Chair.

(2) Board staff, the Department, the Attorney General's office, the original prosecuting agency, the offender, and any victim may participate in the restitution hearing, as necessary.

(3) Board staff may assist non-lawyer hearing participants with subpoenas to procure the attendance of necessary witnesses.

(4) The rules of evidence do not apply at restitution hearings.

(5) The offender bears the burden of proving all objections or assertions, including any payments, credits, or offsets, by a preponderance of the evidence.

(6) If any amount of restitution is claimed by, or on behalf of, any victim, in addition to any amount previously determined by a court or by the Board, including the initial restitution determination, the proponent of such additional restitution carries the burden of proving such additional restitution by a preponderance of the evidence.

(7) Any party may submit documentation, records, or other written evidence for the Board to consider regarding the issue of restitution.

(8) Within 30 days after the hearing, the Board shall enter an order determining the amount of restitution owed by the offender, or continue the matter for additional information, further hearing or further consideration as needed.

R671-403-7. Modifications to Restitution Orders.

Modifications to restitution orders may occur:

- (1) upon a waiver and stipulation of the offender;
- (2) upon receipt of new or subsequent court orders;
- (3) when restitution claims, damages, or costs continue to accrue after sentencing;
- (4) upon consideration of offender restitution payments, credits for payments made by others on the offender's behalf, offsets due to insurance or other third-party payments, or modifications based upon property being returned to a victim after the conclusion of court proceedings;
- (5) when an open or on-going claim exists with the Utah Office for Victims of Crime;
- (6) following an informal resolution regarding new restitution claims or offsets; or
- (7) following subsequent restitution hearings.

R671-403-8. Compliance With Restitution Orders.

(1) While the offender is under Department or Board jurisdiction, the Department shall enforce the Board's restitution orders and parole conditions.

(2) As part of parole, the Board expects that parolees will make regular monthly payments based on the offender's ability to pay and in amounts sufficient to satisfy the restitution obligation during the parole period.

(3) The Board and the Department have jurisdiction over, and may continue to enforce restitution orders, in cases which may have terminated on or after July 1, 2005, if the Board has had continuing jurisdiction over the offender in any other case.

(4) The Department shall track cases for restitution payment and notify the Board in a timely manner of any action needed regarding restitution orders, payments, or lack of payment.

(5) If any restitution ordered by the Board or by a court has not been paid in full prior to a parole termination request, the Department shall inform the Board, as part of the termination request:

(a) how much of the offender's restitution obligation has been paid;

(b) how much of the restitution obligation, including post-judgment interest, remains unpaid;

(c) why the restitution obligation was not paid in full during the term of parole; and

(d) why parole should not be revoked or re-started because the restitution amounts were not paid in full during the parole period.

(6) If any restitution ordered by the Board or by a court has not been paid in full prior to a parole termination request, the Board may deny the parole termination request.

R671-403-9. Unpaid Restitution - Civil Judgments.

(1) If upon parole termination, sentence termination, termination of Board jurisdiction, or sentence expiration, an offender owes outstanding restitution, or if the Board makes an order of restitution within 60 days following the termination or expiration of the defendant's parole or sentence, the unpaid restitution shall be referred by the Board to the district court for the entry of a civil judgment and for civil collection remedies.

(2) The Board shall forward a restitution order to the sentencing court to be entered on the judgment docket. The entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil judgment.

(3) If the Board has continuing jurisdiction over the offender for a separate criminal offense, the Board may defer seeking a civil judgment for restitution until termination or expiration of all of the offender's sentences. The restitution obligation for the terminating or expiring case shall be made a condition of parole for any separate or subsequent offense under continuing jurisdiction.

(4) The Board may order conversion of restitution to a civil judgment at any time, provided that the restitution amount was determined and ordered by:

(a) a Court;

(b) the Board during its jurisdiction over the offender; or

(c) the Board within 60 days following parole termination, sentence termination, sentence expiration, or other termination of Board jurisdiction.

R671-405-1. General Provisions.

(1) When an offender is granted parole, the offender shall remain on parole until:

(a) the offender's maximum parole term has been served;

(b) the Board grants a discretionary parole termination and discharge of the offender's sentence, pursuant to Utah Admin. Rule R671-405-3;

(c) the Board grants an earned parole termination and discharge of the offender's sentence, pursuant to Utah Code Subsections 64-13-21(7), 76-3-202(1)(a) and Utah Admin. Rule R671-405-4; or

(d) the offender's parole is revoked, the offender is found in violation of parole, the offender agrees to re-start parole in lieu of a parole violation or revocation proceeding, or the offender is confined during the parole period.

(2) "Maximum Parole Term" for purposes of this rule is the expiration date of an offender's combined sentences, or the last day of the offender's legislative parole term, as set forth in Utah Code Section 76-3-202, whichever occurs first.

R671-405-2. Termination Request Reports.

All parole termination requests or notices submitted by the Department of Corrections (Department) shall include or be accompanied by a report which includes:

(1) the offender's identification information, supervising agent information, and agent contact information;

(2) any incentives granted to, or sanctions imposed on the offender by the Department during the term of parole supervision;

(3) the number of total months on parole during which the offender was compliant with all conditions of parole and the offender's case action plan;

(4) a current risk assessment, score, and risk level;

(5) the results of a current sex offender treatment exit polygraph, if the offender is on parole for a sex offense or if requested by the Board;

(6) an update on the offender's case action plan progress, compliance, and completion and a recommendation from the Department whether parole should be extended to allow successful completion of any necessary treatment program identified in the case action plan which has not yet been completed;

(7) an update regarding the offender's compliance with or completion of all special conditions of parole; and

(8) a summary which details the offender's payment of restitution obligations or orders, and if restitution has not been paid in full, an explanation of the non-payment, and the efforts the Department has made to collect restitution.

R671-405-3. Discretionary Termination of Parole.

(1) The Department may request that the Board terminate any offender's parole at any time prior to the final day of the offender's maximum parole term.

(2) The Department shall submit, with the request for early termination of parole, a termination report which contains the information set forth in Rule 405-2 of this rule.

(3) Written notification of the Board's decision regarding the request for parole termination shall be provided to the offender through the Department.

R671-405-4. Earned Early Termination of Parole.

(1) When the Department determines that an offender has earned an early termination of parole, pursuant to Utah Code Subsection 64-13-21(7), it shall notify the Board within 30 day and request that the Board terminate the parole of the offender.

(2) The Department shall submit, with the request for earned early termination of parole, a termination report which contains the information set forth in Rule 405-2 of this rule.

(3) Upon receipt and verification of the Department's earned early termination request, the Board shall terminate the offender's parole, unless the Board determines that:

(a) the offender is currently in violation of parole;

(b) the offender violated the terms and conditions of parole at any point during parole, and the violation was not reported to the Board;

(c) the Board determines that the offender was awarded credit toward the earned early termination for a month in which the offender violated the terms and conditions of parole; or

(d) the Board determines that early parole termination would interrupt the completion of a necessary treatment program, identified in the offender's case action plan.

(4) Written notification of the Board's decision regarding the request for earned early parole termination shall be provided to the offender through the Department.

Utah Rules of Criminal Procedure

Rule 21A. Presentence investigation reports; Restitution.

(a) Presentence investigation reports shall be completed by order of the court as provided in Utah Code Sections 77-18-1 and 64-13-20. Presentence reports shall either be physically removed from the case file and kept in a separate storage area or retained in the case file in a sealed envelope marked "Protected".

(b) Full disclosure of the presentence investigation report shall be made to the prosecutor, defense counsel, or the defendant if the defendant is not represented by counsel, unless disclosure of the presentence report would jeopardize the life or safety of third parties. At least 3 business days in advance of the scheduled sentencing date, the Department shall provide a copy of the presentence investigation report to the court, and to the defendant's counsel or the defendant if not represented by counsel, and the prosecutor. The presentence report shall also be made available to prosecutors, defense counsel and the defendant at the court on the date of sentencing. In cases where a party or a party's counsel notifies the court clerk, in writing, that the presentence investigation report is the subject of an appeal, the clerk shall include the sealed presentence investigation report as part of the record.

(c) Restitution.

(c)(1) The presentence investigation report prepared by the Department of Corrections shall include a specific statement of pecuniary damages as provided in Utah Code Section 77-18-1(4). This statement shall include, but not be limited to, a specific dollar amount recommended by the Department of Corrections to be paid by the defendant to the victim(s).

(c)(2) In cases where a specific dollar value is not known, and is not an accumulating amount, e.g. continuing medical expenses, the court may continue the sentencing. If sentencing occurs, it shall be done with the concurrence of defense counsel/defendant and the prosecutor and an agreement shall be reached as to how restitution shall be determined. In no instance shall the restitution amount be determined by the Department of Corrections without approval of the court, defendant, defense counsel and the prosecutor. If the parties disagree about the restitution amount, a restitution hearing shall be scheduled.

Rule 35. Victims and witnesses.

(a) The prosecuting agency shall inform all victims and subpoenaed witnesses of their responsibilities during the criminal proceedings.

(b) The prosecuting agency shall inform all victims and subpoenaed witnesses of their right to be free from threats, intimidation and harm by anyone seeking to induce the victim or witness to testify falsely, withhold testimony or information, avoid legal process, or secure the dismissal of or prevent the filing of a criminal complaint, indictment or information.

(c) If requested by the victim, the prosecuting agency shall provide notice to all victims of the date and time of scheduled hearings, trial and sentencing and of their right to be present during those proceedings and any other public hearing unless they are subpoenaed to testify as a witness and the exclusionary rule is invoked.

(d) The informational rights of victims and witnesses contained in paragraphs (a) through (c) of this rule are contingent upon their providing the prosecuting agency and court with their current telephone numbers and addresses.

(e) In cases where the victim or the victim's legal guardian so requests, the prosecutor shall explain to the victim that a plea agreement involves the dismissal or reduction of charges in exchange for a plea of guilty and identify the possible penalties which may be imposed by the court upon acceptance of the plea agreement. At the time of entry of the plea, the prosecutor shall represent to the court, either in writing or on the record, that the victim has been contacted and an explanation of the plea bargain has been provided to the victim or the victim's legal guardian prior to the court's acceptance of the plea. If the victim or the victim's legal guardian has informed the prosecutor that he or she wishes to address the court at the change of plea or sentencing hearing, the prosecutor shall so inform the court.

(f) The court shall not require victims and witnesses to state their addresses and telephone numbers in open court.

(g) Judges should give scheduling priority to those criminal cases where the victim is a minor in an effort to minimize the emotional trauma to the victim. Scheduling priorities for cases involving minor victims are subject to the scheduling priorities for criminal cases where the defendant is in custody.

Utah Rule of Judicial Administration

Rule 6-303. Collection of fines and restitution.

Intent:

To provide consistency in the collection of all fines and restitution ordered by the District Court.

Applicability:

This rule shall apply to all District Courts, the Department of Corrections and the Office of State Debt Collection.

Statement of the Rule:

(1) Upon order of the court, the Department of Corrections shall be responsible for the collection and distribution of fines and restitution during the probation period in cases where the court orders supervised probation by the Department.

(2) If a defendant fails to pay the amount of fines and restitution ordered by the court pursuant to the payment schedule established by the Department, the Department shall file a progress/violation report with the court. The report shall contain any explanation concerning the defendant's failure to pay and a recommendation as to whether the defendant's probation should be modified, continued, terminated or revoked or whether the defendant should be placed on bench probation for the limited purpose of enforcing the payment of fines or restitution.

(3) If the court orders the defendant placed on bench probation for the purpose of enforcing the payment of fines and restitution, the court shall notify the defendant of such order.

(4) The court shall transfer an account to the Office State Debt Collection for collection as required by statute.