

Chapter 38a Crime Victims Restitution Act

Part 1 General Provisions

77-38a-101 Title.

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

Enacted by Chapter 137, 2001 General Session

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:
 - (a) any offense of which the defendant is convicted; or
 - (b) 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, including those 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, including those and other travel expenses reasonably incurred as a result of participation in criminal proceedings, and medical and other 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.

Amended by Chapter 223, 2016 General Session

Part 2 Restitution Determination

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

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

Enacted by Chapter 137, 2001 General Session

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

- (1) At the time of entry of a conviction or entry of any plea disposition of a felony or class A misdemeanor, the attorney general, county attorney, municipal attorney, or district attorney shall provide to the district court:
- (a) the names of all victims, including third parties, asserting claims for restitution;
 - (b) the actual or estimated amount of restitution determined at that time; and
 - (c) whether or not the defendant has agreed to pay the restitution specified as part of the plea disposition.
- (2) In computing actual or estimated restitution, the attorney general, county attorney, municipal attorney, or district attorney shall:
- (a) use the criteria set forth in Section 77-38a-302 for establishing restitution amounts; and
 - (b) in cases involving multiple victims, incorporate into any conviction or plea disposition all claims for restitution arising out of the investigation for which the defendant is charged.

- (3) If charges are not to be prosecuted as part of a plea disposition, restitution claims from victims of those crimes shall also be provided to the court.
- (4)
 - (a) The attorney general, county attorney, municipal attorney, or district attorney may be authorized by the appropriate public treasurer to deposit restitution collected on behalf of crime victims into an interest bearing account in accordance with Title 51, Chapter 7, State Money Management Act, pending distribution of the funds.
 - (b) In the event restitution funds are deposited in an interest bearing account as provided under Subsection (4)(a), the attorney general, county attorney, municipal attorney, or district attorney shall:
 - (i) distribute any interest that accrues in the account to each crime victim on a pro rata basis; and
 - (ii) if all crime victims have been made whole and funds remain, distribute any remaining funds to the state Division of Finance for deposit to the Utah Office for Victims of Crime.
 - (c) This section does not prevent an independent judicial authority from collecting, holding, and distributing restitution.

Amended by Chapter 131, 2011 General Session

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

- (1)
 - (a) The department shall prepare a presentence investigation report in accordance with Subsection 77-18-1(5). The prosecutor and law enforcement agency involved shall provide all available victim information to the department upon request. The victim impact statement shall:
 - (i) identify all victims of the offense;
 - (ii) itemize any economic loss suffered by the victim as a result of the offense;
 - (iii) include for each identifiable victim a specific statement of the recommended amount of complete restitution as defined in Section 77-38a-302, accompanied by a recommendation from the department regarding the payment by the defendant of court-ordered restitution with interest as defined in Section 77-38a-302;
 - (iv) identify any physical, mental, or emotional injuries suffered by the victim as a result of the offense, and the seriousness and permanence;
 - (v) describe any change in the victim's personal welfare or familial relationships as a result of the offense;
 - (vi) identify any request for mental health services initiated by the victim or the victim's family as a result of the offense; and
 - (vii) contain any other information related to the impact of the offense upon the victim or the victim's family that the court requires.
 - (b) The crime victim shall be responsible to provide to the department upon request all invoices, bills, receipts, and other evidence of injury, loss of earnings, and out-of-pocket loss. The crime victim shall also provide upon request:
 - (i) all documentation and evidence of compensation or reimbursement from insurance companies or agencies of the state of Utah, any other state, or federal government received as a direct result of the crime for injury, loss, earnings, or out-of-pocket loss; and
 - (ii) proof of identification, including date of birth, Social Security number, drivers license number, next of kin, and home and work address and telephone numbers.

- (c) The inability, failure, or refusal of the crime victim to provide all or part of the requested information shall result in the court determining restitution based on the best information available.
- (2)
- (a) The court shall order the defendant as part of the presentence investigation to:
 - (i) complete a financial declaration form described in Section 77-38a-204; and
 - (ii) submit to the department any additional information determined necessary to be disclosed for the purpose of ascertaining the restitution.
 - (b) The willful failure or refusal of the defendant to provide all or part of the requisite information shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed information.
 - (c) If the defendant objects to the imposition, amount, or distribution of the restitution recommended in the presentence investigation, the court shall set a hearing date to resolve the matter.
 - (d) If any party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

Amended by Chapter 74, 2013 General Session

77-38a-204 Financial declaration by defendant.

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

Enacted by Chapter 74, 2013 General Session

Part 3 **Restitution Requirements**

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.

Enacted by Chapter 137, 2001 General Session

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.
 - (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;
 - (v) the individual victim's reasonable 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) The prosecuting agency shall submit all requests for complete restitution and court ordered restitution to the court at the time of sentencing if feasible, otherwise within one year after sentencing.
 - (ii) If a defendant is placed on probation pursuant to Section 77-18-1:
 - (A) the court shall determine complete restitution and court ordered restitution; and
 - (B) the time period for determination of complete restitution and court ordered restitution may be extended by the court upon a finding of good cause, but may not exceed the period of the probation term served by the defendant.
 - (iii) If the defendant is committed to prison:
 - (A) 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; and
 - (B) 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.

Amended by Chapter 223, 2016 General Session

Part 4

Restitution Judgments

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.

Amended by Chapter 37, 2011 General Session

77-38a-402 Nondischargeability in bankruptcy.

Restitution imposed under this chapter and interest accruing in accordance with Subsection 77-38a-401(4) is considered a debt and may not be discharged in bankruptcy.

Enacted by Chapter 137, 2001 General Session

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.

Enacted by Chapter 137, 2001 General Session

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.

Amended by Chapter 131, 2011 General Session
Amended by Chapter 208, 2011 General Session

Part 5 Enforcement and Collection

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.

Amended by Chapter 280, 2003 General Session

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.

Enacted by Chapter 137, 2001 General Session

Part 6 Preservation of Assets

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.

Amended by Chapter 265, 2009 General Session