

**Effective 5/3/2023**

**Effective until 5/1/2024**

**77-38b-303 Effect of civil action or settlement for criminal conduct -- Issue preclusion -- Crediting payments.**

- (1) As used in this section:
  - (a) "Civil settlement" or "settlement" means an agreement entered into between a victim and a defendant that settles all the claims that a victim may bring in a civil action against the defendant for the defendant's criminal conduct.
  - (b) "Civil settlement" or "settlement" does not include an agreement that settles a civil judgment of restitution or a civil accounts receivable for a defendant.
- (2) Nothing in this chapter shall be construed to limit or impair the right of a victim to sue and recover damages from the defendant in a civil action.
- (3)
  - (a) A court's finding on the amount of restitution owed by a defendant under Subsection 77-38b-205(1)(d) may be used in a civil action pertaining to the defendant's liability to a victim as presumptive proof of the victim's pecuniary damages that are proximately caused by the defendant's criminal conduct.
  - (b) If a conviction in a criminal trial decides the issue of a defendant's liability for pecuniary damages suffered by a victim, the issue of the defendant's liability for pecuniary damages is conclusively determined as to the defendant if the issue is involved in a subsequent civil action.
  - (c)
    - (i) Except as provided in Subsection (3)(c)(ii), if a defendant is convicted of a misdemeanor or felony offense, the defendant is precluded from subsequently denying the essential allegations of the offense in a subsequent civil action brought against the defendant for the criminal conduct underlying the offense.
    - (ii) Subsection (3)(c)(i) does not apply if the offense is a class C misdemeanor under Title 41, Chapter 6a, Traffic Code, or the defendant entered a plea of no contest for the offense.
- (4) If a civil action brought by a victim against a defendant results in a civil judgment for the defendant's criminal conduct or there is a civil settlement entered into between a victim and defendant for the defendant's criminal conduct, the civil judgment or settlement does not limit or preclude:
  - (a) the sentencing court from entering an order of restitution against the defendant in accordance with this chapter; or
  - (b) the civil enforcement of a civil judgment of restitution by the office or the victim.
- (5)
  - (a) The sentencing court shall credit any payment made to a victim in a civil action for the defendant's criminal conduct toward the amount of restitution owed by the defendant to the victim.
  - (b) In a civil action, a court shall credit any restitution paid by the defendant to a victim for the defendant's criminal conduct towards the victim against any judgment that is in favor of the victim for the civil action.
  - (c) If a victim receives payment from the defendant for the civil action, the victim shall provide notice to the sentencing court and the court in the civil action of the payment within 30 days after the day on which the victim receives the payment.
- (6)
  - (a) If a victim prevails in a civil action against a defendant, the court shall award reasonable attorney fees and costs to the victim.

- (b) If the defendant prevails in the civil action, the court shall award reasonable costs to the defendant if the court finds that the victim brought the civil action for an improper purpose, including to harass the defendant or to cause unnecessary delay or needless increase in the cost of litigation.
- (7)
- (a) The sentencing court shall credit any payment made to a victim as part of a civil settlement toward the amount of restitution owed by the defendant to the victim if the sentencing court determines that the payment compensates the victim for pecuniary damages proximately caused by the defendant's criminal conduct.
  - (b) If a victim receives a payment from the defendant as part of a civil settlement, the victim shall provide notice to the sentencing court within 30 days after the day on which the victim receives the payment.
- (8) Nothing in this section shall prevent a defendant from providing proof of payment to the court or the office.