

Senator Terry R. Spencer proposes to substitute the following bill:

CRIMINAL RESTITUTION AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheryl L. Allen

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

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

AMENDS:

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

ENACTS:

77-38a-101, Utah Code Annotated 1953

77-38a-102, Utah Code Annotated 1953

77-38a-201, Utah Code Annotated 1953

77-38a-202, Utah Code Annotated 1953

77-38a-203, Utah Code Annotated 1953

77-38a-301, Utah Code Annotated 1953

77-38a-302, Utah Code Annotated 1953

77-38a-401, Utah Code Annotated 1953



- 26 **77-38a-402**, Utah Code Annotated 1953
- 27 **77-38a-403**, Utah Code Annotated 1953
- 28 **77-38a-404**, Utah Code Annotated 1953
- 29 **77-38a-501**, Utah Code Annotated 1953
- 30 **77-38a-502**, Utah Code Annotated 1953

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

32 Section 1. Section **77-18-1** is amended to read:

33 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision**
34 **-- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions --**
35 **Restitution -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
36 **monitoring.**

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

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

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

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

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

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

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

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

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

54 (i) the type of offense;

55 (ii) the demand for services;

56 (iii) the availability of agency resources;

57 (iv) the public safety; and

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

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

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

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

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

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

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

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

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

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

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

87 (iv) describe any change in the victim's personal welfare or familial relationships as a

88 result of the offense;

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

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

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

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

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

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

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

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

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

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

- 119 (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;
- 120 (iii) provide for the support of others for whose support he is legally liable;
- 121 (iv) participate in available treatment programs;
- 122 (v) serve a period of time, not to exceed one year, in a county jail designated by the
- 123 department, after considering any recommendation by the court as to which jail the court finds
- 124 most appropriate;
- 125 (vi) serve a term of home confinement, which may include the use of electronic
- 126 monitoring;
- 127 (vii) participate in compensatory service restitution programs, including the compensatory
- 128 service program provided in Section 78-11-20.7;
- 129 (viii) pay for the costs of investigation, probation, and treatment services;
- 130 (ix) make restitution or reparation to the victim or victims with interest in accordance with
- 131 Subsection 76-3-201(4); and
- 132 (x) comply with other terms and conditions the court considers appropriate; and
- 133 (b) if convicted on or after May 5, 1997:
 - 134 (i) complete high school classwork and obtain a high school graduation diploma, a GED
 - 135 certificate, or a vocational certificate at the defendant's own expense if the defendant has not
 - 136 received the diploma, GED certificate, or vocational certificate prior to being placed on probation;
 - 137 or
 - 138 (ii) provide documentation of the inability to obtain one of the items listed in Subsection
 - 139 (8)(b)(i) because of:
 - 140 (A) a diagnosed learning disability; or
 - 141 (B) other justified cause.
- 142 (9) The department shall collect and disburse the account receivable as defined by Section
- 143 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
 - 144 (a) the parole period and any extension of that period in accordance with Subsection
 - 145 77-27-6(4); and
 - 146 (b) the probation period in cases for which the court orders supervised probation and any
 - 147 extension of that period by the department in accordance with Subsection 77-18-1(10).
- 148 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon
- 149 completion without violation of 36 months probation in felony or class A misdemeanor cases, or

150 12 months in cases of class B or C misdemeanors or infractions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

211 **§ [(14)] (13) §** The court may order the defendant to commit himself to the custody of the
211a Division

212 of Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of
213 sentence, only after the superintendent of the Utah State Hospital or his designee has certified to
214 the court that:

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

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

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

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

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

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

243 in this section until further order of the court.

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

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

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

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

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

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

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

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

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

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

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

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

264 **Part 1. General Provisions**

265 **77-38a-101. Title.**

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

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

268 **77-38a-102. Definitions.**

269 As used in this chapter:

270 (1) "Conviction" includes a:

271 (a) judgment of guilt;

272 (b) a plea of guilty; or

273 (c) a plea of no contest.

274 (2) "Criminal activities" means any offense of which the defendant is convicted or any
275 other criminal conduct for which the defendant admits responsibility to the sentencing court with
276 or without an admission of committing the criminal conduct.

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

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

281 (5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

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

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

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

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

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

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

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

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

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

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

312 **Part 2. Restitution Determination**

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

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

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

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

320 (1) At the time of entry of a conviction or entry of any plea disposition of a felony or class
321 A misdemeanor, the attorney general, county attorney, municipal attorney, or district attorney shall
322 provide to the district court:

323 (a) the names of all victims, including third parties, asserting claims for restitution;

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

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

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

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

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

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

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

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

336 **investigation.**

337 (1) (a) The department shall prepare a presentence investigation report in accordance with
338 Subsection 77-18-1(5). The prosecutor and law enforcement agency involved shall provide all
339 available victim information to the department upon request. The victim impact statement shall:

340 (i) identify all victims of the offense;

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

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

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

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

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

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

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

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

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

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

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

367 ascertaining the restitution.

368 (b) The willful failure or refusal of the defendant to provide all or part of the requisite
369 information shall constitute a waiver of any grounds to appeal or seek future amendment or
370 alteration of the restitution order predicated on the undisclosed information.

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

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

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

377 **Part 3. Restitution Requirements**

378 **77-38a-301. Restitution -- Convicted defendant may be required to pay.**

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

380 Section 8. Section **77-38a-302** is enacted to read:

381 **77-38a-302. Restitution criteria.**

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

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

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

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

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

397 (3) If the court determines that restitution is appropriate or inappropriate under this part,

398 the court shall make the reasons for the decision part of the court record.

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

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

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

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

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

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

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

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

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

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

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

424 (iii) the rehabilitative effect on the defendant of the payment of restitution and the method
425 of payment; and

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

427 (d) The court may decline to make an order or may defer entering an order of restitution
428 if the court determines that the complication and prolongation of the sentencing process, as a result

429 of considering an order of restitution under this subsection, substantially outweighs the need to
430 provide restitution to the victim.

431 Section 9. Section **77-38a-401** is enacted to read:

432 **Part 4. Restitution Judgments**

433 **77-38a-401. Entry of judgment -- Interest -- Civil actions -- Lien.**

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

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

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

444 (4) A judgment ordering restitution when recorded in a registry of judgments docket shall
445 have the same affect and is subject to the same rules as a judgment in a civil action. Interest shall
446 accrue on the amount ordered from the time of sentencing, including prejudgment interest.

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

450 Section 10. Section **77-38a-402** is enacted to read:

451 **77-38a-402. Nondischargeability in bankruptcy.**

452 Restitution imposed under this chapter and interest accruing in accordance with Subsection
453 77-38a-501(4) is considered a debt and may not be discharged in bankruptcy.

454 Section 11. Section **77-38a-403** is enacted to read:

455 **77-38a-403. Civil action by victim for damages.**

456 (1) Provisions in this part concerning restitution do not limit or impair the right of a person
457 injured by a defendant's criminal activities to sue and recover damages from the defendant in a
458 civil action. Evidence that the defendant has paid or been ordered to pay restitution under this part
459 may not be introduced in any civil action arising out of the facts or events which were the basis

460 for the restitution. However, the court shall credit any restitution paid by the defendant to a victim
461 against any judgment in favor of the victim in the civil action.

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

465 Section 12. Section **77-38a-404** is enacted to read:

466 **77-38a-404. Priority.**

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

469 (a) the crime victim;

470 (b) the Office of Crime Victim Reparations;

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

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

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

478 ~~§ [(3) Notwithstanding any other statutory provision or rule of procedure, any lien obtained~~
479 ~~under Subsection 77-38a-501(1) shall maintain its priority indefinitely with no further action by~~
480 ~~the victim or the victim's heirs.] §~~

481 Section 13. Section **77-38a-501** is enacted to read:

482 **Part 5. Enforcement and Collection**

483 **77-38a-501. Collection, default, and sanctions.**

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

487 Section 14. Section **77-38a-502** is enacted to read:

488 **77-38a-502. Collection from inmate offenders.**

489 In addition to the remedies provided in Section 77-38a-601, the department upon written
490 request of the prosecutor, victim, or parole or probation agent, shall collect restitution from

491 offender funds held by the department as provided in Section 64-13-23.