

CRIMINAL RESTITUTION AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Douglas C. Aagard

This act modifies the Code of Criminal Procedure provision that allows a victim to recover restitution for wages lost as a result of a crime, to include crimes that do not cause physical injury to the victim.

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

AMENDS:

77-38a-302, as last amended by Chapters 35 and 185, Laws of Utah 2002

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

Section 1. Section **77-38a-302** is amended to read:

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(13) 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.



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

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

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

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

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

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

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

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

47 (iv) the income lost by the victim as a result of the offense [~~if the offense resulted in~~
48 ~~bodily injury to a victim~~]; and

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

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

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

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

57 (iii) the rehabilitative effect on the defendant of the payment of restitution and the
58 method of payment; and

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

61 (d) The court may decline to make an order or may defer entering an order of
62 restitution if the court determines that the complication and prolongation of the sentencing
63 process, as a result of considering an order of restitution under this Subsection (5), substantially
64 outweighs the need to provide restitution to the victim.

Legislative Review Note
as of 1-2-03 3:29 PM

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

Office of Legislative Research and General Counsel