

CRIME VICTIM REPARATIONS REVISIONS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Julie Fisher

Senate Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill clarifies responsibilities for reparations awards to crime victims, allows the release of certain records to a prosecuting attorney, and makes technical name changes throughout the code.

Highlighted Provisions:

This bill:

- ▶ prohibits a court from reducing restitution based on a reparations award;
- ▶ allows reparations officers to decide whether a hearing on an award is necessary;
- ▶ extends eligibility for awards to Utah residents regardless of the location of the criminally injurious conduct in specific situations;
- ▶ clarifies that persons who are injured while in a correctional facility are ineligible for awards;
- ▶ allows the Office of Crime Victim Reparations to release records to a prosecuting attorney for use in seeking a restitution order;
- ▶ provides that records so released are to be admissible in a restitution hearing when the records are prepared in accordance with the Utah Rules of Evidence;
- ▶ delineates amounts and priorities for awards to homicide victims;
- ▶ allows the board to determine when the benefit to the victim outweighs the state's right to reimbursement and decide not to pursue a reimbursement claim;
- ▶ requires a medical service provider that accepts payments from the Reparations



28 Office to consider payments made as payment in full; and

29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill takes effect on July 1, 2008.

34 **Utah Code Sections Affected:**

35 **AMENDS:**

36 **26-1-30**, as last amended by Laws of Utah 2005, Chapter 2

37 **26A-1-114**, as last amended by Laws of Utah 2003, Chapter 171

38 **53-1-106**, as last amended by Laws of Utah 2007, Chapter 60

39 **53-6-213**, as last amended by Laws of Utah 2002, Chapter 256

40 **63-25a-401**, as renumbered and amended by Laws of Utah 1996, Chapter 242

41 **63-25a-402**, as last amended by Laws of Utah 2002, Chapter 256

42 **63-25a-403**, as last amended by Laws of Utah 2002, Chapter 35

43 **63-25a-404**, as last amended by Laws of Utah 2002, Chapter 176

44 **63-25a-405**, as last amended by Laws of Utah 2002, Chapter 256

45 **63-25a-407**, as last amended by Laws of Utah 2002, Chapter 256

46 **63-25a-408**, as renumbered and amended by Laws of Utah 1996, Chapter 242

47 **63-25a-409**, as last amended by Laws of Utah 2000, Chapter 235

48 **63-25a-410**, as last amended by Laws of Utah 2000, Chapters 28 and 235

49 **63-25a-411**, as last amended by Laws of Utah 2002, Chapters 35 and 256

50 **63-25a-412**, as last amended by Laws of Utah 2000, Chapter 235

51 **63-25a-414**, as last amended by Laws of Utah 2002, Chapter 256

52 **63-25a-415**, as last amended by Laws of Utah 2000, Chapter 235

53 **63-25a-419**, as last amended by Laws of Utah 2002, Chapter 256

54 **63-25a-421**, as renumbered and amended by Laws of Utah 1996, Chapter 242

55 **63-25a-428**, as last amended by Laws of Utah 2002, Chapter 256

56 **63-55-263**, as last amended by Laws of Utah 2007, Chapters 216, 306, and 317

57 **63-63a-4**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 12

58 **67-4a-405**, as last amended by Laws of Utah 2002, Chapter 256

- 59 **77-2-4.2**, as last amended by Laws of Utah 2006, Chapter 315
- 60 **77-2a-3**, as last amended by Laws of Utah 2006, Chapter 341
- 61 **77-37-3**, as last amended by Laws of Utah 2005, Chapter 13
- 62 **77-38-3**, as last amended by Laws of Utah 2003, Chapter 171
- 63 **78-61-101**, as enacted by Laws of Utah 2004, Chapter 368

64 ENACTS:

- 65 **63-25a-411.5**, Utah Code Annotated 1953
- 66 **63-25a-421.5**, Utah Code Annotated 1953
- 67 **63-25a-429**, Utah Code Annotated 1953

68 REPEALS:

- 69 **63-25a-420**, as renumbered and amended by Laws of Utah 1996, Chapter 242



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

72 Section 1. Section **26-1-30** is amended to read:

73 **26-1-30. Powers and duties of department.**

74 (1) The department shall:

75 (a) enter into cooperative agreements with the Department of Environmental Quality to
76 delineate specific responsibilities to assure that assessment and management of risk to human
77 health from the environment are properly administered; and

78 (b) consult with the Department of Environmental Quality and enter into cooperative
79 agreements, as needed, to ensure efficient use of resources and effective response to potential
80 health and safety threats from the environment, and to prevent gaps in protection from potential
81 risks from the environment to specific individuals or population groups.

82 (2) In addition to all other powers and duties of the department, it shall have and
83 exercise the following powers and duties:

84 (a) promote and protect the health and wellness of the people within the state;

85 (b) establish, maintain, and enforce rules necessary or desirable to carry out the
86 provisions and purposes of this title to promote and protect the public health or to prevent
87 disease and illness;

88 (c) investigate and control the causes of epidemic, infectious, communicable, and other
89 diseases affecting the public health;

90 (d) provide for the detection, reporting, prevention, and control of communicable,
91 infectious, acute, chronic, or any other disease or health hazard [~~that~~] which the department
92 considers to be dangerous, important, or likely to affect the public health;

93 (e) collect and report information on causes of injury, sickness, death, and disability
94 and the risk factors that contribute to the causes of injury, sickness, death, and disability within
95 the state;

96 (f) collect, prepare, publish, and disseminate information to inform the public
97 concerning the health and wellness of the population, specific hazards, and risks that may affect
98 the health and wellness of the population and specific activities which may promote and protect
99 the health and wellness of the population;

100 (g) establish and operate programs necessary or desirable for the promotion or
101 protection of the public health and the control of disease or which may be necessary to
102 ameliorate the major causes of injury, sickness, death, and disability in the state, except that the
103 programs [~~shall~~] may not be established if adequate programs exist in the private sector;

104 (h) establish, maintain, and enforce isolation and quarantine, and for this purpose only,
105 exercise physical control over property and individuals as the department finds necessary for
106 the protection of the public health;

107 (i) close theaters, schools, and other public places and forbid gatherings of people
108 when necessary to protect the public health;

109 (j) abate nuisances when necessary to eliminate sources of filth and infectious and
110 communicable diseases affecting the public health;

111 (k) make necessary sanitary and health investigations and inspections in cooperation
112 with local health departments as to any matters affecting the public health;

113 (l) establish laboratory services necessary to support public health programs and
114 medical services in the state;

115 (m) establish and enforce standards for laboratory services which are provided by any
116 laboratory in the state when the purpose of the services is to protect the public health;

117 (n) cooperate with the Labor Commission to conduct studies of occupational health
118 hazards and occupational diseases arising in and out of employment in industry, and make
119 recommendations for elimination or reduction of the hazards;

120 (o) cooperate with the local health departments, the Department of Corrections, the

121 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime
122 [~~Victims~~] Victim Reparations Board to conduct testing for HIV infection of convicted sexual
123 offenders and any victims of a sexual offense;

124 (p) investigate the cause of maternal and infant mortality;

125 (q) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians
126 and drivers of motor vehicles killed in highway accidents be examined for the presence and
127 concentration of alcohol;

128 (r) provide the commissioner of public safety with monthly statistics reflecting the
129 results of the examinations provided for in Subsection (2)(q) and provide safeguards so that
130 information derived from the examinations is not used for a purpose other than the compilation
131 of statistics authorized in this Subsection (2)(r);

132 (s) establish qualifications for individuals permitted to draw blood pursuant to Section
133 41-6a-523, and to issue permits to individuals it finds qualified, which permits may be
134 terminated or revoked by the department;

135 (t) establish a uniform public health program throughout the state which includes
136 continuous service, employment of qualified employees, and a basic program of disease
137 control, vital and health statistics, sanitation, public health nursing, and other preventive health
138 programs necessary or desirable for the protection of public health;

139 (u) adopt rules and enforce minimum sanitary standards for the operation and
140 maintenance of:

141 (i) orphanages;

142 (ii) boarding homes;

143 (iii) summer camps for children;

144 (iv) lodging houses;

145 (v) hotels;

146 (vi) restaurants and all other places where food is handled for commercial purposes,
147 sold, or served to the public;

148 (vii) tourist and trailer camps;

149 (viii) service stations;

150 (ix) public conveyances and stations;

151 (x) public and private schools;

- 152 (xi) factories;
- 153 (xii) private sanatoria;
- 154 (xiii) barber shops;
- 155 (xiv) beauty shops;
- 156 (xv) physicians' offices;
- 157 (xvi) dentists' offices;
- 158 (xvii) workshops;
- 159 (xviii) industrial, labor, or construction camps;
- 160 (xix) recreational resorts and camps;
- 161 (xx) swimming pools, public baths, and bathing beaches;
- 162 (xxi) state, county, or municipal institutions, including hospitals and other buildings,
- 163 centers, and places used for public gatherings; and
- 164 (xxii) of any other facilities in public buildings and on public grounds;
- 165 (v) conduct health planning for the state;
- 166 (w) monitor the costs of health care in the state and foster price competition in the
- 167 health care delivery system;
- 168 (x) adopt rules for the licensure of health facilities within the state pursuant to Title 26,
- 169 Chapter 21, Health Care Facility Licensing and Inspection Act;
- 170 (y) license the provision of child care;
- 171 (z) accept contributions to and administer the funds contained in the Organ Donation
- 172 Contribution Fund created in Section 26-18b-101; and
- 173 (aa) serve as the collecting agent, on behalf of the state, for the nursing care facility
- 174 assessment fee imposed under Title 26, Chapter 35a, Nursing Care Facility Assessment Act,
- 175 and adopt rules for the enforcement and administration of the nursing facility assessment
- 176 consistent with the provisions of Title 26, Chapter 35a.
- 177 Section 2. Section **26A-1-114** is amended to read:
- 178 **26A-1-114. Powers and duties of departments.**
- 179 (1) A local health department may:
- 180 (a) subject to the provisions in Section 26A-1-108, enforce state laws, local ordinances,
- 181 department rules, and local health department standards and regulations relating to public
- 182 health and sanitation, including the plumbing code adopted by the Division of Occupational

183 and Professional Licensing under Section 58-56-4 and under Title 26, Chapter 15a, Food
184 Safety Manager Certification Act, in all incorporated and unincorporated areas served by the
185 local health department;

186 (b) establish, maintain, and enforce isolation and quarantine, and exercise physical
187 control over property and over individuals as the local health department finds necessary for
188 the protection of the public health;

189 (c) establish and maintain medical, environmental, occupational, and other laboratory
190 services considered necessary or proper for the protection of the public health;

191 (d) establish and operate reasonable health programs or measures not in conflict with
192 state law [~~that~~] which:

193 (i) are necessary or desirable for the promotion or protection of the public health and
194 the control of disease; or

195 (ii) may be necessary to ameliorate the major risk factors associated with the major
196 causes of injury, sickness, death, and disability in the state;

197 (e) close theaters, schools, and other public places and prohibit gatherings of people
198 when necessary to protect the public health;

199 (f) abate nuisances or eliminate sources of filth and infectious and communicable
200 diseases affecting the public health and bill the owner or other person in charge of the premises
201 upon which this nuisance occurs for the cost of abatement;

202 (g) make necessary sanitary and health investigations and inspections on its own
203 initiative or in cooperation with the Department of Health or Environmental Quality, or both,
204 as to any matters affecting the public health;

205 (h) pursuant to county ordinance or interlocal agreement:

206 (i) establish and collect appropriate fees for the performance of services and operation
207 of authorized or required programs and duties;

208 (ii) accept, use, and administer all federal, state, or private donations or grants of funds,
209 property, services, or materials for public health purposes; and

210 (iii) make agreements not in conflict with state law [~~that~~] which are conditional to
211 receiving a donation or grant;

212 (i) prepare, publish, and disseminate information necessary to inform and advise the
213 public concerning:

- 214 (i) the health and wellness of the population, specific hazards, and risk factors that may
- 215 adversely affect the health and wellness of the population; and
- 216 (ii) specific activities individuals and institutions can engage in to promote and protect
- 217 the health and wellness of the population;
- 218 (j) investigate the causes of morbidity and mortality;
- 219 (k) issue notices and orders necessary to carry out this part;
- 220 (l) conduct studies to identify injury problems, establish injury control systems,
- 221 develop standards for the correction and prevention of future occurrences, and provide public
- 222 information and instruction to special high risk groups;
- 223 (m) cooperate with boards created under Section 19-1-106 to enforce laws and rules
- 224 within the jurisdiction of the boards;
- 225 (n) cooperate with the state health department, the Department of Corrections, the
- 226 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime
- 227 [Victims] Victim Reparations Board to conduct testing for HIV infection of convicted sexual
- 228 offenders and any victims of a sexual offense;
- 229 (o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and
- 230 (p) provide public health assistance in response to a national, state, or local emergency,
- 231 a public health emergency as defined in Section 26-23b-102, or a declaration by the President
- 232 of the United States or other federal official requesting public health-related activities.
- 233 (2) The local health department shall:
- 234 (a) establish programs or measures to promote and protect the health and general
- 235 wellness of the people within the boundaries of the local health department;
- 236 (b) investigate infectious and other diseases of public health importance and implement
- 237 measures to control the causes of epidemic and communicable diseases and other conditions
- 238 significantly affecting the public health which may include involuntary testing of convicted
- 239 sexual offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of
- 240 victims of sexual offenses for HIV infection pursuant to Section 76-5-503;
- 241 (c) cooperate with the department in matters pertaining to the public health and in the
- 242 administration of state health laws; and
- 243 (d) coordinate implementation of environmental programs to maximize efficient use of
- 244 resources by developing with the Department of Environmental Quality a Comprehensive

245 Environmental Service Delivery Plan [~~that~~] which:

246 (i) recognizes that the Department of Environmental Quality and local health
247 departments are the foundation for providing environmental health programs in the state;

248 (ii) delineates the responsibilities of the department and each local health department
249 for the efficient delivery of environmental programs using federal, state, and local authorities,
250 responsibilities, and resources;

251 (iii) provides for the delegation of authority and pass through of funding to local health
252 departments for environmental programs, to the extent allowed by applicable law, identified in
253 the plan, and requested by the local health department; and

254 (iv) is reviewed and updated annually.

255 (3) The local health department has the following duties regarding public and private
256 schools within its boundaries:

257 (a) enforce all ordinances, standards, and regulations pertaining to the public health of
258 persons attending public and private schools;

259 (b) exclude from school attendance any person, including teachers, who is suffering
260 from any communicable or infectious disease, whether acute or chronic, if the person is likely
261 to convey the disease to those in attendance; and

262 (c) (i) make regular inspections of the health-related condition of all school buildings
263 and premises;

264 (ii) report the inspections on forms furnished by the department to those responsible for
265 the condition and provide instructions for correction of any conditions that impair or endanger
266 the health or life of those attending the schools; and

267 (iii) provide a copy of the report to the department at the time the report is made.

268 (4) If those responsible for the health-related condition of the school buildings and
269 premises do not carry out any instructions for corrections provided in a report in Subsection
270 (3)(c), the local health board shall cause the conditions to be corrected at the expense of the
271 persons responsible.

272 (5) The local health department may exercise incidental authority as necessary to carry
273 out the provisions and purposes of this part.

274 Section 3. Section **53-1-106** is amended to read:

275 **53-1-106. Department duties -- Powers.**

- 276 (1) In addition to the responsibilities contained in this title, the department shall:
- 277 (a) make rules and perform the functions specified in Title 41, Chapter 6a, Traffic
- 278 Code, including:
- 279 (i) setting performance standards for towing companies to be used by the department,
- 280 as required by Section 41-6a-1406; and
- 281 (ii) advising the Department of Transportation regarding the safe design and operation
- 282 of school buses, as required by Section 41-6a-1304;
- 283 (b) make rules to establish and clarify standards pertaining to the curriculum and
- 284 teaching methods of a motor vehicle accident prevention course under Section 31A-19a-211;
- 285 (c) aid in enforcement efforts to combat drug trafficking;
- 286 (d) meet with the Department of Technology Services to formulate contracts, establish
- 287 priorities, and develop funding mechanisms for dispatch and telecommunications operations;
- 288 (e) provide assistance to the Crime [~~Victims'~~] Victim Reparations Board and Office of
- 289 Crime Victim Reparations [~~Office~~] in conducting research or monitoring victims' programs, as
- 290 required by Section 63-25a-405;
- 291 (f) develop sexual assault exam protocol standards in conjunction with the Utah
- 292 Hospital Association;
- 293 (g) engage in emergency planning activities, including preparation of policy and
- 294 procedure and rulemaking necessary for implementation of the federal Emergency Planning
- 295 and Community Right to Know Act of 1986, as required by Section 63-5-5;
- 296 (h) implement the provisions of Section 53-2-202, the Emergency Management
- 297 Assistance Compact; and
- 298 (i) (i) maintain a database of the information listed below regarding each driver license
- 299 or state identification card status check made by a law enforcement officer:
- 300 (A) the agency employing the law enforcement officer;
- 301 (B) the name of the law enforcement officer or the identifying number the agency has
- 302 assigned to the law enforcement officer;
- 303 (C) the race and gender of the law enforcement officer;
- 304 (D) the purpose of the law enforcement officer's status check, including but not limited
- 305 to a traffic stop or a pedestrian stop; and
- 306 (E) the race of the individual regarding whom the status check is made, based on the

307 information provided through the application process under Section 53-3-205 or 53-3-804;

308 (ii) provide access to the database created in Subsection (1)(i)(i) to the Commission on
309 Criminal and Juvenile Justice for the purpose of:

310 (A) evaluating the data;

311 (B) evaluating the effectiveness of the data collection process; and

312 (C) reporting and making recommendations to the Legislature; and

313 (iii) classify any personal identifying information of any individual, including law
314 enforcement officers, in the database as protected records under Subsection 63-2-304(9).

315 (2) (a) The department may establish a schedule of fees as required or allowed in this
316 title for services provided by the department.

317 (b) The fees shall be established in accordance with Section 63-38-3.2.

318 (3) The department may establish or contract for the establishment of an Organ
319 Procurement Donor Registry in accordance with Section 26-28-120.

320 Section 4. Section **53-6-213** is amended to read:

321 **53-6-213. Appropriations from reparation fund.**

322 (1) The Legislature shall appropriate from the fund established in Title 63, Chapter
323 25a, Part 4, [~~the~~] Crime [~~Victims~~] Victim Reparations Act, to the division, funds for training
324 of law enforcement officers in the state.

325 (2) The department shall make an annual report to the Legislature, which includes the
326 amount received during the previous fiscal year.

327 Section 5. Section **63-25a-401** is amended to read:

328 **CHAPTER 25a. CRIME VICTIM REPARATIONS ACT**

329 **63-25a-401. Title.**

330 This part is known as the "Crime [~~Victims~~] Victim Reparations Act" and may be
331 abbreviated as the "CVRA."

332 Section 6. Section **63-25a-402** is amended to read:

333 **63-25a-402. Definitions.**

334 As used in this chapter:

335 (1) "Accomplice" means a person who has engaged in criminal conduct as defined in
336 Section 76-2-202.

337 (2) "Board" means the Crime [~~Victims~~] Victim Reparations Board created under

338 Section 63-25a-404.

339 (3) "Bodily injury" means physical pain, illness, or any impairment of physical
340 condition.

341 (4) "Claim" means:

342 (a) the victim's application or request for a reparations award; and

343 (b) the formal action taken by a victim to apply for reparations pursuant to Sections
344 63-25a-401 through 63-25a-428.

345 (5) "Claimant" means any of the following claiming reparations under this chapter:

346 (a) a victim;

347 (b) a dependent of a deceased victim;

348 (c) a representative other than a collateral source; or

349 (d) the person or representative who files a claim on behalf of a victim.

350 (6) "Child" means an unemancipated person who is under 18 years of age.

351 (7) "Collateral source" means the definition as provided in Section 63-25a-413.

352 (8) "Contested case" means a case which the claimant contests, claiming the award was
353 either inadequate or denied, or which a county attorney, a district attorney, a law enforcement
354 officer, or other individual related to the criminal investigation proffers reasonable evidence of
355 the claimant's lack of cooperation in the prosecution of a case after an award has already been
356 given.

357 (9) (a) "Criminally injurious conduct" other than acts of war declared or not declared
358 means conduct that:

359 (i) is or would be subject to prosecution in this state under Section 76-1-201;

360 (ii) occurs or is attempted;

361 (iii) causes, or poses a substantial threat of causing, bodily injury or death;

362 (iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct
363 possessed the capacity to commit the conduct; and

364 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle,
365 aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is
366 conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the
367 Person, or as any offense chargeable as driving under the influence of alcohol or drugs.

368 (b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C.

369 2331 committed outside of the United States against a resident of this state. "Terrorism" does
370 not include an "act of war" as defined in 18 U.S.C. 2331.

371 (10) "Dependent" means a natural person to whom the victim is wholly or partially
372 legally responsible for care or support and includes a child of the victim born after his death.

373 (11) "Dependent's economic loss" means loss after the victim's death of contributions
374 of things of economic value to his dependent, not including services the dependent would have
375 received from the victim if he had not suffered the fatal injury, less expenses of the dependent
376 avoided by reason of victim's death.

377 (12) "Dependent's replacement services loss" means loss reasonably and necessarily
378 incurred by the dependent after the victim's death in obtaining services in lieu of those the
379 decedent would have performed for his benefit if he had not suffered the fatal injury, less
380 expenses of the dependent avoided by reason of the victim's death and not subtracted in
381 calculating the dependent's economic loss.

382 (13) "Director" means the director of the Office of Crime Victim Reparations [~~Office~~].

383 (14) "Disposition" means the sentencing or determination of penalty or punishment to
384 be imposed upon a person:

385 (a) convicted of a crime;

386 (b) found delinquent; or

387 (c) against whom a finding of sufficient facts for conviction or finding of delinquency
388 is made.

389 (15) "Economic loss" means economic detriment consisting only of allowable expense,
390 work loss, replacement services loss, and if injury causes death, dependent's economic loss and
391 dependent's replacement service loss. Noneconomic detriment is not loss, but economic
392 detriment is loss although caused by pain and suffering or physical impairment.

393 (16) "Elderly victim" means a person 60 years of age or older who is a victim.

394 (17) "Fraudulent claim" means a filed claim based on material misrepresentation of
395 fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds
396 for which the claimant is not eligible as provided in Section 63-25a-410.

397 (18) "Fund" means the Crime Victim [~~Reparation~~] Reparations Fund created in Section
398 63-63a-4.

399 (19) "Law enforcement officer" means a law enforcement officer as defined in Section

400 53-13-103.

401 (20) "Medical examination" means a physical examination necessary to document
402 criminally injurious conduct but does not include mental health evaluations for the prosecution
403 and investigation of a crime.

404 (21) "Mental health counseling" means outpatient and inpatient counseling necessitated
405 as a result of criminally injurious conduct. The definition of mental health counseling is
406 subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah
407 Administrative Rulemaking Act.

408 (22) "Misconduct" as provided in Subsection 63-25a-412(1)(b) means conduct by the
409 victim which was attributable to the injury or death of the victim as provided by rules
410 promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking
411 Act.

412 (23) "Noneconomic detriment" means pain, suffering, inconvenience, physical
413 impairment, and other nonpecuniary damage, except as provided in this chapter.

414 (24) "Pecuniary loss" does not include loss attributable to pain and suffering except as
415 otherwise provided in this chapter.

416 (25) "Offender" means a person who has violated the criminal code through criminally
417 injurious conduct regardless of whether he is arrested, prosecuted, or convicted.

418 (26) "Offense" means a violation of the criminal code.

419 (27) "Office of Crime Victim Reparations" or "office" means the office of the
420 reparations staff for the purpose of carrying out the provisions of this chapter.

421 ~~[(27)]~~ (28) "Perpetrator" means the person who actually participated in the criminally
422 injurious conduct.

423 ~~[(28)]~~ (29) "Personal property" has the same definition as provided in Section 68-3-12.

424 ~~[(29) "Reparations Office" means the office of the reparations staff for the purpose of~~
425 ~~carrying out this chapter.]~~

426 (30) "Reparations officer" means a person employed by the [Reparations] office to
427 investigate claims of victims and award reparations under this chapter, and includes the
428 director when he is acting as a reparations officer.

429 (31) "Reparations staff" means the director, the reparations officers, and any other staff
430 employed to administer the Crime [Victims'] Victim Reparations Act.

431 (32) "Replacement service loss" means expenses reasonably and necessarily incurred in
432 obtaining ordinary and necessary services in lieu of those the injured person would have
433 performed, not for income but the benefit of himself or his dependents if he had not been
434 injured.

435 (33) "Representative" means the victim, immediate family member, legal guardian,
436 attorney, conservator, executor, or an heir of a person but does not include service providers.

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

439 (35) "Secondary victim" means a person who is traumatically affected by the criminally
440 injurious conduct subject to rules promulgated by the board pursuant to Title 63, Chapter 46a,
441 Utah Administrative Rulemaking Act.

442 (36) "Service provider" means a person or agency who provides a service to crime
443 victims for a monetary fee except attorneys as provided in Section 63-25a-424.

444 (37) (a) "Victim" means a person who suffers bodily or psychological injury or death as
445 a direct result of criminally injurious conduct or of the production of pornography in violation
446 of Sections 76-5a-1 through 76-5a-4 if the person is a minor.

447 (b) "Victim" does not include a person who participated in or observed the judicial
448 proceedings against an offender unless otherwise provided by statute or rule.

449 (c) "Victim" includes a resident of this state who is injured or killed by an act of
450 terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States.

451 (38) "Work loss" means loss of income from work the injured victim would have
452 performed if he had not been injured and expenses reasonably incurred by him in obtaining
453 services in lieu of those he would have performed for income, reduced by any income from
454 substitute work he was capable of performing but unreasonably failed to undertake.

455 Section 7. Section **63-25a-403** is amended to read:

456 **63-25a-403. Restitution -- Reparations not to supplant restitution -- Assignment**
457 **of claim for restitution judgment to reparations office.**

458 (1) A reparations award ~~[shall]~~ may not supplant restitution as established under Title
459 77, Chapter 38a, Crime Victims Restitution Act, or as established by any other provisions.

460 (2) The court ~~[shall]~~ may not ~~[consider a reparations award when determining the]~~
461 reduce an order of restitution [nor when enforcing restitution] based on a reparations award.

462 (3) If, due to reparation payments to a victim, the Office of Crime Victim Reparations
463 [~~Office~~] is assigned under Section 63-25a-419 a claim for the victim's judgment for restitution
464 or a portion of the restitution, the [~~Reparations~~] office may file with the sentencing court a
465 notice of the assignment. The notice of assignment shall be signed by the victim and a
466 reparations officer and shall state the amount of the claim assigned.

467 (4) Upon conviction and sentencing of the defendant, the court shall enter a civil
468 judgment for complete restitution as provided in Section 77-38a-401 and identify the
469 [~~Reparations~~] office as the assignee of the assigned portion of the judgment.

470 (5) If the notice of assignment is filed after sentencing, the court shall modify the civil
471 judgment for restitution to identify the [~~Reparations~~] office as the assignee of the assigned
472 portion of the judgment.

473 Section 8. Section ~~63-25a-404~~ is amended to read:

474 **~~63-25a-404. Crime Victim Reparations Board -- Members.~~**

475 (1) (a) A Crime [~~Victims'~~] Victim Reparations Board is created, consisting of seven
476 members appointed by the governor with the consent of the Senate.

477 (b) The membership of the board shall consist of:

- 478 (i) a member of the bar of this state;
- 479 (ii) a victim of criminally injurious conduct;
- 480 (iii) a licensed physician;
- 481 (iv) a representative of law enforcement;
- 482 (v) a mental health care provider; and
- 483 (vi) two other private citizens.

484 (c) The governor may appoint a chair of the board who shall serve for a period of time
485 prescribed by the governor, not to exceed the length of the chair's term. The board may elect a
486 vice chair to serve in the absence of the chair.

487 (d) The board may hear appeals from administrative decisions as provided in rules
488 adopted pursuant to Section 63-25a-415.

489 (2) (a) Except as required by Subsection (2)(b), as terms of current board members
490 expire, the governor shall appoint each new member or reappointed member to a four-year
491 term.

492 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the

493 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
494 board members are staggered so that approximately half of the board is appointed every two
495 years.

496 (c) A member may be reappointed to one successive term.

497 (3) (a) When a vacancy occurs in the membership for any reason, the replacement shall
498 be appointed for the unexpired term.

499 (b) A member resigning from the board shall serve until his successor is appointed and
500 qualified.

501 (4) (a) (i) Members who are not government employees shall receive no compensation
502 or benefits for their services, but may receive per diem and expenses incurred in the
503 performance of the member's official duties at the rates established by the Division of Finance
504 under Sections 63A-3-106 and 63A-3-107.

505 (ii) Members may decline to receive per diem and expenses for their service.

506 (b) (i) State government officer and employee members who do not receive salary, per
507 diem, or expenses from their agency for their service may receive per diem and expenses
508 incurred in the performance of their official duties from the board at the rates established by the
509 Division of Finance under Sections 63A-3-106 and 63A-3-107.

510 (ii) State government officer and employee members may decline to receive per diem
511 and expenses for their service.

512 (5) The board shall meet at least once quarterly but may meet more frequently as
513 necessary.

514 Section 9. Section **63-25a-405** is amended to read:

515 **63-25a-405. Board and office within Commission on Criminal and Juvenile**
516 **Justice.**

517 (1) The Crime [~~Victims'~~] Victim Reparations Board and Office of Crime Victim
518 Reparations [~~Office~~] are placed within the Commission on Criminal and Juvenile Justice for
519 the provision by the commission of administrative and support services [~~to the Reparations~~
520 ~~Office~~].

521 (2) The board or the director may request assistance from the Commission on Criminal
522 and Juvenile Justice, the Department of Public Safety, and other state agencies in conducting
523 research or monitoring victims' programs.

524 [~~(3) The fund shall appear as a separate line item in the Commission on Criminal and~~
525 ~~Juvenile Justice budget.~~]

526 Section 10. Section **63-25a-407** is amended to read:

527 **63-25a-407. Director -- Appointment and functions.**

528 The executive director of the Commission on Criminal and Juvenile Justice, after
529 consulting with the board, shall appoint a director to carry out the provisions of this chapter.
530 The director shall be an experienced administrator with a background in at least one of the
531 following fields: social work, psychology, criminal justice, law, or a related field. The director
532 shall demonstrate an understanding of the needs of crime victims and of services to victims.
533 The director shall devote his time and capacity to his duties. The director shall:

- 534 (1) hire staff, including reparations officers, as necessary;
- 535 (2) act when necessary as a reparations officer in deciding initial claims;
- 536 (3) possess the same investigation and decision-making authority as the reparations
537 officers;
- 538 (4) hear appeals from the decisions of the reparations officers, unless he acted as a
539 reparations officer on the initial claim;
- 540 (5) serve as a liaison between [~~the reparations staff and~~] the Office of Crime Victim
541 Reparations [Office] and the board;
- 542 (6) serve as the public relations representative of the [~~Reparations~~] office;
- 543 (7) provide for payment of all administrative salaries, fees, and expenses incurred by
544 the staff of the board, to be paid out of appropriations from the fund;
- 545 (8) cooperate with the state treasurer and the state Division of Finance in causing the
546 funds in the trust fund to be invested and its investments sold or exchanged and the proceeds
547 and income collected;
- 548 (9) apply for, receive, allocate, disburse, and account for grants of funds made
549 available by the United States, the state, foundations, corporations, and other businesses,
550 agencies, or individuals;
- 551 (10) obtain and utilize the services of other governmental agencies upon request; and
- 552 (11) act in any other capacity or perform any other acts necessary for the [~~Reparations~~]
553 office or board to successfully fulfill its statutory objectives.

554 Section 11. Section **63-25a-408** is amended to read:

555 **63-25a-408. Reparations officers.**

556 The reparations officers shall in addition to any assignments made by the director of the
557 Office of Crime Victim Reparations [~~Office~~]:

558 (1) hear and determine all matters relating to claims for reparations and reinvestigate or
559 reopen claims without regard to statutes of limitation or periods of prescription;

560 (2) obtain from prosecuting attorneys, law enforcement officers, and other criminal
561 justice agencies, investigations and data to enable the reparations officer to determine whether
562 and to what extent a claimant qualifies for reparations;

563 (3) as determined necessary by the reparations officers, hold hearings, administer oaths
564 or affirmations, examine any person under oath or affirmation, issue subpoenas requiring the
565 attendance and giving of testimony of witnesses, require the production of any books, papers,
566 documents, or other evidence which may contribute to the reparations officer's ability to
567 determine particular reparation awards;

568 (4) determine who is a victim or dependent;

569 (5) award reparations or other benefits determined to be due under this chapter and the
570 rules of the board;

571 (6) take notice of judicially recognized facts and general, technical, and scientific facts
572 within their specialized knowledge;

573 (7) advise and assist the board in developing policies recognizing the rights, needs, and
574 interests of crime victims;

575 (8) render periodic reports as requested by the board concerning:

576 (a) the officers' activities; and

577 (b) the manner in which the rights, needs, and interests of crime victims are being
578 addressed by the state's criminal justice system;

579 (9) establish priorities for assisting elderly victims of crime or those victims facing
580 extraordinary hardships;

581 (10) cooperate with the Commission on Criminal and Juvenile Justice to develop
582 information regarding crime victims' problems and programs; and

583 (11) assist the director in publicizing the provisions of the Crime [~~Victims'~~] Victim
584 Reparations Act, including the procedures for obtaining reparation, and in encouraging law
585 enforcement agencies, health providers, and other related officials to take reasonable care to

586 ensure that victims are informed about the provisions of this chapter and the procedure for
587 applying for reparation.

588 Section 12. Section **63-25a-409** is amended to read:

589 **63-25a-409. Grounds for eligibility.**

590 In order to be eligible for a reparations award under this chapter:

591 (1) The claimant shall be:

592 (a) a victim of criminally injurious conduct;

593 (b) a dependent of a deceased victim of criminally injurious conduct; or

594 (c) a representative acting on behalf of one of the above.

595 (2) (a) The [victim shall be either a resident of Utah or the] criminally injurious
596 conduct shall have occurred in Utah, except as provided in Subsection (2)(b).

597 (b) If a Utah resident suffers injury or death as a result of criminally injurious conduct
598 inflicted in a state, territory, or country which does not provide a crime victims' compensation
599 program, that person shall receive the same consideration under this chapter as if the criminally
600 injurious conduct occurred in this state.

601 (3) The application shall be made in writing in a form that conforms substantially to
602 that prescribed by the board.

603 (4) The criminally injurious conduct shall be reported to a law enforcement officer, in
604 his capacity as a law enforcement officer, or other federal or state investigative agencies.

605 (5) (a) The claimant or victim shall cooperate with the appropriate law enforcement
606 agencies and prosecuting attorneys in their efforts to apprehend or convict the perpetrator of the
607 alleged offense.

608 (b) An award to a victim may be made whether any person is arrested, prosecuted, or
609 convicted of the criminally injurious conduct giving rise to the claim.

610 (6) The criminally injurious conduct shall have occurred after December 31, 1986.

611 Section 13. Section **63-25a-410** is amended to read:

612 **63-25a-410. Ineligible persons -- Fraudulent claims -- Penalties.**

613 (1) The following individuals [~~shall~~] are not [~~be~~] eligible to receive an award of
614 reparations:

615 (a) persons who do not meet all of the provisions set forth in Section 63-25a-409;

616 (b) the offender;

617 (c) an accomplice of the offender;

618 (d) any person whose receipt of an award would unjustly benefit the offender,
619 accomplice, or other person reasonably suspected of participating in the offense;

620 (e) the victim of a motor vehicle injury who was the owner or operator of the motor
621 vehicle and was not at the time of the injury in compliance with the state motor vehicle
622 insurance laws;

623 (f) any convicted offender serving a sentence of imprisonment [~~for that conviction or~~
624 ~~residing in any other institution which provides for the maintenance of convicted persons~~] in
625 any prison or jail or residing in any other correctional facility; [~~and~~]

626 (g) [~~residents of halfway houses or any other correctional facilities and~~] all persons
627 who are on probation or parole if the circumstances surrounding the offense of which they are
628 victims constitute a violation of their parole or probation[~~;~~]; and

629 (h) any person whose injuries are the result of criminally injurious conduct which
630 occurred in a prison, jail, or any other correctional facility while the person was serving a
631 sentence of imprisonment.

632 (2) A person who knowingly submits a fraudulent claim for reparations or who
633 knowingly misrepresents material facts in making a claim, and who receives an award based on
634 that claim, is guilty of an offense, based on the following award amounts:

635 (a) for value under \$300, a class B misdemeanor;

636 (b) for value equal to or greater than \$300, but less than \$1,000, a class A
637 misdemeanor;

638 (c) for value equal to or greater than \$1,000, but less than \$5,000, a third degree felony;
639 and

640 (d) for value equal to or greater than \$5,000, a second degree felony.

641 (3) A person who submits a claim described in Subsection (2) but receives no award
642 based on that claim is guilty of a class B misdemeanor.

643 (4) The state attorney general may prosecute violations under this section or may make
644 arrangements with county attorneys for the prosecution of violations under this section when
645 the attorney general cannot conveniently prosecute.

646 (5) The state may also bring a civil action against a claimant who receives reparation
647 payments that are later found to be unjustified and who does not return to the [~~board~~] Crime

648 Victim Reparations Fund the unjustified amount.

649 Section 14. Section **63-25a-411** is amended to read:

650 **63-25a-411. Compensable losses and amounts.**

651 A reparations award under this chapter may be made if:

652 (1) the reparations officer finds the claim satisfies the requirements for the award under
653 the provisions of this chapter and the rules of the board;

654 (2) monies are available in the fund;

655 (3) the person for whom the award of reparations is to be paid is otherwise eligible
656 under this [act;] part; and

657 (4) the claim is for an allowable expense incurred by the victim, as follows:

658 (a) reasonable and necessary charges incurred for products, services, and
659 accommodations;

660 (b) inpatient and outpatient medical treatment and physical therapy, subject to rules
661 promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking
662 Act;

663 (c) mental health counseling which:

664 (i) is set forth in a mental health treatment plan which has been approved prior to any
665 payment by a reparations officer; and

666 (ii) qualifies within any further rules promulgated by the board pursuant to Title 63,
667 Chapter 46a, Utah Administrative Rulemaking Act;

668 (d) actual loss of past earnings and anticipated loss of future earnings because of a
669 death or disability resulting from the personal injury at a rate not to exceed 66-2/3% of the
670 person's weekly gross salary or wages or the maximum amount allowed under the state
671 workers' compensation statute;

672 (e) care of minor children enabling a victim or spouse of a victim, but not both of them,
673 to continue gainful employment at a rate per child per week as determined under rules
674 established by the board;

675 (f) funeral and burial expenses for death caused by the criminally injurious conduct,
676 subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah
677 Administrative Rulemaking Act;

678 (g) loss of support to the dependent or dependents not otherwise compensated for a

679 pecuniary loss for personal injury, for as long as the dependence would have existed had the
680 victim survived, at a rate not to exceed 66-2/3% of the person's weekly salary or wages or the
681 maximum amount allowed under the state workers' compensation statute, whichever is less;

682 (h) personal property necessary and essential to the health or safety of the victim as
683 defined by rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah
684 Administrative Rulemaking Act; and

685 (i) medical examinations as defined in Section 63-25a-402, subject to rules
686 promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking
687 Act, which may allow for exemptions from Sections 63-25a-409, 63-25a-412, and 63-25a-413.

688 [~~(5) If a Utah resident suffers injury or death as a result of criminally injurious conduct~~
689 ~~inflicted in a state, territory, or country that does not provide a reciprocal crime victims'~~
690 ~~compensation program, the Utah resident has the same rights under this chapter as if the~~
691 ~~injurious conduct occurred in this state.]~~

692 [~~(6) An award of reparations shall not exceed \$25,000 in the aggregate unless the~~
693 ~~victim is entitled to proceeds in excess of that amount as provided in Subsection~~
694 ~~77-38a-403(2). However, reparations for actual medical expenses incurred as a result of~~
695 ~~homicide, attempted homicide, aggravated assault, or DUI offenses, may be awarded up to~~
696 ~~\$50,000 in the aggregate.]~~

697 Section 15. Section **63-25a-411.5** is enacted to read:

698 **63-25a-411.5. Limitation of awards.**

699 (1) (a) Except as provided in Subsection (1)(b), an award of reparations may not
700 exceed \$25,000 in the aggregate.

701 (b) (i) In claims involving homicide, attempted homicide, aggravated assault, or DUI
702 offenses, an award of reparations may not exceed \$50,000 in the aggregate.

703 (ii) Reparations for nonmedical expenses incurred as a result of the homicide,
704 attempted homicide, aggravated assault, or DUI may not exceed \$25,000.

705 (2) (a) Awards of reparations to secondary victims shall be paid from the victims'
706 maximum award amount provided in Subsection (1).

707 (b) When it appears that allowable expenses for the victim and secondary victims will
708 exceed the maximum award amount provided in Subsection (1), the expenses of the victim
709 shall be paid first unless otherwise requested by the claimant.

710 (c) Priority of payment among multiple secondary victims on a single claim shall be
711 determined by the reparations officer.

712 Section 16. Section **63-25a-412** is amended to read:

713 **63-25a-412. Reparations reduction.**

714 (1) Reparations otherwise payable to a claimant may be reduced or denied as follows:

715 (a) the economic loss upon which the claim is based has been or could be recouped
716 from other persons, including collateral sources~~[-and the victim was not entitled to nor~~
717 ~~receiving monies prior to the criminally injurious conduct giving rise to the claim under this~~
718 ~~chapter];~~

719 (b) the reparations officer considers the claim unreasonable because of the misconduct
720 of the claimant or of a victim through whom he claims; or

721 (c) the victim ~~[had]~~ did not [used] use a facility or health care provider ~~[that]~~ which
722 would be covered by a collateral source.

723 (2) When two or more dependents are entitled to an award as a result of a victim's
724 death, the award shall be apportioned by the reparations officer among the dependents.

725 Section 17. Section **63-25a-414** is amended to read:

726 **63-25a-414. Notification of claimant -- Suspension of proceedings.**

727 (1) The Office of Crime Victim Reparations ~~[Office]~~ shall immediately notify the
728 claimant in writing of any ~~[decision]~~ award and shall forward to the Division of Finance a
729 certified copy of the ~~[decision]~~ award and a warrant request for the amount of the ~~[claim]~~
730 award. The Division of Finance shall pay the claimant the amount submitted to the division,
731 out of the fund. If monies in the fund are temporarily depleted, claimants ~~[entitled]~~ approved
732 to receive awards shall be placed on a waiting list and shall receive their awards as funds are
733 available in the order in which their ~~[claims]~~ awards were ~~[awarded]~~ approved.

734 (2) The reparations officer may suspend the proceedings pending disposition of a
735 criminal prosecution that has been commenced or is imminent.

736 Section 18. Section **63-25a-415** is amended to read:

737 **63-25a-415. Rules for contested claims -- Exemption from Administrative**
738 **Procedures Act.**

739 (1) Rules for procedures for contested determinations by a reparations officer shall be
740 adopted pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

741 (2) The Office of Crime [Victims'] Victim Reparations is exempt from Title 63,
742 Chapter 46b, Administrative Procedures Act.

743 Section 19. Section **63-25a-419** is amended to read:

744 **63-25a-419. Assignment of recovery -- Reimbursement.**

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

747 (a) the amount paid by the state; or

748 (b) the amount recovered from the third party.

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

751 (a) the reduction will benefit the fund[-]; or

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

755 (3) The state reserves the right to make a claim for reimbursement on behalf of the
756 victim and the victim [~~shall~~] may not impair the state's claim or the state's right of
757 reimbursement.

758 Section 20. Section **63-25a-421** is amended to read:

759 **63-25a-421. Award -- Payment methods -- Claims against the award.**

760 (1) The reparations officer may provide for the payment of an award in a lump sum or
761 in installments. The part of an award equal to the amount of economic loss accrued to the date
762 of the award shall be paid in a lump sum. An award of allowable expense that would accrue
763 after an initial award is made may not be paid in a lump sum. Except as provided in
764 Subsection (2), the part of an award that may not be paid in a lump sum shall be paid in
765 installments.

766 (2) At the request of the claimant, the reparations officer may convert future economic
767 loss installment payments, other than allowable expense, to a lump sum payment, discounted to
768 present value, but only upon a finding by the officer that the award in a lump sum will promote
769 the interests of the claimant.

770 (3) An award for future economic loss payable in installments may be made only for a
771 period for which the reparations officer can reasonably determine future economic loss. The

772 reparations officer may reconsider and modify an award for future economic loss payable in
773 installments, upon his finding that a material and substantial change of circumstances has
774 occurred.

775 (4) An award is not subject to execution, attachment, or garnishment, except that an
776 award for allowable expense is not exempt from a claim of a creditor to the extent that he
777 provided products, services, or accommodations, the costs of which are included in the award.

778 (5) An assignment or agreement to assign [~~a right to~~] an award of reparations for loss
779 accruing in the future is unenforceable, except:

780 (a) an assignment of [~~a right to~~] an award of reparations for work loss to secure
781 payment of alimony, maintenance, or child support;

782 (b) an assignment of [~~a right to~~] an award of reparations for allowable expense to the
783 extent that the benefits are for the cost of products, services, or accommodations necessitated
784 by the injury or death on which the claim is based and are provided or to be provided by the
785 assignee; or

786 (c) an assignment to repay a loan obtained to pay for the obligations or expenses
787 described in Subsection (5) (a) or (b).

788 Section 21. Section **63-25a-421.5** is enacted to read:

789 **63-25a-421.5. Payments to medical providers.**

790 (1) Except as provided in Subsection (2), a medical service provider who accepts
791 payment from the office shall agree to accept payments as payment in full on behalf of the
792 victim or claimant. The medical service provider may not attempt to collect further payment
793 from the victim or the claimant for services for which the office has made payment.

794 (2) In the event the office is unable to make full payment in accordance with its rules,
795 the medical service provider may collect from the victim or claimant, but not more than the
796 amount the provider would have received from the office.

797 (3) The office may:

798 (a) use the fee schedule utilized by the Utah Public Employees Health Plan or any other
799 fee schedule adopted by the board; and

800 (b) make rules necessary to implement the fee schedule adopted in accordance with
801 this section.

802 Section 22. Section **63-25a-428** is amended to read:

803 **63-25a-428. Purpose -- Not entitlement program.**

804 (1) The purpose of the Office of Crime [Victims'] Victim Reparations is [a program
805 with the purpose] to assist victims of criminally injurious conduct who may be eligible for
806 assistance from the Crime Victim Reparations Fund. Reparation to a victim is limited to the
807 monies available in the fund.

808 (2) This program is not an entitlement program. Awards may be limited or denied as
809 determined appropriate by the board. Failure to grant an award does not create a cause of
810 action against the Office of Crime [Victims'] Victim Reparations, the state, or any of its
811 subdivisions. There is no right to judicial review over the decision whether or not to grant an
812 award.

813 (3) A cause of action based on a failure to give or receive the notice required by this
814 chapter does not accrue to any person against the state, any of its agencies or local
815 subdivisions, any of their law enforcement officers or other agents or employees, or any health
816 care or medical provider or its agents or employees. The failure does not affect or alter any
817 requirement for filing or payment of a claim.

818 Section 23. Section **63-25a-429** is enacted to read:

819 **63-25a-429. Release of records.**

820 (1) Notwithstanding the provisions of Title 63, Chapter 2, Government Records Access
821 and Management Act, the office may release records to a prosecuting attorney for use in
822 seeking a restitution order as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

823 (2) Records released under Subsection (1) are admissible in a restitution hearing if the
824 records are prepared in accordance with Utah Rules of Evidence, Rule 803(6).

825 Section 24. Section **63-55-263** is amended to read:

826 **63-55-263. Repeal dates, Titles 63 to 63E.**

827 (1) Title 63, Chapter 25a, Part 3, Sentencing Commission, is repealed January 1, 2012.

828 (2) The Crime [Victims'] Victim Reparations Board, created in Section 63-25a-404, is
829 repealed July 1, 2017.

830 (3) The Resource Development Coordinating Committee, created in Section
831 63-38d-501, is repealed July 1, 2015.

832 (4) Title 63, Chapter 38f, Part 4, Enterprise Zone Act, is repealed July 1, 2008.

833 (5) (a) Title 63, Chapter 38f, Part 11, Recycling Market Development Zone Act, is

834 repealed July 1, 2010.

835 (b) Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in
836 recycling market development zones, are repealed for taxable years beginning on or after
837 January 1, 2011.

838 (c) Notwithstanding Subsection (5)(b), a person may not claim a tax credit under
839 Section 59-7-610 or 59-10-1007:

840 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
841 59-10-1007, if the machinery or equipment is purchased on or after July 1, 2010; or

842 (ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if
843 the expenditure is made on or after July 1, 2010.

844 (d) Notwithstanding Subsections (5)(b) and (c), a person may carry forward a tax credit
845 in accordance with Section 59-7-610 or 59-10-1007 if:

846 (i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

847 (ii) (A) for the purchase price of machinery or equipment described in Section
848 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before June 30, 2010;
849 or

850 (B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the
851 expenditure is made on or before June 30, 2010.

852 (6) Title 63, Chapter 47, Utah Commission for Women and Families, is repealed July
853 1, 2011.

854 (7) Title 63, Chapter 75, Families, Agencies, and Communities Together for Children
855 and Youth At Risk Act, is repealed July 1, 2016.

856 (8) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, 2008.

857 (9) Title 63, Chapter 99, Utah Commission on Aging, is repealed July 1, 2009.

858 (10) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage
859 to any public school district ~~that~~ which chooses to participate, is repealed July 1, 2016.

860 (11) Section 63C-8-106, Rural residency training program, is repealed July 1, 2015.
861 Section 25. Section ~~63-63a-4~~ is amended to read:

862 **63-63a-4. Distribution of surcharge amounts.**

863 (1) In this section:

864 (a) "Reparation fund" means the Crime Victim ~~[Reparation]~~ Reparations Fund.

865 (b) "Safety account" means the Public Safety Support Account.

866 (2) (a) There is created a restricted special revenue fund known as the "Crime Victim
867 [~~Reparation~~] Reparations Fund" to be administered and distributed as provided in this chapter
868 by the Office of Crime Victim Reparations [~~Office~~] under Title 63, Chapter 25a, Part 4, Crime
869 [~~Victims~~] Victim Reparations Act, in cooperation with the Division of Finance.

870 (b) Monies deposited in this fund are for victim reparations, criminal justice and
871 substance abuse, other victim services, and, as appropriated, for administrative costs of the
872 Commission on Criminal and Juvenile Justice under Title 63, Chapter 25a.

873 (3) (a) There is created a restricted account in the General Fund known as the "Public
874 Safety Support Account" to be administered and distributed by the Department of Public Safety
875 in cooperation with the Division of Finance as provided in this chapter.

876 (b) Monies deposited in this account shall be appropriated to:

877 (i) the Division of Peace Officer Standards and Training (POST) as described in Title
878 53, Chapter 6, Peace Officer Standards and Training Act; and

879 (ii) the Office of the Attorney General for the support of the Utah Prosecution Council
880 established in Title 67, Chapter 5a, and the fulfillment of the council's duties.

881 (4) The Division of Finance shall allocate from the collected surcharge established in
882 Section 63-63a-1:

883 (a) 35% to the [~~reparation fund~~] Crime Victim Reparations Fund;

884 (b) 18.5% to the safety account for POST, but not to exceed the amount appropriated
885 by the Legislature; and

886 (c) 3% to the safety account for support of the Utah Prosecution Council, but not to
887 exceed the amount appropriated by the Legislature.

888 (5) (a) In addition to the funding provided by other sections of this chapter, a
889 percentage of the income earned by inmates working for correctional industries in a federally
890 certified private sector/prison industries enhancement program shall be deposited in the
891 [~~reparation fund~~] Crime Victim Reparations Fund.

892 (b) The percentage of income deducted from inmate pay under Subsection (5)(a) shall
893 be determined by the executive director of the Department of Corrections in accordance with
894 the requirements of the private sector/prison industries enhancement program.

895 (6) (a) In addition to other monies collected from the surcharge, judges are encouraged

896 to, and may in their discretion, impose additional reparations to be paid into the [reparation
897 fund] Crime Victim Reparations Fund by convicted criminals.

898 (b) The additional discretionary reparations may not exceed the statutory maximum
899 fine permitted by Title 76, Utah Criminal Code, for that offense.

900 Section 26. Section **67-4a-405** is amended to read:

901 **67-4a-405. Deposit of funds.**

902 (1) (a) There is created a private-purpose trust fund entitled the "Unclaimed Property
903 Trust Fund."

904 (b) The fund consists of all funds received under this chapter, including the proceeds
905 from the sale of abandoned property.

906 (c) The fund shall earn interest.

907 (2) The administrator shall:

908 (a) pay any legitimate claims or deductions authorized by this chapter from the fund;

909 (b) before the end of the fiscal year, estimate the amount of money from the fund [~~that~~
910 which will ultimately be needed to be paid to claimants; and

911 (c) at the end of the fiscal year, transfer any amount in excess of that amount to the
912 Uniform School Fund, except that unclaimed restitution for crime victims shall be transferred
913 to the Crime Victim [~~Reparation~~] Reparations Fund.

914 (3) Before making any transfer to the Uniform School Fund, the administrator may
915 deduct from the fund:

916 (a) amounts appropriated by the Legislature for administration of this chapter;

917 (b) any costs incurred in connection with the sale of abandoned property;

918 (c) costs of mailing and publication in connection with any abandoned property;

919 (d) reasonable service charges; and

920 (e) costs incurred in examining records of holders of property and in collecting the
921 property from those holders.

922 Section 27. Section **77-2-4.2** is amended to read:

923 **77-2-4.2. Compromise of traffic charges -- Limitations.**

924 (1) As used in this section:

925 (a) "Compromise" means referral of a person charged with a traffic violation to traffic
926 school or other school, class, or remedial or rehabilitative program.

- 927 (b) "Traffic violation" means any charge for which bail may be forfeited in lieu of
928 appearance, by citation or information, of a violation of:
- 929 (i) Title 41, Chapter 6a, Traffic Code, amounting to:
- 930 (A) a class B misdemeanor;
- 931 (B) a class C misdemeanor; or
- 932 (C) an infraction; or
- 933 (ii) any local traffic ordinance.
- 934 (2) Any compromise of a traffic violation shall be done pursuant to a plea in abeyance
935 agreement as provided in Title 77, Chapter 2a, Pleas in Abeyance, except:
- 936 (a) when the criminal prosecution is dismissed pursuant to Section 77-2-4; or
- 937 (b) when there is a plea by the defendant to and entry of a judgment by a court for the
938 offense originally charged or for an amended charge.
- 939 (3) In all cases which are compromised pursuant to the provisions of Subsection (2):
- 940 (a) the court, taking into consideration the offense charged, shall collect a plea in
941 abeyance fee which shall:
- 942 (i) be subject to the same surcharge as if imposed on a criminal fine;
- 943 (ii) be allocated subject to the surcharge as if paid as a criminal fine under Section
944 78-3-14.5 and a surcharge under Title 63, Chapter 63a, Crime Victim [~~Reparation Trust~~]
945 Reparations Fund, Public Safety Support Funds, Substance Abuse Prevention Account, and
946 Services for Victims of Domestic Violence Account; and
- 947 (iii) be not more than \$25 greater than the bail designated in the Uniform Bail
948 Schedule; or
- 949 (b) if no plea in abeyance fee is collected, a surcharge on the fee charged for the traffic
950 school or other school, class, or rehabilitative program shall be collected, which surcharge
951 shall:
- 952 (i) be computed, assessed, collected, and remitted in the same manner as if the traffic
953 school fee and surcharge had been imposed as a criminal fine and surcharge; and
- 954 (ii) be subject to the financial requirements contained in Title 63, Chapter 63a, Crime
955 Victim [~~Reparation Trust~~] Reparations Fund, Public Safety Support Funds, Substance Abuse
956 Prevention Account, and Services for Victims of Domestic Violence Account.
- 957 (4) If a written plea in abeyance agreement is provided, or the defendant requests a

958 written accounting, an itemized statement of all amounts assessed by the court shall be
959 provided, including:

- 960 (a) the Uniform Bail Schedule amount;
- 961 (b) the amount of any surcharges being assessed; and
- 962 (c) the amount of the plea in abeyance fee.

963 Section 28. Section **77-2a-3** is amended to read:

964 **77-2a-3. Manner of entry of plea -- Powers of court.**

965 (1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be
966 done in full compliance with the provisions of Rule 11, Utah Rules of Criminal Procedure.

967 (b) In cases charging offenses for which bail may be forfeited, a plea in abeyance
968 agreement may be entered into without a personal appearance before a magistrate.

969 (2) A plea in abeyance agreement may provide that the court may, upon finding that the
970 defendant has successfully completed the terms of the agreement:

971 (a) reduce the degree of the offense and enter judgment of conviction and impose
972 sentence for a lower degree of offense; or

973 (b) allow withdrawal of defendant's plea and order the dismissal of the case.

974 (3) Upon finding that a defendant has successfully completed the terms of a plea in
975 abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as
976 provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a
977 defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not
978 invoke Section 76-3-402 to further reduce the degree of the offense.

979 (4) The court may require the Department of Corrections to assist in the administration
980 of the plea in abeyance agreement as if the defendant were on probation to the court under
981 Section 77-18-1.

982 (5) The terms of a plea in abeyance agreement may include:

983 (a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a
984 surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in
985 the same manner as if paid as a fine for a criminal conviction under Section 78-3-14.5 and a
986 surcharge under Title 63, Chapter 63a, Crime Victim [~~Reparation Trust~~] Reparations Fund,
987 Public Safety Support Funds, Substance Abuse Prevention Account, and Services for Victims
988 of Domestic Violence Account, and which may not exceed in amount the maximum fine and

989 surcharge which could have been imposed upon conviction and sentencing for the same
990 offense;

991 (b) an order that the defendant pay restitution to the victims of his actions as provided
992 in Title 77, Chapter 38a, Crime Victims Restitution Act;

993 (c) an order that the defendant pay the costs of any remedial or rehabilitative program
994 required by the terms of the agreement; and

995 (d) an order that the defendant comply with any other conditions which could have
996 been imposed as conditions of probation upon conviction and sentencing for the same offense.

997 (6) A court may not hold a plea in abeyance without the consent of both the
998 prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a
999 plea in abeyance is final.

1000 (7) No plea may be held in abeyance in any case involving a sexual offense against a
1001 victim who is under the age of 14.

1002 (8) Beginning on July 1, 2008, no plea may be held in abeyance in any case involving a
1003 driving under the influence violation under Section 41-6a-502.

1004 Section 29. Section **77-37-3** is amended to read:

1005 **77-37-3. Bill of Rights.**

1006 (1) The bill of rights for victims and witnesses is:

1007 (a) Victims and witnesses have a right to be informed as to the level of protection from
1008 intimidation and harm available to them, and from what sources, as they participate in criminal
1009 justice proceedings as designated by Section 76-8-508, regarding witness tampering, and
1010 Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and
1011 corrections personnel have the duty to timely provide this information in a form [~~that~~] which is
1012 useful to the victim.

1013 (b) Victims and witnesses, including children and their guardians, have a right to be
1014 informed and assisted as to their role in the criminal justice process. All criminal justice
1015 agencies have the duty to provide this information and assistance.

1016 (c) Victims and witnesses have a right to clear explanations regarding relevant legal
1017 proceedings; these explanations shall be appropriate to the age of child victims and witnesses.
1018 All criminal justice agencies have the duty to provide these explanations.

1019 (d) Victims and witnesses should have a secure waiting area that does not require them

1020 to be in close proximity to defendants or the family and friends of defendants. Agencies
1021 controlling facilities shall, whenever possible, provide this area.

1022 (e) Victims [~~are entitled to~~] may seek restitution or reparations, including medical
1023 costs, as provided in Title 63, Chapter 25a, Criminal Justice and Substance Abuse, and
1024 Sections [~~62A-7-109~~] 62A-7-109.5, 77-38a-302, and 77-27-6. State and local government
1025 agencies that serve victims have the duty to have a functional knowledge of the procedures
1026 established by the [~~Utah~~] Crime [~~Victims'~~] Victim Reparations Board and to inform victims of
1027 these procedures.

1028 (f) Victims and witnesses have a right to have any personal property returned as
1029 provided in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously
1030 return the property when it is no longer needed for court law enforcement or prosecution
1031 purposes.

1032 (g) Victims and witnesses have the right to reasonable employer intercession services,
1033 including pursuing employer cooperation in minimizing employees' loss of pay and other
1034 benefits resulting from their participation in the criminal justice process. Officers of the court
1035 shall provide these services and shall consider victims' and witnesses' schedules so that
1036 activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may
1037 request that the responsible agency intercede with employers or other parties.

1038 (h) Victims and witnesses, particularly children, should have a speedy disposition of
1039 the entire criminal justice process. All involved public agencies shall establish policies and
1040 procedures to encourage speedy disposition of criminal cases.

1041 (i) Victims and witnesses have the right to timely notice of judicial proceedings they
1042 are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies
1043 have the duty to provide these notifications. Defense counsel and others have the duty to
1044 provide timely notice to prosecution of any continuances or other changes that may be required.

1045 (j) Victims of sexual offenses have a right to be informed of their right to request
1046 voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to
1047 request mandatory testing of the convicted sexual offender for HIV infection as provided in
1048 Section 76-5-502. The law enforcement office where the sexual offense is reported shall have
1049 the responsibility to inform victims of this right.

1050 (2) Informational rights of the victim under this chapter are based upon the victim

1051 providing his current address and telephone number to the criminal justice agencies involved in
1052 the case.

1053 Section 30. Section **77-38-3** is amended to read:

1054 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**
1055 **notices -- Form of notice -- Protected victim information.**

1056 (1) Within seven days of the filing of felony criminal charges against a defendant, the
1057 prosecuting agency shall provide an initial notice to reasonably identifiable and locatable
1058 victims of the crime contained in the charges, except as otherwise provided in this chapter.

1059 (2) The initial notice to the victim of a crime shall provide information about electing
1060 to receive notice of subsequent important criminal justice hearings listed in Subsections
1061 77-38-2(5)(a) through (f) and rights under this chapter.

1062 (3) The prosecuting agency shall provide notice to a victim of a crime for the important
1063 criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f) which the victim
1064 has requested.

1065 (4) (a) The responsible prosecuting agency may provide initial and subsequent notices
1066 in any reasonable manner, including telephonically, electronically, orally, or by means of a
1067 letter or form prepared for this purpose.

1068 (b) In the event of an unforeseen important criminal justice hearing, listed in
1069 Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith
1070 attempt to contact the victim by telephone shall be considered sufficient notice, provided that
1071 the prosecuting agency subsequently notifies the victim of the result of the proceeding.

1072 (5) (a) The court shall take reasonable measures to ensure that its scheduling practices
1073 for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for
1074 victims of crimes to be notified.

1075 (b) The court shall also consider whether any notification system [~~that~~] it might use to
1076 provide notice of judicial proceedings to defendants could be used to provide notice of those
1077 same proceedings to victims of crimes.

1078 (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give
1079 notice to the responsible prosecuting agency of any motion for modification of any
1080 determination made at any of the important criminal justice hearings provided in Subsections
1081 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the

1082 prosecuting agency may comply with its notification obligation.

1083 (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and
1084 Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

1085 (b) The board may provide notice in any reasonable manner, including telephonically,
1086 electronically, orally, or by means of a letter or form prepared for this purpose.

1087 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give
1088 notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through
1089 (f) only where the victim has responded to the initial notice, requested notice of subsequent
1090 proceedings, and provided a current address and telephone number if applicable.

1091 (9) (a) Law enforcement and criminal justice agencies shall refer any requests for
1092 notice or information about crime victim rights from victims to the responsible prosecuting
1093 agency.

1094 (b) In a case in which the Board of Pardons and Parole is involved, the responsible
1095 prosecuting agency shall forward any request for notice [~~that~~] it has received from a victim to
1096 the Board of Pardons and Parole.

1097 (10) In all cases where the number of victims exceeds ten, the responsible prosecuting
1098 agency may send any notices required under this chapter in its discretion to a representative
1099 sample of the victims.

1100 (11) (a) A victim's address, telephone number, and victim impact statement maintained
1101 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice
1102 Services, Department of Corrections, and Board of Pardons and Parole, for purposes of
1103 providing notice under this section, is classified as protected as provided in Subsection
1104 63-2-304(10).

1105 (b) The victim's address, telephone number, and victim impact statement is available
1106 only to the following persons or entities in the performance of their duties:

- 1107 (i) a law enforcement agency, including the prosecuting agency;
- 1108 (ii) a victims' right committee as provided in Section 77-37-5;
- 1109 (iii) a governmentally sponsored victim or witness program;
- 1110 (iv) the Department of Corrections;
- 1111 (v) Office of Crime [~~Victims'~~] Victim Reparations;
- 1112 (vi) Commission on Criminal and Juvenile Justice; and

1113 (vii) the Board of Pardons and Parole.
1114 (12) The notice provisions as provided in this section do not apply to misdemeanors as
1115 provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section
1116 77-38-2.

1117 Section 31. Section **78-61-101** is amended to read:

1118 **78-61-101. Definitions.**

1119 As used in this chapter:

1120 (1) "Conviction" means an adjudication by a federal or state court resulting from a trial
1121 or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity,
1122 or not guilty but mentally ill regardless of whether the sentence was imposed or suspended.

1123 (2) "Fund" means the Crime Victim [~~Reparation~~] Reparations Fund created in Section
1124 63-63a-4.

1125 (3) "Memorabilia" means any tangible property of a person convicted of a first degree
1126 or capital felony, the value of which is enhanced by the notoriety gained from the conviction.

1127 (4) "Profit" means any income or benefit over and above the fair market value of the
1128 property that is received upon the sale or transfer of memorabilia.

1129 Section 32. **Repealer.**

1130 This bill repeals:

1131 Section **63-25a-420, Special verdict -- Allocation of damages.**

1132 Section 33. **Effective date.**

1133 This bill takes effect on July 1, 2008.

Legislative Review Note

as of 12-12-07 1:52 PM

Office of Legislative Research and General Counsel

H.B. 312 - Crime Victim Reparations Revisions

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses, or local governments. Victims of violent crime may benefit.
