

**CRIME VICTIMS REPARATIONS REVISIONS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: J. Stuart Adams**

House Sponsor: Brad R. Wilson

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**LONG TITLE**

**General Description:**

This bill modifies the Crime Victim Reparations Act to incorporate functions already being performed and renames the office.

**Highlighted Provisions:**

This bill:

- ▶ changes the name of the office to the Utah Office for Victims of Crime;
- ▶ modifies the existing membership of the board to include a victim advocate;
- ▶ expands the board duties to include approval or allocation of subgrantee awards and establishment of policies for the administration of the assistance program;
- ▶ defines the duties and functions of assistance officers; and
- ▶ amends restitution claims procedures.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**51-9-404**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382

**53-1-106**, as last amended by Laws of Utah 2009, Chapter 183



- 28           **53-6-213**, as last amended by Laws of Utah 2008, Chapters 339 and 382
- 29           **63A-9-801**, as last amended by Laws of Utah 2008, Chapters 3 and 382
- 30           **63M-7-501**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
- 31 amended by Laws of Utah 2008, Chapter 382
- 32           **63M-7-502**, as last amended by Laws of Utah 2010, Chapter 254
- 33           **63M-7-503**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
- 34 amended by Laws of Utah 2008, Chapter 382
- 35           **63M-7-504**, as last amended by Laws of Utah 2010, Chapter 286
- 36           **63M-7-505**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
- 37 amended by Laws of Utah 2008, Chapter 382
- 38           **63M-7-506**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 39           **63M-7-507**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
- 40 amended by Laws of Utah 2008, Chapter 382
- 41           **63M-7-508**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
- 42 amended by Laws of Utah 2008, Chapter 382
- 43           **63M-7-514**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
- 44 amended by Laws of Utah 2008, Chapter 382
- 45           **63M-7-515**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
- 46 amended by Laws of Utah 2008, Chapter 382
- 47           **63M-7-516**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 48           **63M-7-525**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
- 49 amended by Laws of Utah 2008, Chapter 382
- 50           **63M-7-601**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 51           **76-3-201**, as last amended by Laws of Utah 2010, Chapter 85
- 52           **76-5-503**, as enacted by Laws of Utah 1993, Chapter 40
- 53           **77-37-5**, as last amended by Laws of Utah 2010, Chapter 82
- 54           **77-38-3**, as last amended by Laws of Utah 2008, Chapters 339 and 382
- 55           **77-38a-202**, as last amended by Laws of Utah 2009, Chapter 91
- 56           **77-38a-404**, as last amended by Laws of Utah 2008, Chapter 3
- 57           **78B-9-405**, as enacted by Laws of Utah 2008, Chapter 358

58 ENACTS:

59 ~~H~~→ [~~63M-7-508.5, Utah Code Annotated 1953~~] ←~~H~~

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

62 Section 1. Section **51-9-404** is amended to read:

63 **51-9-404. Distribution of surcharge amounts.**

64 (1) In this section:

65 (a) "Reparation fund" means the Crime Victim Reparations Fund.

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

67 (2) (a) There is created a restricted special revenue fund known as the "Crime Victim  
68 Reparations Fund" to be administered and distributed as provided in this part by the Utah  
69 Office for Victims of Crime [~~Victim Reparations~~] under Title 63M, Chapter 7, Part 5, Utah  
70 Office for Victims of Crime [~~Victim Reparations Act~~], in cooperation with the Division of  
71 Finance.

72 (b) Monies deposited in this fund are for victim reparations, criminal justice and  
73 substance abuse, other victim services, and, as appropriated, for administrative costs of the  
74 Commission on Criminal and Juvenile Justice under Title 63M, Chapter 7, Criminal Justice  
75 and Substance Abuse.

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

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

80 (i) the Division of Peace Officer Standards and Training (POST) as described in Title  
81 53, Chapter 6, Peace Officer Standards and Training Act; and

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

84 (4) The Division of Finance shall allocate from the collected surcharge established in  
85 Section 51-9-401:

86 (a) 35% to the Crime Victim Reparations Fund;

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

89 (c) 3% to the safety account for support of the Utah Prosecution Council, but not to

90 exceed the amount appropriated by the Legislature.

91 (5) (a) In addition to the funding provided by other sections of this part, a percentage of  
92 the income earned by inmates working for correctional industries in a federally certified private  
93 sector/prison industries enhancement program shall be deposited in the Crime Victim  
94 Reparations Fund.

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

98 (6) (a) In addition to other monies collected from the surcharge, judges are encouraged  
99 to, and may in their discretion, impose additional reparations to be paid into the Crime Victim  
100 Reparations Fund by convicted criminals.

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

103 Section 2. Section **53-1-106** is amended to read:

104 **53-1-106. Department duties -- Powers.**

105 (1) In addition to the responsibilities contained in this title, the department shall:

106 (a) make rules and perform the functions specified in Title 41, Chapter 6a, Traffic  
107 Code, including:

108 (i) setting performance standards for towing companies to be used by the department,  
109 as required by Section 41-6a-1406; and

110 (ii) advising the Department of Transportation regarding the safe design and operation  
111 of school buses, as required by Section 41-6a-1304;

112 (b) make rules to establish and clarify standards pertaining to the curriculum and  
113 teaching methods of a motor vehicle accident prevention course under Section 31A-19a-211;

114 (c) aid in enforcement efforts to combat drug trafficking;

115 (d) meet with the Department of Technology Services to formulate contracts, establish  
116 priorities, and develop funding mechanisms for dispatch and telecommunications operations;

117 (e) provide assistance to the Crime Victim Reparations Board and the Utah Office for  
118 Victims of Crime [~~Victim Reparations~~] in conducting research or monitoring victims'  
119 programs, as required by Section 63M-7-505;

120 (f) develop sexual assault exam protocol standards in conjunction with the Utah

121 Hospital Association;

122 (g) engage in emergency planning activities, including preparation of policy and  
123 procedure and rulemaking necessary for implementation of the federal Emergency Planning  
124 and Community Right to Know Act of 1986, as required by Section 63K-3-301;

125 (h) implement the provisions of Section 53-2-202, the Emergency Management  
126 Assistance Compact; and

127 (i) (i) maintain a database of the information listed below regarding each driver license  
128 or state identification card status check made by a law enforcement officer:

129 (A) the agency employing the law enforcement officer;

130 (B) the name of the law enforcement officer or the identifying number the agency has  
131 assigned to the law enforcement officer;

132 (C) the race and gender of the law enforcement officer;

133 (D) the purpose of the law enforcement officer's status check, including but not limited  
134 to a traffic stop or a pedestrian stop; and

135 (E) the race of the individual regarding whom the status check is made, based on the  
136 information provided through the application process under Section 53-3-205 or 53-3-804;

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

139 (A) evaluating the data;

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

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

142 (iii) classify any personal identifying information of any individual, including law  
143 enforcement officers, in the database as protected records under Subsection 63G-2-305(9).

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

146 (b) The fees shall be established in accordance with Section 63J-1-504.

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

149 Section 3. Section **53-6-213** is amended to read:

150 **53-6-213. Appropriations from reparation fund.**

151 (1) The Legislature shall appropriate from the fund established in Title 63M, Chapter

152 7, Part 5, Utah Office for Victims of Crime [~~Victim Reparations Act~~], to the division, funds for  
 153 training of law enforcement officers in the state.

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

156 Section 4. Section **63A-9-801** is amended to read:

157 **63A-9-801. State surplus property program -- Definitions -- Administration.**

158 (1) As used in this section:

159 (a) "Agency" means:

160 (i) the Utah Departments of Administrative Services, Agriculture, Alcoholic Beverage  
 161 Control, Commerce, Community and Culture, Corrections, Workforce Services, Health,  
 162 Human Resource Management, Human Services, Insurance, Natural Resources, Public Safety,  
 163 Technology Services, and Transportation and the Labor Commission;

164 (ii) the Utah Offices of the Auditor, Attorney General, Court Administrator, Utah  
 165 Office for Victims of Crime [~~Victim Reparations~~], Rehabilitation, and Treasurer;

166 (iii) the Public Service Commission and State Tax Commission;

167 (iv) the State Boards of Education, Pardons and Parole, and Regents;

168 (v) the Career Service Review ~~H~~→ [Board] Office ←~~H~~ ;

169 (vi) other state agencies designated by the governor;

170 (vii) the legislative branch, the judicial branch, and the State Board of Regents; and

171 (viii) an institution of higher education, its president, and its board of trustees for  
 172 purposes of Section 63A-9-802.

173 (b) "Division" means the Division of Fleet Operations.

174 (c) "Information technology equipment" means any equipment that is designed to  
 175 electronically manipulate, store, or transfer any form of data.

176 (d) "Inventory property" means property in the possession of the division that is  
 177 available for purchase by an agency or the public.

178 (e) "Judicial district" means the geographic districts established by Section 78A-1-102.

179 (f) (i) "Surplus property" means property purchased by, seized by, or donated to, an  
 180 agency that the agency wishes to dispose of.

181 (ii) "Surplus property" does not mean real property.

182 (g) "Transfer" means transfer of surplus property without cash consideration.

183 (2) (a) The division shall make rules establishing a state surplus property program that  
184 meets the requirements of this chapter by following the procedures and requirements of Title  
185 63G, Chapter 3, Utah Administrative Rulemaking Act.

186 (b) Those rules shall include:

187 (i) a requirement prohibiting the transfer of surplus property from one agency to  
188 another agency without written approval from the division;

189 (ii) procedures and requirements governing division administration requirements that  
190 an agency must follow;

191 (iii) requirements governing purchase priorities;

192 (iv) requirements governing accounting, reimbursement, and payment procedures;

193 (v) procedures for collecting bad debts;

194 (vi) requirements and procedures for disposing of firearms;

195 (vii) the elements of the rates or other charges assessed by the division for services and  
196 handling;

197 (viii) procedures governing the timing and location of public sales of inventory  
198 property; and

199 (ix) procedures governing the transfer of information technology equipment by state  
200 agencies directly to public schools.

201 (c) The division shall report all transfers of information technology equipment by state  
202 agencies to public schools to the Utah Technology Commission and to the Legislative Interim  
203 Education Committee at the end of each fiscal year.

204 (3) In creating and administering the program, the division shall:

205 (a) when conditions, inventory, and demand permit:

206 (i) establish facilities to store inventory property at geographically dispersed locations  
207 throughout the state; and

208 (ii) hold public sales of property at geographically dispersed locations throughout the  
209 state;

210 (b) establish, after consultation with the agency requesting the sale of surplus property,  
211 the price at which the surplus property shall be sold; and

212 (c) transfer proceeds arising from the sale of state surplus property to the agency  
213 requesting the sale in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less an

214 amount established by the division by rule to pay the costs of administering the surplus  
215 property program.

216 (4) Unless specifically exempted from this chapter by explicit reference to this chapter,  
217 each state agency shall dispose of and acquire surplus property only by participating in the  
218 division's program.

219 Section 5. Section **63M-7-501** is amended to read:

220 **Part 5. Utah Office for Victims of Crime**

221 **63M-7-501. Title.**

222 This part is known as the [~~"Crime Victim Reparations Act"~~] "Utah Office for Victims  
223 of Crime" and may be abbreviated as the [~~"CVRA."~~] "UOVC."

224 Section 6. Section **63M-7-502** is amended to read:

225 **63M-7-502. Definitions.**

226 As used in this chapter:

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

229 (2) "Assistance officer" means the victim services program coordinator, grant analysts,  
230 and other staff employed by the office to perform the duties and functions provided in  
231 63M-7-508.5.

232 [~~(2)~~] (3) "Board" means the Crime Victim Reparations ~~Board~~ **and Assistance** Board  
232a created under Section  
233 63M-7-504.

234 [~~(3)~~] (4) "Bodily injury" means physical pain, illness, or any impairment of physical  
235 condition.

236 [~~(4)~~] (5) "Claim" means:

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

238 (b) the formal action taken by a victim to apply for reparations pursuant to [~~Sections~~  
239 ~~63M-7-501 through 63M-7-525~~] this chapter.

240 [~~(5)~~] (6) "Claimant" means any of the following claiming reparations under this  
241 chapter:

242 (a) a victim;

243 (b) a dependent of a deceased victim;

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



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

246 [~~(6)~~] (7) "Child" means an unemancipated person who is under 18 years of age.

247 [~~(7)~~] (8) "Collateral source" means the definition as provided in Section 63M-7-513.

248 [~~(8)~~] (9) "Contested case" means a case which the claimant contests, claiming the  
249 award was either inadequate or denied, or which a county attorney, a district attorney, a law  
250 enforcement officer, or other individual related to the criminal investigation proffers reasonable  
251 evidence of the claimant's lack of cooperation in the prosecution of a case after an award has  
252 already been given.

253 [~~(9)~~] (10) (a) "Criminally injurious conduct" other than acts of war declared or not  
254 declared means conduct that:

- 255 (i) is or would be subject to prosecution in this state under Section 76-1-201;
- 256 (ii) occurs or is attempted;
- 257 (iii) causes, or poses a substantial threat of causing, bodily injury or death;
- 258 (iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct  
259 possessed the capacity to commit the conduct; and

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

264 (b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C.  
265 Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism"  
266 does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.

267 [~~(10)~~] (11) "Dependent" means a natural person to whom the victim is wholly or  
268 partially legally responsible for care or support and includes a child of the victim born after the  
269 victim's death.

270 [~~(11)~~] (12) "Dependent's economic loss" means loss after the victim's death of  
271 contributions of things of economic value to the victim's dependent, not including services the  
272 dependent would have received from the victim if the victim had not suffered the fatal injury,  
273 less expenses of the dependent avoided by reason of victim's death.

274 [~~(12)~~] (13) "Dependent's replacement services loss" means loss reasonably and  
275 necessarily incurred by the dependent after the victim's death in obtaining services in lieu of

276 those the decedent would have performed for the victim's benefit if the victim had not suffered  
277 the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not  
278 subtracted in calculating the dependent's economic loss.

279 ~~[(13)]~~ (14) "Director" means the director of the Utah Office for Victims of Crime  
280 ~~[Victim Reparations]~~.

281 ~~[(14)]~~ (15) "Disposition" means the sentencing or determination of penalty or  
282 punishment to be imposed upon a person:

283 (a) convicted of a crime;

284 (b) found delinquent; or

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

287 ~~[(15)]~~ (16) "Economic loss" means economic detriment consisting only of allowable  
288 expense, work loss, replacement services loss, and if injury causes death, dependent's economic  
289 loss and dependent's replacement service loss. Noneconomic detriment is not loss, but  
290 economic detriment is loss although caused by pain and suffering or physical impairment.

291 ~~[(16)]~~ (17) "Elderly victim" means a person 60 years of age or older who is a victim.

292 ~~[(17)]~~ (18) "Fraudulent claim" means a filed claim based on material misrepresentation  
293 of fact and intended to deceive the reparations staff for the purpose of obtaining reparation  
294 funds for which the claimant is not eligible as provided in Section 63M-7-510.

295 ~~[(18)]~~ (19) "Fund" means the Crime Victim Reparations Fund created in Section  
296 51-9-404.

297 ~~[(19)]~~ (20) "Law enforcement officer" means a law enforcement officer as defined in  
298 Section 53-13-103.

299 ~~[(20)]~~ (21) "Medical examination" means a physical examination necessary to  
300 document criminally injurious conduct but does not include mental health evaluations for the  
301 prosecution and investigation of a crime.

302 ~~[(21)]~~ (22) "Mental health counseling" means outpatient and inpatient counseling  
303 necessitated as a result of criminally injurious conduct. The definition of mental health  
304 counseling is subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah  
305 Administrative Rulemaking Act.

306 ~~[(22)]~~ (23) "Misconduct" as provided in Subsection 63M-7-512(1)(b) means conduct

307 by the victim which was attributable to the injury or death of the victim as provided by rules  
308 promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking  
309 Act.

310 ~~[(23)]~~ (24) "Noneconomic detriment" means pain, suffering, inconvenience, physical  
311 impairment, and other nonpecuniary damage, except as provided in this chapter.

312 ~~[(24)]~~ (25) "Pecuniary loss" does not include loss attributable to pain and suffering  
313 except as otherwise provided in this chapter.

314 ~~[(25)]~~ (26) "Offender" means a person who has violated the criminal code through  
315 criminally injurious conduct regardless of whether the person is arrested, prosecuted, or  
316 convicted.

317 ~~[(26)]~~ (27) "Offense" means a violation of the criminal code.

318 ~~[(27) "Office of Crime Victim Reparations" or "office" means the office of the  
319 reparations staff for the purpose of carrying out the provisions of this chapter.]~~

320 (28) "Perpetrator" means the person who actually participated in the criminally  
321 injurious conduct.

322 (29) "Reparations officer" means a person employed by the office to investigate claims  
323 of victims and award reparations under this chapter, and includes the director when the director  
324 is acting as a reparations officer.

325 ~~[(30) "Reparations staff" means the director, the reparations officers, and any other  
326 staff employed to administer the Crime Victim Reparations Act.]~~

327 ~~[(31)]~~ (30) "Replacement service loss" means expenses reasonably and necessarily  
328 incurred in obtaining ordinary and necessary services in lieu of those the injured person would  
329 have performed, not for income but the benefit of the injured person or the injured person's  
330 dependents if the injured person had not been injured.

331 ~~[(32)]~~ (31) "Representative" means the victim, immediate family member, legal  
332 guardian, attorney, conservator, executor, or an heir of a person but does not include service  
333 providers.

334 ~~[(33)]~~ (32) "Restitution" means money or services an appropriate authority orders an  
335 offender to pay or render to a victim of the offender's conduct.

336 ~~[(34)]~~ (33) "Secondary victim" means a person who is traumatically affected by the  
337 criminally injurious conduct subject to rules promulgated by the board pursuant to Title 63G,

338 Chapter 3, Utah Administrative Rulemaking Act.

339 ~~[(35)]~~ (34) "Service provider" means a person or agency who provides a service to  
 340 crime victims for a monetary fee except attorneys as provided in Section 63M-7-524.

341 (35) "Utah Office for Victims of Crime" or "office" means the director, the reparations  
 342 and assistance officers, and any other staff employed for the purpose of carrying out the  
 343 provisions of this chapter.

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

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

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

351 (37) "Work loss" means loss of income from work the injured victim would have  
 352 performed if the injured victim had not been injured and expenses reasonably incurred by the  
 353 injured victim in obtaining services in lieu of those the injured victim would have performed  
 354 for income, reduced by any income from substitute work the injured victim was capable of  
 355 performing but unreasonably failed to undertake.

356 Section 7. Section **63M-7-503** is amended to read:

357 **63M-7-503. Restitution -- Reparations not to supplant restitution -- Assignment**  
 358 **of claim for restitution judgment to Reparations Office.**

359 (1) A reparations award may not supplant restitution as established under Title 77,  
 360 Chapter 38a, Crime Victims Restitution Act, or as established by any other provisions.

361 (2) The court may not reduce an order of restitution based on a reparations award.

362 (3) If, due to reparation payments to a victim, the Utah Office for Victims of Crime  
 363 [Victim Reparations] is assigned under Section 63M-7-519 a claim for the victim's judgment  
 364 for restitution or a portion of the restitution, the office may file with the sentencing court a  
 365 notice of the assignment. The notice of assignment shall be signed by the victim and a  
 366 reparations officer and shall ~~H→~~ **[state the amount of the claim assigned] contain an affidavit**  
 366a **detailing the specific amounts of pecuniary damages paid on behalf of the victim. A copy of the**  
 366b **notice of assignment and affidavit shall be mailed by certified mail to the defendant at his last**  
 366c **known address 20 days prior to sentencing, entry of any judgment or order of restitution, or**  
 366d **modification of any existing judgment or order of restitution. Any objection by the defendant**  
 366e **to the imposition or amount of restitution shall be made at the time of sentencing or in**

366f writing within 20 days of the receipt of notice, to be filed with the court and a copy mailed to  
366g the office. Upon the filing of the objection, the court shall allow the defendant a full hearing on  
366h the issue as provided by Subsection 77-38a-302(4) ←Ĥ .

367 (4) ~~Ĥ→~~ [Upon] If no objection is made or filed by the defendant, then upon ←Ĥ  
367a conviction and sentencing [~~of the defendant~~], the court shall enter a [civil]  
368 judgment for complete restitution [~~as provided in Section 77-38a-401~~] pursuant to the

369 provisions of Subsections 76-3-201(4)(c) and (d) and identify the office as the assignee of the  
 370 assigned portion of the judgment and order of restitution.

371 (5) If the notice of assignment is filed after sentencing~~[- the court shall modify the civil~~  
 372 ~~judgment for restitution to]~~ but during the term of probation or parole, the court or Board of  
 373 Pardons shall modify any existing civil judgment and order of restitution to include expenses  
 374 paid by the office on behalf of the victim and identify the office as the assignee of the assigned  
 375 portion of the judgment and order of restitution. If no judgment or order of restitution has been  
 376 entered, the court shall enter a judgment for complete restitution and court ordered restitution  
 377 pursuant to the provisions of Sections 77-38a-302 and 77-38a-401.

378 Section 8. Section **63M-7-504** is amended to read:

379 **63M-7-504. Crime Victim Reparations and Assistance Board -- Members.**

380 (1) (a) A Crime Victim Reparations and Assistance Board is created, consisting of  
 381 seven members appointed by the governor with the consent of the Senate.

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

383 (i) a member of the bar of this state;

384 (ii) a victim of criminally injurious conduct;

385 (iii) a licensed physician;

386 (iv) a representative of law enforcement;

387 (v) a mental health care provider; ~~and]~~

388 (vi) a victim advocate; and

389 ~~[(vi)] (vii) [two other] a private [citizens] citizen.~~

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

393 (d) The board may hear appeals from administrative decisions as provided in rules  
 394 adopted pursuant to Section 63M-7-515.

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

398 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the  
 399 time of appointment or reappointment, adjust the length of terms to ensure that the terms of

400 board members are staggered so that approximately half of the board is appointed every two  
401 years.

402 (c) A member may be reappointed to one successive term in addition to a member's  
403 initial full-term appointment.

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

406 (b) A member resigning from the board shall serve until the member's successor is  
407 appointed and qualified.

408 (4) A member may not receive compensation or benefits for the member's service, but  
409 may receive per diem and travel expenses in accordance with:

410 (a) Section 63A-3-106;

411 (b) Section 63A-3-107; and

412 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
413 63A-3-107.

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

416 Section 9. Section **63M-7-505** is amended to read:

417 **63M-7-505. Board and office within Commission on Criminal and Juvenile**  
418 **Justice.**

419 (1) The Crime Victim Reparations and Assistance Board and the Utah Office for  
420 Victims of Crime [~~Victim Reparations~~] are placed within the Commission on Criminal and  
421 Juvenile Justice for the provision by the commission of administrative and support services.

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

425 Section 10. Section **63M-7-506** is amended to read:

426 **63M-7-506. Functions of board.**

427 (1) The Crime Victim Reparations and Assistance Board shall:

428 (a) adopt a description of the organization and prescribe the general operation of the  
429 board;

430 (b) prescribe policy for the Utah Office for Victims of Crime [~~Victim Reparations~~];

431 (c) adopt rules to implement and administer [~~Sections 63M-7-501 through 63M-7-525]~~  
432 this chapter pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which  
433 may include setting of ceilings on reparations, defining of terms not specifically stated in this  
434 chapter, and establishing of rules governing attorney fees;

435 (d) prescribe forms for applications for reparations;

436 (e) review all awards made by the reparations staff, although the board may not reverse  
437 or modify awards authorized by the reparations staff;

438 (f) render an annual report to the governor and the Legislature regarding the staff's and  
439 the board's activities;

440 (g) cooperate with the director and the director's staff in formulating standards for the  
441 uniform application of Section 63M-7-509, taking into consideration the rates and amounts of  
442 reparation payable for injuries and death under other laws of this state and the United States;

443 (h) allocate money available in the Crime Victim Reparations Fund to victims of  
444 criminally injurious conduct for reparations claims; [~~and]~~

445 (i) allocate money available to other victim services as provided by administrative rule  
446 once a sufficient reserve has been established for reparation claims[~~;~~]; and

447 (j) approve the allocation and disbursement of funds made available to the office by the  
448 United States, the state, foundations, corporations, or other entities or individuals to  
449 subgrantees from private, non-profit, and governmental entities operating qualified statewide  
450 assistance programs.

451 (2) All rules, or other statements of policy, along with application forms specified by  
452 the board, are binding upon the director, the reparations officers, assistance officers, and other  
453 staff.

454 Section 11. Section **63M-7-507** is amended to read:

455 **63M-7-507. Director -- Appointment and functions.**

456 The executive director of the Commission on Criminal and Juvenile Justice, after  
457 consulting with the board, shall appoint a director to carry out the provisions of this chapter.  
458 The director shall be an experienced administrator with a background in at least one of the  
459 following fields: social work, psychology, criminal justice, law, or a related field. The director  
460 shall demonstrate an understanding of the needs of crime victims and of services to victims.  
461 The director shall devote the director's time and capacity to the director's duties. The director



462 shall:

- 463 (1) hire staff, including reparations and assistance officers, as necessary;
- 464 (2) act when necessary as a reparations officer in deciding initial claims;
- 465 (3) possess the same investigation and decision-making authority as the reparations  
466 officers;
- 467 (4) hear appeals from the decisions of the reparations officers, unless the director acted  
468 as a reparations officer on the initial claim;
- 469 (5) serve as a liaison between the Utah Office for Victims of Crime [~~Victim~~  
470 ~~Reparations~~] and the board;
- 471 (6) serve as the public relations representative of the office;
- 472 (7) provide for payment of all administrative salaries, fees, and expenses incurred by  
473 the staff of the board, to be paid out of appropriations from the fund;
- 474 (8) cooperate with the state treasurer and the state Division of Finance in causing the  
475 funds in the trust fund to be invested and its investments sold or exchanged and the proceeds  
476 and income collected;
- 477 (9) apply for, receive, allocate, disburse, and account for [~~grants of~~], subject to  
478 approval and in conformance with policies adopted by the board, all grant funds made available  
479 by the United States, the state, foundations, corporations, and other businesses, agencies, or  
480 individuals;
- 481 (10) obtain and utilize the services of other governmental agencies upon request; and
- 482 (11) act in any other capacity or perform any other acts necessary for the office or  
483 board to successfully fulfill its statutory duties and objectives.

484 Section 12. Section **63M-7-508** is amended to read:

485 **63M-7-508. Reparations officers.**

486 The reparations officers shall in addition to any assignments made by the director of the  
487 Utah Office for Victims of Crime [~~Victim Reparations~~]:

- 488 (1) hear and determine all matters relating to claims for reparations and reinvestigate or  
489 reopen claims without regard to statutes of limitation or periods of prescription;
- 490 (2) obtain from prosecuting attorneys, law enforcement officers, and other criminal  
491 justice agencies, investigations and data to enable the reparations officer to determine whether  
492 and to what extent a claimant qualifies for reparations;

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

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

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

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

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

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

506 (a) the officers' activities; and

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

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

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

513 (11) assist the director in publicizing the provisions of the [~~Crime Victim Reparations~~  
 514 ~~Act~~] Utah Office for Victims of Crime, including the procedures for obtaining reparation, and  
 515 in encouraging law enforcement agencies, health providers, and other related officials to take  
 516 reasonable care to ensure that victims are informed about the provisions of this chapter and the  
 517 procedure for applying for reparation.

518 ~~H→ [Section 13. Section 63M-7-508.5 is enacted to read:~~

519 ~~63M-7-508.5. Assistance officers duties and functions:~~

520 ~~Assistance officers shall, in addition to assignments made by the director and under the~~  
 521 ~~supervision of the victim services program coordinator:~~

522 ~~(1) apply for grant funds made available by the United States, the state, foundations,~~  
 523 ~~corporations, and other businesses and agencies, or individuals;~~

524 ~~—— (2) monitor, account for, and prepare all reports required by statute or rule by the grant~~  
 525 ~~525 funding entity;~~  
 526 ~~—— (3) advise and assist the program coordinator and board in developing policies and~~  
 527 ~~527 procedures for screening, awarding contracts, and disbursing of grant funds to subgrantees for~~  
 528 ~~528 the development and administration of victim service programs statewide;~~  
 529 ~~—— (4) render periodic reports as requested by the board concerning;~~  
 530 ~~—— (a) the status, development, and implementation of victim assistance programs~~  
 531 ~~531 statewide; and~~  
 532 ~~—— (b) quarterly financial reports as to grant fund balances and disbursements;~~  
 533 ~~—— (5) engage in periodic financial and programmatic site reviews and audits of~~  
 534 ~~534 subgrantee victim assistance programs;~~  
 535 ~~—— (6) provide, coordinate, and assist in the development of statewide training of victim~~  
 536 ~~536 service providers and associated criminal justice agencies; and~~  
 537 ~~—— (7) assist the director and board in performing any other acts necessary for the office or~~  
 538 ~~538 board to successfully fulfill its statutory duties or objectives.] ←H~~

539 Section 14. Section **63M-7-514** is amended to read:

540 **63M-7-514. Notification of claimant -- Suspension of proceedings.**

541 (1) The Utah Office for Victims of Crime [~~Victim Reparations~~] shall immediately  
 542 notify the claimant in writing of any award and shall forward to the Division of Finance a  
 543 certified copy of the award and a warrant request for the amount of the award. The Division of  
 544 Finance shall pay the claimant the amount submitted to the division, out of the fund. If monies  
 545 in the fund are temporarily depleted, claimants approved to receive awards shall be placed on a  
 546 waiting list and shall receive their awards as funds are available in the order in which their  
 547 awards were approved.

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

550 Section 15. Section **63M-7-515** is amended to read:

551 **63M-7-515. Rules for contested claims -- Exemption from Administrative**  
 552 **Procedures Act.**

553 (1) Rules for procedures for contested determinations by a reparations officer shall be  
 554 adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

555 (2) The Utah Office for Victims of Crime [~~Victim Reparations~~] is exempt from Title  
556 63G, Chapter 4, Administrative Procedures Act.

557 Section 16. Section **63M-7-516** is amended to read:

558 **63M-7-516. Waiver of privilege.**

559 (1) A victim filing a claim under the provisions of this chapter shall be considered to  
560 have waived any privilege as to communications or records relevant to an issue of the physical,  
561 mental, or emotional conditions of the victim except for the attorney-client privilege. The  
562 waiver shall apply only to reparations officers, the director [~~of reparations~~], the board, and legal  
563 counsel.

564 (2) The claimant may be required to supply any additional medical or psychological  
565 reports available relating to the injury or death for which compensation is claimed.

566 (3) The reparations officer hearing a claim or an appeal from a claim shall make  
567 available to the claimant a copy of the report. If the victim is deceased, the director or the  
568 director's appointee, on request, shall furnish the claimant a copy of the report unless  
569 dissemination of that copy is prohibited by law.

570 Section 17. Section **63M-7-525** is amended to read:

571 **63M-7-525. Purpose -- Not entitlement program.**

572 (1) The purpose of the Utah Office for Victims of Crime [~~Victim Reparations~~] is to  
573 assist victims of criminally injurious conduct who may be eligible for assistance from the  
574 Crime Victim Reparations Fund. Reparation to a victim is limited to the money available in  
575 the fund.

576 (2) This program is not an entitlement program. Awards may be limited or denied as  
577 determined appropriate by the board. Failure to grant an award does not create a cause of  
578 action against the Utah Office for Victims of Crime [~~Victim Reparations~~], the state, or any of  
579 its subdivisions. There is no right to judicial review over the decision whether or not to grant  
580 an award.

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

586 Section 18. Section **63M-7-601** is amended to read:

587 **63M-7-601. Creation -- Members -- Chair.**

588 (1) There is created within the governor's office the Utah Council on Victims of Crime.

589 (2) The Utah Council on Victims of Crime shall be composed of 24 voting members as

590 follows:

591 (a) a representative of the Commission on Criminal and Juvenile Justice appointed by  
592 the executive director;

593 (b) a representative of the Department of Corrections appointed by the executive  
594 director;

595 (c) a representative of the Board of Pardons and Parole appointed by the chair;

596 (d) a representative of the Department of Public Safety appointed by the commissioner;

597 (e) a representative of the Division of Juvenile Justice Services appointed by the  
598 director;

599 (f) a representative of the Utah Office for Victims of Crime [~~Victim Reparations~~]  
600 appointed by the director;

601 (g) a representative of the Office of the Attorney General appointed by the attorney  
602 general;

603 (h) a representative of the United States Attorney for the district of Utah appointed by  
604 the United States Attorney;

605 (i) a professional or volunteer working in the area of violence against women and  
606 families appointed by the governor;

607 (j) the chair of each judicial district's victims' rights committee;

608 (k) the following members appointed to serve four-year terms:

609 (i) a representative of the Statewide Association of Public Attorneys appointed by that  
610 association;

611 (ii) a representative of the Utah Chiefs of Police Association appointed by the president  
612 of that association;

613 (iii) a representative of the Utah Sheriffs' Association appointed by the president of that  
614 association;

615 (iv) a representative of a Children's Justice Center appointed by the Advisory Board on  
616 Children's Justice; and

- 617 (v) a citizen representative appointed by the governor; and
- 618 (l) the following members appointed by the members in Subsections (2)(a) through
- 619 (2)(k) to serve four-year terms:
  - 620 (i) an individual who works professionally with victims of crime; and
  - 621 (ii) a victim of crime.
- 622 (3) The council shall annually elect one member to serve as chair.

623 Section 19. Section **76-3-201** is amended to read:

624 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**  
625 **penalties.**

626 (1) As used in this section:

627 (a) "Conviction" includes a:

628 (i) judgment of guilt; and

629 (ii) plea of guilty.

630 (b) "Criminal activities" means any offense of which the defendant is convicted or any  
631 other criminal conduct for which the defendant admits responsibility to the sentencing court  
632 with or without an admission of committing the criminal conduct.

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

638 (d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a  
639 victim, and payment for expenses to a governmental entity for extradition or transportation and  
640 as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

641 (e) (i) "Victim" means any person who the court determines has suffered pecuniary  
642 damages as a result of the defendant's criminal activities.

643 (ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

644 (2) Within the limits prescribed by this chapter, a court may sentence a person  
645 convicted of an offense to any one of the following sentences or combination of them:

646 (a) to pay a fine;

647 (b) to removal or disqualification from public or private office;

- 648 (c) to probation unless otherwise specifically provided by law;  
 649 (d) to imprisonment;  
 650 (e) on or after April 27, 1992, to life in prison without parole; or  
 651 (f) to death.

652 (3) (a) This chapter does not deprive a court of authority conferred by law to:

- 653 (i) forfeit property;  
 654 (ii) dissolve a corporation;  
 655 (iii) suspend or cancel a license;  
 656 (iv) permit removal of a person from office;  
 657 (v) cite for contempt; or  
 658 (vi) impose any other civil penalty.

659 (b) A civil penalty may be included in a sentence.

660 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary  
 661 damages, in addition to any other sentence it may impose, the court shall order that the  
 662 defendant make restitution to the victims, or for conduct for which the defendant has agreed to  
 663 make restitution as part of a plea agreement.

664 (b) In determining whether restitution is appropriate, the court shall follow the criteria  
 665 and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

666 (c) In addition to any other sentence the court may impose, the court, pursuant to the  
 667 provisions of Sections 63M-7-503 and ~~H→ [77-38-a-401]~~ 77-38a-401 ←H, shall enter:

668 (i) a civil judgment for complete restitution for the full amount of expenses paid on  
 669 behalf of the victim by the Utah Office for Victims of Crime; and

670 (ii) an order of restitution for restitution payable to the Utah Office for Victims of  
 671 Crime in the same amount unless otherwise ordered by the court pursuant to Subsection (4)(d).

672 (d) In determining whether to order that the restitution required under Subsection (4)(c)  
 673 be reduced or that the defendant be exempted from the restitution, the court shall consider the  
 674 criteria under Subsections 77-38a-302(5)(c)(i) through (iv) and provide ~~H→ [written]~~ ←H  
 674a findings of its  
 675 decision on the record.

676 (5) (a) In addition to any other sentence the court may impose, and unless otherwise  
 677 ordered by the court, the defendant shall pay restitution of governmental transportation  
 678 expenses if the defendant was:

679 (i) transported pursuant to court order from one county to another within the state at  
680 governmental expense to resolve pending criminal charges;

681 (ii) charged with a felony or a class A, B, or C misdemeanor; and

682 (iii) convicted of a crime.

683 (b) The court may not order the defendant to pay restitution of governmental  
684 transportation expenses if any of the following apply:

685 (i) the defendant is charged with an infraction or on a subsequent failure to appear a  
686 warrant is issued for an infraction; or

687 (ii) the defendant was not transported pursuant to a court order.

688 (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i)  
689 shall be calculated according to the following schedule:

690 (A) \$100 for up to 100 miles a defendant is transported;

691 (B) \$200 for 100 up to 200 miles a defendant is transported; and

692 (C) \$350 for 200 miles or more a defendant is transported.

693 (ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant  
694 transported regardless of the number of defendants actually transported in a single trip.

695 (d) If a defendant has been extradited to this state under Title 77, Chapter 30,  
696 Extradition, to resolve pending criminal charges and is convicted of criminal activity in the  
697 county to which he has been returned, the court may, in addition to any other sentence it may  
698 impose, order that the defendant make restitution for costs expended by any governmental  
699 entity for the extradition.

700 (6) (a) In addition to any other sentence the court may impose, and unless otherwise  
701 ordered by the court pursuant to Subsection (6)(c), the defendant shall pay restitution to the  
702 county for the cost of incarceration in the county correctional facility before and after  
703 sentencing if:

704 (i) the defendant is convicted of criminal activity that results in incarceration in the  
705 county correctional facility; and

706 (ii) (A) the defendant is not a state prisoner housed in a county correctional facility  
707 through a contract with the Department of Corrections; or

708 (B) the reimbursement does not duplicate the reimbursement provided under Section  
709 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or



710 a state parole inmate, as defined in Section 64-13e-102.

711 (b) (i) The costs of incarceration under Subsection (6)(a) are the amount determined by  
712 the county correctional facility, but may not exceed the daily inmate incarceration costs and  
713 medical and transportation costs for the county correctional facility.

714 (ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred  
715 by the county correctional facility in providing reasonable accommodation for an inmate  
716 qualifying as an individual with a disability as defined and covered by the federal Americans  
717 with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental  
718 health treatment for the inmate's disability.

719 (c) In determining whether to order that the restitution required under this Subsection  
720 (6) be reduced or that the defendant be exempted from the restitution, the court shall consider  
721 the criteria under Subsections 77-38a-302(5)(c)(i) through (iv) and shall enter the reason for its  
722 order on the record.

723 (d) If on appeal the defendant is found not guilty of the criminal activity under  
724 Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall  
725 reimburse the defendant for restitution the defendant paid for costs of incarceration under  
726 Subsection (6)(a).

727 Section 20. Section **76-5-503** is amended to read:

728 **76-5-503. Voluntary testing -- Victim to request -- Costs paid by Utah Office for**  
729 **Victims of Crime.**

730 (1) A victim or minor victim of a sexual offense as provided under Title 76, Chapter 5,  
731 Part 4, may request a test for the HIV infection.

732 (2) (a) The local health department shall obtain the blood specimen from the victim  
733 and forward the specimen to the Department of Health.

734 (b) The Department of Health shall analyze the specimen of the victim.

735 (3) The testing shall consist of a base-line test of the victim at the time immediately or  
736 as soon as possible after the alleged occurrence of the sexual offense. If the base-line test result  
737 is not positive, follow-up testing shall occur at three months and six months after the alleged  
738 occurrence of the sexual offense.

739 (4) The Crime Victim Reparations Fund shall pay for the costs of the victim testing if  
740 the victim provides a substantiated claim of the sexual offense, does not test HIV positive at

741 the base-line testing phase, and complies with eligibility criteria established by the [~~Crime~~  
742 ~~Victim Reparations Act~~] Utah Office for Victims of Crime.

743 Section 21. Section **77-37-5** is amended to read:

744 **77-37-5. Remedies -- District Victims' Rights Committee.**

745 (1) In each judicial district, the Utah Council on Victims of Crime, established in  
746 Section 63M-7-601, shall appoint a person who shall chair a judicial district victims' rights  
747 committee consisting of:

- 748 (a) a county attorney or district attorney;
- 749 (b) a sheriff;
- 750 (c) a corrections field services administrator;
- 751 (d) an appointed victim advocate;
- 752 (e) a municipal attorney;
- 753 (f) a municipal chief of police; and
- 754 (g) other representatives as appropriate.

755 (2) The committee shall meet at least semiannually to review progress and problems  
756 related to this chapter, Title 77, Chapter 38, Rights of Crime Victims Act, Title 77, Chapter  
757 38a, Crime Victims Restitution Act, and Utah Constitution Article I, Section 28. Victims and  
758 other interested parties may submit matters of concern to the victims' rights committee. The  
759 committee may hold a hearing open to the public on any appropriate matter of concern and may  
760 publish its findings. These matters shall also be considered at the meetings of the victims'  
761 rights committee. The committee shall forward minutes of all meetings to the Utah Council on  
762 Victims of Crime for review and other appropriate action.

763 (3) If a victims' rights committee is unable to resolve a complaint, it may refer the  
764 complaint to the Utah Council on Victims of Crime.

765 (4) The Utah Office for Victims of Crime [~~Victim Reparations~~] shall provide materials  
766 to local law enforcement to inform every victim of a sexual offense of the right to request  
767 testing of the convicted sexual offender and of the victim as provided in Section 76-5-502.

768 (5) (a) If a person acting under color of state law willfully or wantonly fails to perform  
769 duties so that the rights in this chapter are not provided, an action for injunctive relief may be  
770 brought against the individual and the government entity that employs the individual.

771 (b) For all other violations, if the committee finds a violation of a victim's right, it shall

772 refer the matter to the appropriate court for further proceedings consistent with Subsection  
773 77-38-11(2).

774 (c) The failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of  
775 Crime Victims Act, does not constitute cause for a judgment against the state or any  
776 government entity, or any individual employed by the state or any government entity, for  
777 monetary damages, attorney fees, or the costs of exercising any rights under this chapter.

778 (6) The person accused of and subject to prosecution for the crime or the act which  
779 would be a crime if committed by a competent adult, has no standing to make a claim  
780 concerning any violation of the provisions of this chapter.

781 Section 22. Section **77-38-3** is amended to read:

782 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**  
783 **notices -- Form of notice -- Protected victim information.**

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

787 (2) The initial notice to the victim of a crime shall provide information about electing  
788 to receive notice of subsequent important criminal justice hearings listed in Subsections  
789 77-38-2(5)(a) through (f) and rights under this chapter.

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

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

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

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

803 (b) The court shall also consider whether any notification system it might use to  
804 provide notice of judicial proceedings to defendants could be used to provide notice of those  
805 same proceedings to victims of crimes.

806 (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give  
807 notice to the responsible prosecuting agency of any motion for modification of any  
808 determination made at any of the important criminal justice hearings provided in Subsections  
809 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the  
810 prosecuting agency may comply with its notification obligation.

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

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

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

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

822 (b) In a case in which the Board of Pardons and Parole is involved, the responsible  
823 prosecuting agency shall forward any request for notice it has received from a victim to the  
824 Board of Pardons and Parole.

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

828 (11) (a) A victim's address, telephone number, and victim impact statement maintained  
829 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice  
830 Services, Department of Corrections, and Board of Pardons and Parole, for purposes of  
831 providing notice under this section, is classified as protected as provided in Subsection  
832 63G-2-305(10).

833 (b) The victim's address, telephone number, and victim impact statement is available

834 only to the following persons or entities in the performance of their duties:

- 835 (i) a law enforcement agency, including the prosecuting agency;
- 836 (ii) a victims' right committee as provided in Section 77-37-5;
- 837 (iii) a governmentally sponsored victim or witness program;
- 838 (iv) the Department of Corrections;
- 839 (v) the Utah Office for Victims of Crime [~~Victim Reparations~~];
- 840 (vi) the Commission on Criminal and Juvenile Justice; and
- 841 (vii) the Board of Pardons and Parole.

842 (12) The notice provisions as provided in this section do not apply to misdemeanors as  
843 provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section  
844 77-38-2.

845 Section 23. Section **77-38a-202** is amended to read:

846 **77-38a-202. Restitution determination -- Prosecution duties and responsibilities.**

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

- 850 (a) the names of all victims, including third parties, asserting claims for restitution;
- 851 (b) the actual or estimated amount of restitution determined at that time; and
- 852 (c) whether or not the defendant has agreed to pay the restitution specified as part of  
853 the plea disposition.

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

- 856 (a) use the criteria set forth in Section 77-38a-302 for establishing restitution amounts;  
857 and
- 858 (b) in cases involving multiple victims, incorporate into any conviction or plea  
859 disposition all claims for restitution arising out of the investigation for which the defendant is  
860 charged.

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

863 (4) (a) The attorney general, county attorney, municipal attorney, or district attorney  
864 may be authorized by the appropriate public treasurer to deposit restitution collected on behalf

865 of crime victims into an interest bearing account in accordance with Title 51, Chapter 7, State  
866 Money Management Act, pending distribution of the funds.

867 (b) In the event restitution funds are deposited in an interest bearing account as  
868 provided under Subsection (4)(a), the attorney general, county attorney, municipal attorney, or  
869 district attorney shall:

870 (i) distribute any interest that accrues in the account to each crime victim on a pro rata  
871 basis; and

872 (ii) if all crime victims have been made whole and funds remain, distribute any  
873 remaining funds to the state Division of Finance for deposit to the Utah Office for Victims of  
874 Crime [~~Victims Reparations~~].

875 (c) This section does not prevent an independent judicial authority from collecting,  
876 holding, and distributing restitution.

877 Section 24. Section **77-38a-404** is amended to read:

878 **77-38a-404. Priority.**

879 (1) Restitution payments made pursuant to a court order shall be disbursed to victims  
880 within 60 days of receipt from the defendant by the court or department:

881 (a) provided the victim has complied with Subsection 77-38a-203(1)(b); and

882 (b) if the defendant has tendered a negotiable instrument, funds from the financial  
883 institution are actually received.

884 (2) If restitution to more than one person, agency, or entity is required at the same time,  
885 the department shall establish the following priorities of payment, except as provided in  
886 Subsection (4):

887 (a) the crime victim;

888 (b) the Utah Office for Victims of Crime [~~Victim Reparations~~];

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

891 (d) the person, entity, or governmental agency that has offered and paid a reward under  
892 Section 76-3-201.1 or 78A-6-117;

893 (e) any insurance company which has provided reimbursement to the victim as a result  
894 of the offender's criminal conduct; and

895 (f) any county correctional facility to which the defendant is required to pay restitution

896 under Subsection 76-3-201(6).

897 (3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and  
898 surcharges are paid.

899 (4) If the offender is required under Section 53-10-404 to reimburse the department for  
900 the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after  
901 restitution to the crime victim under Subsection (2)(a).

902 (5) All money collected for court-ordered obligations from offenders by the department  
903 will be applied:

904 (a) first, to victim restitution, except the current and past due amount of \$30 per month  
905 required to be collected by the department under Section 64-13-21, if applicable; and

906 (b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection  
907 (4).

908 (6) Restitution owed to more than one victim shall be disbursed to each victim  
909 according to the percentage of each victim's share of the total restitution order.

910 Section 25. Section **78B-9-405** is amended to read:

911 **78B-9-405. Judgment and assistance payment.**

912 (1) (a) If a court finds a petitioner factually innocent under Title 78B, Chapter 9, Part 3,  
913 Postconviction [~~DNA~~] Testing of DNA, or under this part, and if the petitioner has served a  
914 period of incarceration, the court shall order that, as provided in Subsection (2), the petitioner  
915 shall receive for each year or portion of a year the petitioner was incarcerated, up to a  
916 maximum of 15 years, the monetary equivalent of the average annual nonagricultural payroll  
917 wage in Utah, as determined by the data most recently published by the Department of  
918 Workforce Services at the time of the petitioner's release from prison.

919 (b) As used in this Subsection (1), "petitioner" means a United States citizen or an  
920 individual who was otherwise lawfully present in this country at the time of the incident that  
921 gave rise to the underlying conviction.

922 (2) Payments pursuant to this section shall be made as follows:

923 (a) The Utah Office for Victims of Crime [~~Victim Reparations~~] shall pay from the  
924 Crime Victim Reparations Fund to the petitioner within 45 days of the court order under  
925 Subsection (1) an initial sum equal to either 20% of the total financial assistance payment as  
926 determined under Subsection (1) or an amount equal to two years of incarceration, whichever is

927 greater, but not to exceed the total amount owed.

928 (b) The Legislature shall appropriate as nonlapsing funds from the General Fund, and  
929 no later than the next general session following the issuance of the court order under  
930 Subsection (1):

931 (i) to the Crime Victim Reparations Fund, the amount that was paid out of the fund  
932 under Subsection (2)(a); and

933 (ii) to the Commission on Criminal and Juvenile Justice, as a separate line item, the  
934 amount ordered by the court for payments under Subsection (1), minus the amount reimbursed  
935 to the Crime Victim Reparations Fund under Subsection (2)(b)(i).

936 (c) Payments to the petitioner under this section, other than the payment under  
937 Subsection (2)(a), shall be made by the Commission on Criminal and Juvenile Justice quarterly  
938 on or before the last day of the month next succeeding each calendar quarterly period.

939 (d) Payments under Subsection (2)(c) shall:

940 (i) commence no later than one year after the effective date of the appropriation for the  
941 payments;

942 (ii) be made to the petitioner for the balance of the amount ordered by the court after  
943 the initial payment under Subsection (2)(a); and

944 (iii) be allocated so that the entire amount due to the petitioner under this section has  
945 been paid no later than 10 years after the effective date of the appropriation made under  
946 Subsection (2)(b).

947 (3) (a) Payments pursuant to this section shall be reduced to the extent that the period  
948 of incarceration for which the petitioner seeks payment was attributable to a separate and  
949 lawful conviction.

950 (b) (i) Payments pursuant to this section shall be tolled upon the commencement of any  
951 period of incarceration due to the petitioner's subsequent conviction of a felony and shall  
952 resume upon the conclusion of that period of incarceration.

953 (ii) As used in this section, "felony" means a criminal offense classified as a felony  
954 under Title 76, Chapter 3, Punishments, or conduct that would constitute a felony if committed  
955 in Utah.

956 (c) The reduction of payments pursuant to Subsection (3)(a) or the tolling of payments  
957 pursuant to Subsection (3)(b) shall be determined by the same court that finds a petitioner to be



958 factually innocent under Title 78B, Chapter 9, Part 3, Postconviction [~~DNA~~] Testing of DNA,  
959 or this part.

960 (4) (a) A person is ineligible for any payments under this part if the person was already  
961 serving a prison sentence in another jurisdiction at the time of the conviction of the crime for  
962 which that person has been found factually innocent pursuant to Title 78B, Chapter 9, Part 3,  
963 Postconviction [~~DNA~~] Testing of DNA, or this part, and that person is to be returned to that  
964 other jurisdiction upon release for further incarceration on the prior conviction.

965 (b) Ineligibility for any payments pursuant to this Subsection (4) shall be determined by  
966 the same court that finds a person to be factually innocent under Title 78B, Chapter 9, Part 3,  
967 Postconviction [~~DNA~~] Testing of DNA, or this part.

968 (5) Payments pursuant to this section:

969 (a) are not subject to any Utah state taxes; and

970 (b) may not be offset by any expenses incurred by the state or any political subdivision  
971 of the state, including expenses incurred to secure the petitioner's custody, or to feed, clothe, or  
972 provide medical services for the petitioner.

973 (6) If a court finds a petitioner to be factually innocent under Title 78B, Chapter 9, Part  
974 3, Postconviction [~~DNA~~] Testing of DNA, or this part, the court shall also:

975 (a) issue an order of expungement of the petitioner's criminal record for all acts in the  
976 charging document upon which the payment under this part is based; and

977 (b) provide a letter to the petitioner explaining that the petitioner's conviction has been  
978 vacated on the grounds of factual innocence and indicating that the petitioner did not commit  
979 the crime or crimes for which the petitioner was convicted and was later found to be factually  
980 innocent under Title 78B, Chapter 9, Part 3, Postconviction [~~DNA~~] Testing of DNA, or this  
981 part.

982 (7) A petitioner found to be factually innocent under Title 78B, Chapter 9, Part 3,  
983 Postconviction [~~DNA~~] Testing of DNA, or this part shall have access to the same services and  
984 programs available to Utah citizens generally as though the conviction for which the petitioner  
985 was found to be factually innocent had never occurred.

986 (8) Payments pursuant to this part constitute a full and conclusive resolution of the  
987 petitioner's claims on the specific issue of factual innocence.

**Legislative Review Note**  
**as of 1-26-11 5:08 PM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

S.B. 58

SHORT TITLE: **Crime Victims Reparations Revisions**

SPONSOR: **Adams, J. S.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.

