

1 **CRIME VICTIMS REPARATIONS REVISIONS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: J. Stuart Adams**

5 House Sponsor: Brad R. Wilson

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **51-9-404**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
26 amended by Laws of Utah 2008, Chapter 382

27 **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

59 *Be it enacted by the Legislature of the state of Utah:*60 Section 1. Section **51-9-404** is amended to read:61 **51-9-404. Distribution of surcharge amounts.**

62 (1) In this section:

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

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

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

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

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

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

78 (i) the Division of Peace Officer Standards and Training (POST) as described in Title
79 53, Chapter 6, Peace Officer Standards and Training Act; and

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

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

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

85 (b) 18.5% to the safety account for POST, but not to exceed the amount appropriated

86 by the Legislature; and

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

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

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

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

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

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

102 **53-1-106. Department duties -- Powers.**

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

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

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

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

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

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

113 (d) meet with the Department of Technology Services to formulate contracts, establish

114 priorities, and develop funding mechanisms for dispatch and telecommunications operations;

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

118 (f) develop sexual assault exam protocol standards in conjunction with the Utah
119 Hospital Association;

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

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

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

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

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

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

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

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

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

137 (A) evaluating the data;

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

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

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

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

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

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

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

148 **53-6-213. Appropriations from reparation fund.**

149 (1) The Legislature shall appropriate from the fund established in Title 63M, Chapter
150 7, Part 5, Utah Office for Victims of Crime [~~Victim Reparations Act~~], to the division, funds for
151 training of law enforcement officers in the state.

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

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

155 **63A-9-801. State surplus property program -- Definitions -- Administration.**

156 (1) As used in this section:

157 (a) "Agency" means:

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

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

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

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

166 (v) the Career Service Review [~~Board~~] Office;

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

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

169 (viii) an institution of higher education, its president, and its board of trustees for

170 purposes of Section 63A-9-802.

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

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

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

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

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

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

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

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

184 (b) Those rules shall include:

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

187 (ii) procedures and requirements governing division administration requirements that
188 an agency must follow;

189 (iii) requirements governing purchase priorities;

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

191 (v) procedures for collecting bad debts;

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

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

195 (viii) procedures governing the timing and location of public sales of inventory
196 property; and

197 (ix) procedures governing the transfer of information technology equipment by state

198 agencies directly to public schools.

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

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

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

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

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

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

210 (c) transfer proceeds arising from the sale of state surplus property to the agency
211 requesting the sale in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, less an
212 amount established by the division by rule to pay the costs of administering the surplus
213 property program.

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

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

Part 5. Utah Office for Victims of Crime

63M-7-501. Title.

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

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

63M-7-502. Definitions.

224 As used in this chapter:

225 (1) "Accomplice" means a person who has engaged in criminal conduct as defined in

226 Section 76-2-202.

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

230 [~~2~~] (3) "Board" means the Crime Victim Reparations and Assistance Board created
231 under Section 63M-7-504.

232 [~~3~~] (4) "Bodily injury" means physical pain, illness, or any impairment of physical
233 condition.

234 [~~4~~] (5) "Claim" means:

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

236 (b) the formal action taken by a victim to apply for reparations pursuant to [~~Sections~~
237 ~~63M-7-501 through 63M-7-525~~] this chapter.

238 [~~5~~] (6) "Claimant" means any of the following claiming reparations under this
239 chapter:

240 (a) a victim;

241 (b) a dependent of a deceased victim;

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

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

244 [~~6~~] (7) "Child" means an unemancipated person who is under 18 years of age.

245 [~~7~~] (8) "Collateral source" means the definition as provided in Section 63M-7-513.

246 [~~8~~] (9) "Contested case" means a case which the claimant contests, claiming the
247 award was either inadequate or denied, or which a county attorney, a district attorney, a law
248 enforcement officer, or other individual related to the criminal investigation proffers reasonable
249 evidence of the claimant's lack of cooperation in the prosecution of a case after an award has
250 already been given.

251 [~~9~~] (10) (a) "Criminally injurious conduct" other than acts of war declared or not
252 declared means conduct that:

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

254 (ii) occurs or is attempted;
255 (iii) causes, or poses a substantial threat of causing, bodily injury or death;
256 (iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct
257 possessed the capacity to commit the conduct; and

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

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

265 ~~[(10)]~~ (11) "Dependent" means a natural person to whom the victim is wholly or
266 partially legally responsible for care or support and includes a child of the victim born after the
267 victim's death.

268 ~~[(11)]~~ (12) "Dependent's economic loss" means loss after the victim's death of
269 contributions of things of economic value to the victim's dependent, not including services the
270 dependent would have received from the victim if the victim had not suffered the fatal injury,
271 less expenses of the dependent avoided by reason of victim's death.

272 ~~[(12)]~~ (13) "Dependent's replacement services loss" means loss reasonably and
273 necessarily incurred by the dependent after the victim's death in obtaining services in lieu of
274 those the decedent would have performed for the victim's benefit if the victim had not suffered
275 the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not
276 subtracted in calculating the dependent's economic loss.

277 ~~[(13)]~~ (14) "Director" means the director of the Utah Office for Victims of Crime
278 [~~Victim Reparations~~].

279 ~~[(14)]~~ (15) "Disposition" means the sentencing or determination of penalty or
280 punishment to be imposed upon a person:

281 (a) convicted of a crime;

282 (b) found delinquent; or

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

285 ~~[(15)]~~ (16) "Economic loss" means economic detriment consisting only of allowable
286 expense, work loss, replacement services loss, and if injury causes death, dependent's economic
287 loss and dependent's replacement service loss. Noneconomic detriment is not loss, but
288 economic detriment is loss although caused by pain and suffering or physical impairment.

289 ~~[(16)]~~ (17) "Elderly victim" means a person 60 years of age or older who is a victim.

290 ~~[(17)]~~ (18) "Fraudulent claim" means a filed claim based on material misrepresentation
291 of fact and intended to deceive the reparations staff for the purpose of obtaining reparation
292 funds for which the claimant is not eligible as provided in Section 63M-7-510.

293 ~~[(18)]~~ (19) "Fund" means the Crime Victim Reparations Fund created in Section
294 51-9-404.

295 ~~[(19)]~~ (20) "Law enforcement officer" means a law enforcement officer as defined in
296 Section 53-13-103.

297 ~~[(20)]~~ (21) "Medical examination" means a physical examination necessary to
298 document criminally injurious conduct but does not include mental health evaluations for the
299 prosecution and investigation of a crime.

300 ~~[(21)]~~ (22) "Mental health counseling" means outpatient and inpatient counseling
301 necessitated as a result of criminally injurious conduct. The definition of mental health
302 counseling is subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah
303 Administrative Rulemaking Act.

304 ~~[(22)]~~ (23) "Misconduct" as provided in Subsection 63M-7-512(1)(b) means conduct
305 by the victim which was attributable to the injury or death of the victim as provided by rules
306 promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking
307 Act.

308 ~~[(23)]~~ (24) "Noneconomic detriment" means pain, suffering, inconvenience, physical
309 impairment, and other nonpecuniary damage, except as provided in this chapter.

310 ~~[(24)]~~ (25) "Pecuniary loss" does not include loss attributable to pain and suffering
311 except as otherwise provided in this chapter.

312 ~~[(25)]~~ (26) "Offender" means a person who has violated the criminal code through
313 criminally injurious conduct regardless of whether the person is arrested, prosecuted, or
314 convicted.

315 ~~[(26)]~~ (27) "Offense" means a violation of the criminal code.

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

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

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

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

325 ~~[(31)]~~ (30) "Replacement service loss" means expenses reasonably and necessarily
326 incurred in obtaining ordinary and necessary services in lieu of those the injured person would
327 have performed, not for income but the benefit of the injured person or the injured person's
328 dependents if the injured person had not been injured.

329 ~~[(32)]~~ (31) "Representative" means the victim, immediate family member, legal
330 guardian, attorney, conservator, executor, or an heir of a person but does not include service
331 providers.

332 ~~[(33)]~~ (32) "Restitution" means money or services an appropriate authority orders an
333 offender to pay or render to a victim of the offender's conduct.

334 ~~[(34)]~~ (33) "Secondary victim" means a person who is traumatically affected by the
335 criminally injurious conduct subject to rules promulgated by the board pursuant to Title 63G,
336 Chapter 3, Utah Administrative Rulemaking Act.

337 ~~[(35)]~~ (34) "Service provider" means a person or agency who provides a service to

338 crime victims for a monetary fee except attorneys as provided in Section 63M-7-524.

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

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

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

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

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

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

355 **63M-7-503. Restitution -- Reparations not to supplant restitution -- Assignment**
356 **of claim for restitution judgment to Reparations Office.**

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

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

360 (3) If, due to reparation payments to a victim, the Utah Office for Victims of Crime
361 [~~Victim Reparations~~] is assigned under Section 63M-7-519 a claim for the victim's judgment
362 for restitution or a portion of the restitution, the office may file with the sentencing court a
363 notice of the assignment. The notice of assignment shall be signed by the victim and a
364 reparations officer and shall [~~state the amount of the claim assigned.~~] contain an affidavit
365 detailing the specific amounts of pecuniary damages paid on behalf of the victim. A copy of

366 the notice of assignment and affidavit shall be mailed by certified mail to the defendant at his
367 last known address 20 days prior to sentencing, entry of any judgment or order of restitution, or
368 modification of any existing judgment or order of restitution. Any objection by the defendant
369 to the imposition or amount of restitution shall be made at the time of sentencing or in writing
370 within 20 days of the receipt of notice, to be filed with the court and a copy mailed to the
371 office. Upon the filing of the objection, the court shall allow the defendant a full hearing on
372 the issue as provided by Subsection 77-38a-302(4).

373 (4) ~~Upon~~ If no objection is made or filed by the defendant, then upon conviction and
374 sentencing ~~[of the defendant]~~, the court shall enter a ~~[civil]~~ judgment for complete restitution
375 ~~[as provided in Section 77-38a-401]~~ pursuant to the provisions of Subsections 76-3-201(4)(c)
376 and (d) and identify the office as the assignee of the assigned portion of the judgment and order
377 of restitution.

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

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

386 **63M-7-504. Crime Victim Reparations and Assistance Board -- Members.**

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

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

- 390 (i) a member of the bar of this state;
391 (ii) a victim of criminally injurious conduct;
392 (iii) a licensed physician;
393 (iv) a representative of law enforcement;

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

395 (vi) a victim advocate; and

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

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

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

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

405 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
406 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
407 board members are staggered so that approximately half of the board is appointed every two
408 years.

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

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

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

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

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

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

419 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
420 63A-3-107.

421 (5) The board shall meet at least once quarterly but may meet more frequently as

422 necessary.

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

424 **63M-7-505. Board and office within Commission on Criminal and Juvenile**
425 **Justice.**

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

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

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

433 **63M-7-506. Functions of board.**

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

435 (a) adopt a description of the organization and prescribe the general operation of the
436 board;

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

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

442 (d) prescribe forms for applications for reparations;

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

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

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

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

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

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

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

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

462 **63M-7-507. Director -- Appointment and functions.**

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

470 (1) hire staff, including reparations and assistance officers, as necessary;

471 (2) act when necessary as a reparations officer in deciding initial claims;

472 (3) possess the same investigation and decision-making authority as the reparations
473 officers;

474 (4) hear appeals from the decisions of the reparations officers, unless the director acted
475 as a reparations officer on the initial claim;

476 (5) serve as a liaison between the Utah Office for Victims of Crime [~~Victim~~
477 ~~Reparations~~] and the board;

- 478 (6) serve as the public relations representative of the office;
- 479 (7) provide for payment of all administrative salaries, fees, and expenses incurred by
480 the staff of the board, to be paid out of appropriations from the fund;
- 481 (8) cooperate with the state treasurer and the state Division of Finance in causing the
482 funds in the trust fund to be invested and its investments sold or exchanged and the proceeds
483 and income collected;
- 484 (9) apply for, receive, allocate, disburse, and account for ~~[grants of]~~, subject to
485 approval and in conformance with policies adopted by the board, all grant funds made available
486 by the United States, the state, foundations, corporations, and other businesses, agencies, or
487 individuals;
- 488 (10) obtain and utilize the services of other governmental agencies upon request; and
- 489 (11) act in any other capacity or perform any other acts necessary for the office or
490 board to successfully fulfill its statutory duties and objectives.

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

492 **63M-7-508. Reparations officers.**

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

- 495 (1) hear and determine all matters relating to claims for reparations and reinvestigate or
496 reopen claims without regard to statutes of limitation or periods of prescription;
- 497 (2) obtain from prosecuting attorneys, law enforcement officers, and other criminal
498 justice agencies, investigations and data to enable the reparations officer to determine whether
499 and to what extent a claimant qualifies for reparations;
- 500 (3) as determined necessary by the reparations officers, hold hearings, administer oaths
501 or affirmations, examine any person under oath or affirmation, issue subpoenas requiring the
502 attendance and giving of testimony of witnesses, require the production of any books, papers,
503 documents, or other evidence which may contribute to the reparations officer's ability to
504 determine particular reparation awards;
- 505 (4) determine who is a victim or dependent;

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

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

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

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

513 (a) the officers' activities; and

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

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

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

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

525 Section 13. Section **63M-7-514** is amended to read:

526 **63M-7-514. Notification of claimant -- Suspension of proceedings.**

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

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

536 Section 14. Section **63M-7-515** is amended to read:

537 **63M-7-515. Rules for contested claims -- Exemption from Administrative**
538 **Procedures Act.**

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

541 (2) The Utah Office for Victims of Crime [~~Victim Reparations~~] is exempt from Title
542 63G, Chapter 4, Administrative Procedures Act.

543 Section 15. Section **63M-7-516** is amended to read:

544 **63M-7-516. Waiver of privilege.**

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

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

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

556 Section 16. Section **63M-7-525** is amended to read:

557 **63M-7-525. Purpose -- Not entitlement program.**

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

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

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

572 Section 17. Section **63M-7-601** is amended to read:

573 **63M-7-601. Creation -- Members -- Chair.**

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

575 (2) The Utah Council on Victims of Crime shall be composed of 24 voting members as
576 follows:

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

579 (b) a representative of the Department of Corrections appointed by the executive
580 director;

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

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

583 (e) a representative of the Division of Juvenile Justice Services appointed by the
584 director;

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

587 (g) a representative of the Office of the Attorney General appointed by the attorney
588 general;

589 (h) a representative of the United States Attorney for the district of Utah appointed by

590 the United States Attorney;

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

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

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

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

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

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

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

603 (v) a citizen representative appointed by the governor; and

604 (l) the following members appointed by the members in Subsections (2)(a) through
605 (2)(k) to serve four-year terms:

606 (i) an individual who works professionally with victims of crime; and

607 (ii) a victim of crime.

608 (3) The council shall annually elect one member to serve as chair.

609 Section 18. Section **76-3-201** is amended to read:

610 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**
611 **penalties.**

612 (1) As used in this section:

613 (a) "Conviction" includes a:

614 (i) judgment of guilt; and

615 (ii) plea of guilty.

616 (b) "Criminal activities" means any offense of which the defendant is convicted or any
617 other criminal conduct for which the defendant admits responsibility to the sentencing court

618 with or without an admission of committing the criminal conduct.

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

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

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

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

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

632 (a) to pay a fine;

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

634 (c) to probation unless otherwise specifically provided by law;

635 (d) to imprisonment;

636 (e) on or after April 27, 1992, to life in prison without parole; or

637 (f) to death.

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

639 (i) forfeit property;

640 (ii) dissolve a corporation;

641 (iii) suspend or cancel a license;

642 (iv) permit removal of a person from office;

643 (v) cite for contempt; or

644 (vi) impose any other civil penalty.

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

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

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

652 (c) In addition to any other sentence the court may impose, the court, pursuant to the
653 provisions of Sections 63M-7-503 and 77-38a-401, shall enter:

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

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

658 (d) In determining whether to order that the restitution required under Subsection (4)(c)
659 be reduced or that the defendant be exempted from the restitution, the court shall consider the
660 criteria under Subsections 77-38a-302(5)(c)(i) through (iv) and provide findings of its decision
661 on the record.

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

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

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

668 (iii) convicted of a crime.

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

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

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

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

- 676 (A) \$100 for up to 100 miles a defendant is transported;
- 677 (B) \$200 for 100 up to 200 miles a defendant is transported; and
- 678 (C) \$350 for 200 miles or more a defendant is transported.

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

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

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

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

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

694 (B) the reimbursement does not duplicate the reimbursement provided under Section
695 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or
696 a state parole inmate, as defined in Section 64-13e-102.

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

700 (ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred
701 by the county correctional facility in providing reasonable accommodation for an inmate

702 qualifying as an individual with a disability as defined and covered by the federal Americans
703 with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental
704 health treatment for the inmate's disability.

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

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

713 Section 19. Section **76-5-503** is amended to read:

714 **76-5-503. Voluntary testing -- Victim to request -- Costs paid by Utah Office for**
715 **Victims of Crime.**

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

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

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

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

725 (4) The Crime Victim Reparations Fund shall pay for the costs of the victim testing if
726 the victim provides a substantiated claim of the sexual offense, does not test HIV positive at
727 the base-line testing phase, and complies with eligibility criteria established by the [~~Crime~~
728 ~~Victim Reparations Act~~] Utah Office for Victims of Crime.

729 Section 20. Section **77-37-5** is amended to read:

730 **77-37-5. Remedies -- District Victims' Rights Committee.**

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

- 734 (a) a county attorney or district attorney;
- 735 (b) a sheriff;
- 736 (c) a corrections field services administrator;
- 737 (d) an appointed victim advocate;
- 738 (e) a municipal attorney;
- 739 (f) a municipal chief of police; and
- 740 (g) other representatives as appropriate.

741 (2) The committee shall meet at least semiannually to review progress and problems
742 related to this chapter, Title 77, Chapter 38, Rights of Crime Victims Act, Title 77, Chapter
743 38a, Crime Victims Restitution Act, and Utah Constitution Article I, Section 28. Victims and
744 other interested parties may submit matters of concern to the victims' rights committee. The
745 committee may hold a hearing open to the public on any appropriate matter of concern and may
746 publish its findings. These matters shall also be considered at the meetings of the victims'
747 rights committee. The committee shall forward minutes of all meetings to the Utah Council on
748 Victims of Crime for review and other appropriate action.

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

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

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

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

758 refer the matter to the appropriate court for further proceedings consistent with Subsection
759 77-38-11(2).

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

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

767 Section 21. Section **77-38-3** is amended to read:

768 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**
769 **notices -- Form of notice -- Protected victim information.**

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

773 (2) The initial notice to the victim of a crime shall provide information about electing
774 to receive notice of subsequent important criminal justice hearings listed in Subsections
775 77-38-2(5)(a) through (f) and rights under this chapter.

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

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

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

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

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

792 (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give
793 notice to the responsible prosecuting agency of any motion for modification of any
794 determination made at any of the important criminal justice hearings provided in Subsections
795 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the
796 prosecuting agency may comply with its notification obligation.

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

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

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

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

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

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

814 (11) (a) A victim's address, telephone number, and victim impact statement maintained
815 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice
816 Services, Department of Corrections, and Board of Pardons and Parole, for purposes of
817 providing notice under this section, is classified as protected as provided in Subsection
818 63G-2-305(10).

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

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

828 (12) The notice provisions as provided in this section do not apply to misdemeanors as
829 provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section
830 77-38-2.

831 Section 22. Section **77-38a-202** is amended to read:

832 **77-38a-202. Restitution determination -- Prosecution duties and responsibilities.**

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

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

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

842 (a) use the criteria set forth in Section 77-38a-302 for establishing restitution amounts;
843 and

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

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

849 (4) (a) The attorney general, county attorney, municipal attorney, or district attorney
850 may be authorized by the appropriate public treasurer to deposit restitution collected on behalf
851 of crime victims into an interest bearing account in accordance with Title 51, Chapter 7, State
852 Money Management Act, pending distribution of the funds.

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

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

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

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

863 Section 23. Section **77-38a-404** is amended to read:

864 **77-38a-404. Priority.**

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

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

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

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

- 873 (a) the crime victim;
- 874 (b) the Utah Office for Victims of Crime [~~Victim Reparations~~];
- 875 (c) any other government agency which has provided reimbursement to the victim as a
876 result of the offender's criminal conduct;
- 877 (d) the person, entity, or governmental agency that has offered and paid a reward under
878 Section 76-3-201.1 or 78A-6-117;
- 879 (e) any insurance company which has provided reimbursement to the victim as a result
880 of the offender's criminal conduct; and
- 881 (f) any county correctional facility to which the defendant is required to pay restitution
882 under Subsection 76-3-201(6).

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

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

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

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

892 (b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection
893 (4).

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

896 Section 24. Section **78B-9-405** is amended to read:

897 **78B-9-405. Judgment and assistance payment.**

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

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

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

909 (a) The Utah Office for Victims of Crime [~~Victim Reparations~~] shall pay from the
910 Crime Victim Reparations Fund to the petitioner within 45 days of the court order under
911 Subsection (1) an initial sum equal to either 20% of the total financial assistance payment as
912 determined under Subsection (1) or an amount equal to two years of incarceration, whichever is
913 greater, but not to exceed the total amount owed.

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

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

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

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

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

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

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

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

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

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

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

942 (c) The reduction of payments pursuant to Subsection (3)(a) or the tolling of payments
943 pursuant to Subsection (3)(b) shall be determined by the same court that finds a petitioner to be
944 factually innocent under Title 78B, Chapter 9, Part 3, Postconviction [~~DNA~~] Testing of DNA,
945 or this part.

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

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

- 954 (5) Payments pursuant to this section:
- 955 (a) are not subject to any Utah state taxes; and
- 956 (b) may not be offset by any expenses incurred by the state or any political subdivision
957 of the state, including expenses incurred to secure the petitioner's custody, or to feed, clothe, or
958 provide medical services for the petitioner.
- 959 (6) If a court finds a petitioner to be factually innocent under Title 78B, Chapter 9, Part
960 3, Postconviction [~~DNA~~] Testing of DNA, or this part, the court shall also:
- 961 (a) issue an order of expungement of the petitioner's criminal record for all acts in the
962 charging document upon which the payment under this part is based; and
- 963 (b) provide a letter to the petitioner explaining that the petitioner's conviction has been
964 vacated on the grounds of factual innocence and indicating that the petitioner did not commit
965 the crime or crimes for which the petitioner was convicted and was later found to be factually
966 innocent under Title 78B, Chapter 9, Part 3, Postconviction [~~DNA~~] Testing of DNA, or this
967 part.
- 968 (7) A petitioner found to be factually innocent under Title 78B, Chapter 9, Part 3,
969 Postconviction [~~DNA~~] Testing of DNA, or this part shall have access to the same services and
970 programs available to Utah citizens generally as though the conviction for which the petitioner
971 was found to be factually innocent had never occurred.
- 972 (8) Payments pursuant to this part constitute a full and conclusive resolution of the
973 petitioner's claims on the specific issue of factual innocence.