

**CRIME VICTIM RESTITUTION AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad R. Wilson**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill makes changes in the composition of restitution orders and the priority for distribution of restitution payments.

**Highlighted Provisions:**

This bill:

- ▶ broadens the conduct a sentencing court can use to determine restitution amounts;
- ▶ includes reasonable expenses for participation in the adjudicative process as pecuniary damages;
- ▶ requires that the victim be paid first when a restitution payment is made; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-27-5**, as last amended by Laws of Utah 2010, Chapter 110

**77-27-6**, as last amended by Laws of Utah 2005, Chapter 96

**77-38-3**, as last amended by Laws of Utah 2013, Chapters 196 and 445

**77-38a-102**, as last amended by Laws of Utah 2015, Chapter 147



28 [77-38a-302](#), as last amended by Laws of Utah 2013, Chapter 74

29 [77-38a-404](#), as last amended by Laws of Utah 2011, Chapters 131 and 208

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

32 Section 1. Section **77-27-5** is amended to read:

33 **77-27-5. Board of Pardons and Parole authority.**

34 (1) (a) The Board of Pardons and Parole shall determine by majority decision when and  
35 under what conditions, subject to this chapter and other laws of the state, persons committed to  
36 serve sentences in class A misdemeanor cases at penal or correctional facilities which are under  
37 the jurisdiction of the Department of Corrections, and all felony cases except treason or  
38 impeachment or as otherwise limited by law, may be released upon parole, pardoned, ordered  
39 to pay restitution, or have their fines, forfeitures, or restitution remitted, or their sentences  
40 commuted or terminated.

41 (b) The board may sit together or in panels to conduct hearings. The chair shall  
42 appoint members to the panels in any combination and in accordance with rules promulgated  
43 by the board, except in hearings involving commutation and pardons. The chair may  
44 participate on any panel and when doing so is chair of the panel. The chair of the board may  
45 designate the chair for any other panel.

46 (c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole,  
47 pardon, or commutation granted or sentence terminated, except after a full hearing before the  
48 board or the board's appointed examiner in open session. Any action taken under this  
49 subsection other than by a majority of the board shall be affirmed by a majority of the board.

50 (d) A commutation or pardon may be granted only after a full hearing before the board.

51 (e) The board may determine restitution as provided in Section [77-27-6](#) and Subsection  
52 [77-38a-302\(5\)\(d\)\(~~\(ii\)~~\(iii\)\(A\)](#).

53 (2) (a) In the case of original parole grant hearings, rehearings, and parole revocation  
54 hearings, timely prior notice of the time and location of the hearing shall be given to the  
55 defendant, the county or district attorney's office responsible for prosecution of the case, the  
56 sentencing court, law enforcement officials responsible for the defendant's arrest and  
57 conviction, and whenever possible, the victim or the victim's family.

58 (b) Notice to the victim, his representative, or his family shall include information

59 provided in Section 77-27-9.5, and any related rules made by the board under that section.  
60 This information shall be provided in terms that are reasonable for the lay person to  
61 understand.

62 (3) Decisions of the board in cases involving paroles, pardons, commutations or  
63 terminations of sentence, restitution, or remission of fines or forfeitures are final and are not  
64 subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a  
65 civil judgment, including restitution as provided in Section 77-27-6.

66 (4) This chapter may not be construed as a denial of or limitation of the governor's  
67 power to grant respite or reprieves in all cases of convictions for offenses against the state,  
68 except treason or conviction on impeachment. However, respites or reprieves may not extend  
69 beyond the next session of the Board of Pardons and Parole and the board, at that session, shall  
70 continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the  
71 offense as provided. In the case of conviction for treason, the governor may suspend execution  
72 of the sentence until the case is reported to the Legislature at its next session. The Legislature  
73 shall then either pardon or commute the sentence, or direct its execution.

74 (5) In determining when, where, and under what conditions offenders serving sentences  
75 may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted,  
76 or their sentences commuted or terminated, the board shall consider whether the persons have  
77 made or are prepared to make restitution as ascertained in accordance with the standards and  
78 procedures of Section 77-38a-302, as a condition of any parole, pardon, remission of fines or  
79 forfeitures, or commutation or termination of sentence.

80 (6) In determining whether parole may be terminated, the board shall consider the  
81 offense committed by the parolee, the parole period as provided in Section 76-3-202, and in  
82 accordance with Section 77-27-13.

83 Section 2. Section 77-27-6 is amended to read:

84 **77-27-6. Payment of restitution.**

85 (1) When the Board of Pardons and Parole orders the release on parole of an inmate  
86 who has been sentenced to make restitution pursuant to Title 77, Chapter 38a, Crime Victims  
87 Restitution Act, or whom the board has ordered to make restitution, and all or a portion of  
88 restitution is still owing, the board may establish a schedule, including both complete and  
89 court-ordered restitution, by which payment of the restitution shall be made, or order

90 compensatory or other service in lieu of or in combination with restitution. In fixing the  
91 schedule and supervising the paroled offender's performance, the board may consider the  
92 factors specified in Section 77-38a-302.

93 (2) (a) The board may impose any court order for restitution.

94 (b) In accordance with Subsection 77-38a-302(5)(d)[(ii)](iii)(A), the board may order  
95 that a defendant make restitution for pecuniary damages that were not determined by the court,  
96 unless the board applying the criteria as set forth in Section 77-38a-302 determines that  
97 restitution is inappropriate.

98 (c) Except as provided in Subsection (2)(d), the board shall make all orders of  
99 restitution within 60 days after the termination or expiration of the defendant's sentence.

100 (d) If, upon termination or expiration of a defendant's sentence, the board has  
101 continuing jurisdiction over the defendant for a separate criminal offense, the board may defer  
102 making an order of restitution until termination or expiration of all sentences for that  
103 defendant.

104 (3) The board may also make orders of restitution for recovery of any or all costs  
105 incurred by the Department of Corrections or the state or any other agency arising out of the  
106 defendant's needs or conduct.

107 (4) If the defendant, upon termination or expiration of the sentence owes outstanding  
108 fines, restitution, or other assessed costs, or if the board makes an order of restitution within 60  
109 days after the termination or expiration of the defendant's sentence, the matter shall be referred  
110 to the district court for civil collection remedies. The Board of Pardons and Parole shall  
111 forward a restitution order to the sentencing court to be entered on the judgment docket. The  
112 entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil  
113 judgment.

114 Section 3. Section 77-38-3 is amended to read:

115 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**  
116 **notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact**  
117 **order.**

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

121 (2) The initial notice to the victim of a crime shall provide information about electing  
122 to receive notice of subsequent important criminal justice hearings listed in Subsections  
123 [77-38-2\(5\)\(a\)](#) through (f) and rights under this chapter.

124 (3) The prosecuting agency shall provide notice to a victim of a crime;

125 (a) for the important criminal justice hearings, provided in Subsections [77-38-2\(5\)\(a\)](#)  
126 through (f), which the victim has requested[-]; and

127 (b) for restitution requests to be submitted as provided in Subsection [77-38a-302\(5\)\(d\)](#).

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

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

135 (5) (a) The court shall take reasonable measures to ensure that its scheduling practices  
136 for the proceedings provided in Subsections [77-38-2\(5\)\(a\)](#) through (f) permit an opportunity for  
137 victims of crimes to be notified.

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

141 (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give  
142 notice to the responsible prosecuting agency of any motion for modification of any  
143 determination made at any of the important criminal justice hearings provided in Subsections  
144 [77-38-2\(5\)\(a\)](#) through (f) in advance of any requested court hearing or action so that the  
145 prosecuting agency may comply with its notification obligation.

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

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

150 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give  
151 notice to a victim of a crime for the proceedings provided in Subsections [77-38-2\(5\)\(a\)](#) through

152 (f) only where the victim has responded to the initial notice, requested notice of subsequent  
153 proceedings, and provided a current address and telephone number if applicable.

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

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

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

163 (11) (a) A victim's address, telephone number, and victim impact statement maintained  
164 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice  
165 Services, Department of Corrections, and Board of Pardons and Parole, for purposes of  
166 providing notice under this section, is classified as protected as provided in Subsection  
167 63G-2-305(10).

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

170 (i) a law enforcement agency, including the prosecuting agency;

171 (ii) a victims' right committee as provided in Section 77-37-5;

172 (iii) a governmentally sponsored victim or witness program;

173 (iv) the Department of Corrections;

174 (v) the Utah Office for Victims of Crime;

175 (vi) the Commission on Criminal and Juvenile Justice; and

176 (vii) the Board of Pardons and Parole.

177 (12) The notice provisions as provided in this section do not apply to misdemeanors as  
178 provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section  
179 77-38-2.

180 (13) (a) When a defendant is charged with a felony crime under Sections 76-5-301  
181 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections  
182 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding

183 aggravated exploitation of prostitution, the court may, during any court hearing where the  
184 defendant is present, issue a pretrial criminal no contact order:

185 (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise  
186 communicating with the victim directly or through a third party;

187 (ii) ordering the defendant to stay away from the residence, school, place of  
188 employment of the victim, and the premises of any of these, or any specified place frequented  
189 by the victim or any designated family member of the victim directly or through a third party;  
190 and

191 (iii) ordering any other relief that the court considers necessary to protect and provide  
192 for the safety of the victim and any designated family or household member of the victim.

193 (b) Violation of a pretrial criminal no contact order issued pursuant to this section is a  
194 third degree felony.

195 (c) (i) The court shall provide to the victim a certified copy of any pretrial criminal no  
196 contact order that has been issued if the victim can be located with reasonable effort.

197 (ii) The court shall also transmit the pretrial criminal no contact order to the statewide  
198 domestic violence network in accordance with Section 78B-7-113.

199 Section 4. Section 77-38a-102 is amended to read:

200 **77-38a-102. Definitions.**

201 As used in this chapter:

202 (1) "Conviction" includes a:

203 (a) judgment of guilt;

204 (b) a plea of guilty; or

205 (c) a plea of no contest.

206 (2) "Criminal activities" means:

207 (a) any offense of which the defendant is convicted [~~or~~];

208 (b) any other criminal conduct for which the defendant admits responsibility to the  
209 sentencing court with or without an admission of committing the criminal conduct[~~-~~]; or

210 (c) conduct the sentencing court reasonably determines resulted in pecuniary damages  
211 to a victim.

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

213 (4) "Diversion" means suspending criminal proceedings prior to conviction on the

214 condition that a defendant agree to participate in a rehabilitation program, make restitution to  
215 the victim, or fulfill some other condition.

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

217 (6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet  
218 incurred, including those which a person could recover in a civil action arising out of the facts  
219 or events constituting the defendant's criminal activities and includes the fair market value of  
220 property taken, destroyed, broken, or otherwise harmed, and losses including lost earnings,  
221 including those and other expenses reasonably incurred as a result of participation in  
222 adjudicative processes, and medical and other expenses, but excludes punitive or exemplary  
223 damages and pain and suffering.

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

227 (8) "Plea disposition" means an agreement entered into between the prosecution and  
228 defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement  
229 by which the defendant may enter a plea in any other jurisdiction or where charges are  
230 dismissed without a plea.

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

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

238 (11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a  
239 victim, including prejudgment interest, the accrual of interest from the time of sentencing,  
240 insured damages, reimbursement for payment of a reward, and payment for expenses to a  
241 governmental entity for extradition or transportation and as may be further defined by law.

242 (12) (a) "Reward" means a sum of money:

243 (i) offered to the public for information leading to the arrest and conviction of an  
244 offender; and



245 (ii) that has been paid to a person or persons who provide this information, except that  
246 the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

247 (b) "Reward" does not include any amount paid in excess of the sum offered to the  
248 public.

249 (13) "Screening" means the process used by a prosecuting attorney to terminate  
250 investigative action, proceed with prosecution, move to dismiss a prosecution that has been  
251 commenced, or cause a prosecution to be diverted.

252 (14) (a) "Victim" means any person or entity, including the Utah Office for Victims of  
253 Crime, who the court determines has suffered pecuniary damages as a result of the defendant's  
254 criminal activities.

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

256 Section 5. Section **77-38a-302** is amended to read:

257 **77-38a-302. Restitution criteria.**

258 (1) When a defendant is convicted of criminal activity that has resulted in pecuniary  
259 damages, in addition to any other sentence it may impose, the court shall order that the  
260 defendant make restitution to victims of crime as provided in this chapter, or for conduct for  
261 which the defendant has agreed to make restitution as part of a plea disposition. For purposes  
262 of restitution, a victim has the meaning as defined in Subsection [77-38a-102\(14\)](#) and in  
263 determining whether restitution is appropriate, the court shall follow the criteria and procedures  
264 as provided in Subsections (2) through (5).

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

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

269 (b) "Court-ordered restitution" means the restitution the court having criminal  
270 jurisdiction orders the defendant to pay as a part of the criminal sentence [~~at the time of~~  
271 ~~sentencing or within one year after sentencing~~].

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

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

276 (4) If the defendant objects to the imposition, amount, or distribution of the restitution,  
277 the court shall allow the defendant a full hearing on the issue.

278 (5) (a) For the purpose of determining restitution for an offense, the offense shall  
279 include any criminal conduct admitted by the defendant to the sentencing court, or any criminal  
280 conduct that the sentencing court reasonably determines resulted in pecuniary damages to a  
281 victim, or to which the defendant agrees to pay restitution. A victim of an offense that involves  
282 as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person  
283 directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or  
284 pattern.

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

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

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

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

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

295 (v) [~~up to five days of~~] the individual victim's reasonable determinable wages that are  
296 lost due to theft of or damage to tools or equipment items of a trade that were owned by the  
297 victim and were essential to the victim's current employment at the time of the offense; and

298 (vi) the cost of necessary funeral and related services if the offense resulted in the death  
299 of a victim.

300 (c) In determining the monetary sum and other conditions for court-ordered restitution,  
301 the court shall consider:

302 (i) the factors listed in Subsections (5)(a) and (b);

303 (ii) the financial resources of the defendant, as disclosed in the financial declaration  
304 described in Section [77-38a-204](#);

305 (iii) the burden that payment of restitution will impose, with regard to the other  
306 obligations of the defendant;

307 (iv) the ability of the defendant to pay restitution on an installment basis or on other  
308 conditions to be fixed by the court;

309 (v) the rehabilitative effect on the defendant of the payment of restitution and the  
310 method of payment; and

311 (vi) other circumstances that the court determines may make restitution inappropriate.

312 ~~[(d) (i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete  
313 restitution and court-ordered restitution, and shall make all restitution orders at the time of  
314 sentencing if feasible, otherwise within one year after sentencing.]~~

315 (d) (i) The prosecuting agency shall submit all requests for complete restitution and  
316 court ordered restitution to the court at the time of sentencing if feasible, otherwise within one  
317 year after sentencing.

318 (ii) If a defendant is placed on probation pursuant to Section [77-18-1](#):

319 (A) the court shall determine complete restitution and court ordered restitution; and

320 (B) the time period for determination of complete restitution and court ordered  
321 restitution may be extended by the court upon a finding of good cause, but may not exceed the  
322 period of the probation term served by the defendant.

323 (iii) If the defendant is committed to prison:

324 ~~[(ii) Any]~~ (A) any pecuniary damages that have not been determined by the court  
325 within one year after sentencing may be determined by the Board of Pardons and Parole[-]; and

326 ~~[(e) The]~~ (B) the Board of Pardons and Parole may, within one year after sentencing,  
327 refer an order of judgment and commitment back to the court for determination of restitution.

328 Section 6. Section **77-38a-404** is amended to read:

329 **77-38a-404. Priority.**

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

332 (a) the victim has complied with Subsection [77-38a-203\(1\)\(b\)](#);

333 (b) if the defendant has tendered a negotiable instrument, funds from the financial  
334 institution are actually received; and

335 (c) the payment to the victim is at least \$5, unless the payment is the final payment.

336 (2) If restitution to more than one person, agency, or entity is required at the same time,  
337 the department shall establish the following priorities of payment, except as provided in

338 Subsection (4):  
339       (a) the crime victim;  
340       (b) the Utah Office for Victims of Crime;  
341       (c) any other government agency which has provided reimbursement to the victim as a  
342 result of the offender's criminal conduct;  
343       (d) the person, entity, or governmental agency that has offered and paid a reward under  
344 Section [76-3-201.1](#) or [78A-6-117](#);  
345       (e) any insurance company which has provided reimbursement to the victim as a result  
346 of the offender's criminal conduct; and  
347       (f) any county correctional facility to which the defendant is required to pay restitution  
348 under Subsection [76-3-201\(6\)](#).  
349       (3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and  
350 surcharges are paid.  
351       (4) If the offender is required under Section [53-10-404](#) to reimburse the department for  
352 the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after  
353 restitution to the crime victim under Subsection (2)(a).  
354       (5) All money collected for court-ordered obligations from offenders by the department  
355 will be applied:  
356       (a) first, to victim restitution~~[, except the]~~;  
357       **(b) second, to any** current and past due amount of \$30 per month required to be  
358 collected by the department under Section [64-13-21](#), if applicable; and  
359       ~~[(b) second]~~ **(c) third**, if applicable, to the cost of obtaining a DNA specimen under  
360 Subsection (4).  
361       (6) Restitution owed to more than one victim shall be disbursed to each victim  
362 according to the percentage of each victim's share of the total restitution order.