

CRIME VICTIMS RESTITUTION AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: Craig Hall

LONG TITLE

General Description:

This bill modifies restitution criteria to include expenses for security measures put in place by a victim in response to a criminal offense.

Highlighted Provisions:

This bill:

- ▶ provides that restitution may include expenses for security measures put in place by a victim in response to a criminal offense.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-38a-302, as last amended by Laws of Utah 2017, Chapter 304

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

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

77-38a-302. Restitution criteria.

(1) When a defendant enters into a plea disposition or is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence or term of a plea in abeyance it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make

30 restitution as part of a plea disposition. For purposes of restitution, "victim" means the same as
31 that term is defined in Subsection 77-38a-102(14). In determining whether restitution is
32 appropriate, the court shall follow the criteria and procedures as provided in Subsections (2)
33 through (5).

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

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

38 (b) "Court-ordered restitution" means the restitution the court having criminal
39 jurisdiction orders the defendant to pay as a part of the criminal sentence.

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

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

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

46 (5) (a) For the purpose of determining restitution for an offense, the offense shall
47 include any criminal conduct admitted by the defendant to the sentencing court or ~~[to]~~ for
48 which the defendant agrees to pay restitution. A victim of an offense that involves as an
49 element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly
50 harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

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

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

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

- 58 (iii) the cost of necessary physical and occupational therapy and rehabilitation;
- 59 (iv) the income lost by the victim as a result of the offense;
- 60 (v) the individual victim's reasonable determinable wages that are lost due to theft of or
- 61 damage to tools or equipment items of a trade that were owned by the victim and were essential
- 62 to the victim's current employment at the time of the offense; [~~and~~]
- 63 (vi) the cost of necessary funeral and related services if the offense resulted in the death
- 64 of a victim[-]; and
- 65 (vii) expenses incurred by a victim in implementing reasonable security measures in
- 66 response to the offense.
- 67 (c) In determining the monetary sum and other conditions for court-ordered restitution,
- 68 the court shall consider:
 - 69 (i) the factors listed in Subsections (5)(a) and (b);
 - 70 (ii) the financial resources of the defendant, as disclosed in the financial declaration
 - 71 described in Section 77-38a-204;
 - 72 (iii) the burden that payment of restitution will impose, with regard to the other
 - 73 obligations of the defendant;
 - 74 (iv) the ability of the defendant to pay restitution on an installment basis or on other
 - 75 conditions to be fixed by the court;
 - 76 (v) the rehabilitative effect on the defendant of the payment of restitution and the
 - 77 method of payment; and
 - 78 (vi) other circumstances that the court determines may make restitution inappropriate.
- 79 (d) (i) The prosecuting agency shall submit all requests for complete restitution and
- 80 court-ordered restitution to the court at the time of sentencing if feasible, otherwise within one
- 81 year after sentencing.
 - 82 (ii) If a defendant is placed on probation pursuant to Section 77-18-1:
 - 83 (A) the court shall determine complete restitution and court-ordered restitution; and
 - 84 (B) the time period for determination of complete restitution and court-ordered
 - 85 restitution may be extended by the court upon a finding of good cause, but may not exceed the

86 period of the probation term served by the defendant.

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

88 (A) any pecuniary damages that have not been determined by the court within one year
89 after sentencing may be determined by the Board of Pardons and Parole; and

90 (B) the Board of Pardons and Parole may, within one year after sentencing, refer an
91 order of judgment and commitment back to the court for determination of restitution.