LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: J. Carlton ₵
₵ 02-13-23 11:20 AM ₵

RESTITUTION REVISIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill amends provisions related to restitution.

Highlighted Provisions:

This bill:

- defines terms;
- addresses restitution owed by a defendant to an individual for financial support that a deceased or incapacitated victim had a legal obligation to provide to the individual at the time of the defendant's criminal conduct; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-7-503, as last amended by Laws of Utah 2021, Chapter 260

77-18-114, as last amended by Laws of Utah 2022, Chapters 323, 359

77-18-118, as last amended by Laws of Utah 2022, Chapter 359

77-27-6.1, as enacted by Laws of Utah 2021, Chapter 260

77-32b-103, as last amended by Laws of Utah 2022, Chapters 328, 359

H.B. 456

77-38b-102, as last amended by Laws of Utah 2022, Chapter 359
77-38b-202, as enacted by Laws of Utah 2021, Chapter 260
77-38b-205, as enacted by Laws of Utah 2021, Chapter 260
77-38b-303, as last amended by Laws of Utah 2022, Chapter 359
ENACTS:
77-38b-206, Utah Code Annotated 1953

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

Section 1. Section **63M-7-503** is amended to read:

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

(1) A reparations award may not supplant an order for restitution under Title 77, Chapter 38b, Crime Victims Restitution Act, or under any other provision of law.

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

(3) (a) (i) If a victim receives a reparations award and the office is assigned the victim's claim for restitution, or a portion of the victim's claim for restitution, under Section 63M-7-519, the office may file with the sentencing court a notice of restitution listing the amounts or estimated future amounts of payments made or anticipated to be made to or on behalf of the victim.

(ii) The office may provide a notice of restitution to the victim or victim's representative before or at sentencing.

(iii) The office's failure to provide notice under Subsection (3)(a)(i) or (ii) does not invalidate the imposition of the judgment or an order for restitution if the defendant is given the opportunity to object and be heard as provided in this part.

(b) (i) Any objection by the defendant to the imposition or amount of restitution under Subsection (3)(a)(i) shall be:

(A) made at the time of sentencing; or

(B) made in writing within 20 days after the day on which the defendant receives the notice described in Subsection (3)(a) and filed with the court and a copy mailed to the office.

(ii) Upon an objection, the court shall allow the defendant a hearing on the issue.

(iii) After a hearing under Subsection (3)(b)(ii), the court shall:

(A) enter an order for restitution in accordance with Section 77-38b-205; and

(B) identify the office as an assignee for the order for restitution.

(iv) Subject to the right of the defendant to object, the amount of restitution sought by the office may be updated and the office identified as an assignee of an order for restitution in accordance with the time periods established under [~~Subsection 77-38b-205(5)~~] Section 77-38b-205.

(4) If no objection is made or filed by the defendant under Subsection (3), the court shall upon conviction and sentencing:

(a) enter an order for restitution in accordance with Section 77-38b-205; and

(b) identify the office as an assignee for the order for restitution.

(5) (a) If the notice of restitution is filed after sentencing but during the term of probation or parole, the court shall:

(i) modify any order for restitution to include expenses paid by the office on behalf of the victim in accordance with [~~Subsection 77-38b-205(5)~~] Section 77-38b-205; and

(ii) identify the office as an assignee of the order for restitution.

(b) If an order for restitution has not been entered, the court shall:

(i) enter an order for restitution in accordance with Section 77-38b-205; and

(ii) identify the office as an assignee of the order for restitution.

Section 2. Section **77-18-114** is amended to read:

77-18-114. Unpaid balance at termination of sentence -- Past due account -- Notice -- Account or judgment paid in full -- Effect of civil accounts receivable and civil judgment of restitution.

(1) When a defendant's sentence is terminated by law or by the decision of the court or the board:

(a) the board shall provide an accounting of the unpaid balance of the defendant's criminal accounts receivable to the court if the defendant was on parole or incarcerated at the time of termination; and

(b) except as provided in Subsection 77-18-118(1)(g), within 90 days after the day on which a defendant's sentence is terminated, the court shall:

(i) enter an order for a civil accounts receivable and a civil judgment of restitution for a defendant on the civil judgment docket;

(ii) transfer the responsibility of collecting the civil accounts receivable and the civil judgment of restitution to the Office of State Debt Collection; and

(iii) identify in the order under this Subsection (1):

(A) the Office of State Debt Collection as a judgment creditor for the civil accounts receivable and the civil judgment of restitution; and

(B) the victim as a judgment creditor for the civil judgment of restitution.

(2) If a criminal accounts receivable for the defendant is more than 90 days past due and the court has ordered that a defendant does not owe restitution to any victim, or the time period [~~in Subsection 77-38b-205(5) has passed~~] for entering an order for restitution has passed under Section 77-38b-205 and the court has not ordered restitution, the court may:

(a) enter an order for a civil accounts receivable for the defendant on the civil judgment docket;

(b) identify, in the order under Subsection (2)(a), the Office of State Debt Collection as a judgment creditor for the civil accounts receivable; and

(c) transfer the responsibility of collecting the civil accounts receivable to the Office of State Debt Collection.

(3) An order for a criminal accounts receivable is no longer in effect after the court enters an order for a civil accounts receivable or a civil judgment of restitution under Subsection (1) or (2).

(4) The court shall provide notice to the Office of State Debt Collection and the prosecuting attorney of any hearing that affects an order for the civil accounts receivable or the civil judgment of restitution.

(5) The Office of State Debt Collection shall notify the court when a civil judgment of restitution or a civil accounts receivable is satisfied.

(6) When a fine, forfeiture, surcharge, cost, or fee is recorded in an order for a civil accounts receivable on the civil judgment docket, or when restitution is recorded as an order for a civil judgment of restitution on the civil judgment docket, the order:

(a) constitutes a lien on the defendant's real property until the judgment is satisfied; and

(b) may be collected by any means authorized by law for the collection of a civil judgment.

(7) A criminal accounts receivable, a civil accounts receivable, and a civil judgment of

restitution are not subject to the civil statutes of limitation and expire only upon payment in full.

(8) (a) If a defendant asserts that a payment was made to a victim or third party for a civil judgment of restitution, or enters into any other transaction that does not involve the Office of State Debt Collection, and the defendant asserts that the payment results in a credit towards the civil judgment of restitution for the defendant:

(i) the defendant shall provide notice to the Office of State Debt Collection and the prosecuting attorney within 30 days after the day on which the payment or other transaction is made; and

(ii) the payment may only be credited towards the principal of the civil judgment of restitution and does not affect any other amount owed to the Office of State Debt Collection under Section 63A-3-502.

(b) Nothing in this Subsection (8) shall be construed to prevent a victim or a third party from providing notice of a payment towards a civil judgment of restitution to the Office of State Debt Collection.

Section 3. Section **77-18-118** is amended to read:

77-18-118. Continuing jurisdiction of a sentencing court.

(1) A sentencing court shall retain jurisdiction over a defendant's criminal case:

(a) if the defendant is on probation as described in Subsection 77-18-105(3)(c);

(b) if the defendant is on probation and the probation period has terminated under Subsection 77-18-105(7), to require the defendant to continue to make payments towards a criminal accounts receivable until the defendant's sentence expires;

(c) within the time periods described in [~~Subsection 77-38b-205(5)~~] Section 77-38b-205, to enter or modify an order for a criminal accounts receivable in accordance with Section 77-32b-103;

(d) within the time periods described in [~~Subsection 77-38b-205(5)~~] Section 77-38b-205, to enter or modify an order for restitution in accordance with Section 77-38b-205;

(e) until a defendant's sentence is terminated, to correct an error for a criminal accounts receivable in accordance with Subsection 77-32b-105(1)(a);

(f) until a defendant's sentence is terminated, to modify a payment schedule for a criminal accounts receivable in accordance with Subsection 77-32b-105(1)(b);

(g) if a defendant files a petition for remittance under Subsection 77-32b-106(1) within 90 days from the day on which the defendant's sentence is terminated, to determine whether to remit, in whole or in part, the defendant's criminal accounts receivable; and

(h) to enter an order for a civil accounts receivable and a civil judgment of restitution in accordance with Section 77-18-114.

(2) This section does not prevent a court from exercising jurisdiction over:

(a) a contempt proceeding for a defendant under Title 78B, Chapter 6, Part 3, Contempt; or

(b) enforcement of a civil accounts receivable or a civil judgment of restitution.

Section 4. Section **77-27-6.1** is amended to read:

77-27-6.1. Payment of a criminal accounts receivable -- Failure to enter an order for restitution or create a criminal accounts receivable -- Modification of a criminal accounts receivable -- Order for recovery of costs or pecuniary damages.

(1) When an offender is committed to prison, the board may require the offender to pay the offender's criminal accounts receivable ordered by the court during the period of incarceration or parole supervision.

(2) If the board orders the release of an offender on parole and there is an unpaid balance on the offender's criminal accounts receivable, the board may modify the payment schedule entered by the court for the offender's criminal accounts receivable in accordance with Section 77-32b-105.

(3) (a) If the sentencing court has not entered an order of restitution for an offender who is under the jurisdiction of the board, the board shall refer the offender's case to the sentencing court, within the time periods described in [~~Subsection 77-38b-205(5),~~] Section 77-38b-205, to enter an order for restitution for the offender in accordance with Section 77-38b-205.

(b) If the sentencing court has not entered an order to establish a criminal accounts receivable for an offender who is under the jurisdiction of the board, the board shall refer the offender's case to the sentencing court, within the time periods described in [~~Subsection 77-38b-205(5),~~] Section 77-38b-205, to enter an order to establish a criminal accounts receivable for the offender in accordance with Section 77-32b-103.

(4) (a) If there is a challenge to an offender's criminal accounts receivable, the board

shall refer the offender's case to the sentencing court, within the time periods described in [~~Subsection 77-38b-205(5),~~] Section 77-38b-205, to resolve the challenge to the criminal accounts receivable.

(b) If a sentencing court modifies a criminal accounts receivable after the offender is committed to prison, the sentencing court shall provide notice to the board of the modification.

(5) The board may enter an order to recover any cost incurred by the department, or the state or any other agency, arising out of the offender's needs or conduct.

Section 5. Section **77-32b-103** is amended to read:

77-32b-103. Establishment of a criminal accounts receivable -- Responsibility -- Payment schedule -- Delinquency or default.

(1) (a) Except as provided in Subsection (1)(b) and (c), at the time of sentencing or acceptance of a plea in abeyance, the court shall enter an order to establish a criminal accounts receivable for the defendant.

(b) The court is not required to create a criminal accounts receivable for the defendant under Subsection (1)(a) if the court finds that the defendant does not owe restitution and there are no other fines or fees to be assessed against the defendant.

(c) Subject to Subsection [~~77-38b-205(5),~~] 77-38b-205(8), if the court does not create a criminal accounts receivable for a defendant under Subsection (1)(a), the court shall enter an order to establish a criminal accounts receivable for the defendant at the time the court enters an order for restitution under Section 77-38b-205.

(2) After establishing a criminal accounts receivable for a defendant, the court shall:

(a) if a prison sentence is imposed and not suspended for the defendant:

(i) accept any payment for the criminal accounts receivable that is tendered on the date of sentencing; and

(ii) transfer the responsibility of receiving, distributing, and processing payments for the criminal accounts receivable to the Office of State Debt Collection; and

(b) for all other cases:

(i) retain the responsibility for receiving, processing, and distributing payments for the criminal accounts receivable until the court enters a civil accounts receivable or civil judgment of restitution on the civil judgment docket under Subsection 77-18-114(1) or (2); and

(ii) record each payment by the defendant on the case docket.

(c) For a criminal accounts receivable that a court retains responsibility for receiving, processing, and distributing payments under Subsection (2)(b)(i), the Judicial Council may establish rules to require a defendant to pay the cost, or a portion of the cost, for an electronic payment fee that is charged by a financial institution for the use of a credit or debit card to make payments towards the criminal accounts receivable.

(3) (a) Upon entering an order for a criminal accounts receivable, the court shall establish a payment schedule for the defendant to make payments towards the criminal accounts receivable.

(b) In establishing the payment schedule for the defendant, the court shall consider:

(i) the needs of the victim if the criminal accounts receivable includes an order for restitution under Section 77-38b-205;

(ii) the financial resources of the defendant, as disclosed in the financial declaration under Section 77-38b-204 or in evidence obtained by subpoena under Subsection 77-38b-402(1)(b);

(iii) the burden that the payment schedule will impose on the defendant regarding the other reasonable obligations of the defendant;

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

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

(vi) any other circumstance that the court determines is relevant.

(4) A payment schedule for a criminal accounts receivable does not limit the ability of a judgment creditor to pursue collection by any means allowable by law.

(5) If the court orders restitution under Section 77-38b-205, or makes another financial decision, after sentencing that increases the total amount owed in a defendant's case, the defendant's criminal accounts receivable balance shall be adjusted to include any new amount ordered by the court.

(6) (a) If a defendant is incarcerated in a county jail or a secure correctional facility, as defined in Section 64-13-1, or the defendant is involuntarily committed under Section 62A-15-631:

(i) all payments for a payment schedule shall be suspended for the period of time that

the defendant is incarcerated or involuntarily committed, unless the court, or the board if the defendant is under the jurisdiction of the board, expressly orders the defendant to make payments according to the payment schedule; and

(ii) the defendant shall provide the court with notice of the incarceration or involuntary commitment.

(b) A suspension under Subsection (6)(a) shall remain in place for 60 days after the day in which the defendant is released from incarceration or commitment.

Section 6. Section **77-38b-102** is amended to read:

77-38b-102. Definitions.

As used in this chapter:

(1) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.

(2) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.

(3) (a) "Conviction" means:

(i) a plea of:

(A) guilty;

(B) guilty with a mental illness; or

(C) no contest; or

(ii) a judgment of:

(A) guilty; or

(B) guilty with a mental illness.

(b) "Conviction" does not include:

(i) a plea in abeyance until a conviction is entered for the plea in abeyance;

(ii) a diversion agreement; or

(iii) an adjudication of a minor for an offense under Section 80-6-701.

(4) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.

(5) "Criminal conduct" means:

(a) any misdemeanor or felony offense of which the defendant is convicted; or

(b) any other criminal behavior for which the defendant admits responsibility to the

sentencing court with or without an admission of committing the criminal behavior.

(6) (a) "Defendant" means an individual who has been convicted of, or entered into a plea disposition for, criminal conduct.

(b) "Defendant" does not include a minor, as defined in Section 80-1-102, who is adjudicated, or enters into a nonjudicial adjustment, for any offense under Title 80, Chapter 6, Juvenile Justice.

(7) "Deceased or incapacitated victim" means an individual whose death or incapacitation is proximately caused by the criminal conduct of the defendant.

[~~(7)~~] (8) "Department" means the Department of Corrections.

(9) (a) "Dependent" means an individual for whom a deceased or incapacitated victim had a legal obligation to provide dependent support at the time of the criminal conduct by the defendant.

(b) "Dependent" includes:

(i) a child:

(A) who is younger than 18 years old; and

(B) for whom a deceased or incapacitated victim is the adoptive or biological parent or legal guardian;

(ii) an unborn child who has a parent-child relationship with a deceased or incapacitated victim in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act; or

(iii) an incapacitated individual for whom a deceased or incapacitated victim is the adoptive or biological parent or legal guardian.

(10) "Dependent support" means the financial obligation of an individual to provide for the needs of a dependent, including food, clothing, health care, safety, or shelter.

[~~(8)~~] (11) "Diversion agreement" means an agreement entered into by the prosecuting attorney and the defendant that suspends criminal proceedings before conviction on the condition that a defendant agree to participate in a rehabilitation program, pay restitution to the victim, or fulfill some other condition.

(12) "Incapacitated" or "incapacitation" means the individual is:

(a) mentally or physically impaired to the extent that the individual is permanently unable to gain employment and provide basic necessities, including food, clothing, health care, safety, or shelter; and

(b) reliant on a parent, legal guardian, or other relative or person to provide basic necessities for the individual.

(13) "Legal guardian" means an individual appointed by a court to make decisions regarding a child or an incapacitated individual.

(14) "Life expectancy" means the number of months an individual is or was expected to live considering medical records and experiential data for the individual.

[~~(9)~~] (15) "Office" means the Office of State Debt Collection created in Section 63A-3-502.

[~~(10)~~] (16) "Party" means the prosecuting attorney, the defendant, or the department involved in a prosecution.

[~~(11)~~] (17) "Payment schedule" means the same as that term is defined in Section 77-32b-102.

[~~(12)~~] (18) (a) "Pecuniary damages" means all demonstrable economic injury, losses, and expenses regardless of whether the economic injury, losses, and expenses have yet been incurred.

(b) "Pecuniary damages" does not include punitive damages or pain and suffering damages.

[~~(13)~~] (19) "Plea agreement" means an agreement entered between the prosecuting attorney and the defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.

[~~(14)~~] (20) "Plea disposition" means an agreement entered into between the prosecuting attorney and the defendant including a diversion agreement, a plea agreement, a plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.

[~~(15)~~] (21) "Plea in abeyance" means an order by a court, upon motion of the prosecuting attorney and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against the defendant nor imposing sentence upon the defendant on condition that the defendant comply with specific conditions as set forth in a plea in abeyance agreement.

[~~(16)~~] (22) "Plea in abeyance agreement" means an agreement entered into between the prosecuting attorney and the defendant setting forth the specific terms and conditions upon

which, following acceptance of the agreement by the court, a plea may be held in abeyance.

[~~(17)~~] (23) "Restitution" means the payment of pecuniary damages to a victim.

(24) "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.

[~~(18)~~] (25) (a) "Victim" means any person who has suffered pecuniary damages that are proximately caused by the criminal conduct of the defendant.

(b) "Victim" includes:

(i) the Utah Office for Victims of Crime if the Utah Office for Victims of Crime makes a payment to a victim under Section 63M-7-519;

(ii) the estate of a deceased victim;

(iii) a dependent; and

[~~(iii)~~] (iv) a parent, spouse, or sibling of a victim.

(c) "Victim" does not include a codefendant or accomplice.

Section 7. Section **77-38b-202** is amended to read:

77-38b-202. Prosecuting attorney responsibility for collecting restitution information -- Depositing restitution on behalf of victim.

(1) If a prosecuting attorney files a criminal charge against a defendant, the prosecuting attorney shall:

(a) contact any known victim of the offense for which the criminal charge is filed, or person asserting a claim for restitution on behalf of the victim; and

(b) gather the following information from the victim or person:

(i) the name of the victim or person; and

(ii) the actual or estimated amount of restitution.

(2) (a) When a conviction, a diversion agreement, or a plea in abeyance is entered by the court, the prosecuting attorney shall provide the court with the information gathered by the prosecuting attorney under Subsection (1)(b).

(b) If, at the time of the plea disposition or conviction, the prosecuting attorney does not have all the information under Subsection (1)(b), the prosecuting attorney shall provide the defendant with:

(i) at the time of plea disposition or conviction, all information under Subsection (1)(b) that is reasonably available to the prosecuting attorney; and

(ii) any information under Subsection (1)(b) as the information becomes available to the prosecuting attorney.

(c) Nothing in this section shall be construed to prevent a prosecuting attorney, a victim, or a person asserting a claim for restitution on behalf of a victim from:

(i) submitting information on, or a request for, restitution to the court within the time periods described in [~~Subsection 77-38b-205(5)~~] Section 77-38b-205; or

(ii) submitting information on, or a request for, restitution for additional or substituted victims within the time periods described in [~~Subsection 77-38b-205(5)~~] Section 77-38b-205.

(3) (a) The prosecuting attorney may be authorized by the appropriate public treasurer to deposit restitution collected on behalf of a victim into an interest-bearing account in accordance with Title 51, Chapter 7, State Money Management Act, pending the distribution of the funds to the victim.

(b) If restitution is deposited into an interest-bearing account under Subsection (3)(a), the prosecuting attorney shall:

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

(ii) if all victims have been made whole and funds remain in the account, distribute any remaining funds to the Division of Finance, created in Section 63A-3-101, to deposit to the Utah Office for Victims of Crime.

(c) Nothing in this section prevents an independent judicial authority from collecting, holding, and distributing restitution.

Section 8. Section **77-38b-205** is amended to read:

77-38b-205. Order for restitution.

[~~(1) (a) (i)~~] (1) If a defendant is convicted, as defined in Section 76-3-201, the court shall order a defendant, as part of the sentence imposed under Section 76-3-201, to pay restitution to all victims:

[~~(A)~~] (a) in accordance with the terms of any plea agreement in the case; or

[~~(B)~~] (b) for the entire amount of pecuniary damages that are proximately caused to each victim by the criminal conduct of the defendant.

[~~(ii)~~] (2) (a) In determining the amount of pecuniary damages under Subsection [~~(1)(a)(i)(B)~~] (1)(b), the court shall consider all relevant facts to establish an amount that fully

compensates a victim for all pecuniary damages proximately caused by the criminal conduct of the defendant.

(b) If the court determines that the defendant owes pecuniary damages to a dependent for dependent support under Subsection (2)(a), the court shall establish the amount of dependent support owed to the dependent in accordance with Section 77-38b-206.

[~~(iii)~~] (3) The court shall enter the determination of the amount of restitution under Subsection [~~(1)(a)(ii)~~] (2) as a finding on the record.

[~~(b)~~] (4) If a court enters a plea in abeyance or a diversion agreement for a defendant that includes an agreement to pay restitution, the court shall order the defendant to pay restitution in accordance with the terms of the plea in abeyance or the diversion agreement.

[~~(2)~~] (5) (a) Upon an order for a defendant to pay restitution under Subsection (1), the court shall:

(i) enter an order to establish a criminal accounts receivable as described in Section 77-32b-103; and

(ii) establish a payment schedule for the criminal accounts receivable as described in Section 77-32b-103.

[~~(3)~~] (6) If the defendant objects to the order for restitution or the payment schedule, the court shall allow the defendant to have a hearing on the issue, unless the issue is addressed at the sentencing hearing for the defendant.

[~~(4)~~] (7) (a) For a defendant who is sentenced after July 1, 2021, if no restitution is ordered at sentencing, the court shall schedule a hearing to determine restitution, unless the parties waive the hearing in accordance with Subsection [~~(4)(b)~~] (7)(b).

(b) The parties may only waive a hearing [~~under Subsection (4)(a)~~] if:

(i) the parties have stipulated to the amount of restitution owed; or

(ii) the prosecuting attorney certifies that the prosecuting attorney has consulted with the victim, including the Utah Office for Victims of Crime, and the defendant owes no restitution.

(c) The court may not enter an order for restitution without a statement from the prosecuting attorney that the prosecuting attorney has consulted with the victim, including the Utah Office for Victims of Crime.

(d) If the court does not enter an order for restitution in a hearing under Subsection

[~~(4)(a)~~] (7)(a), the court shall:

(i) state, on the record, why the court did not enter an order for restitution; and

(ii) order a continuance of the hearing.

[~~(5)~~] (8) A court shall enter an order for restitution in a defendant's case no later than the earlier of:

(a) the termination of the defendant's sentence; or

(b) (i) if the defendant is convicted and imprisoned for a first degree felony, within seven years after the day on which the court sentences the defendant for the first degree felony conviction;

(ii) except as provided in Subsection [~~(5)(b)(i)~~] (8)(b)(i), and if the defendant is convicted of a felony, within three years after the day on which the court sentences the defendant for the felony conviction; and

(iii) if the defendant is convicted of a misdemeanor, within one year after the day on which the court sentences the defendant for the misdemeanor conviction.

[~~(6)~~] (9) (a) Upon a motion from the prosecuting attorney or the victim, the court may modify an existing order of restitution, including the amount of pecuniary damages owed by the defendant in the order for restitution, if the prosecuting attorney or the victim shows good cause for modifying the order.

(b) A motion under Subsection [~~(6)(a)~~] (9)(a) shall be brought within the time periods described in Subsection [~~(5)~~] (8).

Section 9. Section **77-38b-206** is enacted to read:

77-38b-206. Calculating the amount of restitution owed for dependent support.

For pecuniary damages owed to a dependent for dependent support under Section 77-38b-205, the court shall:

(1) establish a monthly amount of dependent support that is reasonably necessary for the financial support of the dependent; and

(2) calculate the entire amount of pecuniary damages owed for dependent support by multiplying the monthly amount established under Subsection (1) by:

(a) if the dependent is a child who is younger than 18 years old and is not an incapacitated individual, the number of months until the dependent is 18 years old and is graduated from high school; or

(b) if the dependent is an incapacitated individual, the life expectancy of:

(i) the deceased or incapacitated victim before the victim's death or incapacitation; or

(ii) the dependent if the court determines that the dependent's life expectancy is shorter than the deceased or incapacitated victim's life expectancy under Subsection (2)(b)(i).

Section 10. Section **77-38b-303** is amended to read:

77-38b-303. Civil action by a victim.

(1) A provision under this part concerning restitution does not limit or impair the right of a person injured by a defendant's criminal conduct to sue and recover damages from the defendant in a civil action.

(2) (a) A court's finding on the amount of restitution owed by a defendant under Subsection [~~77-38b-205(1)(a)(iii)~~] 77-38b-205(3) may be used in a civil action pertaining to the defendant's liability to a victim as presumptive proof of the victim's pecuniary damages that are proximately caused by the defendant's criminal conduct.

(b) If a conviction in a criminal trial decides the issue of a defendant's liability for pecuniary damages suffered by a victim, the issue of the defendant's liability for pecuniary damages is conclusively determined as to the defendant if the issue is involved in a subsequent civil action.

(c) (i) Except as provided in Subsection (2)(c)(ii), if a defendant is convicted of a misdemeanor or felony offense, the defendant is precluded from subsequently denying the essential allegations of the offense in a subsequent civil action brought against the defendant for the criminal conduct underlying the offense.

(ii) Subsection (2)(c)(i) does not apply if the offense is a class C misdemeanor under Title 41, Chapter 6a, Traffic Code, or the defendant entered a plea of no contest for the offense.

(3) (a) The sentencing court shall credit any payment in favor of the victim in a civil action for the defendant's criminal conduct toward the amount of restitution owed by the defendant to the victim.

(b) In a civil action, a court shall credit any restitution paid by the defendant to a victim for the defendant's criminal conduct towards the victim against any judgment that is in favor of the victim for the civil action.

(c) If a victim receives payment from the defendant for the civil action, the victim shall provide notice to the sentencing court and the court in the civil action of the payment within 30

days after the day on which the victim receives the payment.

(d) Nothing in this section shall prevent a defendant from providing proof of payment to the court or the office.

(4) (a) If a victim prevails in a civil action against a defendant, the court shall award reasonable attorney fees and costs to the victim.

(b) If the defendant prevails in the civil action, the court shall award reasonable costs to the defendant if the court finds that the victim brought the civil action for an improper purpose, including to harass the defendant or to cause unnecessary delay or needless increase in the cost of litigation.