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RESTITUTION REVISIONS
2024 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 victim, or a permanently impaired victim, had a legal obligation to provide to the individual at the time of the defendant's criminal conduct;
- addresses restitution payments with regard to a civil action for 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 2023, Chapter 113
- 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 2023, Chapter 330
- 77-38b-102**, as last amended by Laws of Utah 2023, Chapters 113, 184
- 77-38b-202**, as enacted by Laws of Utah 2021, Chapter 260

28 **77-38b-205**, as last amended by Laws of Utah 2023, Chapter 113

29 **77-38b-303**, as last amended by Laws of Utah 2023, Chapter 113

30 ENACTS:

31 **77-38b-206**, as Utah Code Annotated 1953

32

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

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

35 **63M-7-503 . Restitution -- Reparations not to supplant restitution -- Assignment**
36 **of claim for restitution judgment to Reparations Office.**

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

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

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

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

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

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

52 (A) made at the time of sentencing; or

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

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

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

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

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

60 (iv) Subject to the right of the defendant to object, the amount of restitution sought by
61 the office may be updated and the office identified as an assignee of an order for

- 62 restitution in accordance with the time periods established under [~~Subsection~~
63 77-38b-205(5)] Section 77-38b-205.
- 64 (4) If no objection is made or filed by the defendant under Subsection (3), the court shall
65 upon conviction and sentencing:
- 66 (a) enter an order for restitution in accordance with Section 77-38b-205; and
67 (b) identify the office as an assignee for the order for restitution.
- 68 (5) (a) If the notice of restitution is filed after sentencing but during the term of
69 probation or parole, the court shall:
- 70 (i) modify any order for restitution to include expenses paid by the office on behalf of
71 the victim in accordance with [~~Subsection 77-38b-205(5)~~] Section 77-38b-205; and
72 (ii) identify the office as an assignee of the order for restitution.
- 73 (b) If an order for restitution has not been entered, the court shall:
- 74 (i) enter an order for restitution in accordance with Section 77-38b-205; and
75 (ii) identify the office as an assignee of the order for restitution.

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

77 **77-18-114 . Unpaid balance at termination of sentence -- Past due account --**

78 **Notice -- Account or judgment paid in full -- Effect of civil accounts**
79 **receivable and civil judgment of restitution.**

- 80 (1) When a defendant's sentence is terminated by law or by the decision of the court or the
81 board:
- 82 (a) the board shall provide an accounting of the unpaid balance of the defendant's
83 criminal accounts receivable to the court if the defendant was on parole or
84 incarcerated at the time of termination; and
- 85 (b) except as provided in Subsection 77-18-118(1)(g), within 90 days after the day on
86 which a defendant's sentence is terminated, the court shall:
- 87 (i) enter an order for a civil accounts receivable and a civil judgment of restitution for
88 a defendant on the civil judgment docket;
- 89 (ii) transfer the responsibility of collecting the civil accounts receivable and the civil
90 judgment of restitution to the Office of State Debt Collection; and
- 91 (iii) identify in the order under this Subsection (1):
- 92 (A) the Office of State Debt Collection as a judgment creditor for the civil
93 accounts receivable and the civil judgment of restitution; and
- 94 (B) the victim as a judgment creditor for the civil judgment of restitution.
- 95 (2) If a criminal accounts receivable for the defendant is more than 90 days past due and the

96 court has ordered that a defendant does not owe restitution to any victim, or the time
97 period [~~in Subsection 77-38b-205(5) has passed~~] for entering an order for restitution has
98 expired under Section 77-38b-205 and the court has not ordered restitution, the court
99 may:

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

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

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

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

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

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

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

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

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

120 (7) A criminal accounts receivable, a civil accounts receivable, and a civil judgment of
121 restitution are not subject to the civil statutes of limitation and expire only upon payment
122 in full.

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

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

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

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

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

137 **77-18-118 . Continuing jurisdiction of a sentencing court.**

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

- 139 (a) if the defendant is on probation as described in Subsection 77-18-105(3)(c);
140 (b) if the defendant is on probation and the probation period has terminated under
141 Subsection 77-18-105(7), to require the defendant to continue to make payments
142 towards a criminal accounts receivable until the defendant's sentence expires;
143 (c) within the time periods described in [~~Subsection 77-38b-205(5)~~] Section 77-38b-205,
144 to enter or modify an order for a criminal accounts receivable in accordance with
145 Section 77-32b-103;
146 (d) within the time periods described in [~~Subsection 77-38b-205(5)~~] Section 77-38b-205,
147 to enter or modify an order for restitution in accordance with Section 77-38b-205;
148 (e) until a defendant's sentence is terminated, to correct an error for a criminal accounts
149 receivable in accordance with Subsection 77-32b-105(1)(a);
150 (f) until a defendant's sentence is terminated, to modify a payment schedule for a
151 criminal accounts receivable in accordance with Subsection 77-32b-105(1)(b);
152 (g) if a defendant files a petition for remittance under Subsection 77-32b-106(1) within
153 90 days from the day on which the defendant's sentence is terminated, to determine
154 whether to remit, in whole or in part, the defendant's criminal accounts receivable;
155 and
156 (h) to enter an order for a civil accounts receivable and a civil judgment of restitution in
157 accordance with Section 77-18-114.

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

- 159 (a) a contempt proceeding for a defendant under Title 78B, Chapter 6, Part 3, Contempt;
160 or
161 (b) enforcement of a civil accounts receivable or a civil judgment of restitution.

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

163 **77-27-6.1 . Payment of a criminal accounts receivable -- Failure to enter an order**

164 **for restitution or create a criminal accounts receivable -- Modification of a**
 165 **criminal accounts receivable -- Order for recovery of costs or pecuniary**
 166 **damages.**

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

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

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

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

184 (4) (a) If there is a challenge to an offender's criminal accounts receivable, the board
 185 shall refer the offender's case to the sentencing court, within the time periods
 186 described in [~~Subsection 77-38b-205(5);~~] Section 77-38b-205, to resolve the
 187 challenge to the criminal accounts receivable.

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

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

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

194 **77-32b-103 . Establishment of a criminal accounts receivable -- Responsibility --**
 195 **Payment schedule -- Delinquency or default.**

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

- 198 accounts receivable for the defendant.
- 199 (b) The court is not required to create a criminal accounts receivable for the defendant
200 under Subsection (1)(a) if the court finds that the defendant does not owe restitution
201 and there are no other fines or fees to be assessed against the defendant.
- 202 (c) [~~Subject to Subsection 77-38b-205(5), if~~] If the court does not create a criminal
203 accounts receivable for a defendant under Subsection (1)(a), the court shall enter an
204 order to establish a criminal accounts receivable for the defendant at the time the
205 court enters an order for restitution under Section 77-38b-205.
- 206 (2) After establishing a criminal accounts receivable for a defendant, the court shall:
- 207 (a) if a prison sentence is imposed and not suspended for the defendant:
- 208 (i) accept any payment for the criminal accounts receivable that is tendered on the
209 date of sentencing; and
- 210 (ii) transfer the responsibility of receiving, distributing, and processing payments for
211 the criminal accounts receivable to the Office of State Debt Collection; and
- 212 (b) for all other cases:
- 213 (i) retain the responsibility for receiving, processing, and distributing payments for
214 the criminal accounts receivable until the court enters a civil accounts receivable
215 or civil judgment of restitution on the civil judgment docket under Subsection
216 77-18-114(1) or (2); and
- 217 (ii) record each payment by the defendant on the case docket.
- 218 (c) For a criminal accounts receivable that a court retains responsibility for receiving,
219 processing, and distributing payments under Subsection (2)(b)(i), the Judicial Council
220 may establish rules to require a defendant to pay the cost, or a portion of the cost, for
221 an electronic payment fee that is charged by a financial institution for the use of a
222 credit or debit card to make payments towards the criminal accounts receivable.
- 223 (3) (a) Upon entering an order for a criminal accounts receivable, the court shall
224 establish a payment schedule for the defendant to make payments towards the
225 criminal accounts receivable.
- 226 (b) In establishing the payment schedule for the defendant, the court shall consider:
- 227 (i) the needs of the victim if the criminal accounts receivable includes an order for
228 restitution under Section 77-38b-205;
- 229 (ii) the financial resources of the defendant, as disclosed in the financial declaration
230 under Section 77-38b-204 or in evidence obtained by subpoena under Subsection
231 77-38b-402(1)(b);

- 232 (iii) the burden that the payment schedule will impose on the defendant regarding the
 233 other reasonable obligations of the defendant;
- 234 (iv) the ability of the defendant to pay restitution on an installment basis or on other
 235 conditions fixed by the court;
- 236 (v) the rehabilitative effect on the defendant of the payment of restitution and method
 237 of payment; and
- 238 (vi) any other circumstance that the court determines is relevant.
- 239 (4) A payment schedule for a criminal accounts receivable does not limit the ability of a
 240 judgment creditor to pursue collection by any means allowable by law.
- 241 (5) If the court orders restitution under Section 77-38b-205, or makes another financial
 242 decision, after sentencing that increases the total amount owed in a defendant's case, the
 243 defendant's criminal accounts receivable balance shall be adjusted to include any new
 244 amount ordered by the court.
- 245 (6) (a) If a defendant is incarcerated in a county jail or a secure correctional facility, as
 246 defined in Section 64-13-1, or the defendant is involuntarily committed under Section
 247 26B-5-332:
- 248 (i) all payments for a payment schedule shall be suspended for the period of time that
 249 the defendant is incarcerated or involuntarily committed, unless the court, or the
 250 board if the defendant is under the jurisdiction of the board, expressly orders the
 251 defendant to make payments according to the payment schedule; and
- 252 (ii) the defendant shall provide the court with notice of the incarceration or
 253 involuntary commitment.
- 254 (b) A suspension under Subsection (6)(a) shall remain in place for 60 days after the day
 255 in which the defendant is released from incarceration or commitment.
- 256 Section 6. Section **77-38b-102** is amended to read:
- 257 **77-38b-102 . Definitions.**
- 258 As used in this chapter:
- 259 (1) "Civil accounts receivable" means the same as that term is defined in Section
 260 77-32b-102.
- 261 (2) "Civil judgment of restitution" means the same as that term is defined in Section
 262 77-32b-102.
- 263 (3) (a) "Conviction" means:
- 264 (i) a plea of:
- 265 (A) guilty;

- 266 (B) guilty with a mental condition; or
267 (C) no contest; or
268 (ii) a judgment of:
269 (A) guilty; or
270 (B) guilty with a mental condition.
- 271 (b) "Conviction" does not include:
272 (i) a plea in abeyance until a conviction is entered for the plea in abeyance;
273 (ii) a diversion agreement; or
274 (iii) an adjudication of a minor for an offense under Section 80-6-701.
- 275 (4) "Criminal accounts receivable" means the same as that term is defined in Section
276 77-32b-102.
- 277 (5) "Criminal conduct" means:
278 (a) any misdemeanor or felony offense of which the defendant is convicted; or
279 (b) any other criminal behavior for which the defendant admits responsibility to the
280 court with or without an admission of committing the criminal behavior.
- 281 (6) "Deceased victim" means an individual whose death is proximately caused by the
282 criminal conduct of the defendant.
- 283 [~~6~~] (7) (a) "Defendant" means an individual who has been convicted of, or entered into
284 a plea disposition for, criminal conduct.
285 (b) "Defendant" does not include a minor, as defined in Section 80-1-102, who is
286 adjudicated, or enters into a nonjudicial adjustment, for any offense under Title 80,
287 Chapter 6, Juvenile Justice.
- 288 [~~7~~] (8) "Department" means the Department of Corrections.
- 289 (9) (a) "Dependent" means an individual for whom a deceased victim, or a permanently
290 impaired victim, had a legal obligation to provide dependent support at the time of
291 the criminal conduct by the defendant.
- 292 (b) "Dependent" includes:
293 (i) a child:
294 (A) who is younger than 18 years old; and
295 (B) for whom a deceased victim, or a permanently impaired victim, is the adoptive
296 or biological parent or legal guardian;
297 (ii) an unborn child who has a parent-child relationship with a deceased victim, or a
298 permanently impaired victim, in accordance with Title 78B, Chapter 15, Utah
299 Uniform Parentage Act; or

- 300 (iii) an incapacitated individual for whom a deceased victim, or a permanently
301 impaired victim, is the adoptive or biological parent or the legal guardian.
- 302 (10) "Dependent support" means the financial obligation of an individual to provide for the
303 routine needs of a dependent, including food, clothing, health care, safety, or shelter.
- 304 [~~8~~] (11) "Diversion agreement" means an agreement entered into by the prosecuting
305 attorney and the defendant that suspends criminal proceedings before conviction on the
306 condition that a defendant agree to participate in a rehabilitation program, pay restitution
307 to the victim, or fulfill some other condition.
- 308 (12) "Incapacitated" or "incapacitation" means the individual is:
- 309 (a) mentally or physically impaired to the extent that the individual is permanently
310 unable to gain employment and provide basic necessities, including food, clothing,
311 health care, safety, or shelter; and
- 312 (b) reliant on a parent, legal guardian, or other relative or person to provide basic
313 necessities for the individual.
- 314 (13) "Incapacitated individual" means an individual who is incapacitated.
- 315 (14) "Legal guardian" means an individual appointed by a court to make decisions
316 regarding a child or an incapacitated individual.
- 317 (15) "Life expectancy" means the number of months an individual is or was expected to
318 live considering medical records and experiential data for the individual.
- 319 [~~9~~] (16) "Office" means the Office of State Debt Collection created in Section 63A-3-502.
- 320 [~~10~~] (17) "Payment schedule" means the same as that term is defined in Section
321 77-32b-102.
- 322 [~~11~~] (18) (a) "Pecuniary damages" means all demonstrable economic injury, losses, and
323 expenses regardless of whether the economic injury, losses, and expenses have yet
324 been incurred.
- 325 (b) "Pecuniary damages" does not include punitive damages or pain and suffering
326 damages.
- 327 (19) "Permanently impaired victim" means an incapacitated individual whose
328 incapacitation is proximately caused by the criminal conduct of the defendant.
- 329 [~~12~~] (20) "Plea agreement" means an agreement entered between the prosecuting attorney
330 and the defendant setting forth the special terms and conditions and criminal charges
331 upon which the defendant will enter a plea of guilty or no contest.
- 332 [~~13~~] (21) "Plea disposition" means an agreement entered into between the prosecuting
333 attorney and the defendant including a diversion agreement, a plea agreement, a plea in

334 abeyance agreement, or any agreement by which the defendant may enter a plea in any
335 other jurisdiction or where charges are dismissed without a plea.

336 [(14)] (22) "Plea in abeyance" means an order by a court, upon motion of the prosecuting
337 attorney and the defendant, accepting a plea of guilty or of no contest from the defendant
338 but not, at that time, entering judgment of conviction against the defendant nor imposing
339 sentence upon the defendant on condition that the defendant comply with specific
340 conditions as set forth in a plea in abeyance agreement.

341 [(15)] (23) "Plea in abeyance agreement" means an agreement entered into between the
342 prosecuting attorney and the defendant setting forth the specific terms and conditions
343 upon which, following acceptance of the agreement by the court, a plea may be held in
344 abeyance.

345 [(16)] (24) "Restitution" means the payment of pecuniary damages to a victim.

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

348 [(17)] (26) (a) "Victim" means any person who has suffered pecuniary damages that are
349 proximately caused by the criminal conduct of the defendant.

350 (b) "Victim" includes:

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

353 (ii) the estate of a deceased victim; [and]

354 (iii) a dependent; or

355 [(iii)] (iv) a parent, spouse, intimate partner as defined in 18 U.S.C. Sec. 921, child, or
356 sibling of a victim.

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

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

359 **77-38b-202 . Prosecuting attorney responsibility for collecting restitution**
360 **information -- Depositing restitution on behalf of victim.**

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

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

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

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

367 (ii) the actual or estimated amount of restitution.

- 368 (2) (a) When a conviction, a diversion agreement, or a plea in abeyance is entered by the
 369 court, the prosecuting attorney shall provide the court with the information gathered
 370 by the prosecuting attorney under Subsection (1)(b).
- 371 (b) If, at the time of the plea disposition or conviction, the prosecuting attorney does not
 372 have all the information under Subsection (1)(b), the prosecuting attorney shall
 373 provide the defendant with:
- 374 (i) at the time of plea disposition or conviction, all information under Subsection
 375 (1)(b) that is reasonably available to the prosecuting attorney; and
- 376 (ii) any information under Subsection (1)(b) as the information becomes available to
 377 the prosecuting attorney.
- 378 (c) Nothing in this section shall be construed to prevent a prosecuting attorney, a victim,
 379 or a person asserting a claim for restitution on behalf of a victim from:
- 380 (i) submitting information on, or a request for, restitution to the court within the time
 381 periods described in [~~Subsection 77-38b-205(5)~~] Section 77-38b-205; or
- 382 (ii) submitting information on, or a request for, restitution for additional or
 383 substituted victims within the time periods described in [~~Subsection 77-38b-205(5)~~]
 384 Section 77-38b-205.
- 385 (3) (a) The prosecuting attorney may be authorized by the appropriate public treasurer to
 386 deposit restitution collected on behalf of a victim into an interest-bearing account in
 387 accordance with Title 51, Chapter 7, State Money Management Act, pending the
 388 distribution of the funds to the victim.
- 389 (b) If restitution is deposited into an interest-bearing account under Subsection (3)(a),
 390 the prosecuting attorney shall:
- 391 (i) distribute any interest that accrues in the account to each victim on a pro rata
 392 basis; and
- 393 (ii) if all victims have been made whole and funds remain in the account, distribute
 394 any remaining funds to the Division of Finance, created in Section 63A-3-101, to
 395 deposit to the Utah Office for Victims of Crime.
- 396 (c) Nothing in this section prevents an independent judicial authority from collecting,
 397 holding, and distributing restitution.
- 398 Section 8. Section **77-38b-205** is amended to read:
- 399 **77-38b-205 . Order for restitution.**
- 400 (1) (a) If a defendant is convicted, as defined in Section 76-3-201, the court shall order a
 401 defendant, as part of the sentence imposed under Section 76-3-201, to pay restitution

402 to all victims:

- 403 (i) in accordance with the terms of any plea agreement in the case; or
404 (ii) for the entire amount of pecuniary damages that are proximately caused to each
405 victim by the criminal conduct of the defendant.

406 (b) If a court enters a plea in abeyance or a diversion agreement for a defendant that
407 includes an agreement to pay restitution, the court shall order the defendant to pay
408 restitution to all victims:

- 409 (i) in accordance with the terms of the plea in abeyance or the diversion agreement; or
410 (ii) if the terms of the plea in abeyance include an agreement between the parties that
411 restitution will be determined by the court as described in Section 77-2a-3, for the
412 entire amount of pecuniary damages that are proximately caused to each victim by
413 the criminal conduct of the defendant.

414 ~~[(e)]~~ (2) (a) ~~[H]~~ Except as provided in Subsection (2)(b), in determining the amount of
415 pecuniary damages under Subsection (1)(a)(ii) or (b)(ii), the court shall consider all
416 relevant facts to establish an amount that fully compensates a victim for all pecuniary
417 damages proximately caused by the criminal conduct of the defendant.

418 (b) If the court determines that the defendant owes pecuniary damages to a dependent
419 for dependent support, the court shall establish the amount of dependent support
420 owed to the dependent as described in Section 77-38b-206.

421 (c) Subsection (2)(b) does not prohibit the court from also ordering restitution for a
422 victim under Subsection (2)(a) that is not dependent support.

423 ~~[(d)]~~ (3) The court shall enter the determination of the amount of restitution under
424 Subsection (1)(a)(ii) or (b)(ii) as a finding on the record.

425 ~~[(2)]~~ (4) Upon an order for a defendant to pay restitution under Subsection (1), the court
426 shall:

427 (a) enter an order to establish a criminal accounts receivable as described in Section
428 77-32b-103; and

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

431 ~~[(3)]~~ (5) If the defendant objects to a request for restitution, the court shall allow the
432 defendant to have a hearing on the issue, unless the issue is addressed at the sentencing
433 hearing for the defendant.

434 ~~[(4)]~~ (6) If a court does not enter an order for restitution at sentencing, the court shall
435 schedule a hearing to enter an order for restitution, unless:

- 436 (a) the court finds as a matter of law that there is no victim in the case; or
 437 (b) the prosecuting attorney certifies to the court, on the record, that:
 438 (i) the prosecuting attorney has consulted with all victims, including the Utah Office
 439 for Victims of Crime; and
 440 (ii) all victims, including the Utah Office for Victims of Crime, are not seeking
 441 restitution.

442 ~~[(5)]~~ (7) (a) A court shall enter an order for restitution in a defendant's case no later than
 443 the earlier of:

- 444 (i) the termination of the defendant's sentence, including early termination of the
 445 defendant's sentence; or
 446 (ii) (A) if the defendant is convicted and imprisoned for a first degree felony,
 447 within seven years after the day on which the court sentences the defendant for
 448 the first degree felony conviction; or
 449 (B) except as provided in Subsection ~~[(5)(a)(ii)(A)]~~ (7)(a)(ii)(A), and if the
 450 defendant is convicted of a felony, within three years after the day on which
 451 the court sentences the defendant for the felony conviction.

452 (b) A request for restitution that is made within the time period described in Subsection [
 453 ~~(5)(a)]~~ (7)(a) tolls the time for which the court must enter an order for restitution
 454 under Subsection ~~[(5)(a)]~~ (7)(a) but does not extend the term of the defendant's
 455 probation or period of incarceration.

456 ~~[(6)]~~ (8) (a) If a court does not order restitution at sentencing or at a hearing described in
 457 Subsection ~~[(4)]~~ (6), the prosecuting attorney or the victim may file a motion for
 458 restitution within the time periods described in Subsection ~~[(5)]~~ (7).

459 (b) If the defendant receives notice and does not object to a motion for restitution, the
 460 court may order restitution without a hearing.

461 (c) If the defendant receives notice and objects to a motion for restitution, the court may
 462 schedule a hearing to determine whether restitution should be ordered if the
 463 prosecuting attorney or victim shows good cause.

464 ~~[(7)]~~ (9) Upon a motion from the prosecuting attorney or the victim within the time periods
 465 described in Subsection ~~[(5)]~~ (7), the court may modify an existing order of restitution,
 466 including the amount of pecuniary damages owed by the defendant in the order for
 467 restitution, if the prosecuting attorney or the victim shows good cause for modifying the
 468 order.

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

- 470 **77-38b-206 . Calculating the amount of restitution owed for dependent support.**
- 471 (1) As used in this section:
- 472 (a) "Base combined child support obligation table" means the child support table located
- 473 in Section 78B-12-303.
- 474 (b) "Gross income" means the amount of income that would be calculated for a parent
- 475 for child support purposes as described in Section 78B-12-203.
- 476 (c) "Monthly income" means the amount of monthly income established for a deceased
- 477 victim, or a permanently impaired victim, under Subsection (3).
- 478 (2) If a defendant owes pecuniary damages to a dependent under Section 77-38b-205, the
- 479 court shall determine the entire amount of dependent support that the defendant owes a
- 480 dependent in accordance with this section.
- 481 (3) (a) For purposes of determining a defendant's monthly obligation under Subsection
- 482 (4), the court shall establish the monthly income of the deceased victim, or the
- 483 permanently impaired victim, by:
- 484 (i) calculating the deceased or permanently impaired victim's monthly gross income
- 485 before the victim's death or incapacitation; and
- 486 (ii) dividing the deceased or permanently impaired victim's monthly gross income in
- 487 half.
- 488 (b) If the amount calculated under Subsection (3)(a)(ii) is \$3,000 or less, the court shall
- 489 impute a monthly income of \$3,001 to the deceased or permanently impaired victim.
- 490 (c) If the amount calculated under Subsection (3)(a)(ii) is greater than \$3,000, the
- 491 deceased or permanently impaired victim's monthly income is the amount calculated
- 492 under Subsection (3)(a)(ii).
- 493 (4) To calculate the amount of pecuniary damages that a defendant owes a dependent of a
- 494 deceased victim for dependent support, the court shall:
- 495 (a) locate the monthly dependent support obligation in the base income child support
- 496 table using:
- 497 (i) the deceased victim's monthly income established under Subsection (3)(b) or (c);
- 498 and
- 499 (ii) the total number of dependents for which the defendant owes dependent support;
- 500 and
- 501 (b) multiply the monthly amount established under Subsection (4)(a) for the dependent
- 502 by:
- 503 (i) the number of months until the dependent is 18 years old and is graduated from

- 504 high school if the dependent is a child; or
- 505 (ii) the life expectancy of the dependent if the dependent is an incapacitated
- 506 individual who is 18 years old or older.
- 507 (5) To calculate the amount of pecuniary damages that a defendant owes a dependent of a
- 508 permanently impaired victim for dependent support, the court shall:
- 509 (a) locate the monthly dependent support obligation in the base income child support
- 510 table using:
- 511 (i) the permanently impaired victim's monthly income established under Subsection
- 512 (3)(b) or (c); and
- 513 (ii) the total number of dependents for which the defendant owes dependent support;
- 514 (b) multiply the monthly amount established under Subsection (5)(a) by the permanently
- 515 impaired victim's whole person impairment rating as determined by the most recent
- 516 edition of the American Medical Association's Guides to the Evaluation of Permanent
- 517 Impairment; and
- 518 (c) multiply the amount established under Subsection (5)(b) for the dependent by:
- 519 (i) the number of months until the dependent is 18 years old and is graduated from
- 520 high school if the dependent is a child who is younger than 18 years old; or
- 521 (ii) the life expectancy of the dependent if the dependent is an incapacitated
- 522 individual who is 18 years old or older.
- 523 (6) The deceased or permanently impaired victim's monthly income calculated under
- 524 Subsection (3) is the only income that may be used when locating the monthly
- 525 dependent support obligation in the base combined child support obligation table.
- 526 Section 10. Section **77-38b-303** is amended to read:
- 527 **77-38b-303 . Effect of civil action or settlement for criminal conduct -- Issue**
- 528 **preclusion -- Crediting payments.**
- 529 (1) As used in this section:
- 530 (a) "Civil settlement" or "settlement" means an agreement entered into between a victim
- 531 and a defendant that settles all the claims that a victim may bring in a civil action
- 532 against the defendant for the defendant's criminal conduct.
- 533 (b) "Civil settlement" or "settlement" does not include an agreement that settles a civil
- 534 judgment of restitution or a civil accounts receivable for a defendant.
- 535 (2) Nothing in this chapter shall be construed to limit or impair the right of a victim to sue
- 536 and recover damages from the defendant in a civil action.
- 537 (3) (a) A court's finding on the amount of restitution owed by a defendant under

- 538 Subsection [~~77-38b-205(1)(d)~~] 77-38b-205(3) may be used in a civil action pertaining
539 to the defendant's liability to a victim as presumptive proof of the victim's pecuniary
540 damages that are proximately caused by the defendant's criminal conduct.
- 541 (b) If a conviction in a criminal trial decides the issue of a defendant's liability for
542 pecuniary damages suffered by a victim, the issue of the defendant's liability for
543 pecuniary damages is conclusively determined as to the defendant if the issue is
544 involved in a subsequent civil action.
- 545 (c) (i) Except as provided in Subsection (3)(c)(ii), if a defendant is convicted of a
546 misdemeanor or felony offense, the defendant is precluded from subsequently
547 denying the essential allegations of the offense in a subsequent civil action
548 brought against the defendant for the criminal conduct underlying the offense.
- 549 (ii) Subsection (3)(c)(i) does not apply if the offense is a class C misdemeanor under
550 Title 41, Chapter 6a, Traffic Code, or the defendant entered a plea of no contest
551 for the offense.
- 552 (4) If a civil action brought by a victim against a defendant results in a civil judgment for
553 the defendant's criminal conduct or there is a civil settlement entered into between a
554 victim and defendant for the defendant's criminal conduct, the civil judgment or
555 settlement does not limit or preclude:
- 556 (a) the sentencing court from entering an order of restitution against the defendant in
557 accordance with this chapter; or
- 558 (b) the civil enforcement of a civil judgment of restitution by the office or the victim.
- 559 (5) (a) The sentencing court shall credit any payment made to a victim in a civil action
560 for the defendant's criminal conduct toward the amount of restitution owed by the
561 defendant to the victim.
- 562 (b) In a civil action, a court shall credit any restitution paid by the defendant to a victim
563 for the defendant's criminal conduct towards the victim against any judgment that is
564 in favor of the victim for the civil action.
- 565 (c) If a victim receives payment from the defendant for the civil action, the victim shall
566 provide notice to the sentencing court and the court in the civil action of the payment
567 within 30 days after the day on which the victim receives the payment.
- 568 (6) (a) If a victim prevails in a civil action against a defendant, the court shall award
569 reasonable attorney fees and costs to the victim.
- 570 (b) If the defendant prevails in the civil action, the court shall award reasonable costs to
571 the defendant if the court finds that the victim brought the civil action for an

572 improper purpose, including to harass the defendant or to cause unnecessary delay or
573 needless increase in the cost of litigation.

574 (7) (a) The sentencing court shall credit any payment made to a victim as part of a civil
575 settlement toward the amount of restitution owed by the defendant to the victim if the
576 sentencing court determines that the payment compensates the victim for pecuniary
577 damages proximately caused by the defendant's criminal conduct.

578 (b) If a victim receives a payment from the defendant as part of a civil settlement, the
579 victim shall provide notice to the sentencing court within 30 days after the day on
580 which the victim receives the payment.

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

583 (9) Notwithstanding Subsections (5) and (6), if a defendant owes dependent support to a
584 victim in an order for restitution:

585 (a) the defendant may not use any payment from a motor vehicle insurance policy to
586 satisfy any amount of dependent support owed by the defendant until all persons
587 entitled to recover in a civil action for the defendant's criminal conduct are made
588 whole; and

589 (b) a court may not credit any payment from the defendant towards the amount of
590 dependent support owed by the defendant against any judgment that is in favor of the
591 victim for a civil action until all persons entitled to recover in a civil action for the
592 defendant's criminal conduct are made whole.

593 Section 11. **Effective date.**

594 This bill takes effect on May 1, 2024.