

VICTIM RESTITUTION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes to the Crime Victims Restitution Act.

Highlighted Provisions:

This bill:

- ▶ makes a victim's application for and receipt of reparations protected records under the Government Records Access and Management Act;
- ▶ allows the Utah Office for Victims of Crime to pursue restitution from a criminal offender by filing a claim directly with the sentencing court; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-305, as last amended by Laws of Utah 2014, Chapters 90 and 320

63M-7-503, as last amended by Laws of Utah 2011, Chapter 131

76-3-201, as last amended by Laws of Utah 2013, Chapter 74

77-38a-102, as last amended by Laws of Utah 2005, Chapter 96

77-38a-401, as last amended by Laws of Utah 2011, Chapter 37



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

Section 1. Section **63G-2-305** is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section [13-24-2](#) if the person submitting the trade secret has provided the governmental entity with the information specified in Section [63G-2-309](#);

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section [63G-2-309](#);

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection [11-13-103\(4\)](#);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

- 59 (a) an invitation for bids;
- 60 (b) a request for proposals;
- 61 (c) a request for quotes;
- 62 (d) a grant; or
- 63 (e) other similar document;
- 64 (7) information submitted to or by a governmental entity in response to a request for
- 65 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
- 66 the right of a person to have access to the information, after:
 - 67 (a) a contract directly relating to the subject of the request for information has been
 - 68 awarded and signed by all parties; or
 - 69 (b) (i) a final determination is made not to enter into a contract that relates to the
 - 70 subject of the request for information; and
 - 71 (ii) at least two years have passed after the day on which the request for information is
 - 72 issued;
 - 73 (8) records that would identify real property or the appraisal or estimated value of real
 - 74 or personal property, including intellectual property, under consideration for public acquisition
 - 75 before any rights to the property are acquired unless:
 - 76 (a) public interest in obtaining access to the information is greater than or equal to the
 - 77 governmental entity's need to acquire the property on the best terms possible;
 - 78 (b) the information has already been disclosed to persons not employed by or under a
 - 79 duty of confidentiality to the entity;
 - 80 (c) in the case of records that would identify property, potential sellers of the described
 - 81 property have already learned of the governmental entity's plans to acquire the property;
 - 82 (d) in the case of records that would identify the appraisal or estimated value of
 - 83 property, the potential sellers have already learned of the governmental entity's estimated value
 - 84 of the property; or
 - 85 (e) the property under consideration for public acquisition is a single family residence
 - 86 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
 - 87 the property as required under Section [78B-6-505](#);
 - 88 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
 - 89 compensated transaction of real or personal property including intellectual property, which, if

90 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
91 of the subject property, unless:

92 (a) the public interest in access is greater than or equal to the interests in restricting
93 access, including the governmental entity's interest in maximizing the financial benefit of the
94 transaction; or

95 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
96 the value of the subject property have already been disclosed to persons not employed by or
97 under a duty of confidentiality to the entity;

98 (10) records created or maintained for civil, criminal, or administrative enforcement
99 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
100 release of the records:

101 (a) reasonably could be expected to interfere with investigations undertaken for
102 enforcement, discipline, licensing, certification, or registration purposes;

103 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
104 proceedings;

105 (c) would create a danger of depriving a person of a right to a fair trial or impartial
106 hearing;

107 (d) reasonably could be expected to disclose the identity of a source who is not
108 generally known outside of government and, in the case of a record compiled in the course of
109 an investigation, disclose information furnished by a source not generally known outside of
110 government if disclosure would compromise the source; or

111 (e) reasonably could be expected to disclose investigative or audit techniques,
112 procedures, policies, or orders not generally known outside of government if disclosure would
113 interfere with enforcement or audit efforts;

114 (11) records the disclosure of which would jeopardize the life or safety of an
115 individual;

116 (12) records the disclosure of which would jeopardize the security of governmental
117 property, governmental programs, or governmental recordkeeping systems from damage, theft,
118 or other appropriation or use contrary to law or public policy;

119 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
120 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere

121 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

122 (14) records that, if disclosed, would reveal recommendations made to the Board of
123 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
124 Board of Pardons and Parole, or the Department of Human Services that are based on the
125 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
126 jurisdiction;

127 (15) records and audit workpapers that identify audit, collection, and operational
128 procedures and methods used by the State Tax Commission, if disclosure would interfere with
129 audits or collections;

130 (16) records of a governmental audit agency relating to an ongoing or planned audit
131 until the final audit is released;

132 (17) records that are subject to the attorney client privilege;

133 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
134 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
135 quasi-judicial, or administrative proceeding;

136 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
137 from a member of the Legislature; and

138 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
139 legislative action or policy may not be classified as protected under this section; and

140 (b) (i) an internal communication that is part of the deliberative process in connection
141 with the preparation of legislation between:

142 (A) members of a legislative body;

143 (B) a member of a legislative body and a member of the legislative body's staff; or

144 (C) members of a legislative body's staff; and

145 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
146 legislative action or policy may not be classified as protected under this section;

147 (20) (a) records in the custody or control of the Office of Legislative Research and
148 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
149 legislation or contemplated course of action before the legislator has elected to support the
150 legislation or course of action, or made the legislation or course of action public; and

151 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the

152 Office of Legislative Research and General Counsel is a public document unless a legislator
153 asks that the records requesting the legislation be maintained as protected records until such
154 time as the legislator elects to make the legislation or course of action public;

155 (21) research requests from legislators to the Office of Legislative Research and
156 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
157 in response to these requests;

158 (22) drafts, unless otherwise classified as public;

159 (23) records concerning a governmental entity's strategy about:

160 (a) collective bargaining; or

161 (b) imminent or pending litigation;

162 (24) records of investigations of loss occurrences and analyses of loss occurrences that
163 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
164 Uninsured Employers' Fund, or similar divisions in other governmental entities;

165 (25) records, other than personnel evaluations, that contain a personal recommendation
166 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
167 personal privacy, or disclosure is not in the public interest;

168 (26) records that reveal the location of historic, prehistoric, paleontological, or
169 biological resources that if known would jeopardize the security of those resources or of
170 valuable historic, scientific, educational, or cultural information;

171 (27) records of independent state agencies if the disclosure of the records would
172 conflict with the fiduciary obligations of the agency;

173 (28) records of an institution within the state system of higher education defined in
174 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,
175 retention decisions, and promotions, which could be properly discussed in a meeting closed in
176 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
177 the final decisions about tenure, appointments, retention, promotions, or those students
178 admitted, may not be classified as protected under this section;

179 (29) records of the governor's office, including budget recommendations, legislative
180 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
181 policies or contemplated courses of action before the governor has implemented or rejected
182 those policies or courses of action or made them public;

183 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
184 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
185 recommendations in these areas;

186 (31) records provided by the United States or by a government entity outside the state
187 that are given to the governmental entity with a requirement that they be managed as protected
188 records if the providing entity certifies that the record would not be subject to public disclosure
189 if retained by it;

190 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
191 except as provided in Section [52-4-206](#);

192 (33) records that would reveal the contents of settlement negotiations but not including
193 final settlements or empirical data to the extent that they are not otherwise exempt from
194 disclosure;

195 (34) memoranda prepared by staff and used in the decision-making process by an
196 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
197 other body charged by law with performing a quasi-judicial function;

198 (35) records that would reveal negotiations regarding assistance or incentives offered
199 by or requested from a governmental entity for the purpose of encouraging a person to expand
200 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
201 person or place the governmental entity at a competitive disadvantage, but this section may not
202 be used to restrict access to a record evidencing a final contract;

203 (36) materials to which access must be limited for purposes of securing or maintaining
204 the governmental entity's proprietary protection of intellectual property rights including patents,
205 copyrights, and trade secrets;

206 (37) the name of a donor or a prospective donor to a governmental entity, including an
207 institution within the state system of higher education defined in Section [53B-1-102](#), and other
208 information concerning the donation that could reasonably be expected to reveal the identity of
209 the donor, provided that:

210 (a) the donor requests anonymity in writing;

211 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
212 classified protected by the governmental entity under this Subsection (37); and

213 (c) except for an institution within the state system of higher education defined in

214 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
215 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
216 over the donor, a member of the donor's immediate family, or any entity owned or controlled
217 by the donor or the donor's immediate family;

218 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
219 73-18-13;

220 (39) a notification of workers' compensation insurance coverage described in Section
221 34A-2-205;

222 (40) (a) the following records of an institution within the state system of higher
223 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
224 or received by or on behalf of faculty, staff, employees, or students of the institution:

225 (i) unpublished lecture notes;

226 (ii) unpublished notes, data, and information:

227 (A) relating to research; and

228 (B) of:

229 (I) the institution within the state system of higher education defined in Section
230 53B-1-102; or

231 (II) a sponsor of sponsored research;

232 (iii) unpublished manuscripts;

233 (iv) creative works in process;

234 (v) scholarly correspondence; and

235 (vi) confidential information contained in research proposals;

236 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
237 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

238 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

239 (41) (a) records in the custody or control of the Office of Legislative Auditor General
240 that would reveal the name of a particular legislator who requests a legislative audit prior to the
241 date that audit is completed and made public; and

242 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
243 Office of the Legislative Auditor General is a public document unless the legislator asks that
244 the records in the custody or control of the Office of Legislative Auditor General that would

245 reveal the name of a particular legislator who requests a legislative audit be maintained as
246 protected records until the audit is completed and made public;

247 (42) records that provide detail as to the location of an explosive, including a map or
248 other document that indicates the location of:

249 (a) a production facility; or
250 (b) a magazine;

251 (43) information:

252 (a) contained in the statewide database of the Division of Aging and Adult Services
253 created by Section [62A-3-311.1](#); or
254 (b) received or maintained in relation to the Identity Theft Reporting Information
255 System (IRIS) established under Section [67-5-22](#);

256 (44) information contained in the Management Information System and Licensing
257 Information System described in Title 62A, Chapter 4a, Child and Family Services;

258 (45) information regarding National Guard operations or activities in support of the
259 National Guard's federal mission;

260 (46) records provided by any pawn or secondhand business to a law enforcement
261 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
262 Secondhand Merchandise Transaction Information Act;

263 (47) information regarding food security, risk, and vulnerability assessments performed
264 by the Department of Agriculture and Food;

265 (48) except to the extent that the record is exempt from this chapter pursuant to Section
266 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
267 prepared or maintained by the Division of Emergency Management, and the disclosure of
268 which would jeopardize:

269 (a) the safety of the general public; or
270 (b) the security of:

271 (i) governmental property;
272 (ii) governmental programs; or
273 (iii) the property of a private person who provides the Division of Emergency
274 Management information;

275 (49) records of the Department of Agriculture and Food that provides for the

276 identification, tracing, or control of livestock diseases, including any program established under
277 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control
278 of Animal Disease;

279 (50) as provided in Section 26-39-501:

280 (a) information or records held by the Department of Health related to a complaint
281 regarding a child care program or residential child care which the department is unable to
282 substantiate; and

283 (b) information or records related to a complaint received by the Department of Health
284 from an anonymous complainant regarding a child care program or residential child care;

285 (51) unless otherwise classified as public under Section 63G-2-301 and except as
286 provided under Section 41-1a-116, an individual's home address, home telephone number, or
287 personal mobile phone number, if:

288 (a) the individual is required to provide the information in order to comply with a law,
289 ordinance, rule, or order of a government entity; and

290 (b) the subject of the record has a reasonable expectation that this information will be
291 kept confidential due to:

292 (i) the nature of the law, ordinance, rule, or order; and

293 (ii) the individual complying with the law, ordinance, rule, or order;

294 (52) the name, home address, work addresses, and telephone numbers of an individual
295 that is engaged in, or that provides goods or services for, medical or scientific research that is:

296 (a) conducted within the state system of higher education, as defined in Section
297 53B-1-102; and

298 (b) conducted using animals;

299 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
300 Private Proposal Program, to the extent not made public by rules made under that chapter;

301 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
302 Evaluation Commission concerning an individual commissioner's vote on whether or not to
303 recommend that the voters retain a judge;

304 (55) information collected and a report prepared by the Judicial Performance
305 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
306 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,

307 the information or report;

308 (56) records contained in the Management Information System created in Section
309 62A-4a-1003;

310 (57) records provided or received by the Public Lands Policy Coordinating Office in
311 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

312 (58) information requested by and provided to the Utah [State] 911 Committee under
313 Section 63H-7-303;

314 (59) in accordance with Section 73-10-33:

315 (a) a management plan for a water conveyance facility in the possession of the Division
316 of Water Resources or the Board of Water Resources; or

317 (b) an outline of an emergency response plan in possession of the state or a county or
318 municipality;

319 (60) the following records in the custody or control of the Office of Inspector General
320 of Medicaid Services, created in Section 63A-13-201:

321 (a) records that would disclose information relating to allegations of personal
322 misconduct, gross mismanagement, or illegal activity of a person if the information or
323 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
324 through other documents or evidence, and the records relating to the allegation are not relied
325 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
326 report or final audit report;

327 (b) records and audit workpapers to the extent they would disclose the identity of a
328 person who, during the course of an investigation or audit, communicated the existence of any
329 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
330 regulation adopted under the laws of this state, a political subdivision of the state, or any
331 recognized entity of the United States, if the information was disclosed on the condition that
332 the identity of the person be protected;

333 (c) before the time that an investigation or audit is completed and the final
334 investigation or final audit report is released, records or drafts circulated to a person who is not
335 an employee or head of a governmental entity for the person's response or information;

336 (d) records that would disclose an outline or part of any investigation, audit survey
337 plan, or audit program; or

338 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
339 investigation or audit;

340 (61) records that reveal methods used by the Office of Inspector General of Medicaid
341 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
342 abuse;

343 (62) information provided to the Department of Health or the Division of Occupational
344 and Professional Licensing under Subsection 58-68-304(3) or (4);

345 (63) a record described in Section 63G-12-210; ~~and~~

346 (64) captured plate data that is obtained through an automatic license plate reader
347 system used by a governmental entity as authorized in Section 41-6a-2003[-]; and

348 (65) any record in the custody of the Utah Office for Victims of Crime relating to a
349 victim, including:

350 (a) a victim's application or request for benefits;

351 (b) a victim's receipt or denial of benefits; and

352 (c) any administrative notes or records made or created for the purpose of, or used to,
353 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
354 Reparations Fund.

355 Section 2. Section 63M-7-503 is amended to read:

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

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

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

361 (3) If, due to reparation payments to a victim, the Utah Office for Victims of Crime is
362 assigned under Section 63M-7-519 a claim for the victim's judgment for restitution or a portion
363 of the restitution, the office may file with the sentencing court a notice of ~~[the assignment. The~~
364 ~~notice of assignment shall be signed by the victim and a reparations officer and shall contain an~~
365 ~~affidavit detailing the specific amounts of pecuniary damages paid on behalf of the victim. A~~
366 ~~copy of the notice of assignment and affidavit shall be mailed by certified mail to the defendant~~
367 ~~at his last known address 20 days prior to sentencing, entry of any judgment or order of~~
368 ~~restitution, or modification of any existing judgment or order of restitution.] restitution listing~~

369 the amounts or estimated future amounts of payments made or anticipated to be made to or on
 370 behalf of the victim. The Utah Office for Victims of Crime may provide a restitution notice to
 371 the victim or victim's representative prior to or at sentencing. The amount of restitution sought
 372 by the office may be updated at any time, subject to the right of the defendant to object. Failure
 373 to provide the notice may not invalidate the imposition of the judgment or order of restitution
 374 provided the defendant is given the opportunity to object and be heard as provided in this
 375 chapter. Any objection by the defendant to the imposition or amount of restitution shall be
 376 made at the time of sentencing or in writing within 20 days of ~~H~~→ [H] **the receipt of notice** [H]
 377 **[sentencing]** ←~~H~~ , to be filed with the court and a copy mailed to the [~~office~~] Utah Office for
 377a Victims
 378 of Crime. Upon the filing of the objection, the court shall allow the defendant a full hearing on
 379 the issue as provided by Subsection 77-38a-302(4).

380 (4) If no objection is made or filed by the defendant, then upon conviction and
 381 sentencing, the court shall enter a judgment for ~~H~~→ [H] **complete** [H] ~~[-court-ordered]~~ ←~~H~~
 381a restitution pursuant to
 382 the provisions of Subsections 76-3-201(4)(c) and (d) and identify the office as the assignee of
 383 the assigned portion of the judgment and order of restitution.

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

391 Section 3. Section 76-3-201 is amended to read:

392 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**
 393 **penalties.**

394 (1) As used in this section:

395 (a) "Conviction" includes a:

396 (i) judgment of guilt; and

397 (ii) plea of guilty.

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

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

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

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

409 (e) (i) "Victim" means any person or entity, including the Utah Office for Victims of
410 Crime, who the court determines has suffered pecuniary damages as a result of the defendant's
411 criminal activities.

412 (ii) "Victim" does not include [~~any coparticipant in the defendant's criminal activities]~~
413 a codefendant or accomplice.

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

- 416 (a) to pay a fine;
- 417 (b) to removal or disqualification from public or private office;
- 418 (c) to probation unless otherwise specifically provided by law;
- 419 (d) to imprisonment;
- 420 (e) on or after April 27, 1992, to life in prison without parole; or
- 421 (f) to death.

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

- 423 (i) forfeit property;
- 424 (ii) dissolve a corporation;
- 425 (iii) suspend or cancel a license;
- 426 (iv) permit removal of a person from office;
- 427 (v) cite for contempt; or
- 428 (vi) impose any other civil penalty.

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

430 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary

431 damages, in addition to any other sentence it may impose, the court shall order that the
432 defendant make restitution to the victims, or for conduct for which the defendant has agreed to
433 make restitution as part of a plea agreement.

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

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

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

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

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

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

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

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

452 (iii) convicted of a crime.

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

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

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

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

460 (A) \$100 for up to 100 miles a defendant is transported;

461 (B) \$200 for 100 up to 200 miles a defendant is transported; and

462 (C) \$350 for 200 miles or more a defendant is transported.

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

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

470 (6) (a) In addition to any other sentence the court may impose, and unless otherwise
471 ordered by the court pursuant to Subsection (6)(c), the defendant shall pay restitution to the
472 county for the cost of incarceration and costs of medical care provided to the defendant while
473 in the county correctional facility before and after sentencing if:

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

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

478 (B) the reimbursement does not duplicate the reimbursement provided under Section
479 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or
480 a state parole inmate, as defined in Section 64-13e-102.

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

484 (ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred
485 by the county correctional facility in providing reasonable accommodation for an inmate
486 qualifying as an individual with a disability as defined and covered by the federal Americans
487 with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental
488 health treatment for the inmate's disability.

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

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

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

498 **77-38a-102. Definitions.**

499 As used in this chapter:

500 (1) "Conviction" includes a:

501 (a) judgment of guilt;

502 (b) a plea of guilty; or

503 (c) a plea of no contest.

504 (2) "Criminal activities" means any offense of which the defendant is convicted or any
505 other criminal conduct for which the defendant admits responsibility to the sentencing court
506 with or without an admission of committing the criminal conduct.

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

508 (4) "Diversion" means suspending criminal proceedings prior to conviction on the
509 condition that a defendant agree to participate in a rehabilitation program, make restitution to
510 the victim, or fulfill some other condition.

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

512 (6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet
513 incurred, which a person could recover in a civil action arising out of the facts or events
514 constituting the defendant's criminal activities and includes the fair market value of property
515 taken, destroyed, broken, or otherwise harmed, and losses including lost earnings and medical
516 expenses, but excludes punitive or exemplary damages and pain and suffering.

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

520 ~~[(10)]~~ (8) "Plea disposition" means an agreement entered into between the prosecution
521 and defendant including diversion, plea agreement, plea in abeyance agreement, or any
522 agreement by which the defendant may enter a plea in any other jurisdiction or where charges
523 are dismissed without a plea.

524 [(8)] (9) "Plea in abeyance" means an order by a court, upon motion of the prosecution
 525 and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that
 526 time, entering judgment of conviction against him nor imposing sentence upon him on
 527 condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

528 [(9)] (10) "Plea in abeyance agreement" means an agreement entered into between the
 529 prosecution and the defendant setting forth the specific terms and conditions upon which,
 530 following acceptance of the agreement by the court, a plea may be held in abeyance.

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

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

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

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

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

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

545 (14) (a) "Victim" means any person [~~whom~~] or entity, including the Utah Office for
 546 Victims of Crime, who the court determines has suffered pecuniary damages as a result of the
 547 defendant's criminal activities.

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

549 Section 5. Section **77-38a-401** is amended to read:

550 **77-38a-401. Entry of judgment -- Interest -- Civil actions -- Lien.**

551 (1) Upon the court determining that a defendant owes restitution, the clerk of the court
 552 shall enter an order of ~~H~~→ [H] **complete** [H] [~~court-ordered~~] ←~~H~~ restitution as defined in
 552a Section **77-38a-302** on

553 the civil judgment docket and provide notice of the order to the parties.

554 (2) The order shall be considered a legal judgment, enforceable under the Utah Rules

555 of Civil Procedure. In addition, the department may, on behalf of the person in whose favor the
556 restitution order is entered, enforce the restitution order as judgment creditor under the Utah
557 Rules of Civil Procedure.

558 (3) If the defendant fails to obey a court order for payment of restitution and the victim
559 or department elects to pursue collection of the order by civil process, the victim shall be
560 entitled to recover collection and reasonable attorney fees.

561 (4) Notwithstanding Subsection 77-18-6(1)(b)(v) and Sections 78B-2-311 and
562 78B-5-202, a judgment ordering restitution when entered on the civil judgment docket shall
563 have the same affect and is subject to the same rules as a judgment in a civil action and expires
564 only upon payment in full, which includes applicable interest, collection fees, and attorney fees.
565 Interest shall accrue on the amount ordered from the time of sentencing, including prejudgment
566 interest. This Subsection (4) applies to all restitution judgments not paid in full on or before
567 May 12, 2009.

568 (5) The department shall make rules permitting the restitution payments to be credited
569 to principal first and the remainder of payments credited to interest in accordance with Title
570 63G, Chapter 3, Utah Administrative Rulemaking Act.

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