

VICTIM RESTITUTION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: Todd Weiler

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

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

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

30 **63G-2-305. Protected records.**

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

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

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

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

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

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

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

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

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

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

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

86 the property as required under Section 78B-6-505;

87 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
88 compensated transaction of real or personal property including intellectual property, which, if
89 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
90 of the subject property, unless:

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

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

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

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

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

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

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

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

113 (11) records the disclosure of which would jeopardize the life or safety of an

114 individual;

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

118 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
119 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
120 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

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

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

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

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

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

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

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

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

141 (A) members of a legislative body;

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

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

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

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

150 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
151 Office of Legislative Research and General Counsel is a public document unless a legislator
152 asks that the records requesting the legislation be maintained as protected records until such
153 time as the legislator elects to make the legislation or course of action public;

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

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

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

159 (a) collective bargaining; or

160 (b) imminent or pending litigation;

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

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

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

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

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

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

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

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

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

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

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

197 (35) records that would reveal negotiations regarding assistance or incentives offered

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

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

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

209 (a) the donor requests anonymity in writing;

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

212 (c) except for an institution within the state system of higher education defined in
213 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
214 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
215 over the donor, a member of the donor's immediate family, or any entity owned or controlled
216 by the donor or the donor's immediate family;

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

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

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

224 (i) unpublished lecture notes;

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

- 226 (A) relating to research; and
- 227 (B) of:
- 228 (I) the institution within the state system of higher education defined in Section
- 229 [53B-1-102](#); or
- 230 (II) a sponsor of sponsored research;
- 231 (iii) unpublished manuscripts;
- 232 (iv) creative works in process;
- 233 (v) scholarly correspondence; and
- 234 (vi) confidential information contained in research proposals;
- 235 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 236 information required pursuant to Subsection [53B-16-302](#)(2)(a) or (b); and
- 237 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 238 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 239 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 240 date that audit is completed and made public; and
- 241 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 242 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 243 the records in the custody or control of the Office of Legislative Auditor General that would
- 244 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 245 protected records until the audit is completed and made public;
- 246 (42) records that provide detail as to the location of an explosive, including a map or
- 247 other document that indicates the location of:
- 248 (a) a production facility; or
- 249 (b) a magazine;
- 250 (43) information:
- 251 (a) contained in the statewide database of the Division of Aging and Adult Services
- 252 created by Section [62A-3-311.1](#); or
- 253 (b) received or maintained in relation to the Identity Theft Reporting Information

254 System (IRIS) established under Section [67-5-22](#);

255 (44) information contained in the Management Information System and Licensing

256 Information System described in Title 62A, Chapter 4a, Child and Family Services;

257 (45) information regarding National Guard operations or activities in support of the

258 National Guard's federal mission;

259 (46) records provided by any pawn or secondhand business to a law enforcement

260 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and

261 Secondhand Merchandise Transaction Information Act;

262 (47) information regarding food security, risk, and vulnerability assessments performed

263 by the Department of Agriculture and Food;

264 (48) except to the extent that the record is exempt from this chapter pursuant to Section

265 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or

266 prepared or maintained by the Division of Emergency Management, and the disclosure of

267 which would jeopardize:

268 (a) the safety of the general public; or

269 (b) the security of:

270 (i) governmental property;

271 (ii) governmental programs; or

272 (iii) the property of a private person who provides the Division of Emergency

273 Management information;

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

275 identification, tracing, or control of livestock diseases, including any program established under

276 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control

277 of Animal Disease;

278 (50) as provided in Section [26-39-501](#):

279 (a) information or records held by the Department of Health related to a complaint

280 regarding a child care program or residential child care which the department is unable to

281 substantiate; and

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

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

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

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

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

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

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

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

297 (b) conducted using animals;

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

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

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

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

309 (57) records provided or received by the Public Lands Policy Coordinating Office in

310 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
311 (58) information requested by and provided to the Utah [State] 911 Committee under
312 Section 63H-7-303;
313 (59) in accordance with Section 73-10-33:
314 (a) a management plan for a water conveyance facility in the possession of the Division
315 of Water Resources or the Board of Water Resources; or
316 (b) an outline of an emergency response plan in possession of the state or a county or
317 municipality;
318 (60) the following records in the custody or control of the Office of Inspector General
319 of Medicaid Services, created in Section 63A-13-201:
320 (a) records that would disclose information relating to allegations of personal
321 misconduct, gross mismanagement, or illegal activity of a person if the information or
322 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
323 through other documents or evidence, and the records relating to the allegation are not relied
324 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
325 report or final audit report;
326 (b) records and audit workpapers to the extent they would disclose the identity of a
327 person who, during the course of an investigation or audit, communicated the existence of any
328 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
329 regulation adopted under the laws of this state, a political subdivision of the state, or any
330 recognized entity of the United States, if the information was disclosed on the condition that
331 the identity of the person be protected;
332 (c) before the time that an investigation or audit is completed and the final
333 investigation or final audit report is released, records or drafts circulated to a person who is not
334 an employee or head of a governmental entity for the person's response or information;
335 (d) records that would disclose an outline or part of any investigation, audit survey
336 plan, or audit program; or
337 (e) requests for an investigation or audit, if disclosure would risk circumvention of an

338 investigation or audit;

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

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

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

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

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

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

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

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

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

355 **63M-7-503. Restitution -- Reparations not to supplant restitution -- Assignment**
 356 **of claim for restitution judgment to Reparations Office.**

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

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

360 (3) If, due to reparation payments to a victim, the Utah Office for Victims of Crime is
 361 assigned under Section 63M-7-519 a claim for the victim's judgment for restitution or a portion
 362 of the restitution, the office may file with the sentencing court a notice of ~~[the assignment. The~~
 363 ~~notice of assignment shall be signed by the victim and a reparations officer and shall contain an~~
 364 ~~affidavit detailing the specific amounts of pecuniary damages paid on behalf of the victim. A~~
 365 ~~copy of the notice of assignment and affidavit shall be mailed by certified mail to the defendant~~

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

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

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

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

391 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**
392 **penalties.**

393 (1) As used in this section:

394 (a) "Conviction" includes a:

395 (i) judgment of guilt; and

396 (ii) plea of guilty.

397 (b) "Criminal activities" means any offense of which the defendant is convicted or any
398 other criminal conduct for which the defendant admits responsibility to the sentencing court
399 with or without an admission of committing the criminal conduct.

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

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

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

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

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

415 (a) to pay a fine;

416 (b) to removal or disqualification from public or private office;

417 (c) to probation unless otherwise specifically provided by law;

418 (d) to imprisonment;

419 (e) on or after April 27, 1992, to life in prison without parole; or

420 (f) to death.

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

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

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

429 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary
430 damages, in addition to any other sentence it may impose, the court shall order that the
431 defendant make restitution to the victims, or for conduct for which the defendant has agreed to
432 make restitution as part of a plea agreement.

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

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

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

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

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

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

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

- 450 (ii) charged with a felony or a class A, B, or C misdemeanor; and
- 451 (iii) convicted of a crime.
- 452 (b) The court may not order the defendant to pay restitution of governmental
- 453 transportation expenses if any of the following apply:
 - 454 (i) the defendant is charged with an infraction or on a subsequent failure to appear a
 - 455 warrant is issued for an infraction; or
 - 456 (ii) the defendant was not transported pursuant to a court order.
- 457 (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i)
- 458 shall be calculated according to the following schedule:
 - 459 (A) \$100 for up to 100 miles a defendant is transported;
 - 460 (B) \$200 for 100 up to 200 miles a defendant is transported; and
 - 461 (C) \$350 for 200 miles or more a defendant is transported.
- 462 (ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant
- 463 transported regardless of the number of defendants actually transported in a single trip.
- 464 (d) If a defendant has been extradited to this state under Title 77, Chapter 30,
- 465 Extradition, to resolve pending criminal charges and is convicted of criminal activity in the
- 466 county to which he has been returned, the court may, in addition to any other sentence it may
- 467 impose, order that the defendant make restitution for costs expended by any governmental
- 468 entity for the extradition.
- 469 (6) (a) In addition to any other sentence the court may impose, and unless otherwise
- 470 ordered by the court pursuant to Subsection (6)(c), the defendant shall pay restitution to the
- 471 county for the cost of incarceration and costs of medical care provided to the defendant while
- 472 in the county correctional facility before and after sentencing if:
 - 473 (i) the defendant is convicted of criminal activity that results in incarceration in the
 - 474 county correctional facility; and
 - 475 (ii) (A) the defendant is not a state prisoner housed in a county correctional facility
 - 476 through a contract with the Department of Corrections; or
 - 477 (B) the reimbursement does not duplicate the reimbursement provided under Section

478 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or
479 a state parole inmate, as defined in Section 64-13e-102.

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

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

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

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

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

497 **77-38a-102. Definitions.**

498 As used in this chapter:

499 (1) "Conviction" includes a:

500 (a) judgment of guilt;

501 (b) a plea of guilty; or

502 (c) a plea of no contest.

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

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

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

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

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

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

519 [~~(10)~~] (8) "Plea disposition" means an agreement entered into between the prosecution
520 and defendant including diversion, plea agreement, plea in abeyance agreement, or any
521 agreement by which the defendant may enter a plea in any other jurisdiction or where charges
522 are dismissed without a plea.

523 [~~(8)~~] (9) "Plea in abeyance" means an order by a court, upon motion of the prosecution
524 and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that
525 time, entering judgment of conviction against him nor imposing sentence upon him on
526 condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

527 [~~(9)~~] (10) "Plea in abeyance agreement" means an agreement entered into between the
528 prosecution and the defendant setting forth the specific terms and conditions upon which,
529 following acceptance of the agreement by the court, a plea may be held in abeyance.

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

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

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

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

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

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

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

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