

77-38b-205. Order for restitution.

(1)

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

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

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

(i) in accordance with the terms of the plea in abeyance or the diversion agreement; or
(ii) if the terms of the plea in abeyance do not include a restitution amount or include an agreement between the parties that restitution will be determined by the court as described in Section 77-2a-3, for the entire amount of pecuniary damages that are proximately caused to each victim by the criminal conduct of the defendant.

(2)

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

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

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

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

(4) Upon an order for a defendant to pay restitution under Subsection (1), the court shall:

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

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

(5) If the defendant objects to a request for restitution, the court shall allow the defendant to have a hearing on the issue, unless the issue is addressed at the sentencing hearing for the defendant.

(6) If a court does not enter an order for restitution at sentencing, the court shall schedule a hearing to enter an order for restitution, unless:

(a) the court finds as a matter of law that there is no victim in the case; or

(b) the prosecuting attorney certifies to the court, on the record, that:

(i) the prosecuting attorney has consulted with all victims, including the Utah Office for Victims of Crime; and

(ii) all victims, including the Utah Office for Victims of Crime, are not seeking restitution.

(7)

- (a) A court shall enter an order for restitution in a defendant's case no later than the earlier of:
- (i) the termination of the defendant's sentence, including early termination of the defendant's sentence, or the successful completion of the terms of a plea in abeyance or diversion agreement; or
 - (ii)
 - (A) if the defendant is convicted and imprisoned for a first degree felony, within seven years after the day on which the court sentences the defendant for the first degree felony conviction; or
 - (B) except as provided in Subsection (7)(a)(ii)(A), and if the defendant is convicted of a felony, within three years after the day on which the court sentences the defendant for the felony conviction.
- (b) A request for restitution that is made within the time period described in Subsection (7)(a) tolls the time for which the court must enter an order for restitution under Subsection (7)(a) but does not extend the term of the defendant's probation or period of incarceration.
- (8)
 - (a) If a court does not order restitution at sentencing or at a hearing described in Subsection (6), the prosecuting attorney or the victim may file a motion for restitution within the time periods described in Subsection (7).
 - (b) If the defendant receives notice and does not object to a motion for restitution, the court may order restitution without a hearing.
 - (c) If the defendant receives notice and objects to a motion for restitution, the court may schedule a hearing to determine whether restitution should be ordered if the prosecuting attorney or victim shows good cause.
- (9) Upon a motion from the prosecuting attorney or the victim within the time periods described in Subsection (7), the court may modify an existing order of restitution, including the amount of pecuniary damages owed by the defendant in the order for restitution, if the prosecuting attorney or the victim shows good cause for modifying the order.

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

- (1) If a prosecuting attorney files a criminal charge against a defendant, the prosecuting attorney shall:
- (a) contact any known victim of the offense for which the criminal charge is filed, or person asserting a claim for restitution on behalf of the victim, including the Office for Victims of Crime; and
 - (b) gather the following information from the victim or person:
 - (i) the name of the victim or person; and
 - (ii) the actual or estimated amount of restitution.
- (2)
 - (a) When a conviction, a diversion agreement, or a plea in abeyance is entered by the court, the prosecuting attorney shall provide the court with the information gathered by the prosecuting attorney under Subsection (1)(b).

- (b) If, at the time of the plea disposition or conviction, the prosecuting attorney does not have all the information under Subsection (1)(b), the prosecuting attorney shall provide the defendant with:
 - (i) at the time of plea disposition or conviction, all information under Subsection (1)(b) that is reasonably available to the prosecuting attorney; and
 - (ii) any information under Subsection (1)(b) as the information becomes available to the prosecuting attorney.
- (c) Nothing in this section shall be construed to prevent a prosecuting attorney, a victim, or a person asserting a claim for restitution on behalf of a victim from:
 - (i) submitting information on, or a request for, restitution to the court within the time periods described in Section 77-38b-205; or
 - (ii) submitting information on, or a request for, restitution for additional or substituted victims within the time periods described in Section 77-38b-205.
- (3)
 - (a) The prosecuting attorney may be authorized by the sentencing court or appropriate public treasurer to deposit restitution collected on behalf of a victim into an interest-bearing account in accordance with Title 51, Chapter 7, State Money Management Act, pending the distribution of the funds to the victim.
 - (b) If restitution is deposited into an interest-bearing account under Subsection (3)(a), the prosecuting attorney shall:
 - (i) distribute any interest that accrues in the account to each victim on a pro rata basis; and
 - (ii) if all victims have been made whole and funds remain in the account, distribute any remaining funds to the Division of Finance, created in Section 63A-3-101, to deposit to the Utah Office for Victims of Crime.
 - (c) Nothing in this section prevents an independent judicial authority from collecting, holding, and distributing restitution.

77-2a-3. Manner of entry of plea -- Powers of court -- Expungement.

- (1)
 - (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be done in full compliance with the Utah Rules of Criminal Procedure, Rule 11.
 - (b) In a case charging an offense for which a defendant may voluntarily pay the recommended fine amount without a personal appearance under Section 77-7-21, a defendant may enter into a plea in abeyance agreement without a personal appearance before a magistrate.
- (2) A plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:
 - (a) reduce the degree of the offense, enter a judgment of conviction for the lower degree of the offense, and impose a sentence for the lower degree of the offense;
 - (b) allow withdrawal of the defendant's plea and order the dismissal of the case; or
 - (c) issue an order of expungement for all records of the offense if:
 - (i) the defendant successfully completes a problem solving court program that is certified by the Judicial Council; and

(ii) the court allows the withdrawal of the defendant's plea and orders the dismissal of the case.

(3)

(a) Upon finding that a defendant has successfully completed the terms of a plea in abeyance agreement and only as provided in the plea in abeyance agreement or as agreed to by all parties, the court may:

(i) reduce the degree of the offense, enter a judgment of conviction for the lower degree of the offense, and impose a sentence for the lower degree of the offense;

(ii) allow withdrawal of the defendant's plea and order the dismissal of the case; or

(iii) issue an order of expungement for all records of the offense if:

(A) the defendant successfully completes a problem solving court program that is certified by the Judicial Council; and

(B) the court allows the withdrawal of the defendant's plea and orders the dismissal of the case.

(b) Upon sentencing a defendant for any lesser offense in accordance with a plea in abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of the offense.

(4) The court may require the Division of Adult Probation and Parole created in Section 64-14-202 to assist in the administration of the plea in abeyance agreement as if the defendant were placed on probation under Section 77-18-105.

(5) The terms of a plea in abeyance agreement may include:

(a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and which may not exceed in amount the maximum fine and surcharge which could have been imposed upon conviction and sentencing for the same offense;

(b) an order that the defendant pay the costs of any remedial or rehabilitative program required by the terms of the agreement; and

(c) an order that the defendant comply with any other conditions that could have been imposed as conditions of probation upon conviction and sentencing for the same offense.

(6)

(a) The terms of a plea in abeyance shall include:

(i) a specific amount of restitution that the defendant will pay, as agreed to by the defendant and the prosecuting attorney;

(ii) a certification from the prosecuting attorney that:

(A) the prosecuting attorney has consulted with all victims, including the Utah Office for Victims of Crime; and

(B) all victims, including the Utah Office for Victims of Crime, are not seeking restitution; or

(iii) an agreement between the parties that restitution:

(A) will be determined by the court at a subsequent hearing in accordance with Section 77-38b-205; and

(B) may be determined up until the term of the plea in abeyance expires.

(b) At a subsequent hearing described in Subsection (6)(a)(iii), the court shall order the defendant, as a modified term of the plea in abeyance, to pay restitution to all victims for the entire amount of pecuniary damages that are proximately caused by the criminal conduct of the defendant.

(c) The court shall collect, receive, process, and distribute payments for restitution to the victim, unless otherwise provided by law or by the plea in abeyance agreement.

(d) If the defendant does not successfully complete the terms of the plea in abeyance, the court shall enter an order for restitution, in accordance with Chapter 38b, Crime Victims Restitution Act, upon entering a sentence for the defendant.