

77-38-3

Notification to victims -- Initial notice, election to receive subsequent notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact order.

- (1) Within seven days of the filing of felony criminal charges against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges, except as otherwise provided in this chapter.
- (2) The initial notice to the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings listed in Subsections 77-38-2(5)(a) through (f) and rights under this chapter.
- (3) The prosecuting agency shall provide notice to a victim of a crime:
 - (a) for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f), which the victim has requested and
 - (b) for restitution requests to be submitted as provided in Subsection 77-38a-302(5)(d).
- (4)(a) The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.
 - (b) In the event of an unforeseen important criminal justice hearing, listed in Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceeding.
- (5)(a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for victims of crimes to be notified.
 - (b) The court shall also consider whether any notification system it might use to provide notice of judicial proceedings to defendants could be used to provide notice of those same proceedings to victims of crimes.
- (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give notice to the responsible prosecuting agency of any motion for modification of any determination made at any of the important criminal justice hearings provided in Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the prosecuting agency may comply with its notification obligation.
- (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).
 - (b) The board may provide notice in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.
- (8) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (f) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.
- (9)(a) Law enforcement and criminal justice agencies shall refer any requests for notice or information about crime victim rights from victims to the responsible prosecuting agency.
 - (b) In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice it has received from a victim to the Board of Pardons and Parole.
- (10) In all cases where the number of victims exceeds 10, the responsible prosecuting agency may send any notices required under this chapter in its discretion to a representative sample of the victims.

(11)(a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice Services, Department of Corrections, and Board of Pardons and Parole, for purposes of providing notice under this section, is classified as protected as provided in Subsection 63G-2-305(10).

(b) The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:

- (i) a law enforcement agency, including the prosecuting agency;
- (ii) a victims' right committee as provided in Section 77-37-5;
- (iii) a governmentally sponsored victim or witness program;
- (iv) the Department of Corrections;
- (v) the Utah Office for Victims of Crime;
- (vi) the Commission on Criminal and Juvenile Justice; and
- (vii) the Board of Pardons and Parole.

(12) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.

(13)(a) When a defendant is charged with a felony crime under Sections 76-5-301 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding aggravated exploitation of prostitution, the court may, during any court hearing where the defendant is present, issue a pretrial criminal no contact order:

- (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim directly or through a third party;
- (ii) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim or any designated family member of the victim directly or through a third party; and
- (iii) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member of the victim.

(b) Violation of a pretrial criminal no contact order issued pursuant to this section is a third degree felony.

(c)(i) The court shall provide to the victim a certified copy of any pretrial criminal no contact order that has been issued if the victim can be located with reasonable effort.

(ii) The court shall also transmit the pretrial criminal no contact order to the statewide domestic violence network in accordance with Section 78B-7-113.

77-38a-302

Restitution criteria.

(1) When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, a victim has the meaning as defined in Subsection **77-38a-102**(14) and in determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

(2) In determining restitution, the court shall determine complete restitution and court ordered restitution.

(a) "Complete restitution" means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) "Court ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence. ~~at the time of sentencing or within one year after sentencing.~~

(c) Complete restitution and court ordered restitution shall be determined as provided in Subsection (5).

(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.

(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.

(5) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or that the sentencing court reasonably determines resulted in pecuniary damages to a victim or to which the defendant agrees to pay restitution. A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including but not limited to:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(iii) the cost of necessary physical and occupational therapy and rehabilitation;

(iv) the income lost by the victim as a result of the offense ~~if the offense resulted in bodily injury to a victim;~~

(v) ~~up to five days of~~ the individual victim's determinable reasonable wages that are lost due to theft of or damage to tools or equipment items of a trade that were owned by the victim and were essential to the victim's current employment at the time of the offense; and

(vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court ordered restitution, the court shall consider:

(i) the factors listed in Subsections (5)(a) and (b);

(ii) the financial resources of the defendant, as disclosed in the financial declaration described in Section **77-38a-204**;

(iii) the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

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

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

(vi) other circumstances that the court determines may make restitution inappropriate.

(d) (i) ~~Except as provided in Subsection (5)(d)(ii), the~~ prosecuting agency ~~court~~ shall submit all requests to the court to determine complete restitution and court ordered restitution, ~~and shall make all restitution orders~~ at the time of sentencing if feasible, otherwise within one year after sentencing.

(ii) The court may extend the time for determination of complete restitution and court ordered restitution upon a finding of good cause. Any extension granted shall not exceed the period of probation served by the defendant.

(iii) Any pecuniary damages that have not been determined by the court within one year after commitment to prison sentencing may be determined by the Board of Pardons and Parole.

(e) The Board of Pardons and Parole may, within one year after commitment to prison sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

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