

CRIME VICTIM REPARATIONS AND ASSISTANCE BOARD

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: Derek L. Kitchen

LONG TITLE

General Description:

This bill modifies provisions relating to the Utah Office for Victims of Crime and the Crime Victim Reparations and Assistance Board.

Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ modifies the circumstances under which an individual is ineligible to receive a reparations award from the Utah Office for Victims of Crime;
- ▶ clarifies provisions relating to the total amount the Utah Office for Victims of Crime may provide to a victim as a reparations award;
- ▶ modifies provisions relating to assignment of claims and reimbursements for criminally injurious conduct made to the Utah Office for Victims of Crime;
- ▶ prohibits a medical service provider from seeking collection from a victim before a reparations award is determined by the Utah Office for Victims of Crime;
- ▶ tolls the statute of limitations for an action by a medical service provider while the Utah Office for Victims of Crime determines issuance of a reparations award; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-7-502, as last amended by Laws of Utah 2019, Chapter 297

63M-7-503, as last amended by Laws of Utah 2015, Chapter 147

63M-7-505, as last amended by Laws of Utah 2011, Chapter 131

63M-7-506, as last amended by Laws of Utah 2011, Chapter 131

63M-7-507, as last amended by Laws of Utah 2011, Chapter 131

63M-7-508, as last amended by Laws of Utah 2011, Chapter 131

63M-7-509, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382

63M-7-510, as last amended by Laws of Utah 2013, Chapter 118

63M-7-511, as last amended by Laws of Utah 2011, Chapter 342

63M-7-511.5, as enacted by Laws of Utah 2008, Chapter 339

63M-7-512, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382

63M-7-513, as renumbered and amended by Laws of Utah 2008, Chapter 382

63M-7-514, as last amended by Laws of Utah 2011, Chapters 131 and 342

63M-7-515, as last amended by Laws of Utah 2011, Chapter 131

63M-7-516, as last amended by Laws of Utah 2011, Chapter 131

63M-7-517, as renumbered and amended by Laws of Utah 2008, Chapter 382

63M-7-518, as renumbered and amended by Laws of Utah 2008, Chapter 382

63M-7-519, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382

63M-7-521, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and amended by Laws of Utah 2008, Chapter 382

63M-7-521.5, as enacted by Laws of Utah 2008, Chapter 339

63M-7-522, as renumbered and amended by Laws of Utah 2008, Chapter 382

63M-7-523, as renumbered and amended by Laws of Utah 2008, Chapter 382

58 **63M-7-524**, as renumbered and amended by Laws of Utah 2008, Chapter 382

59 **63M-7-525**, as last amended by Laws of Utah 2011, Chapter 131

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

62 Section 1. Section **63M-7-502** is amended to read:

63 **63M-7-502. Definitions.**

64 As used in this [chapter] part:

65 (1) "Accomplice" means [a person] an individual who has engaged in criminal conduct
66 as [defined] described in Section **76-2-202**.

67 (2) "Board" means the Crime Victim Reparations and Assistance Board created under
68 Section **63M-7-504**.

69 (3) "Bodily injury" means physical pain, illness, or any impairment of physical
70 condition.

71 ~~[(4) "Claim" means:]~~

72 ~~[(a) the victim's application or request for a reparations award; and]~~

73 ~~[(b) the formal action taken by a victim to apply for reparations pursuant to this~~
74 ~~chapter.]~~

75 ~~[(5)]~~ (4) "Claimant" means any of the following claiming a reparations award under
76 this [chapter] part:

77 (a) a victim;

78 (b) a dependent of a deceased victim; or

79 ~~[(c) a representative other than a collateral source; or (d) the person]~~

80 (c) an individual or representative who files a reparations claim on behalf of a victim.

81 ~~[(6)]~~ (5) "Child" means an unemancipated [person] individual who is under 18 years of
82 age.

83 ~~[(7)]~~ (6) "Collateral source" means ~~[the definition as provided in Section **63M-7-513**.]~~
84 any source of benefits or advantages for economic loss otherwise reparable under this part
85 which the victim or claimant has received, or which is readily available to the victim from:

86 (a) the offender;

87 (b) the insurance of the offender or the victim;

88 (c) the United States government or any of its agencies, a state or any of its political
89 subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory
90 state-funded programs;

91 (d) social security, Medicare, and Medicaid;

92 (e) state-required temporary nonoccupational income replacement insurance or
93 disability income insurance;

94 (f) workers' compensation;

95 (g) wage continuation programs of any employer;

96 (h) proceeds of a contract of insurance payable to the victim for the loss the victim
97 sustained because of the criminally injurious conduct;

98 (i) a contract providing prepaid hospital and other health care services or benefits for
99 disability; or

100 (j) veteran's benefits, including veteran's hospitalization benefits.

101 ~~[(8) "Contested case" means a case which the claimant contests, claiming the award~~
102 ~~was either inadequate or denied, or which a county attorney, a district attorney, a law~~
103 ~~enforcement officer, or other individual related to the criminal investigation proffers reasonable~~
104 ~~evidence of the claimant's lack of cooperation in the prosecution of a case after an award has~~
105 ~~already been given.]~~

106 ~~[(9)]~~ (7) (a) "Criminally injurious conduct" other than acts of war declared or not
107 declared means conduct that:

108 (i) is or would be subject to prosecution in this state under Section 76-1-201;

109 (ii) occurs or is attempted;

110 (iii) causes, or poses a substantial threat of causing, bodily injury or death;

111 (iv) is punishable by fine, imprisonment, or death if the ~~[person]~~ individual engaging in
112 the conduct possessed the capacity to commit the conduct; and

113 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle,

aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the Person, or as any offense chargeable as driving under the influence of alcohol or drugs.

(b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C. Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism" does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.

(c) "Criminally injurious conduct" includes a felony violation of Section 76-7-101 and other conduct leading to the psychological injury of ~~[a person]~~ an individual resulting from living in a setting that involves a bigamous relationship.

~~[(10)]~~ (8) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support and includes a child of the victim born after the victim's death.

~~[(11)]~~ (9) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to the victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.

~~[(12)]~~ (10) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for the victim's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.

~~[(13)]~~ (11) "Director" means the director of the ~~[Utah Office for Victims of Crime]~~ office.

~~[(14)]~~ (12) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon ~~[a person]~~ an individual:

(a) convicted of a crime;

(b) found delinquent; or

(c) against whom a finding of sufficient facts for conviction or finding of delinquency

is made.

~~[(15)]~~ (13) (a) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and dependent's replacement service loss. ~~[Noneconomic detriment is not loss, but]~~

(b) "Economic loss" includes economic detriment ~~[is loss although]~~ even if caused by pain and suffering or physical impairment.

(c) "Economic loss" does not include noneconomic detriment.

~~[(16)]~~ (14) "Elderly victim" means ~~[a person]~~ an individual 60 years of age or older who is a victim.

~~[(17)]~~ (15) "Fraudulent claim" means a ~~[fited]~~ reparations claim based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible ~~[as provided in Section 63M-7-510]~~.

~~[(18)]~~ (16) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

~~[(19)]~~ (17) "Law enforcement officer" means a law enforcement officer as defined in Section 53-13-103.

~~[(20)]~~ (18) "Medical examination" means a physical examination necessary to document criminally injurious conduct but does not include mental health evaluations for the prosecution and investigation of a crime.

~~[(21)]~~ (19) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct~~[- The definition of mental health counseling is]~~, subject to rules ~~[promulgated]~~ made by the board ~~[pursuant to]~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(22)]~~ (20) "Misconduct" as provided in Subsection 63M-7-512(1)(b) means conduct by the victim which was attributable to the injury or death of the victim as provided by rules ~~[promulgated]~~ made by the board ~~[pursuant to]~~ in accordance with Title 63G, Chapter 3, Utah

Administrative Rulemaking Act.

~~[(23)]~~ (21) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this ~~[chapter]~~ part.

~~[(24)]~~ (22) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this ~~[chapter]~~ part.

~~[(25)]~~ (23) "Offender" means ~~[a person]~~ an individual who has violated the ~~[criminal code]~~ Utah Criminal Code through criminally injurious conduct regardless of whether the ~~[person]~~ individual is arrested, prosecuted, or convicted.

~~[(26)]~~ (24) "Offense" means a violation of the ~~[criminal code]~~ Utah Criminal Code.

(25) "Office" means the director, the reparations and assistance officers, and any other staff employed for the purpose of carrying out the provisions of this part.

~~[(27)]~~ (26) "Perpetrator" means the ~~[person]~~ individual who actually participated in the criminally injurious conduct.

(27) "Reparations award" means money or other benefits provided to a claimant or to another on behalf of a claimant after the day on which a reparations claim is approved by the office.

(28) "Reparations claim" means a claimant's request or application made to the office for a reparations award.

~~[(28)]~~ (29) "Reparations officer" means ~~[a person]~~ an individual employed by the office to investigate claims of victims and award reparations under this ~~[chapter]~~ part, and includes the director when the director is acting as a reparations officer.

~~[(29)]~~ (30) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured ~~[person]~~ individual would have performed, not for income but the benefit of the injured ~~[person]~~ individual or the injured ~~[person's]~~ individual's dependents if the injured ~~[person]~~ individual had not been injured.

~~[(30)]~~ (31) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of ~~[a person]~~ an individual but does not

include a service ~~[providers]~~ provider or collateral source.

~~[(31)]~~ (32) "Restitution" means money or services an appropriate authority orders an offender to pay or render to a victim of the offender's conduct.

~~[(32)]~~ (33) "Secondary victim" means ~~[a person]~~ an individual who is traumatically affected by the criminally injurious conduct subject to rules ~~[promulgated]~~ made by the board ~~[pursuant to]~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(33)]~~ (34) "Service provider" means ~~[a person]~~ an individual or agency who provides a service to crime victims for a monetary fee except attorneys as provided in Section 63M-7-524.

(35) "Serious bodily injury" means the same as that term is defined in Section 76-1-601.

(36) "Substantial bodily injury" means the same as that term is defined in Section 76-1-601.

~~[(34)] "Utah Office for Victims of Crime" or "office" means the director, the reparations and assistance officers, and any other staff employed for the purpose of carrying out the provisions of this chapter.]~~

~~[(35)]~~ (37) (a) "Victim" means ~~[a person]~~ an individual who suffers bodily or psychological injury or death as a direct result of criminally injurious conduct or of the production of pornography in violation of Section 76-5b-201 if the ~~[person]~~ individual is a minor.

(b) "Victim" does not include ~~[a person]~~ an individual who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) "Victim" includes a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. Sec. 2331, committed outside of the United States.

~~[(36)]~~ (38) "Work loss" means loss of income from work the injured victim would have performed if the injured victim had not been injured and expenses reasonably incurred by the injured victim in obtaining services in lieu of those the injured victim would have performed for income, reduced by any income from substitute work the injured victim was

capable of performing but unreasonably failed to undertake.

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

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

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

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

(3) (a) (i) If, due to reparation payments to a victim, the ~~[Utah Office for Victims of Crime]~~ office is assigned under Section **63M-7-519** a claim for the victim's judgment for restitution or a portion of the restitution, the office may file with the sentencing court a notice of restitution listing the amounts or estimated future amounts of payments made or anticipated to be made to or on behalf of the victim.

(ii) The ~~[Utah Office for Victims of Crime]~~ office may provide a restitution notice to the victim or victim's representative ~~[prior to]~~ before or at sentencing. ~~[The amount of restitution sought by the office may be updated at any time, subject to the right of the defendant to object. Failure to provide the notice may]~~

(iii) The office's failure to provide notice under Subsection (3)(a) does not invalidate the imposition of the judgment or order of restitution ~~[provided]~~ if the defendant is given the opportunity to object and be heard as provided in this ~~[chapter]~~ part.

(b) (i) Any objection by the defendant to the imposition or amount of restitution shall be made at the time of sentencing or in writing within 20 days ~~[of the receipt of notice]~~ after the day on which the defendant receives the notice described in Subsection (3)(a), to be filed with the court and a copy mailed to the ~~[Utah Office for Victims of Crime]~~ office.

(ii) Upon the filing of the objection, the court shall allow the defendant a full hearing on the issue ~~[as provided by]~~ in accordance with Subsection **77-38a-302**(4).

(iii) The amount of restitution sought by the office may be updated at any time, subject to the right of the defendant to object.

(4) If no objection is made or filed by the defendant under Subsection (3), then upon

conviction and sentencing, the court shall enter a judgment for complete restitution [~~pursuant to the provisions of~~] under Subsections 76-3-201(4)(c) and (d) and identify the office as the assignee of the assigned portion of the judgment and order of restitution.

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

Section 3. Section 63M-7-505 is amended to read:

63M-7-505. Board and office within Commission on Criminal and Juvenile Justice.

(1) The [~~Crime Victim Reparations and Assistance Board~~] board and the [~~Utah Office for Victims of Crime~~] office are placed within the Commission on Criminal and Juvenile Justice for the provision by the commission of administrative and support services.

(2) The board or the director may request assistance from the Commission on Criminal and Juvenile Justice, the Department of Public Safety, and other state agencies in conducting research or monitoring victims' programs.

Section 4. Section 63M-7-506 is amended to read:

63M-7-506. Functions of board.

(1) The [~~Crime Victim Reparations and Assistance Board~~] board shall:

(a) adopt a description of the [~~organization~~] office and prescribe the general operation of the board;

(b) prescribe policy for the [~~Utah Office for Victims of Crime~~] office;

(c) adopt rules to implement and administer this [~~chapter pursuant to~~] part in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may include setting of ceilings on reparations, defining of terms not specifically stated in this

[chapter] part, and establishing of rules governing attorney fees;

(d) prescribe forms for applications for reparations;

(e) review all reparations awards made by the reparations staff, although the board may not reverse or modify reparations awards authorized by the reparations staff;

(f) render an annual report to the governor and the Legislature regarding the staff's and the board's activities;

(g) cooperate with the director and the director's staff in formulating standards for the uniform application of Section 63M-7-509, taking into consideration the rates and amounts of reparation payable for injuries and death under other laws of this state and the United States;

(h) allocate money available in the [~~Crime Victim Reparations Fund~~] fund to victims of criminally injurious conduct for reparations claims;

(i) allocate money available to other victim services as provided by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, once a sufficient reserve has been established for reparation claims; and

(j) approve the allocation and disbursement of funds made available to the office by the United States, the state, foundations, corporations, or other entities or individuals to subgrantees from private, non-profit, and governmental entities operating qualified statewide assistance programs.

(2) All rules, or other statements of policy, along with application forms specified by the board, are binding upon the director, the reparations officers, assistance officers, and other staff.

Section 5. Section **63M-7-507** is amended to read:

63M-7-507. Director -- Appointment and functions.

(1) The executive director of the Commission on Criminal and Juvenile Justice, after consulting with the board, shall appoint a director to carry out the provisions of this [chapter] part.

(2) The director shall:

(a) be an experienced administrator with a background in at least one of the following

310 fields:

311 (i) social work[;];

312 (ii) psychology[;];

313 (iii) criminal justice[;];

314 (iv) law[, or a related field. ~~The director shall~~]; or

315 (v) another field related to the fields described in Subsections (2)(a)(i) through (iv);

316 (b) demonstrate an understanding of the needs of crime victims and of services to

317 victims[. ~~The director shall~~]; and

318 (c) devote the director's time and capacity to the director's duties. [~~The~~]

319 (3) In addition to the requirements under Subsection (2), the director shall:

320 ~~[(1)]~~ (a) hire staff, including reparations and assistance officers, as necessary;

321 ~~[(2)]~~ (b) act when necessary as a reparations officer in deciding an initial [~~claims~~]

322 reparations claim;

323 ~~[(3)]~~ (c) possess the same investigation and decision-making authority as the

324 reparations officers;

325 ~~[(4)]~~ (d) hear appeals from the decisions of the reparations officers, unless the director

326 acted as a reparations officer on the initial reparations claim;

327 ~~[(5)]~~ (e) serve as a liaison between the [~~Utah Office for Victims of Crime~~] office and

328 the board;

329 ~~[(6)]~~ (f) serve as the public relations representative of the office;

330 ~~[(7)]~~ (g) provide for payment of all administrative salaries, fees, and expenses incurred

331 by the staff of the board, to be paid out of appropriations from the fund;

332 ~~[(8)]~~ (h) cooperate with the state treasurer and the state Division of Finance in causing

333 the funds in the [~~trust~~] fund to be invested and [~~its~~] the fund's investments sold or exchanged

334 and the proceeds and income collected;

335 ~~[(9)]~~ (i) apply for, receive, allocate, disburse, and account for, subject to approval and

336 in conformance with policies adopted by the board, all grant funds made available by the

337 United States, the state, foundations, corporations, and other businesses, agencies, or

338 individuals;

339 ~~[(10)]~~ (j) obtain and utilize the services of other governmental agencies upon request;

340 and

341 ~~[(11)]~~ (k) act in any other capacity or perform any other acts necessary for the office or
342 board to successfully fulfill ~~[its]~~ the office's or board's statutory duties and objectives.

343 Section 6. Section **63M-7-508** is amended to read:

344 **63M-7-508. Reparations officers.**

345 The reparations officers shall in addition to any assignments made by the director ~~[of~~
346 ~~the Utah Office for Victims of Crime]~~:

347 (1) hear and determine all matters relating to ~~[claims for]~~ a reparations claim and
348 reinvestigate or reopen ~~[claims]~~ a reparations claim without regard to statutes of limitation or
349 periods of prescription;

350 (2) obtain from prosecuting attorneys, law enforcement officers, and other criminal
351 justice agencies, investigations and data to enable the reparations officer to determine whether
352 and to what extent a claimant qualifies for reparations;

353 (3) as determined necessary by the reparations officers, hold hearings, administer oaths
354 or affirmations, examine any ~~[person]~~ individual under oath or affirmation, issue subpoenas
355 requiring the attendance and giving of testimony of witnesses, require the production of any
356 books, papers, documents, or other evidence which may contribute to the reparations officer's
357 ability to determine particular reparation awards;

358 (4) determine who is a victim or dependent;

359 (5) award reparations or other benefits determined to be due under this ~~[chapter]~~ part
360 and the rules of the board made in accordance with Title 63G, Chapter 3, Utah Administrative
361 Rulemaking Act;

362 (6) take notice of judicially recognized facts and general, technical, and scientific facts
363 within ~~[their]~~ the reparations officers' specialized knowledge;

364 (7) advise and assist the board in developing policies recognizing the rights, needs, and
365 interests of crime victims;

(8) render periodic reports as requested by the board concerning:

(a) the reparations officers' activities; and

(b) the manner in which the rights, needs, and interests of crime victims are being addressed by the state's criminal justice system;

(9) establish priorities for assisting elderly victims of crime or those victims facing extraordinary hardships;

(10) cooperate with the State Commission on Criminal and Juvenile Justice to develop information regarding crime victims' problems and programs; and

(11) assist the director in publicizing the provisions of the [~~Utah Office for Victims of Crime~~] office, including the procedures for obtaining reparation, and in encouraging law enforcement agencies, health providers, and other related officials to take reasonable care to ensure that victims are informed about the provisions of this [~~chapter~~] part and the procedure for applying for reparation.

Section 7. Section **63M-7-509** is amended to read:

63M-7-509. Grounds for eligibility.

~~[In order to be]~~ (1) A victim is eligible for a reparations award under this [~~chapter~~] part if:

~~[(1) The claimant shall be:]~~

(a) the claimant is:

~~[(a)]~~ (i) a victim of criminally injurious conduct;

~~[(b)]~~ (ii) a dependent of a deceased victim of criminally injurious conduct; or

~~[(c)]~~ (iii) a representative acting on behalf of one of the above[.];

~~[(2) (a) The] (b) (i) the criminally injurious conduct [shall have] occurred in Utah[; except as provided in Subsection (2)(b). (b) If]; or~~

(ii) the victim is a Utah resident who suffers injury or death as a result of criminally injurious conduct inflicted in a state, territory, or country [~~which~~] that does not provide a crime victims' compensation program[~~, that person shall receive the same consideration under this chapter as if the criminally injurious conduct occurred in this state.~~](3) ~~The application shall~~

be];

(c) the application is made in writing in a form that conforms substantially to that prescribed by the board[. (4) ~~The~~];

(d) the criminally injurious conduct [~~shall be~~] is reported to a law enforcement officer, in the law enforcement officer's capacity as a law enforcement officer, or [~~other~~] another federal or state investigative [~~agencies. (5) (a) The claimant or victim shall cooperate~~] agency;

(e) the claimant or victim cooperates with the appropriate law enforcement agencies and prosecuting attorneys in [~~their~~] efforts to apprehend or convict the perpetrator of the alleged offense[.]; and

[~~(b) An award to a victim may be made whether any person is arrested, prosecuted, or convicted of the criminally injurious conduct giving rise to the claim. (6) The~~]

(f) the criminally injurious conduct [~~shall have~~] occurred after December 31, 1986.

(2) A reparations award may be made to a victim regardless of whether any individual is arrested, prosecuted, or convicted of the criminally injurious conduct giving rise to a reparations claim.

Section 8. Section **63M-7-510** is amended to read:

63M-7-510. Ineligible individuals -- Fraudulent reparations claims -- Penalties.

(1) The following individuals are not eligible to receive [~~an award of~~] a reparations award:

(a) [~~persons who do~~] an individual who does not meet all of the provisions set forth in Section **63M-7-509**;

(b) the offender;

(c) an accomplice of the offender;

(d) [~~any person~~] an individual whose receipt of [~~an~~] a reparations award would unjustly benefit the offender, accomplice, or [~~other person~~] another individual reasonably suspected of participating in the offense;

(e) the victim of a motor vehicle injury who was the owner or operator of the motor vehicle and was not at the time of the injury in compliance with the state motor vehicle

insurance laws;

(f) ~~[any]~~ a convicted offender serving a sentence of imprisonment in any prison or jail or residing in any other correctional facility;

(g) ~~[all persons who are]~~ an individual who is on probation or parole if the circumstances surrounding the offense of which ~~[they are victims constitute]~~ the individual is a victim is a violation of ~~[their parole or probation]~~ the individual's probation or parole; ~~[and]~~

(h) ~~[any person]~~ an individual whose injuries are the result of criminally injurious conduct that occurred in a prison, jail, or ~~[any other]~~ another correctional facility while the ~~[person]~~ individual was incarcerated~~[-]; and~~

(i) an individual who:

(i) submits a fraudulent claim; or

(ii) misrepresents a material fact in requesting a reparations award.

~~[(2) A person who knowingly submits a fraudulent claim for reparations or who knowingly misrepresents material facts in making a claim, and who receives an award based on that claim, is guilty of an offense, based on the following award amounts:]~~

~~[(a) for value under \$500, a class B misdemeanor;]~~

~~[(b) for value equal to or greater than \$500, but less than \$1,500, a class A misdemeanor;]~~

~~[(c) for value equal to or greater than \$1,500, but less than \$5,000, a third degree felony; and]~~

~~[(d) for value equal to or greater than \$5,000, a second degree felony.]~~

~~[(3) A person who submits a claim described in Subsection (2) but receives no award based on that claim is guilty of a class B misdemeanor.]~~

(2) (a) An individual may not knowingly:

(i) submit a fraudulent claim; or

(ii) misrepresent a material fact in requesting a reparations award.

(b) A violation of Subsection (2)(a) is:

(i) a class B misdemeanor if:

- 450 (A) the individual who violates Subsection (2)(a) does not receive a reparations award;
451 or
452 (B) the value of the reparations award received is less than \$500;
453 (ii) a class A misdemeanor if the value of the reparations award received is or exceeds
454 \$500 but is less than \$1,500;
455 (iii) a third degree felony if the value of the reparations award received is or exceeds
456 \$1,500 but is less than \$5,000; and
457 (iv) a second degree felony if the value of the reparations award received is or exceeds
458 \$5,000.

459 ~~[(4)]~~ (3) The state attorney general may prosecute violations under this section or may
460 make arrangements with county ~~[attorneys]~~ or city attorneys for the prosecution of violations
461 under this section when the attorney general cannot conveniently prosecute.

462 ~~[(5) The state may also bring a civil action against a claimant who receives reparation~~
463 ~~payments that are later found to be unjustified and who does not return to the Crime Victim~~
464 ~~Reparations Fund the unjustified amount.]~~

465 (4) (a) A claimant who is not eligible to receive a reparations award under Subsection
466 (1) but receives a reparations award shall reimburse the fund for the amount of the reparations
467 award.

468 (b) The office may bring a civil action against a victim who does not reimburse the
469 fund for the amount of the reparations award in accordance with Subsection (4)(a).

470 Section 9. Section **63M-7-511** is amended to read:

471 **63M-7-511. Compensable losses and amounts.**

472 A reparations award under this ~~[chapter]~~ part may be made if:

- 473 (1) the reparations officer finds the reparations claim satisfies the requirements for the
474 reparations award under the provisions of this ~~[chapter]~~ part and the rules of the board;
475 (2) money is available in the fund;
476 (3) the ~~[person]~~ individual for whom the ~~[award of]~~ reparations award is to be paid is
477 otherwise eligible under this part; and

(4) the reparations claim is for an allowable expense incurred by the victim, as follows:

(a) reasonable and necessary charges incurred for products, services, and accommodations;

(b) inpatient and outpatient medical treatment and physical therapy, subject to rules ~~[promulgated]~~ made by the board ~~[pursuant to]~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(c) mental health counseling ~~[which]~~ that:

(i) is set forth in a mental health treatment plan ~~[which has been approved prior to]~~ that is approved before any payment is made by a reparations officer; and

(ii) qualifies within any further rules ~~[promulgated]~~ made by the board ~~[pursuant to]~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(d) actual loss of past earnings and anticipated loss of future earnings because of a death or disability resulting from the personal injury at a rate not to exceed 66-2/3% of the ~~[person's]~~ individual's weekly gross salary or wages or the maximum amount allowed under the state workers' compensation statute;

(e) care of minor children enabling a victim or spouse of a victim, but not both ~~[of them]~~, to continue gainful employment at a rate per child per week as determined under rules established by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(f) funeral and burial expenses for death caused by the criminally injurious conduct, subject to rules ~~[promulgated]~~ made by the board ~~[pursuant to]~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(g) loss of support to ~~[the]~~ a dependent ~~[or dependents]~~ not otherwise compensated for a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate not to exceed 66-2/3% of the ~~[person's]~~ individual's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute, whichever is less;

(h) personal property necessary and essential to the health or safety of the victim as

defined by rules ~~[promulgated]~~ made by the board ~~[pursuant to]~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(i) medical examinations ~~[as defined in Section 63M-7-502]~~, subject to rules ~~[promulgated]~~ made by the board ~~[pursuant to]~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may allow for exemptions from Sections 63M-7-509, 63M-7-512, and 63M-7-513.

Section 10. Section 63M-7-511.5 is amended to read:

63M-7-511.5. Limitation of reparations awards.

(1) (a) Except as provided in Subsection (1)(b), ~~[an award of]~~ a reparations award may not exceed \$25,000 ~~[in the aggregate]~~.

~~[(b) (i) In claims involving homicide, attempted homicide, aggravated assault, or DUI offenses, an award of reparations may not exceed \$50,000 in the aggregate.]~~

~~[(ii) Reparations for nonmedical expenses incurred as a result of the homicide, attempted homicide, aggravated assault, or DUI may not exceed \$25,000.]~~

~~[(2) (a) Awards of reparations to secondary victims shall be paid from the victims' maximum award amount provided in Subsection (1).]~~

~~[(b) When it appears that allowable expenses for the victim and secondary victims will exceed the maximum award amount provided in Subsection (1), the expenses of the victim shall be paid first unless otherwise requested by the claimant.]~~

(b) Notwithstanding Subsection (1)(a), a reparations award for medical expenses resulting from serious bodily injury or substantial bodily injury may not exceed \$50,000.

(2) (a) A reparations award under Subsection (1) includes any reparations award for a secondary victim.

(b) Unless otherwise requested by the claimant, the office shall pay a reparations award for the victim before a reparations award for a secondary victim.

(c) [Priority] The reparations officer shall determine the priority of payment among multiple secondary victims on a single reparations claim [shall be determined by the reparations officer].

Section 11. Section **63M-7-512** is amended to read:

63M-7-512. Reparations reduction.

(1) Reparations otherwise payable to a claimant may be reduced or denied as follows:

(a) the economic loss upon which the claim is based has been or could be recouped from other persons, including collateral sources;

(b) the reparations officer considers the reparations claim unreasonable because of the misconduct of the claimant [~~or of a victim through whom the claimant claims~~]; or

(c) the victim did not use a facility or health care provider which would be covered by a collateral source.

(2) When two or more dependents are entitled to [~~an~~] a reparations award as a result of a victim's death, the [~~award shall be apportioned by the~~] reparations officer shall apportion the reparations award among the dependents.

Section 12. Section **63M-7-513** is amended to read:

63M-7-513. Collateral sources.

~~[(1) Collateral source shall include any source of benefits or advantages for economic loss otherwise reparable under this chapter which the victim or claimant has received, or which is readily available to the victim from:]~~

~~[(a) the offender;]~~

~~[(b) the insurance of the offender;]~~

~~[(c) the United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, except in the case of nonobligatory state-funded programs;]~~

~~[(d) social security, Medicare, and Medicaid;]~~

~~[(e) state-required temporary nonoccupational income replacement insurance or disability income insurance;]~~

~~[(f) workers' compensation;]~~

~~[(g) wage continuation programs of any employer;]~~

~~[(h) proceeds of a contract of insurance payable to the victim for the loss the victim~~

sustained because of the criminally injurious conduct;]

~~[(i) a contract providing prepaid hospital and other health care services or benefits for disability; or]~~

~~[(j) veteran's benefits, including veteran's hospitalization benefits. (2)]~~

(1) (a) An order of restitution ~~[shall]~~ may not be considered readily available as a collateral source.

(b) Receipt of ~~[an award of]~~ a reparations award under this ~~[chapter shall be]~~ part is considered an assignment of the victim's rights to restitution from the offender.

~~[(3)]~~ (2) The victim ~~[shall]~~ may not discharge a claim against ~~[a person]~~ an individual or entity without the ~~[state's]~~ office's written permission and shall fully cooperate with the ~~[state]~~ office in pursuing ~~[its]~~ the office's right of reimbursement, including providing the ~~[state]~~ office with any evidence in the victim's possession.

~~[(4)]~~ (3) The ~~[state's]~~ office's right of reimbursement applies regardless of whether the victim ~~[has been]~~ is fully compensated for the victim's losses.

~~[(5)]~~ (4) Notwithstanding ~~[the collateral source provisions in Subsection (1) and]~~ Subsection 63M-7-512(1)(a), a victim of a sexual offense who requests testing of ~~[himself]~~ the victim's self may be reimbursed for the costs of the HIV test only as provided in Subsection 76-5-503(4).

Section 13. Section **63M-7-514** is amended to read:

63M-7-514. Notification of claimant -- Suspension of proceedings.

(1) (a) The ~~[Utah Office for Victims of Crime]~~ office shall immediately notify the claimant in writing of ~~[any]~~ a reparations award and shall forward to the Division of Finance a certified copy of the reparations award and a warrant request for the amount of the reparations award.

(b) The Division of Finance shall pay the claimant the amount submitted to the division, out of the fund.

(c) If money in the fund is temporarily depleted, the office shall place claimants approved to receive ~~[awards shall be placed]~~ a reparations award on a waiting list and ~~[shall]~~

590 ~~receive their awards]~~ provide the reparations awards as funds are available in the order in
591 which ~~[their awards were]~~ the reparations awards are approved.

592 (2) The reparations officer may suspend the proceedings pending disposition of a
593 criminal prosecution that ~~[has been]~~ is commenced or is imminent.

594 Section 14. Section **63M-7-515** is amended to read:

595 **63M-7-515. Rules for contested reparations claims -- Exemption from**
596 **Administrative Procedures Act.**

597 (1) Rules for procedures for contested determinations by a reparations officer shall be
598 adopted ~~[pursuant to]~~ in accordance with Title 63G, Chapter 3, Utah Administrative
599 Rulemaking Act.

600 (2) The ~~[Utah Office for Victims of Crime]~~ office is exempt from Title 63G, Chapter 4,
601 Administrative Procedures Act.

602 Section 15. Section **63M-7-516** is amended to read:

603 **63M-7-516. Waiver of privilege.**

604 (1) (a) A victim ~~[filing a claim under the provisions of this chapter shall be considered~~
605 ~~to have waived]~~ who is a claimant waives any privilege as to communications or records
606 relevant to an issue of the physical, mental, or emotional conditions of the victim except for the
607 attorney-client privilege.

608 (b) The waiver ~~[shall apply]~~ described in Subsection (1)(a) applies only to reparations
609 officers, the director, the board, and legal counsel.

610 (2) ~~[The]~~ A claimant may be required to supply any additional medical or
611 psychological reports available relating to the injury or death for which compensation is
612 claimed.

613 (3) (a) The reparations officer hearing a reparations claim or an appeal from a
614 reparations claim shall make available to the claimant a copy of the report.

615 (b) If the victim is deceased, the director or the director's appointee, on request, shall
616 furnish the claimant a copy of the report unless dissemination of that copy is prohibited by law.

617 Section 16. Section **63M-7-517** is amended to read:

63M-7-517. Additional testing.

(1) If the mental, physical, or emotional condition of a victim is material to a reparations claim, the reparations officer, director, or chair of the board who hears the reparations claim or the appeal may order the claimant to submit to a mental or physical examination by a physician or psychologist and may recommend to the court to order an autopsy of a deceased victim.

(2) ~~[Any order for]~~ The court may order an additional examination ~~[shall be]~~ for good cause shown and shall provide notice to the ~~[person]~~ individual to be examined and the ~~[person's]~~ individual's representative.

(3) All reports from additional examinations shall set out findings, including results of all tests made, diagnoses, prognoses, other conclusions, and reports of earlier examinations of the same conditions.

(4) A copy of the report shall be made available to the victim or the representative of the victim unless dissemination of that copy is prohibited by law.

Section 17. Section **63M-7-518** is amended to read:

63M-7-518. Failure to comply.

If ~~[a person]~~ an individual refuses to comply with an order under this ~~[chapter]~~ part or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a reparations claim, the director or reparations officer may make any appropriate determination including denial of the reparations claim.

Section 18. Section **63M-7-519** is amended to read:

63M-7-519. Assignment of recovery -- Reimbursement.

(1) (a) By accepting ~~[an]~~ a reparations award ~~[of reparations]~~, the victim:

(i) automatically assigns to the [state, subject to the provisions of Subsection (2), all claims against any third party to the lesser of:] office any claim the victim may have relating to criminally injurious conduct in the reparations claim; and

(ii) is required to reimburse the office if the victim recovers any money relating to the criminally injurious conduct.

(b) The office's right of assignment and reimbursement under Subsection (1)(a) is limited to the lesser of:

~~[(a)]~~ (i) the amount paid by the ~~[state]~~ office; or

~~[(b)]~~ (ii) the amount recovered by the victim from the third party.

(c) The office may be reimbursed under Subsection (1)(a) regardless of whether the office exercises the office's right of assignment under Subsection (1)(a).

(2) The board, with the concurrence of the director, may reduce the ~~[state's]~~ office's right of reimbursement if ~~[it is determined]~~ the board determines that:

(a) the reduction will benefit the fund; or

(b) the victim has ongoing expenses related to the offense upon which the reparations claim is based and the benefit to the victim of reducing the ~~[state's]~~ office's right of reimbursement exceeds the benefit to the ~~[state]~~ office of receiving full reimbursement.

(3) The ~~[state]~~ office reserves the right to make a claim for reimbursement on behalf of the victim and the victim may not impair the ~~[state's]~~ office's claim or the ~~[state's]~~ office's right of reimbursement.

Section 19. Section **63M-7-521** is amended to read:

63M-7-521. Reparations award -- Payment methods -- Claims against the award.

~~[(1) The]~~ (1) (a) Except as provided in Subsection (1)(b), a reparations officer may provide for the payment of [an] a reparations award in a lump sum or in installments. [The]

(b) (i) The reparations officer shall pay the part of [an] a reparations award equal to the amount of economic loss accrued to the date of the reparations award [shall be paid] in a lump sum. [An award of]

(ii) A reparations officer may not pay allowable expense that would accrue after an initial reparations award is made [may not be paid] in a lump sum.

(iii) Except as provided in Subsection (2), a reparations officer shall award the part of [an] a reparations award that may not be paid in a lump sum [shall be paid] under this Subsection (1)(b) in installments.

(2) At the request of the claimant, the reparations officer may convert future economic

loss installment payments, other than allowable expense, to a lump sum payment, discounted to present value, but only upon a finding by the reparations officer that the reparations award in a lump sum will promote the interests of the claimant.

~~[(3) An]~~ (3) (a) A reparations award for future economic loss payable in installments may be made only for a period for which the reparations officer can reasonably determine future economic loss.

(b) The reparations officer may reconsider and modify ~~[an]~~ a reparations award for future economic loss payable in installments, upon the reparations officer's finding that a material and substantial change of circumstances has occurred.

(4) ~~[An]~~ A reparations award is not subject to execution, attachment, or garnishment, except that ~~[an]~~ a reparations award for allowable expense is not exempt from a claim of a creditor to the extent that the creditor provided products, services, or accommodations, the costs of which are included in the reparations award.

(5) An assignment or agreement to assign ~~[an]~~ a reparations award ~~[of reparations]~~ for loss accruing in the future is unenforceable, except:

(a) an assignment of ~~[an]~~ a reparations award of reparations for work loss to secure payment of alimony, maintenance, or child support;

(b) an assignment of ~~[an]~~ a reparations award ~~[of reparations]~~ for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the reparations claim is based and are provided or to be provided by the assignee; or

(c) an assignment to repay a loan obtained to pay for the obligations or expenses described in Subsection (5)(a) or (b).

Section 20. Section **63M-7-521.5** is amended to read:

63M-7-521.5. Payments to medical service providers.

(1) (a) Except as provided in Subsection (2), a medical service provider who accepts payment from the office shall agree to accept payments as payment in full on behalf of the victim or claimant~~[- The medical service provider]~~ and may not attempt to collect further

payment from the victim or the claimant for services for which the office has made payment.

~~[(2)]~~ (b) In the event the office is unable to make full payment in accordance with ~~[its]~~ the office's rules, the medical service provider may collect from the victim or claimant, but not more than the amount the provider would have received from the office.

(2) (a) When a medical service provider receives notice that a reparations claim has been filed, the medical service provider may not, before the office determines whether to issue a reparations award, engage in debt collection for the claim, including:

(i) repeatedly calling or writing to a victim and threatening to refer unpaid health care costs to a debt collection agency, attorney, or other person for collection; or

(ii) filing for or pursuing a legal remedy for payment of unpaid health care costs.

(b) The statute of limitations for collecting a debt is tolled during the time in which a request for a reparations award is being reviewed by the office.

(3) The office may:

(a) use the fee schedule utilized by the Utah Public Employees Health Plan or any other fee schedule adopted by the board; and

(b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to implement the fee schedule adopted in accordance with this section.

Section 21. Section **63M-7-522** is amended to read:

63M-7-522. Emergency reparations award.

(1) If the reparations officer determines that the claimant will suffer financial hardship unless an emergency reparations award is made, and it appears likely that a final reparations award will be made, an amount may be paid to the claimant, to be deducted from the final reparations award or repaid by and recoverable from the claimant to the extent that it exceeds the final reparations award.

(2) The board may limit emergency reparations awards under Subsection (1) to any amount [it] the board considers necessary.

Section 22. Section **63M-7-523** is amended to read:

63M-7-523. Review of reparations award decision.

(1) The reparations officer shall review at least annually every reparations award being paid in installments.

(2) An order on review of ~~[an]~~ a reparations award does not require refund of amounts previously paid unless the reparations award was obtained by fraud or a material mistake of fact.

Section 23. Section **63M-7-524** is amended to read:

63M-7-524. Attorney fees.

(1) The claims procedures shall be sufficiently simple that the assistance of an attorney is unnecessary, and no attorney fees ~~[shall]~~ may be paid for the assistance of an attorney or any other representative in filing the reparations claim or providing information to the reparations officer.

(2) Attorney fees may be granted in the following circumstances and shall be paid out of the reparations award not to exceed 15% of the amount of the reparations award:

(a) when ~~[an]~~ a reparations award ~~[has been]~~ is denied and, after a hearing, the decision to deny is overturned; or

(b) when minor dependents of a deceased victim require assistance in establishing a trust or determining a guardian.

(3) (a) An attorney or any other person providing assistance in a reparations claim, who contracts for or receives sums not allowed under this ~~[chapter]~~ part, is guilty of a class B misdemeanor. ~~[This provision shall not extend]~~

(b) This Subsection (3) does not apply to attorneys who assist the victim in filing a civil action against the perpetrator.

Section 24. Section **63M-7-525** is amended to read:

63M-7-525. Purpose -- Not entitlement program.

(1) (a) The purpose of the ~~[Utah Office for Victims of Crime]~~ office is to assist victims of criminally injurious conduct who may be eligible for assistance from the ~~[Crime Victim Reparations Fund]~~ fund.

(b) Reparation to a victim under this part is limited to the money available in the fund.

~~[(2) This program]~~ (2) (a) The assistance program described in Subsection (1) is not an entitlement program. ~~[Awards]~~

(b) A reparations award may be limited or denied as determined appropriate by the board.

(c) Failure to grant ~~[an]~~ a reparations award does not create a cause of action against the ~~[Utah Office for Victims of Crime]~~ office, the state, or any of its subdivisions~~[-There]~~ and there is no right to judicial review over the decision whether or not to grant ~~[an]~~ a reparations award.

(3) A cause of action based on a failure to give or receive the notice required by this ~~[chapter]~~ part does not accrue to any person against the state, any of its agencies or local subdivisions, any of their law enforcement officers or other agents or employees, or any health care or medical provider or its agents or employees~~[-The failure does not]~~ nor does it affect or alter any requirement for filing or payment of a reparations claim.