

<p style="text-align: center;">STATE OF UTAH BOARD OF PARDONS & PAROLE</p>	<p>INTERNAL OPERATING POLICIES AND PROCEDURE</p> <p>Policy No.: 5.11</p>	<p>Effective Date: Feb. 11, 2013</p> <p>Revised: April 29, 2013</p>
<p>Subject: Restitution Determination & Orders</p>		
<p>Authorized by:</p> <p style="text-align: center;"><i>Clark A. Harms</i></p> <p>Chair, Board of Pardons and Parole</p>		

Purposes: To implement the Board’s restitution authority, responsibilities, and discretionary authority as granted by the Utah Constitution Art. VII, §12(2)(a); Utah Code Ann. §§77-27-5; and Admin. Rule R671-403.

To carry out statutory requirements regarding determination and collection of restitution, pursuant to Utah Code Ann. §§77-37-3; 77-38a-203, -301, -302, -401, -501, -502; 64-13-20, -21, -23, and -33.

To provide guidance to Board of Pardons and Parole (Board) members and staff in implementing restitution orders and conditions.

Policies: The Board shall consider, determine, and order restitution in all cases where restitution has been ordered by a court; when appropriate based upon a request of the Department of Corrections, other criminal justice agencies, or victim; or in other appropriate circumstances.

It is the policy of the Board of Pardons and Parole to facilitate the accurate and timely determination and collection of restitution.

Procedure:

- A. At the time of an offender’s initial appearance before the Board and at other hearings or in connection with other decisions setting release dates and conditions of parole, the Board will review the matter of restitution for each conviction for which an offender is serving a prison commitment and any other restitution obligations related thereto.
- B. If the Board determines that a court has previously ordered or determined restitution applicable to any conviction, or that restitution is owed to any victim as a result of the conduct for which an offender was convicted, or any related conduct as authorized by statute to be considered; the Board may order restitution to be paid as a condition of parole release or as a contingency to be satisfied prior to any release from incarceration prior to sentence expiration.

C. In assessing, determining, or ordering restitution:

1. The Board shall affirm court-ordered restitution in accordance with Utah Code Ann. §77-38a-302 and Utah R. Admin. P. R671-403.
 - a. If an offender raises objections or concerns regarding restitution orders entered by the sentencing court, the offender must resolve such objections or concerns with the sentencing court. The Board will not function as an appellate authority or forum to re-litigate restitution amounts previously ordered by a court.
 - b. If an offender raises issues regarding offsets or payments made toward a court-ordered restitution obligation, the offender may address those concerns or issues with the Board. In doing so, the offender must prove, verify, and document any such offsets, reductions, or payments.
2. When restitution has not been determined or ordered by the sentencing court, the Board may refer the case back to the sentencing court for determination of restitution within one year of the date of the imposition of sentence.
 - a. Cases identified for referral to the sentencing court shall be screened and approved by a hearing officer.
 - b. In extraordinary cases, where the input of the Board is deemed appropriate or necessary, a reviewing hearing officer may route the referral information to the Board for decision regarding referral.
 - c. When a case is referred to the sentencing court for determination of restitution, the actual referral and correspondence may be authored by the Administrative Coordinator, the Attorney General's office as legal counsel for the Board, or by the Board Chair or Vice Chair.
 - d. A copy of any referral and correspondence to the sentencing court shall also be provided to the offender.
3. If restitution has not been previously ordered by a court, and the case is not referred to the sentencing court for determination, the Board will enter a restitution order based upon the totality of the information available to it at the time of determination, including:
 - a. any statements made by the victims, offender, or co-defendants relating to restitution;

- b. statements or affirmations made to police officers or AP&P agents, including statements made as part of a pre-sentence report investigation;
 - c. statements made in any civil or criminal proceeding;
 - d. statements made in documents provided to the Board; or
 - e. statements made during Board hearings.
4. If an offender objects to Board ordered restitution, the offender must notify the Board, in writing, of the objection within 30 days of the Board's order. In resolving an offender's objection, the offender has the burden of proving the substance of the objection by a preponderance of evidence.
5. In resolving objections to Board ordered restitution, Board staff may seek to informally, and without hearing, resolve the offender's concerns or objections. This informal resolution may involve correspondence, or an interview or other meeting with the offender and may involve disclosure of information upon which the Board's order was based.
6. If an offender is unable to resolve objections to Board-ordered restitution, the offender may request a restitution hearing, which may be conducted by any Board Member, any Board hearing officer, or any other designee of the Board Chair.
- a. In conducting a restitution hearing, the Board, the Department of Corrections, the Attorney General's office, the original prosecuting agency, the offender, and any victim may participate as necessary.
 - b. Board staff may assist non-lawyer hearing participants with subpoena or other process to procure the attendance of necessary witnesses.
 - c. The offender carries the burden of proving all objections, positions, or assertions, including any payments or offsets, by a preponderance of the evidence.
 - d. If any amount of restitution is claimed by, or on behalf of, any victim, in addition to any amount previously ordered by a court or by the Board, the proponent of such additional restitution claim carries the burden of proving such additional restitution by a preponderance of the evidence.
 - e. Any party may submit any documentation or other record or written evidence they wish the Board to consider in resolving the restitution dispute.

f. Following a restitution hearing, the hearing official shall summarize the hearing, evidence, and submitted records, and make a recommendation to the Board for action and determination of the restitution dispute.

7. Modifications to Board ordered restitution may occur:

- a. upon a waiver and stipulation of the offender;
- b. upon receipt of new or subsequent court orders;
- c. following an informal resolution; or
- d. following a restitution hearing.

D. If restitution has not been determined by the Board prior to an offender's parole, and the Board's order granting parole reserved the issue of restitution as "to be determined", Adult Probation and Parole will be asked to calculate restitution for the offender's cases and send a report to the Board indicating the amount which should be ordered as restitution. Board staff shall ask that AP&P's investigation and report be completed within 90 days following release of the offender on parole.

1. AP&P will present the paroled offender with a waiver to add the restitution as determined by AP&P as a special condition of parole.
2. If the offender does not agree with the amount determined by AP&P, a restitution resolution meeting or a restitution hearing may be scheduled.
3. In cases where restitution is ongoing, or where an open claim with the Utah Office for Victims of Crime exists, a report showing current restitution amounts should be procured by Board staff and submitted to the Board for determination.

E. AP&P shall enforce the Board's restitution orders and parole conditions.

1. As part of parole, the Board expects that parolees will make regular monthly payments based on the offender's ability to pay and based upon the assumption that monthly restitution payments shall be calculated in such a way as to satisfy the restitution obligation during the parole period.
2. The Board and AP&P have jurisdiction over, and may continue to enforce restitution orders in cases which may have terminated on or after July 1, 2005, as long as the Board has had continuing jurisdiction over the offender in any other case, pursuant to Utah Code Ann. §77-27-6.
3. AP&P will track cases for restitution and timely notify the Board of any action needed regarding restitution issues, payment, or lack of payment.

4. If any restitution ordered by the Board or by a court has not been paid in full prior to a parole termination request, AP&P shall inform the Board, as part of the termination request:
 - a. how much of the offender's restitution obligation has been paid;
 - b. how much of the restitution obligation, including post-judgment interest, remains unpaid;
 - c. why the restitution obligation was not paid in full during the term of parole; and
 - d. why parole should not be revoked or re-started because the restitution amounts were not paid in full during the parole period.

- F. If restitution appears to be owed, but has not been determined by the Board prior to an offender's sentence termination or expiration, AP&P will be asked to calculate restitution for the offender's cases and send a report to the Board indicating amounts which should be ordered as restitution. Board staff shall ask that AP&P's investigation and report be completed 90 days prior to termination or expiration.
 1. AP&P or DOC will present the offender with a waiver to add the restitution as a Board order.
 2. If the offender does not agree with the amount determined by AP&P or DOC, a restitution resolution meeting or a restitution hearing may be scheduled.
 3. In cases where restitution is ongoing, or where an open claim with the Utah Office for Victims of Crime exists, a report showing current restitution amounts should be procured by Board staff and submitted to the Board for determination.

- G. The Board will process cases for civil judgment, pursuant to Utah Code Ann. §77-27-5, at the time of parole termination, sentence termination, termination of Board jurisdiction, or sentence expiration.
 1. If, upon parole termination, sentence termination, termination of Board jurisdiction, or expiration, the Board has continuing jurisdiction over the offender for a separate criminal offense, the Board may defer seeking a civil judgment for restitution until termination or expiration of all of the offender's sentences. When this occurs, the restitution obligation for the terminating or expiring case shall be made a condition of parole for any separate or subsequent offense.
 2. If, upon parole termination, sentence termination, termination of Board jurisdiction, or expiration, the Board does not have continuing jurisdiction over the offender for any other separate criminal offense, the Board shall order all

restitution obligations of the offender as previously determined by the Board to be converted to civil judgment.

3. All Board Orders determining restitution amounts must be made and entered during the Board's jurisdiction over the offender, or within 60 days following parole termination, sentence termination, termination of Board jurisdiction, or expiration.
4. The Board may order conversion of restitution to a civil judgment at any time, provided that the actual restitution amount was determined and ordered by a Court at any time; or by the Board within 60 days following parole termination, sentence termination, termination of Board jurisdiction, or expiration.
5. The Board may refrain from issuing a civil judgment order in cases or circumstances where the total amount of restitution remaining unpaid is less than \$50.00 per case or victim.