**R671. Pardons (Board of), Administration.**

**R671-403. Restitution.**

**R671-403-1. General Provisions.**

(1) This rule applies to offenders sentenced before July 1, 2021, only. For offenders sentenced on or after July 1, 2021, the Board will follow the procedures of Rule R671-404.

(2) 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 state law to be considered, the Board may order restitution:

(a) as a condition of parole;

(b) as a contingency to be satisfied before release from prison incarceration earlier than sentence expiration; or

(c) to be converted to a civil judgment, pursuant to applicable state law.

(3) The Board may, pursuant to state law, determine and order an offender to pay restitution at any time while the offender is under the Board's jurisdiction, when:

(a) restitution has been ordered by the sentencing court;

(b) pecuniary damages to a victim occurred as a result of the offender's criminal conduct but were not determined or ordered by the sentencing court;

(c) requested by the Department of Corrections (Department) or other criminal justice agency;

(d) pecuniary damages to any person or entity are caused by an offender's disciplinary violation, conduct, or behavior arising during incarceration;

(e) new information regarding restitution is submitted to the Board which was not available or considered at the time of sentencing or an earlier restitution determination; or

(f) the Board determines a restitution order is otherwise appropriate.

(4) Restitution determinations shall be:

(a) based upon a preponderance of the evidence; and

(b) made by a majority vote of the Board.

(5) When determining restitution, Subsection 77-38a-302(1)(2020) and Subsections 77-38a-302(5)(a) through (b)(2020) shall apply.

(6) The Board may determine and order restitution based upon:

(a) earlier orders made by a sentencing court;

(b) earlier orders involving the same crimes, events, or incidents made by a court in the case of a co-defendant;

(c) amounts and determinations included in presentence reports; or

(d) information received regarding restitution claimed or owed that the Board determines is relevant and reliable.

**R671-403-2. Restitution Ordered by the Court.**

(1) The Board shall affirm restitution ordered by a court in accordance with Section 77-38a-302(2020).

(2) An offender shall resolve objections regarding restitution entered by a court with the applicable court.

(3) The Board is not an appellate authority or forum in which to litigate restitution amounts previously ordered by a court.

(4) An offender may submit evidence of payments, credits, or offsets for consideration by the Board when determining restitution.

(5) The offender bears the burden to prove the validity and amounts of any payments, credits, or offsets submitted for consideration.

(6) If restitution was not determined or ordered by the sentencing court, the Board may, within one year of the imposition of sentence, refer the case back to the court for determination of restitution.

**R671-403-3. Restitution Included in Presentence Report.**

(1) If any party fails to challenge the accuracy of the restitution determinations, amounts, or information contained in a presentence report at the time of sentencing, that matter shall be considered waived, pursuant to Subsection 77-38a-203(2)(d)(2020), and the Board may order restitution based upon the information in the presentence investigation report.

(2) An offender may submit evidence of payments, credits, or offsets for consideration by the Board when determining restitution.

(3) The offender bears the burden to prove the validity and amounts of any payments, credits, or offsets submitted for consideration.

**R671-403-4. Initial Restitution Determination.**

(1) If restitution is not determined and ordered by the Board pursuant to Section R671-403-2 or Section R671-403-3, the Board may make an initial determination of restitution based upon the offender's convictions and the totality of the information available, including:

(a) restitution determinations made by a court applicable to a co-defendant for the same criminal conduct or the same victim;

(b) statements made by a victim, offender, or co-defendant relating to restitution, including statements made as part of a presentence report investigation;

(c) reports or calculations provided by the Department indicating the amount which should be ordered as restitution;

(d) statements made in any civil or criminal proceeding;

(e) statements made in documents provided to the Board; or

(f) statements made during Board hearings.

(2) When the Board determines an initial restitution amount, the Board or the Department shall:

(a) inform the offender of the initial restitution determination; and

(b) inform the offender that any objection to the initial restitution determination must be filed with the Board in accordance with this rule.

(3) If the offender agrees with, or does not object to, the initial restitution determination, that restitution amount shall be ordered by the Board.

(4) If the offender objects to the initial restitution determination, the offender shall inform the Board of the objection and request a restitution hearing.

(5) The offender's objection and request for a hearing:

(a) shall be submitted to the Board in writing within 30 days of the initial restitution determination;

(b) may be accompanied by a clear, brief statement explaining the offender's objections; and

(c) may refer to or be accompanied by an explanation of any evidence, documents, or the names and addresses of witnesses upon which the offender will rely to support the objection.

(6) Following receipt of an offender's objection which complies with Section R671-403-4, the Board may change the initial restitution amount based upon the materials submitted by the offender, or may schedule a restitution hearing.

(7) Failure of an offender to file a timely objection shall waive and forfeit an offender's ability to contest a restitution order by the Board based upon the initial restitution determination.

**R671-403-5. Restitution Hearings - Informal Resolution of Objection.**

(1) Following the receipt of a timely objection to an initial restitution determination, the Board may designate a hearing officer or other Board employee to informally, and without hearing, try to resolve the offender's concerns or objections.

(2) This informal resolution may involve correspondence or an interview or other meeting with the offender.

(3) If an offender's objections to an initial restitution determination are not resolved, the Board shall schedule a restitution hearing.

**R671-403-6. Restitution Hearings - Procedure.**

(1) Restitution hearings may be conducted by a Board member, hearing officer, or other designee of the Board Chair.

(2) Board staff, the Department, the original prosecuting agency, the offender, and any victim may participate in the restitution hearing, as necessary.

(3) The Board may issue subpoenas to procure the attendance of necessary witnesses.

(4) The rules of evidence do not apply at restitution hearings.

(5) Any payments, credits, or offsets, toward a restitution order may be proven by a preponderance of the evidence.

(6) If any amount of restitution is claimed by, or on behalf of, any victim, in addition to any amount previously determined by a court or by the Board, including the initial restitution determination, the proponent of such additional restitution carries the burden of proving such additional restitution by a preponderance of the evidence. The request for restitution can be made by the victim or victim representative by submitting a written request to the Board.

(7) Any party may submit documentation, records, or other written evidence for the Board to consider regarding the issue of restitution. The burden of proof is on the party requesting restitution to show by a preponderance of the evidence that the losses suffered were proximately caused by the offender's convicted conduct or that the offender agreed to pay.

(8) The Board shall enter an order determining the amount of restitution owed by the offender, or continue the matter for additional information, further hearing or further consideration as needed.

**R671-403-7. Modifications to Restitution Orders.**

Modifications to restitution orders may occur:

(1) Upon a waiver and stipulation of the offender;

(2) Upon receipt of new or subsequent court orders;

(3) When restitution claims, damages, or costs continue to accrue after sentencing;

(4) Upon consideration of offender restitution payments, credits for payments made by others on the offender's behalf, offsets due to insurance or other third-party payments, or modifications based upon property being returned to a victim after the conclusion of court proceedings;

(5) When an open or ongoing claim exists with the Utah Office for Victims of Crime;

(6) Following an informal resolution regarding new restitution claims or offsets; or

(7) Following subsequent restitution hearings.

**R671-403-8. Compliance With Restitution Orders.**

(1) While the offender is under Department or Board jurisdiction, the Department shall enforce the Board's restitution orders and parole conditions.

(2) As part of parole, the Board expects that parolees will make regular monthly payments based on the offender's ability to pay and in amounts sufficient to satisfy the restitution obligation during the parole period.

(3) The Board and the Department have jurisdiction over, and may continue to enforce restitution orders, in cases which may have terminated on or after July 1, 2005, if the Board has had continuing jurisdiction over the offender in any other case.

(4) The Department shall track cases for restitution payment and notify the Board in a timely manner of any action needed regarding restitution orders.

(5) If any restitution ordered by the Board or by a court has not been paid in full before a parole termination request, the Department 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; and

(c) why the restitution obligation was not paid in full during the term of parole.

(6) If any restitution ordered by the Board or by a court has not been paid in full before a parole termination request, the Board may deny the parole termination request.

**R671-403-9. Unpaid Restitution - Civil Judgments.**

(1) Upon termination or expiration of the sentence of an offender under the Board's jurisdiction, if an offender owes outstanding restitution, or if the Board makes an order of restitution within 60 days following the termination or expiration of the defendant's parole or sentence, the unpaid restitution shall be referred by the Board to the district court for the entry of a civil judgment and for civil collection remedies.

(2) The Board shall forward a restitution order to the sentencing court to be entered on the judgment docket.

(3) If 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 any of the offender's sentences. The restitution obligation for the terminating or expiring case may be made a condition of parole for any separate or subsequent offense under continuing jurisdiction.

(4) The Board may order conversion of restitution to a civil judgment at any time, provided that the restitution amount was determined and ordered by:

(a) a Court;

(b) the Board during its jurisdiction over the offender; or

(c) the Board within 60 days following parole termination, sentence termination, sentence expiration, or other termination of Board jurisdiction.

**R671-403-10. Restitution Allocations.**

When the Board orders two or more offenders under its jurisdiction to pay restitution for the same event or conduct, the Board may apportion restitution among the offenders or may hold them jointly and severally liable.

**KEY: restitution, hearings, parole**

**Date of Last Change: October 10, 2024**

**Notice of Continuation: November 10, 2021**

**Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 64-13-30; 64-13-33; 77-18-1(6)(b); 77-22-5; 77-27-6; 77-27-9(4)(a); 77-27-10; 77-30-24; 77-38a-203(2)(d); 77-38a-302**