

**RESTITUTION AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Mike K. McKell

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**LONG TITLE**

**General Description:**

This bill amends the Individual Income Tax Act, the Utah Code of Criminal Procedure, and provisions related to the Division of Finance to assist in, and increase, the collection of restitution for crime victims.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides for a restitution order or judgment to be paid from income tax overpayment funds;
- ▶ requires the State Office of Debt Collection to collect restitution for victims ordered in a court if the account receivable is transferred to the office by a court;
- ▶ ~~provides that, before refunding bail that is posted in cash, by credit card, or by debit card, the court shall, after applying the amount posted towards any fine ordered by the court, apply the remaining amount toward restitution;~~ **requires the Judicial Council to create a financial declaration form to be completed by a defendant in a case where restitution is likely to be ordered;**
- ▶ makes it a class B misdemeanor to make a false statement in a financial declaration form; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**



90 (b) a notice of intent to apply the overpayment as bail on the issued warrant has been  
91 sent to the taxpayer's current address on file with the commission.

92 (6) (a) (i) The commission shall deliver an overpayment applied as bail to the court that  
93 issued the warrant of arrest.

94 (ii) The clerk of the court is authorized to endorse the check or commission warrant of  
95 payment on behalf of the payees and deposit the money in the court treasury.

96 (b) (i) The court receiving an overpayment applied as bail shall order withdrawal of the  
97 warrant for arrest of the taxpayer if:

98 (A) the case is a case for which a personal appearance of the taxpayer is not required;  
99 and

100 (B) the dollar amount of the overpayment represents the full dollar amount of bail.

101 (ii) In a case except for a case described in Subsection (6)(b)(i):

102 (A) the court receiving the overpayment applied as bail is not required to order the  
103 withdrawal of the warrant of arrest of the taxpayer during the 40-day period; and

104 (B) the taxpayer may be arrested on the warrant.

105 (c) (i) If a taxpayer fails to respond to the notice required by Subsection (5)(b), or to  
106 resolve the warrant within 40 days after the notice is sent under Subsection (5)(b), the  
107 overpayment applied as bail is forfeited.

108 (ii) A court may issue another warrant or allow the original warrant to remain in force  
109 if:

110 (A) the taxpayer has not complied with an order of the court;

111 (B) the taxpayer has failed to appear and respond to a criminal charge for which a  
112 personal appearance is required; or

113 (C) the taxpayer has paid partial but not full bail in a case for which a personal  
114 appearance is not required.

115 (d) If the alleged violations named in a warrant are later resolved in favor of the  
116 taxpayer, the bail amount shall be remitted to the taxpayer.

117 (7) The fine and bail forfeiture provisions of this section apply to all warrants ~~§→ [and] ,~~  
~~←§ fines §→ , fees, and surcharges ←§~~  
118 issued in cases charging a taxpayer with a felony, a misdemeanor, or an infraction described in  
119 this section, which are outstanding on or after February 16, 1984.

120 (8) If the amount allowable as a credit for tax withheld from a taxpayer exceeds the tax

338 constituting the defendant's criminal activities and includes the money equivalent of property  
339 taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical  
340 expenses.

341 (d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a  
342 victim, and payment for expenses to a governmental entity for extradition or transportation and  
343 as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

344 (e) (i) "Victim" means any person ~~§~~ **or entity, including the Utah Office for Victims of**  
344a **Crime, ←§** who the court determines has suffered pecuniary  
345 damages as a result of the defendant's criminal activities.

346 (ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

347 (2) Within the limits prescribed by this chapter, a court may sentence a person  
348 convicted of an offense to any one of the following sentences or combination of them:

349 (a) to pay a fine;

350 (b) to removal or disqualification from public or private office;

351 (c) to probation unless otherwise specifically provided by law;

352 (d) to imprisonment;

353 (e) on or after April 27, 1992, to life in prison without parole; or

354 (f) to death.

355 (3) (a) This chapter does not deprive a court of authority conferred by law to:

356 (i) forfeit property;

357 (ii) dissolve a corporation;

358 (iii) suspend or cancel a license;

359 (iv) permit removal of a person from office;

360 (v) cite for contempt; or

361 (vi) impose any other civil penalty.

362 (b) A civil penalty may be included in a sentence.

363 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary  
364 damages, in addition to any other sentence it may impose, the court shall order that the  
365 defendant make restitution to the victims, or for conduct for which the defendant has agreed to  
366 make restitution as part of a plea agreement.

367 (b) In determining whether restitution is appropriate, the court shall follow the criteria  
368 and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

493 (c) If a criminal judgment account receivable in a case not supervised by the  
 494 Department of Corrections is more than 90 days past due, the district court shall, without a  
 495 motion or hearing, record the unpaid balance of the criminal judgment account receivable as a  
 496 civil judgment and transfer the responsibility for collecting the criminal judgment account  
 497 receivable to the Office of State Debt Collection.

498 (9) (a) When a fine, forfeiture, surcharge, cost permitted by statute, fee, or an order of  
 499 restitution is imposed on a corporation or unincorporated association, the person authorized to  
 500 make disbursement from the assets of the corporation or association shall pay the obligation  
 501 from those assets.

502 (b) Failure to pay the obligation may be held to be contempt under Subsection (3).

503 (10) The prosecuting attorney may collect restitution in behalf of a victim.

504 Section 7. Section **77-20-4** is amended to read:

505 **77-20-4. Bail to be posted in cash, by credit or debit card, or written undertaking.**

506 (1) Bail may be posted:

507 (a) in cash;

508 (b) by written undertaking with or without sureties at the discretion of the magistrate;

509 or

510 (c) by credit or debit card, at the discretion of the judge or bail commissioner.

511 (2) ~~§~~→ [A bail bond] **Bail** ←~~§~~ may not be accepted without receiving in writing at the time  
 511a the bail is

512 posted the current mailing address and telephone number of the surety.

513 (3) Bail posted by debit or credit card, less the fee charged by the financial institution,  
 514 shall be tendered to the courts.

515 (4) Bail refunded by the court may be refunded by credit to the debit or credit card, or  
 516 cash. The amount refunded shall be the full amount received by the court under Subsection  
 517 (3), which may be less than the full amount of the bail set by the court.

518 ~~§~~→ [(5) **Before refunding bail that is posted in cash, by credit card, or by debit card in a**  
 519 **case, the court shall apply the amount posted toward accounts receivable, as defined in Section**  
 520 **63A-3-501, that are owed by the defendant.**] ←~~§~~

521 Section 8. Section **77-38a-203** is amended to read:

522 **77-38a-203. Restitution determination -- Department of Corrections --**  
 523 **Presentence investigation.**