

**RESTITUTION FOR INCARCERATION COSTS**

**AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Criminal Code and the Crime Victims Restitution Act regarding the payment of incarceration costs by defendants.

**Highlighted Provisions:**

This bill:

- ▶ requires that the county sheriff provide written notice to a defendant of incarceration costs assessed under current state law;
- ▶ provides that a defendant who is subject to incarceration costs may request an impecuniosity hearing for the court to determine if the costs should be reduced or waived under current statutory standards; and
- ▶ provides that incarceration costs are to be paid after victim restitution costs.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-3-201**, as last amended by Laws of Utah 2015, Chapter 147

**77-38a-404**, as last amended by Laws of Utah 2011, Chapters 131 and 208



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

Section 1. Section **76-3-201** is amended to read:

**76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil penalties.**

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; and

(ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means:

(i) full, partial, or nominal payment for pecuniary damages to a victim~~[, and]~~;

(ii) payment for expenses to a governmental entity for extradition or transportation ~~[and]~~ under Subsection (5);

(iii) payment for the costs of the defendant's incarceration as provided in Subsection (6);

(iv) payment for the costs of the defendant's medical care as provided in Subsection (6); and

(v) restitution payments as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

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

(ii) "Victim" does not include a codefendant or accomplice.

- 59 (2) Within the limits prescribed by this chapter, a court may sentence a person  
60 convicted of an offense to any one of the following sentences or combination of them:
- 61 (a) to pay a fine;
  - 62 (b) to removal or disqualification from public or private office;
  - 63 (c) to probation unless otherwise specifically provided by law;
  - 64 (d) to imprisonment;
  - 65 (e) on or after April 27, 1992, to life in prison without parole; or
  - 66 (f) to death.
- 67 (3) (a) This chapter does not deprive a court of authority conferred by law to:
- 68 (i) forfeit property;
  - 69 (ii) dissolve a corporation;
  - 70 (iii) suspend or cancel a license;
  - 71 (iv) permit removal of a person from office;
  - 72 (v) cite for contempt; or
  - 73 (vi) impose any other civil penalty.
- 74 (b) A civil penalty may be included in a sentence.
- 75 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary  
76 damages, in addition to any other sentence it may impose, the court shall order that the  
77 defendant make restitution to the victims, or for conduct for which the defendant has agreed to  
78 make restitution as part of a plea agreement.
- 79 (b) In determining whether restitution is appropriate, the court shall follow the criteria  
80 and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.
- 81 (c) In addition to any other sentence the court may impose, the court, pursuant to the  
82 provisions of Sections [63M-7-503](#) and [77-38a-401](#), shall enter:
- 83 (i) a civil judgment for complete restitution for the full amount of expenses paid on  
84 behalf of the victim by the Utah Office for Victims of Crime; and
  - 85 (ii) an order of restitution for restitution payable to the Utah Office for Victims of  
86 Crime in the same amount unless otherwise ordered by the court pursuant to Subsection (4)(d).
- 87 (d) In determining whether to order that the restitution required under Subsection (4)(c)  
88 be reduced or that the defendant be exempted from the restitution, the court shall consider the  
89 criteria under Subsections [77-38a-302\(5\)\(c\)\(i\)](#) through (vi) and provide findings of its decision

90 on the record.

91 (5) (a) In addition to any other sentence the court may impose, and unless otherwise  
92 ordered by the court, the defendant shall pay restitution of governmental transportation  
93 expenses if the defendant was:

94 (i) transported pursuant to court order from one county to another within the state at  
95 governmental expense to resolve pending criminal charges;

96 (ii) charged with a felony or a class A, B, or C misdemeanor; and

97 (iii) convicted of a crime.

98 (b) The court may not order the defendant to pay restitution of governmental  
99 transportation expenses if any of the following apply:

100 (i) the defendant is charged with an infraction or on a subsequent failure to appear a  
101 warrant is issued for an infraction; or

102 (ii) the defendant was not transported pursuant to a court order.

103 (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i)  
104 shall be calculated according to the following schedule:

105 (A) \$100 for up to 100 miles a defendant is transported;

106 (B) \$200 for 100 up to 200 miles a defendant is transported; and

107 (C) \$350 for 200 miles or more a defendant is transported.

108 (ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant  
109 transported regardless of the number of defendants actually transported in a single trip.

110 (d) If a defendant has been extradited to this state under Title 77, Chapter 30,  
111 Extradition, to resolve pending criminal charges and is convicted of criminal activity in the  
112 county to which he has been returned, the court may, in addition to any other sentence it may  
113 impose, order that the defendant make restitution for costs expended by any governmental  
114 entity for the extradition.

115 (6) (a) ~~In~~ Subject to Subsection (7), and in addition to any other sentence the court  
116 may impose, ~~[and unless otherwise ordered by the court pursuant to Subsection (6)(c);]~~ the  
117 defendant shall pay restitution to the county for the cost of incarceration and costs of medical  
118 care provided to the defendant while in the county correctional facility before and after  
119 sentencing if:

120 (i) the defendant is convicted of criminal activity that results in incarceration in the

121 county correctional facility; and

122 (ii) (A) the defendant is not a state prisoner housed in a county correctional facility  
123 through a contract with the Department of Corrections; or

124 (B) the reimbursement does not duplicate the reimbursement provided under Section  
125 [64-13e-104](#) if the defendant is a state probationary inmate, as defined in Section [64-13e-102](#), or  
126 a state parole inmate, as defined in Section [64-13e-102](#).

127 (b) (i) The costs of incarceration under Subsection (6)(a) are the amount determined by  
128 the county correctional facility, but may not exceed the daily inmate incarceration costs and  
129 medical and transportation costs for the county correctional facility.

130 (ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred  
131 by the county correctional facility in providing reasonable accommodation for an inmate  
132 qualifying as an individual with a disability as defined and covered by the federal Americans  
133 with Disabilities Act of 1990, 42 U.S.C. Secs. 12101 through 12213, including medical and  
134 mental health treatment for the inmate's disability.

135 [~~(c) In determining whether to order that the restitution required under this Subsection  
136 (6) be reduced or that the defendant be exempted from the restitution, the court shall consider  
137 the criteria under Subsections [77-38a-302](#)(5)(c)(i) through (vi) and shall enter the reason for its  
138 order on the record.]~~

139 [~~(c)~~] (c) If on appeal the defendant is found not guilty of the criminal activity under  
140 Subsection (6)(a)(i) and that finding is final as defined in Section [76-1-304](#), the county shall  
141 reimburse the defendant for restitution the defendant paid for costs of incarceration under  
142 Subsection (6)(a).

143 (7) (a) When a defendant is subject to restitution for the cost of incarceration under  
144 Subsection (6), the county sheriff shall, subsequent to the defendant's conviction, provide to the  
145 defendant a written notification of the incarceration restitution amount due under Subsection  
146 (6)(a).

147 (b) The notification shall also state:

148 (i) that the restitution for incarceration costs is established by statutory formula;

149 (ii) the daily inmate incarceration rate on which the total cost is based;

150 (iii) that the defendant may request a court hearing to consider the reduction or waiver  
151 of the incarceration cost by submitting a claim of impecuniosity; and

152 (iv) the criteria the court may consider under Subsections 77-38a-302(5)(c)(i) through  
153 (vi) in a hearing regarding the modification of the incarceration cost assessed.

154 (c) The court may not reduce or waive the incarceration restitution amount without  
155 holding an impecuniosity hearing, if requested by an inmate under Subsection (7)(b)(iii).

156 (d) In determining whether to order that the restitution required under Subsection (6)  
157 be reduced or that the defendant be exempted from the restitution, the court shall consider the  
158 criteria under Subsections 77-38a-302(5)(c)(i) through (vi) and shall enter the reason for the  
159 court's order on the record.

160 (8) Restitution for costs of incarceration shall be paid subject to the priorities listed in  
161 Section 77-38-404.

162 (9) Restitution for the costs of incarceration may not be taken from an inmate's  
163 commissary funds.

164 (10) If a county charges an inmate for the costs of incarceration as provided in  
165 Subsection (6), the county may offer work opportunities from which the wages or hours  
166 worked may be applied toward the restitution for incarceration costs.

167 Section 2. Section **77-38a-404** is amended to read:

168 **77-38a-404. Priority.**

169 (1) Restitution payments made pursuant to a court order shall be disbursed to victims  
170 within 60 days of receipt from the defendant by the court or department provided:

171 (a) the victim has complied with Subsection 77-38a-203(1)(b);

172 (b) if the defendant has tendered a negotiable instrument, funds from the financial  
173 institution are actually received; and

174 (c) the payment to the victim is at least \$5, unless the payment is the final payment.

175 (2) If restitution to more than one person, agency, or entity is required at the same time,  
176 the department shall establish the following priorities of payment, except as provided in  
177 Subsection (4):

178 (a) the crime victim;

179 (b) the Utah Office for Victims of Crime;

180 (c) any other government agency which has provided reimbursement to the victim as a  
181 result of the offender's criminal conduct;

182 (d) the person, entity, or governmental agency that has offered and paid a reward under

183 Section [76-3-201.1](#) or [78A-6-117](#);

184 (e) any insurance company which has provided reimbursement to the victim as a result  
185 of the offender's criminal conduct; and

186 (f) any county correctional facility to which the defendant is required to pay restitution  
187 under [~~Subsection [76-3-201\(6\)](#)] Subsections [76-3-201\(6\)](#) and (7).~~

188 (3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and  
189 surcharges are paid.

190 (4) If the offender is required under Section [53-10-404](#) to reimburse the department for  
191 the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after  
192 restitution to the crime victim under Subsection (2)(a).

193 (5) All money collected for court-ordered obligations from offenders by the department  
194 will be applied:

195 (a) first, to victim restitution, except the current and past due amount of \$30 per month  
196 required to be collected by the department under Section [64-13-21](#), if applicable; [~~and~~]

197 (b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection  
198 (4)[~~;~~]; and

199 (c) third, to any county correctional facility to which the defendant is required to pay  
200 restitution under Subsections [76-3-201\(6\)](#) and (7).

201 (6) Restitution owed to more than one victim shall be disbursed to each victim  
202 according to the percentage of each victim's share of the total restitution order.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**