

1 **AMENDMENTS REGARDING RESTITUTION**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Neal B. Hendrickson**

5 AN ACT RELATING TO THE CRIMINAL CODE; AMENDING DEFINITIONS REGARDING
6 VICTIM RESTITUTION BY CLARIFYING THE DEFINITION OF "VICTIM" AND
7 DELETING THE UNUSED DEFINITION OF "FAMILY MEMBER".

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **76-3-201**, as last amended by Chapters 40, 79, and 241, Laws of Utah 1996

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

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

13 **76-3-201. Sentences or combination of sentences allowed -- Civil penalties --**
14 **Restitution -- Hearing -- Definitions.**

15 (1) As used in this section:

16 (a) "Conviction" includes a:

17 (i) judgment of guilt; and

18 (ii) plea of guilty.

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

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

27 (d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a

1 victim, including the accrual of interest from the time of sentencing, insured damages, and
2 payment for expenses to a governmental entity for extradition or transportation and as further
3 defined in Subsection (4)(c).

4 (e) (i) "Victim" means any person whom the court determines has suffered pecuniary
5 damages as a result of the defendant's criminal activities.

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

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

9 (a) to pay a fine;

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

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

12 (d) to imprisonment;

13 (e) to life imprisonment;

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

15 (g) to death.

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

17 (i) forfeit property;

18 (ii) dissolve a corporation;

19 (iii) suspend or cancel a license;

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

21 (v) cite for contempt; or

22 (vi) impose any other civil penalty.

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

24 (4) (a) (i) When a person is convicted of criminal activity that has resulted in pecuniary
25 damages, in addition to any other sentence it may impose, the court shall order that the defendant
26 make restitution to victims of crime as provided in this subsection, or for conduct for which the
27 defendant has agreed to make restitution as part of a plea agreement. For purposes of restitution,
28 a victim has the meaning as defined in [~~Section 77-38-2 and family member has the meaning as~~
29 ~~defined in Section 77-37-2~~] Subsection (1)(e).

30 (ii) In determining whether restitution is appropriate, the court shall follow the criteria and
31 procedures as provided in Subsections (4)(c) and (4)(d).

1 (iii) If the court finds the defendant owes restitution, the clerk of the court shall enter an
2 order of complete restitution as defined in Subsection (8)(b) on the civil judgment docket and
3 provide notice of the order to the parties.

4 (iv) The order is considered a legal judgment enforceable under the Utah Rules of Civil
5 Procedure, and the person in whose favor the restitution order is entered may seek enforcement
6 of the restitution order in accordance with the Utah Rules of Civil Procedure. In addition, the
7 Department of Corrections may, on behalf of the person in whose favor the restitution order is
8 entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.

9 (v) If the defendant fails to obey a court order for payment of restitution and the victim or
10 department elects to pursue collection of the order by civil process, the victim shall be entitled to
11 recover reasonable attorney's fees.

12 (vi) A judgment ordering restitution constitutes a lien when recorded in a judgment docket
13 and shall have the same effect and is subject to the same rules as a judgment for money in a civil
14 action. Interest shall accrue on the amount ordered from the time of sentencing.

15 (vii) The Department of Corrections shall make rules permitting the restitution payments
16 to be credited to principal first and the remainder of payments credited to interest in accordance
17 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

23 (ii) In determining whether restitution is appropriate, the court shall consider the criteria
24 in Subsection (4)(c).

25 (c) In determining restitution, the court shall determine complete restitution and
26 court-ordered restitution.

27 (i) Complete restitution means the restitution necessary to compensate a victim for all
28 losses caused by the defendant.

29 (ii) Court-ordered restitution means the restitution the court having criminal jurisdiction
30 orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

31 (iii) Complete restitution and court-ordered restitution shall be determined as provided in

1 Subsection (8).

2 (d) (i) If the court determines that restitution is appropriate or inappropriate under this
3 subsection, the court shall make the reasons for the decision a part of the court record.

4 (ii) In any civil action brought by a victim to enforce the judgment, the defendant shall be
5 entitled to offset any amounts that have been paid as part of court-ordered restitution to the victim.

6 (iii) A judgment ordering restitution constitutes a lien when recorded in a judgment docket
7 and shall have the same effect and is subject to the same rules as a judgment for money in a civil
8 action. Interest shall accrue on the amount ordered from the time of sentencing.

9 (iv) The Department of Corrections shall make rules permitting the restitution payments
10 to be credited to principal first and the remainder of payments credited to interest in accordance
11 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

12 (e) If the defendant objects to the imposition, amount, or distribution of the restitution, the
13 court shall at the time of sentencing allow the defendant a full hearing on the issue.

14 (5) (a) In addition to any other sentence the court may impose, the court shall order the
15 defendant to pay restitution of governmental transportation expenses if the defendant was:

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

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

19 (iii) convicted of a crime.

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

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

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

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

27 (A) \$75 for up to 100 miles a defendant is transported;

28 (B) \$125 for 100 up to 200 miles a defendant is transported; and

29 (C) \$250 for 200 miles or more a defendant is transported.

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

1 (6) (a) If a statute under which the defendant was convicted mandates that one of three
2 stated minimum terms shall be imposed, the court shall order imposition of the term of middle
3 severity unless there are circumstances in aggravation or mitigation of the crime.

4 (b) Prior to or at the time of sentencing, either party may submit a statement identifying
5 circumstances in aggravation or mitigation or presenting additional facts. If the statement is in
6 writing, it shall be filed with the court and served on the opposing party at least four days prior to
7 the time set for sentencing.

8 (c) In determining whether there are circumstances that justify imposition of the highest
9 or lowest term, the court may consider the record in the case, the probation officer's report, other
10 reports, including reports received under Section 76-3-404, statements in aggravation or mitigation
11 submitted by the prosecution or the defendant, and any further evidence introduced at the
12 sentencing hearing.

13 (d) The court shall set forth on the record the facts supporting and reasons for imposing
14 the upper or lower term.

15 (e) The court in determining a just sentence shall consider sentencing guidelines regarding
16 aggravation and mitigation promulgated by the Commission on Criminal and Juvenile Justice.

17 (7) If during the commission of a crime described as child kidnaping, rape of a child,
18 object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant causes
19 substantial bodily injury to the child, and if the charge is set forth in the information or indictment
20 and admitted by the defendant, or found true by a judge or jury at trial, the defendant shall be
21 sentenced to the highest minimum term in state prison. This subsection takes precedence over any
22 conflicting provision of law.

23 (8) (a) For the purpose of determining restitution for an offense, the offense shall include
24 any criminal conduct admitted by the defendant to the sentencing court or to which the defendant
25 agrees to pay restitution. A victim of an offense, that involves as an element a scheme, a
26 conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's
27 criminal conduct in the course of the scheme, conspiracy, or pattern.

28 (b) In determining the monetary sum and other conditions for complete restitution, the
29 court shall consider all relevant facts, including:

30 (i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction
31 of property of a victim of the offense;

1 (ii) the cost of necessary medical and related professional services and devices relating to
2 physical, psychiatric, and psychological care, including nonmedical care and treatment rendered
3 in accordance with a method of healing recognized by the law of the place of treatment; the cost
4 of necessary physical and occupational therapy and rehabilitation; and the income lost by the
5 victim as a result of the offense if the offense resulted in bodily injury to a victim; and

6 (iii) the cost of necessary funeral and related services if the offense resulted in the death
7 of a victim.

8 (c) In determining the monetary sum and other conditions for court-ordered restitution, the
9 court shall consider the factors listed in Subsection (8)(b) and:

10 (i) the financial resources of the defendant and the burden that payment of restitution will
11 impose, with regard to the other obligations of the defendant;

12 (ii) the ability of the defendant to pay restitution on an installment basis or on other
13 conditions to be fixed by the court;

14 (iii) the rehabilitative effect on the defendant of the payment of restitution and the method
15 of payment; and

16 (iv) other circumstances which the court determines make restitution inappropriate.

17 (d) The court may decline to make an order or may defer entering an order of restitution
18 if the court determines that the complication and prolongation of the sentencing process, as a result
19 of considering an order of restitution under this subsection, substantially outweighs the need to
20 provide restitution to the victim.

Legislative Review Note
as of 2-2-98 3:30 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel