

Representative Chad E. Bennion proposes the following substitute bill:

SENTENCING AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David Litvack

This act modifies the Criminal Code by clarifying that a sentencing court shall take into account mitigating and aggravating circumstances in imposing sentence for any criminal offense, not only those offenses that mandate that one of three stated minimum terms shall be imposed.

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

AMENDS:

76-3-201, as last amended by Chapter 35, Laws of Utah 2002

REPEALS:

76-3-203.3, as last amended by Chapter 166, Laws of Utah 2002

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 -- Hearing.

(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



26 person could recover against the defendant in a civil action arising out of the facts or events
27 constituting the defendant's criminal activities and includes the money equivalent of property
28 taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical
29 expenses.

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

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

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

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

38 (a) to pay a fine;

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

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

41 (d) to imprisonment;

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

43 (f) to death.

44 (3) In determining a just sentence under this section, the court shall consider sentencing
45 guidelines regarding aggravating and mitigating circumstances promulgated by the Sentencing
46 Commission.

47 [~~3~~] (4) (a) This chapter does not deprive a court of authority conferred by law to:

48 (i) forfeit property;

49 (ii) dissolve a corporation;

50 (iii) suspend or cancel a license;

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

52 (v) cite for contempt; or

53 (vi) impose any other civil penalty.

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

55 [~~4~~] (5) (a) When a person is convicted of criminal activity that has resulted in
56 pecuniary damages, in addition to any other sentence it may impose, the court shall order that

57 the defendant make restitution to the victims, or for conduct for which the defendant has agreed
58 to make restitution as part of a plea agreement.

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

61 [~~5~~] (6) (a) In addition to any other sentence the court may impose, the court shall
62 order the defendant to pay restitution of governmental transportation expenses if the defendant
63 was:

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

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

67 (iii) convicted of a crime.

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

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

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

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

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

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

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

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

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

85 [~~6~~] (7) (a) If a statute under which the defendant was convicted mandates that one of
86 three stated minimum terms shall be imposed, the court shall order imposition of the term of
87 middle severity unless there are circumstances in aggravation or mitigation of the crime.

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

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

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

99 ~~[(e) In determining a just sentence, the court shall consider sentencing guidelines~~
100 ~~regarding aggravating and mitigating circumstances promulgated by the Sentencing~~
101 ~~Commission.]~~

102 ~~[(7)]~~ (8) If during the commission of a crime described as child kidnapping, rape of a
103 child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant
104 causes substantial bodily injury to the child, and if the charge is set forth in the information or
105 indictment and admitted by the defendant, or found true by a judge or jury at trial, the
106 defendant shall be sentenced to the highest minimum term in state prison. This subsection
107 takes precedence over any conflicting provision of law.

108 Section 2. **Repealer.**

109 This act repeals:

110 Section **76-3-203.3, Penalty for hate crimes -- Civil rights violation.**