

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

45 (i) forfeit property;

46 (ii) dissolve a corporation;

47 (iii) suspend or cancel a license;

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

49 (v) cite for contempt; or

50 (vi) impose any other civil penalty.

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

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

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

58 (5) (a) In addition to any other sentence the court may impose, the court shall order the

59 defendant to pay restitution of governmental transportation expenses if the defendant was:

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

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

63 (iii) convicted of a crime.

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

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

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

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

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

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

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

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

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

81 (6) (a) In addition to any other sentence the court may impose, the court shall order the
82 defendant to pay restitution to the county for the cost of incarceration in the county correctional
83 facility before and after sentencing if:

84 (i) the defendant is convicted of criminal activity that results in incarceration in the
85 county correctional facility; and

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

88 (B) the reimbursement does not duplicate the reimbursement provided under Section
89 64-13c-301 if the defendant is a state prisoner housed in a county correctional facility as a

90 condition of probation under Subsection 77-18-1(8).

91 (b) The costs of incarceration under Subsection (6)(a) are the greater amount of:

92 (i) the daily core inmate incarceration costs established under Section 64-13c-302; or

93 (ii) the county correctional facility's direct costs of incarcerating an inmate, including:

94 (A) housing, food, and clothing;

95 (B) the costs of programs the facility provides for inmates; and

96 (C) the costs of inmate transportation services, inmate mental health services, and

97 inmate medical care.

98 [~~(6)~~] (7) (a) If a statute under which the defendant was convicted mandates that one of
99 three stated minimum terms shall be imposed, the court shall order imposition of the term of
100 middle severity unless there are circumstances in aggravation or mitigation of the crime.

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

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

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

112 (e) In determining a just sentence, the court shall consider sentencing guidelines
113 regarding aggravating and mitigating circumstances promulgated by the Sentencing
114 Commission.

115 [~~(7)~~] (8) If during the commission of a crime described as child kidnapping, rape of a
116 child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant
117 causes substantial bodily injury to the child, and if the charge is set forth in the information or
118 indictment and admitted by the defendant, or found true by a judge or jury at trial, the
119 defendant shall be sentenced to the highest minimum term in state prison. This Subsection (8)
120 takes precedence over any conflicting provision of law.

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

122 77-38a-404. Priority.

123 (1) If restitution to more than one person, agency, or entity is set at the same time, the
124 department shall establish the following priorities of payment, except as provided in

125 Subsection (2):

126 (a) the crime victim;

127 (b) the Office of Crime Victim Reparations;

128 (c) any other government agency which has provided reimbursement to the victim as a
129 result of the offender's criminal conduct; [~~and~~]

130 (d) any insurance company which has provided reimbursement to the victim as a result
131 of the offender's criminal conduct[-]; and

132 (e) any county correctional facility to which the court has ordered the defendant to pay
133 restitution under Subsection 76-3-201(6).

134 (2) If the offender is required under Section 53-10-404 to reimburse the department for
135 the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after
136 restitution to the crime victim under Subsection (1)(a).

137 (3) All money collected for court-ordered obligations from offenders by the department
138 will be applied:

139 (a) first, to victim restitution, except the \$30 per month required to be collected by the
140 department under Section 64-13-21, if applicable; and

141 (b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection
142 (2).

Legislative Review Note
as of 1-20-03 11:29 AM

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

Office of Legislative Research and General Counsel