

Representative Brad L. Dee proposes the following substitute bill:

COUNTY CORRECTIONAL FACILITY

REIMBURSEMENT

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Brad L. Dee

This act modifies the Criminal Code and Code of Criminal Procedure to provide the courts and county correctional facilities a process for ordering and collecting restitution of costs for incarcerating offenders in county correctional facilities under specified circumstances.

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

77-38a-404, as last amended by Chapter 140, Laws of Utah 2002

77-38a-501, as last amended by Chapter 35, 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.



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

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

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

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

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

39 (a) to pay a fine;

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

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

42 (d) to imprisonment;

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

44 (f) to death.

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

46 (i) forfeit property;

47 (ii) dissolve a corporation;

48 (iii) suspend or cancel a license;

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

50 (v) cite for contempt; or

51 (vi) impose any other civil penalty.

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

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

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

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

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

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

64 (iii) convicted of a crime.

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

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

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

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

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

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

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

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

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

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

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

87 (ii) (A) the defendant is not a state prisoner housed in a county correctional facility

88 through a contract with the Department of Corrections; or

89 (B) the reimbursement does not duplicate the reimbursement provided under Section
90 64-13c-301 if the defendant is a state prisoner housed in a county correctional facility as a
91 condition of probation under Subsection 77-18-1(8).

92 (b) (i) The costs of incarceration under Subsection (6)(a) are:

93 (A) the daily core inmate incarceration costs and medical and transportation costs
94 established under Section 64-13c-302; and

95 (B) the costs of transportation services and medical care that exceed the negotiated
96 reimbursement rate established under Subsection 64-13c-302(2).

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

102 (c) In determining the monetary sum and other conditions for the court-ordered
103 restitution under this Subsection (6), the court shall consider the criteria provided under
104 Subsections 77-38a-302(5)(c)(i) through (iv).

105 [~~6~~] (7) (a) If a statute under which the defendant was convicted mandates that one of
106 three stated minimum terms shall be imposed, the court shall order imposition of the term of
107 middle severity unless there are circumstances in aggravation or mitigation of the crime.

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

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

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

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

122 [~~(7)~~] (8) If during the commission of a crime described as child kidnapping, rape of a
123 child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant
124 causes substantial bodily injury to the child, and if the charge is set forth in the information or
125 indictment and admitted by the defendant, or found true by a judge or jury at trial, the
126 defendant shall be sentenced to the highest minimum term in state prison. This Subsection (8)
127 takes precedence over any conflicting provision of law.

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

129 **77-38a-404. Priority.**

130 (1) If restitution to more than one person, agency, or entity is set at the same time, the
131 department shall establish the following priorities of payment, except as provided in
132 Subsection (2):

133 (a) the crime victim;

134 (b) the Office of Crime Victim Reparations;

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

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

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

141 (2) Restitution ordered under Subsection (1)(e) is paid after criminal fines and
142 surcharges are paid.

143 [~~(2)~~] (3) If the offender is required under Section 53-10-404 to reimburse the
144 department for the cost of obtaining the offender's DNA specimen, this reimbursement is the
145 next priority after restitution to the crime victim under Subsection (1)(a).

146 [~~(3)~~] (4) All money collected for court-ordered obligations from offenders by the
147 department will be applied:

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

150 (b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection
151 (2).

152 Section 3. Section **77-38a-501** is amended to read:

153 **77-38a-501. Default and sanctions.**

154 (1) When a defendant defaults in the payment of a judgment for restitution or any
155 installment ordered, the court, on motion of the prosecutor, parole or probation agent, victim,
156 or on its own motion may impose sanctions against the defendant as provided in Section
157 [76-3-201] 76-3-201.1.

158 (2) The court may not impose a sanction against the defendant under Subsection (1) if:

159 (a) the defendant's sole default in the payment of a judgement for restitution is the
160 failure to pay restitution ordered under Subsection 76-3-201(6) regarding costs of incarceration
161 in a county correctional facility; and

162 (b) the sanction would extend the defendant's term of probation or parole.