

VICTIM REPARATIONS AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill amends the role of the Board of Pardons and Parole in ordering restitution for parolees.

Highlighted Provisions:

This bill:

- places the authority to determine restitution with the courts;
- allows the Board of Pardons and Parole to order restitution as determined by the courts; and
- requires the Board of Pardons and Parole to send notice to the court prior to the termination of a sentence or parole when a parolee owes outstanding fines, restitution, or other assessed costs.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-27-5, as last amended by Chapter 35, Laws of Utah 2002

77-27-6, as last amended by Chapter 35, Laws of Utah 2002

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



Section 1. Section **77-27-5** is amended to read:

77-27-5. Board of Pardons and Parole authority.

(1) (a) The Board of Pardons and Parole shall determine by majority decision when and under what conditions, subject to this chapter and other laws of the state, persons committed to serve sentences in class A misdemeanor cases at penal or correctional facilities which are under the jurisdiction of the Department of Corrections, and all felony cases except treason or impeachment or as otherwise limited by law, may be released upon parole, pardoned, ~~[restitution ordered,]~~ or have their fines, forfeitures, or restitution remitted, or their sentences commuted or terminated.

(b) The board may sit together or in panels to conduct hearings. The chair shall appoint members to the panels in any combination and in accordance with rules promulgated by the board, except in hearings involving commutation and pardons. The chair may participate on any panel and when doing so is chair of the panel. The chair of the board may designate the chair for any other panel.

(c) No ~~[restitution may be ordered, no]~~ fine, forfeiture, or restitution may be remitted, no parole, pardon, or commutation granted or sentence terminated, except after a full hearing before the board or the board's appointed examiner in open session. Any action taken under this subsection other than by a majority of the board shall be affirmed by a majority of the board.

(d) A commutation or pardon may be granted only after a full hearing before the board.

(e) The board ~~[shall determine]~~ may order restitution in an amount that does not exceed complete restitution ~~[if]~~ as determined by the court in accordance with Section 77-38a-302.

(2) (a) In the case of original parole grant hearings, rehearings, and parole revocation hearings, timely prior notice of the time and place of the hearing shall be given to the defendant, the county or district attorney's office responsible for prosecution of the case, the sentencing court, law enforcement officials responsible for the defendant's arrest and conviction, and whenever possible, the victim or the victim's family.

(b) Notice to the victim, his representative, or his family shall include information provided in Section 77-27-9.5, and any related rules made by the board under that section. This information shall be provided in terms that are reasonable for the lay person to understand.

(3) Decisions of the board in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a civil judgment, including restitution as provided in Section 77-27-6.

(4) (a) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment. However, respites or reprieves may not extend beyond the next session of the Board of Pardons and Parole and the board, at that session, shall continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the offense as provided.

(b) In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at its next session. The Legislature shall then either pardon or commute the sentence, or direct its execution.

(5) In determining when, where, and under what conditions offenders serving sentences may be paroled, pardoned, ~~[have restitution ordered,]~~ or have their fines or forfeitures remitted, or their sentences commuted or terminated, the board shall consider whether the persons have made or are prepared to make restitution as ascertained in accordance with the standards and procedures of Section 77-38a-302, as a condition of any parole, pardon, remission of fines or forfeitures, or commutation or termination of sentence.

(6) In determining whether parole may be terminated, the board shall consider the offense committed by the parolee, the parole period as provided in Section 76-3-202, and information provided in accordance with Section 77-27-13.

Section 2. Section **77-27-6** is amended to read:

77-27-6. Payment of restitution.

(1) When the Board of Pardons and Parole orders the release on parole of an inmate who has been sentenced to make restitution pursuant to Title 77, Chapter 38a, Crime Victims Restitution Act, or whom the board has ordered to make restitution, and all or a portion of restitution is still owing, the board may establish a schedule, including both complete and court-ordered restitution, by which payment of the restitution shall be made, or order compensatory or other service in lieu of or in combination with restitution. In fixing the schedule and supervising the paroled offender's performance, the board may consider the

factors specified in Section 77-38a-302.

(2) (a) The board may impose any court order for restitution ~~[and order that a defendant make restitution in an amount not to exceed the pecuniary damages to the victim of the offense of which the defendant has been convicted, the victim of any other criminal conduct admitted to by the defendant to the sentencing court, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement;]~~ unless the board applying the criteria as set forth in Section 77-38a-302 determines that restitution is inappropriate.

(b) Any restitution order must be executed prior to the termination of a sentence and parole.

(3) The board may also make orders of restitution for recovery of any or all costs incurred by the Department of Corrections or the state or any other agency arising out of the defendant's needs or conduct.

(4) If the defendant, upon termination of the parole period owes outstanding fines, restitution, or other assessed costs not already addressed by the court under Section 77-38a-401, the matter shall be referred to the district court for civil collection remedies. The Board of Pardons and Parole shall ~~[forward a restitution order to the sentencing court to be entered on the judgment docket. The entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil judgment]~~ send notice to the court that a civil collection order needs to be addressed under Section 77-38a-401 prior to the termination of a sentence and parole.

Legislative Review Note
as of 2-10-04 3:52 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0300

Victim Reparations Amendments*16-Feb-04**9:58 AM*

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst