

VICTIM RESTITUTION AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill allows for pretrial orders to preserve property that might be necessary to satisfy an anticipated restitution order in the case of a conviction.

Highlighted Provisions:

This bill:

- ▶ allows a prosecutor to ask the court to take action to preserve property that might be necessary to satisfy a restitution order;
 - ▶ requires notice and opportunity for a hearing be given to persons having an interest in the property;
 - ▶ allows notice and opportunity for a hearing to be waived under certain conditions;
- and
- ▶ limits the time period of the order.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

77-38a-601, Utah Code Annotated 1953

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



28 Section 1. Section **77-38a-601** is enacted to read:

29 **Part 6. Preservation of Assets**

30 **77-38a-601. Preservation of assets.**

31 (1) At the time a criminal information, indictment charging a violation, or a petition
 32 alleging delinquency is filed, **§ OR AT ANY TIME DURING THE PROSECUTION OF THE CASE, § a**
 33a prosecutor may petition the court to enter a restraining order or
 33 injunction, require the execution of a satisfactory performance bond, or take any other action to
 34 preserve the availability of property which may be necessary to satisfy an anticipated restitution
 35 order if, in the prosecutor's best judgement, there is a substantial likelihood that a conviction
 36 will be obtained and restitution will be ordered.

37 (a) Upon receiving a petition from a prosecutor under this Subsection (1), **§ AND AFTER**
 38a **NOTICE AND A HEARING, §** the court
 38 may enter a restraining order or injunction, require the execution of a satisfactory performance
 39 bond, or take any action necessary to preserve the availability of property which may be
 40 necessary to satisfy an anticipated restitution order.

41 (b) An order entered under this Subsection (1) is effective for up to 90 days, unless
 42 extended by the court for good cause shown.

43 (2) Prior to the filing of a criminal information, indictment charging a violation, or a
 44 petition alleging delinquency, a prosecutor may petition the court to enter a restraining order or
 45 injunction, require the execution of a satisfactory performance bond, or take any other action to
 46 preserve the availability of property which may be necessary to satisfy an anticipated restitution
 47 order if, in the prosecutor's best judgement, there is a substantial likelihood that a conviction
 48 will be obtained and restitution will be ordered.

49 (a) Upon receiving a request from a prosecutor under this Subsection (2), the court may
 50 enter a restraining order or injunction, require the execution of a satisfactory performance
 51 bond, or take any action necessary to preserve the availability of property which may be
 52 necessary to satisfy an anticipated restitution order after notice to persons appearing to have an
 53 interest in the property and affording them an opportunity to be heard, if the court determines
 54 that:

55 (i) there is **§ [a-substantial likelihood that the state will prevail on the underlying criminal**
 56 **charges or allegation of delinquency] PROBABLE CAUSE TO BELIEVE THAT A CRIME HAS BEEN**
 57a **COMMITTED AND THAT THE DEFENDANT COMMITTED IT, §** and that failure to enter the order will
 58b result in the
 57 property being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the
 58 court, or otherwise be made unavailable for restitution; and

59 (ii) the need to preserve the availability of the property or prevent its sale, distribution,
60 exhibition, destruction, or removal through the entry of the requested order outweighs the
61 hardship on any party against whom the order is to be entered.

62 (b) An order entered under this Subsection (2) is effective for the period of time given
63 in the order.

64 (3) (a) Upon receiving a request from a prosecutor under Subsection (2), and
65 notwithstanding Subsection (2)(a)(i), a court may enter a temporary restraining order against an
66 owner with respect to specific property without notice or opportunity for a hearing if:

67 (i) the prosecutor demonstrates that there is a substantial likelihood that the property
68 with respect to which the order is sought appears to be necessary to satisfy an anticipated
69 restitution order under this chapter; and

70 (ii) that provision of notice would jeopardize the availability of the property to satisfy
71 any restitution order or judgment.

72 (b) The temporary order in this Subsection (3) expires not more than ten days after it is
73 entered unless extended for good cause shown or the party against whom it is entered consents
74 to an extension.

75 (4) A hearing concerning an order entered under this section shall be held as soon as
76 possible, and prior to the expiration of the temporary order.

Legislative Review Note
as of 2-10-04 3:03 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 SB0167

Victim Restitution Amendments

20-Feb-04

3:13 PM

State Impact

Provisions of this bill can be handled within existing budgets.

Individual and Business Impact

No fiscal impact for individuals who abide by the laws of the state.

Office of the Legislative Fiscal Analyst