

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:

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

Part 6. Preservation of Assets

77-38a-601. Preservation of assets.

(1) At the time a criminal information, indictment charging a violation, or a petition alleging delinquency is filed, or at any time during the prosecution of the case, a prosecutor may petition the court to enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property which may be necessary to satisfy an anticipated restitution order if, in the prosecutor's best judgement, there is a substantial likelihood that a conviction will be obtained and restitution will be ordered.

(a) Upon receiving a petition from a prosecutor under this Subsection (1), and after notice and a hearing, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any action necessary to preserve the availability of property which may be necessary to satisfy an anticipated restitution order.

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

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

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

(i) there is probable cause to believe that a crime has been committed and that the defendant committed it, and that failure to enter the order will result in the property being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or otherwise be made unavailable for restitution; and

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

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

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

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

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

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

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