

1 **RESTITUTION AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Gregory S. Bell**

5

LONG TITLE

6 **General Description:**

7 This bill makes changes regarding the Board of Pardons and Parole's responsibility
8 concerning inmate restitution.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ clarifies the definition of "pecuniary damages";
12 ▶ requires that the convicting court order restitution, if feasible, at the time of
13 sentencing or within one year of sentencing; and
14 ▶ provides that the Board of Pardons and Parole may determine restitution for an
15 inmate if the convicting court has not.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

- 22 **77-27-5**, as last amended by Chapter 35, Laws of Utah 2002
23 **77-27-6**, as last amended by Chapter 35, Laws of Utah 2002
24 **77-38a-102**, as last amended by Chapter 278, Laws of Utah 2003
25 **77-38a-203**, as enacted by Chapter 137, Laws of Utah 2001
26 **77-38a-302**, as last amended by Chapter 285, Laws of Utah 2003
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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, ordered to pay 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 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~~] may determine restitution [~~in an amount that does not exceed complete restitution if determined by the court in accordance with Section~~] as provided in Section 77-27-6 and Subsection 77-38a-302(5)(d)(ii).

(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.

59 This information shall be provided in terms that are reasonable for the lay person to
60 understand.

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

65 (4) This chapter may not be construed as a denial of or limitation of the governor's
66 power to grant respite or reprieves in all cases of convictions for offenses against the state,
67 except treason or conviction on impeachment. However, respites or reprieves may not extend
68 beyond the next session of the Board of Pardons and Parole and the board, at that session, shall
69 continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the
70 offense as provided. In the case of conviction for treason, the governor may suspend execution
71 of the sentence until the case is reported to the Legislature at its next session. The Legislature
72 shall then either pardon or commute the sentence, or direct its execution.

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

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

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

83 **77-27-6. Payment of restitution.**

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

90 schedule and supervising the paroled offender's performance, the board may consider the
91 factors specified in Section 77-38a-302.

92 (2) (a) The board may impose any court order for restitution [~~and~~].

93 (b) In accordance with Subsection 77-38a-302(5)(d)(ii), the board may order that a
94 defendant make restitution [in an amount not to exceed the] for pecuniary damages [to the
95 victim of the offense of which the defendant has been convicted, the victim of any other
96 criminal conduct admitted to by the defendant to the sentencing court, or for conduct for which
97 the defendant has agreed to make restitution as part of a plea agreement] that were not
98 determined by the court, unless the board applying the criteria as set forth in Section
99 77-38a-302 determines that restitution is inappropriate.

100 (c) Except as provided in Subsection (2)(d), the board shall make all orders of
101 restitution within 60 days after the termination or expiration of the defendant's sentence.

102 (d) If, upon termination or expiration of a defendant's sentence, the board has
103 continuing jurisdiction over the defendant for a separate criminal offense, the board may defer
104 making an order of restitution until termination or expiration of all sentences for that
105 defendant.

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

109 (4) If the defendant, upon termination or expiration of the [~~parole period~~] sentence
110 owes outstanding fines, restitution, or other assessed costs, or if the board makes an order of
111 restitution within 60 days after the termination or expiration of the defendant's sentence, the
112 matter shall be referred to the district court for civil collection remedies. The Board of Pardons
113 and Parole shall forward a restitution order to the sentencing court to be entered on the
114 judgment docket. The entry shall constitute a lien and is subject to the same rules as a
115 judgment for money in a civil judgment.

116 Section 3. Section **77-38a-102** is amended to read:

117 **77-38a-102. Definitions.**

118 As used in this chapter:

119 (1) "Conviction" includes a:

120 (a) judgment of guilt;

121 (b) a plea of guilty; or

122 (c) a plea of no contest.

123 (2) "Criminal activities" means any offense of which the defendant is convicted or any
124 other criminal conduct for which the defendant admits responsibility to the sentencing court
125 with or without an admission of committing the criminal conduct.

126 (3) "Department" means the Department of Corrections.

127 (4) "Diversion" means suspending criminal proceedings prior to conviction on the
128 condition that a defendant agree to participate in a rehabilitation program, make restitution to
129 the victim, or fulfill some other condition.

130 (5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

131 (6) "Pecuniary damages" means all ~~[special damages, but not general damages,]~~
132 demonstrable economic injury, whether or not yet incurred, which a person could recover
133 ~~[against the defendant]~~ in a civil action arising out of the facts or events constituting the
134 defendant's criminal activities and includes the ~~[money equivalent]~~ fair market value of
135 property taken, destroyed, broken, or otherwise harmed, and losses including lost earnings and
136 medical expenses, but excludes punitive or exemplary damages and pain and suffering.

137 (7) "Plea agreement" means an agreement entered between the prosecution and
138 defendant setting forth the special terms and conditions and criminal charges upon which the
139 defendant will enter a plea of guilty or no contest.

140 (8) "Plea in abeyance" means an order by a court, upon motion of the prosecution and
141 the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that
142 time, entering judgment of conviction against him nor imposing sentence upon him on
143 condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

144 (9) "Plea in abeyance agreement" means an agreement entered into between the
145 prosecution and the defendant setting forth the specific terms and conditions upon which,
146 following acceptance of the agreement by the court, a plea may be held in abeyance.

147 (10) "Plea disposition" means an agreement entered into between the prosecution and
148 defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement
149 by which the defendant may enter a plea in any other jurisdiction or where charges are
150 dismissed without a plea.

151 (11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a

152 victim, including prejudgment interest, the accrual of interest from the time of sentencing,
153 insured damages, reimbursement for payment of a reward, and payment for expenses to a
154 governmental entity for extradition or transportation and as may be further defined by law.

155 (12) (a) "Reward" means a sum of money:

156 (i) offered to the public for information leading to the arrest and conviction of an
157 offender; and

158 (ii) that has been paid to a person or persons who provide this information, except that
159 the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

160 (b) "Reward" does not include any amount paid in excess of the sum offered to the
161 public.

162 (13) "Screening" means the process used by a prosecuting attorney to terminate
163 investigative action, proceed with prosecution, move to dismiss a prosecution that has been
164 commenced, or cause a prosecution to be diverted.

165 (14) (a) "Victim" means any person whom the court determines has suffered pecuniary
166 damages as a result of the defendant's criminal activities.

167 (b) "Victim" may not include a codefendant or accomplice.

168 Section 4. Section **77-38a-203** is amended to read:

169 **77-38a-203. Restitution determination -- Department of Corrections --**

170 **Presentence investigation.**

171 (1) (a) The department shall prepare a presentence investigation report in accordance
172 with Subsection 77-18-1(5). The prosecutor and law enforcement agency involved shall
173 provide all available victim information to the department upon request. The victim impact
174 statement shall:

175 (i) identify all victims of the offense;

176 (ii) itemize any economic loss suffered by the victim as a result of the offense;

177 (iii) include for each identifiable victim a specific statement of the recommended
178 amount of complete restitution as defined in Section 77-38a-302, accompanied by a
179 recommendation from the department regarding the payment by the defendant of court-ordered
180 restitution with interest as defined in Section 77-38a-302;

181 (iv) identify any physical, mental, or emotional injuries suffered by the victim as a
182 result of the offense, and the seriousness and permanence;

183 (v) describe any change in the victim's personal welfare or familial relationships as a
184 result of the offense;

185 (vi) identify any request for mental health services initiated by the victim or the
186 victim's family as a result of the offense; and

187 (vii) contain any other information related to the impact of the offense upon the victim
188 or the victim's family that the court requires.

189 (b) The crime victim shall be responsible to provide to the department upon request all
190 invoices, bills, receipts, and other evidence of injury, loss of earnings, and out-of-pocket loss.

191 The crime victim shall also provide upon request:

192 (i) all documentation and evidence of compensation or reimbursement from insurance
193 companies or agencies of the state of Utah, any other state, or federal government received as a
194 direct result of the crime for injury, loss, earnings, or out-of-pocket loss; and

195 (ii) proof of identification, including date of birth, Social Security number, drivers
196 license number, next of kin, and home and work address and telephone numbers.

197 (c) The inability, failure, or refusal of the crime victim to provide all or part of the
198 requested information shall result in the court determining restitution based on the best
199 information available.

200 (2) (a) The court shall order the defendant as part of the presentence investigation to
201 submit to the department any information determined necessary to be disclosed for the purpose
202 of ascertaining the restitution.

203 (b) The willful failure or refusal of the defendant to provide all or part of the requisite
204 information shall constitute a waiver of any grounds to appeal or seek future amendment or
205 alteration of the restitution order predicated on the undisclosed information.

206 (c) If the defendant objects to the imposition, amount, or distribution of the restitution
207 recommended in the presentence investigation, [~~or if the department is unable to determine the~~
208 ~~restitution for any reason;~~] the court shall set a hearing date to resolve the matter.

209 (d) If any party fails to challenge the accuracy of the presentence investigation report at
210 the time of sentencing, that matter shall be considered to be waived.

211 Section 5. Section **77-38a-302** is amended to read:

212 **77-38a-302. Restitution criteria.**

213 (1) When a defendant is convicted of criminal activity that has resulted in pecuniary

214 damages, in addition to any other sentence it may impose, the court shall order that the
215 defendant make restitution to victims of crime as provided in this chapter, or for conduct for
216 which the defendant has agreed to make restitution as part of a plea disposition. For purposes
217 of restitution, a victim has the meaning as defined in Subsection 77-38a-102[~~(13)~~](14) and in
218 determining whether restitution is appropriate, the court shall follow the criteria and procedures
219 as provided in Subsections (2) through (5).

220 (2) In determining restitution, the court shall determine complete restitution and
221 court-ordered restitution.

222 (a) "Complete restitution" means restitution necessary to compensate a victim for all
223 losses caused by the defendant.

224 (b) "Court-ordered restitution" means the restitution the court having criminal
225 jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of
226 sentencing or within one year after sentencing.

227 (c) Complete restitution and court-ordered restitution shall be determined as provided
228 in Subsection (5).

229 (3) If the court determines that restitution is appropriate or inappropriate under this
230 part, the court shall make the reasons for the decision part of the court record.

231 (4) If the defendant objects to the imposition, amount, or distribution of the restitution,
232 the court shall [~~at the time of sentencing~~] allow the defendant a full hearing on the issue.

233 (5) (a) For the purpose of determining restitution for an offense, the offense shall
234 include any criminal conduct admitted by the defendant to the sentencing court or to which the
235 defendant agrees to pay restitution. A victim of an offense that involves as an element a
236 scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by
237 the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

238 (b) In determining the monetary sum and other conditions for complete restitution, the
239 court shall consider all relevant facts, including:

240 (i) the cost of the damage or loss if the offense resulted in damage to or loss or
241 destruction of property of a victim of the offense;

242 (ii) the cost of necessary medical and related professional services and devices relating
243 to physical or mental health care, including nonmedical care and treatment rendered in
244 accordance with a method of healing recognized by the law of the place of treatment;

- 245 (iii) the cost of necessary physical and occupational therapy and rehabilitation;
- 246 (iv) the income lost by the victim as a result of the offense if the offense resulted in
247 bodily injury to a victim;
- 248 (v) up to five days of the individual victim's determinable wages that are lost due to
249 theft of or damage to tools or equipment items of a trade that were owned by the victim and
250 were essential to the victim's current employment at the time of the offense; and
- 251 (vi) the cost of necessary funeral and related services if the offense resulted in the death
252 of a victim.
- 253 (c) In determining the monetary sum and other conditions for court-ordered restitution,
254 the court shall consider the factors listed in Subsections (5)(a) and (b) and:
- 255 (i) the financial resources of the defendant and the burden that payment of restitution
256 will impose, with regard to the other obligations of the defendant;
- 257 (ii) the ability of the defendant to pay restitution on an installment basis or on other
258 conditions to be fixed by the court;
- 259 (iii) the rehabilitative effect on the defendant of the payment of restitution and the
260 method of payment; and
- 261 (iv) other circumstances which the court determines may make restitution
262 inappropriate.
- 263 ~~[(d) The court may decline to make an order or may defer entering an order of
264 restitution if the court determines that the complication and prolongation of the sentencing
265 process, as a result of considering an order of restitution under this Subsection (5), substantially
266 outweighs the need to provide restitution to the victim.]~~
- 267 (d) (i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete
268 restitution and court-ordered restitution, and shall make all restitution orders at the time of
269 sentencing if feasible, otherwise within one year after sentencing.
- 270 (ii) Any pecuniary damages that have not been determined by the court within one year
271 after sentencing may be determined by the Board of Pardons and Parole.
- 272 (e) The Board of Pardons and Parole may, within one year after sentencing, refer an
273 order of judgment and commitment back to the court for determination of restitution.

Legislative Review Note

as of 12-2-04 11:35 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel