

**RESTITUTION AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kevin S. Garn**

Senate Sponsor: Gregory S. Bell

Cosponsor: Sheryl L. Allen

---

---

**LONG TITLE**

**General Description:**

This bill makes provision for juvenile restitution orders and adds the payment of restitution to the expungement statute.

**Highlighted Provisions:**

This bill:

- ▶ provides for the transfer of unpaid fines and of restitution orders from juvenile court as a judgment when the juvenile court terminates jurisdiction; and
- ▶ adds payment of restitution to the requirements for juvenile expungements.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78-3a-121**, as last amended by Chapter 195, Laws of Utah 2003

**78-3a-905**, as last amended by Chapter 281, Laws of Utah 2006

ENACTS:

**78-3a-122**, Utah Code Annotated 1953

---

---

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

Section 1. Section **78-3a-121** is amended to read:

30           **78-3a-121. Continuing jurisdiction of juvenile court -- Period of and termination**  
31 **of jurisdiction -- Notice of discharge from custody of local mental health authority or**  
32 **Utah State Developmental Center -- Transfer of continuing jurisdiction to other district.**

33           (1) Jurisdiction of a minor obtained by the court through adjudication under Section  
34 78-3a-118 continues for purposes of this chapter until he becomes 21 years of age, unless  
35 terminated earlier. However, the court, subject to Section 78-3a-122, retains jurisdiction  
36 beyond the age of 21 of a person who has refused or failed to pay any fine or victim restitution  
37 ordered by the court, but only for the purpose of causing compliance with existing orders.

38           (2) (a) The continuing jurisdiction of the court terminates:

39           (i) upon order of the court;

40           (ii) upon commitment to a secure youth corrections facility; or

41           (iii) upon commencement of proceedings in adult cases under Section 78-3a-801.

42           (b) The continuing jurisdiction of the court is not terminated by marriage.

43           (3) When a minor has been committed by the court to the physical custody of a local  
44 mental health authority or its designee or to the Utah State Developmental Center, the local  
45 mental health authority or its designee or the superintendent of the Utah State Developmental  
46 Center shall give the court written notice of its intention to discharge, release, or parole the  
47 minor not fewer than five days prior to the discharge, release, or parole.

48           (4) Jurisdiction over a minor on probation or under protective supervision, or of a  
49 minor who is otherwise under the continuing jurisdiction of the court, may be transferred by the  
50 court to the court of another district, if the receiving court consents, or upon direction of the  
51 chair of the Board of Juvenile Court Judges. The receiving court has the same powers with  
52 respect to the minor that it would have if the proceedings originated in that court.

53           Section 2. Section **78-3a-122** is enacted to read:

54           **78-3a-122. Entry of judgement for fine or restitution -- Transfer for collection.**

55           (1) If, prior to the entry of any order terminating jurisdiction of a juvenile, there  
56 remains any unpaid balance for any fine or restitution ordered by the court, the court shall  
57 record all pertinent information in the juvenile's file and transfer responsibility to collect all

58 unpaid fines and restitution to the Office of State Debt Collection.

59 (2) Before transferring the responsibility to collect any past due fines, the court shall  
60 reduce the order to a judgment listing the Office of State Debt Collection as the judgment  
61 creditor.

62 (3) Before transferring the responsibility to collect any past due accounts receivable for  
63 restitution to a victim, the court shall reduce the restitution order to a judgment listing the  
64 victim, or the estate of the victim, as the judgment creditor.

65 Section 3. Section **78-3a-905** is amended to read:

66 **78-3a-905. Expungement of juvenile court record -- Petition -- Procedure.**

67 (1) (a) A person who has been adjudicated under this chapter may petition the court for  
68 the expungement of the person's record in the juvenile court if:

69 (i) the person has reached 18 years of age; and

70 (ii) one year has elapsed from the date of termination of the continuing jurisdiction of  
71 the juvenile court or, if the person was committed to a secure youth corrections facility, one  
72 year from the date of the person's unconditional release from the custody of the Division of  
73 Juvenile Justice Services.

74 (b) The court may waive the requirements in Subsection (1)(a), if the court finds, and  
75 states on the record, the reason why the waiver is appropriate.

76 (c) The petitioner shall include with the petition the original criminal history report  
77 obtained from the Bureau of Criminal Identification in accordance with the provisions of  
78 Subsection 53-10-108(8).

79 (d) The petitioner shall send a copy of the petition to the county attorney or, if within a  
80 prosecution district, the district attorney.

81 (e) (i) Upon the filing of a petition, the court shall set a date for a hearing and shall  
82 notify the county attorney or district attorney, and the agency with custody of the records of the  
83 pendency of the petition and of the date of the hearing. Notice shall be given at least 30 days  
84 prior to the hearing.

85 (ii) The court shall provide a victim with the opportunity to request notice of a petition

86 for expungement. A victim shall receive notice of a petition for expungement at least 30 days  
87 prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a  
88 child or a person who is incapacitated or deceased, the victim's next of kin or authorized  
89 representative, submits a written and signed request for notice to the court in the judicial  
90 district in which the crime occurred or judgment was entered. The notice shall include a copy  
91 of the petition and statutes and rules applicable to the petition.

92 (2) (a) At the hearing, the county attorney or district attorney, a victim, and any other  
93 person who may have relevant information about the petitioner may testify.

94 (b) In deciding whether to grant a petition for expungement, the court shall consider  
95 whether the rehabilitation of the petitioner has been attained to the satisfaction of the court,  
96 taking into consideration the petitioner's response to programs and treatment, the petitioner's  
97 behavior subsequent to adjudication, and the nature and seriousness of the conduct.

98 (c) The court may order sealed all petitioner's records under the control of the juvenile  
99 court and any of petitioner's records under the control of any other agency or official pertaining  
100 to the petitioner's adjudicated juvenile court cases if the court finds that:

101 (i) the petitioner has not, since the termination of the court's jurisdiction or his  
102 unconditional release from the Division of Juvenile Justice Services, been convicted of a:

103 (A) felony; or

104 (B) misdemeanor involving moral turpitude; [~~and~~]

105 (ii) no proceeding involving a felony or misdemeanor is pending or being instituted  
106 against the petitioner[-]; and

107 (iii) a judgment for restitution entered by the court on the conviction for which the  
108 expungement is sought has been satisfied.

109 (3) The petitioner shall be responsible for service of the order of expungement to all  
110 affected state, county, and local entities, agencies, and officials. To avoid destruction or  
111 sealing of the records in whole or in part, the agency or entity receiving the expungement order  
112 shall only expunge all references to the petitioner's name in the records pertaining to the  
113 petitioner's adjudicated juvenile court cases.

114           (4) Upon the entry of the order, the proceedings in the petitioner's case shall be  
115 considered never to have occurred and the petitioner may properly reply accordingly upon any  
116 inquiry in the matter. Inspection of the records may thereafter only be permitted by the court  
117 upon petition by the person who is the subject of the records, and only to persons named in the  
118 petition.

119           (5) The court may not expunge a juvenile court record if the record contains an  
120 adjudication of:

121           (a) Section 76-5-202, aggravated murder; or

122           (b) Section 76-5-203, murder.

123           (6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments  
124 as provided in Section 78-3a-502 may petition the court for expungement of the person's record  
125 if the person:

126           (i) has reached 18 years of age; and

127           (ii) has completed the conditions of the nonjudicial adjustments.

128           (b) The court shall, without a hearing, order sealed all petitioner's records under the  
129 control of the juvenile court and any of petitioner's records under the control of any other  
130 agency or official pertaining to the petitioner's nonjudicial adjustments.