

**JAIL EXPENSES AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis Oda**

Senate Sponsor: Jon J. Greiner

---

---

**LONG TITLE**

**General Description:**

This bill modifies Title 76, Utah Criminal Code, and Title 77, Utah Code of Criminal Procedure, regarding reimbursement by defendants of incurred costs.

**Highlighted Provisions:**

This bill:

- ▶ changes the process for requiring defendants to pay restitution of the costs of incarceration from one requiring action by the court to one that becomes a requirement unless otherwise ordered by the court;
- ▶ requires the defendant to pay the costs of incarceration to the county correctional facility before and after sentencing, unless the amount is reduced or eliminated by the court; and
- ▶ specifies that the costs of incarceration are to be determined by the county correctional facility, but are not to exceed:
  - the daily core inmate incarceration costs and medical and transportation costs established under Section 64-13c-302; and
  - the costs of transportation services and medical care that exceed the negotiated reimbursement rate established under Subsection 64-13c-302(2).

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

30 AMENDS:

31 **76-3-201**, as last amended by Chapter 208, Laws of Utah 2006

32 **77-38a-404**, as last amended by Chapters 278 and 280, Laws of Utah 2003

33 

---

---

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

35 Section 1. Section **76-3-201** is amended to read:

36 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**  
37 **penalties -- Hearing.**

38 (1) As used in this section:

39 (a) "Conviction" includes a:

40 (i) judgment of guilt; and

41 (ii) plea of guilty.

42 (b) "Criminal activities" means any offense of which the defendant is convicted or any  
43 other criminal conduct for which the defendant admits responsibility to the sentencing court  
44 with or without an admission of committing the criminal conduct.

45 (c) "Pecuniary damages" means all special damages, but not general damages, which a  
46 person could recover against the defendant in a civil action arising out of the facts or events  
47 constituting the defendant's criminal activities and includes the money equivalent of property  
48 taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical  
49 expenses.

50 (d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a  
51 victim, and payment for expenses to a governmental entity for extradition or transportation and  
52 as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

53 (e) (i) "Victim" means any person who the court determines has suffered pecuniary  
54 damages as a result of the defendant's criminal activities.

55 (ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

56 (2) Within the limits prescribed by this chapter, a court may sentence a person  
57 convicted of an offense to any one of the following sentences or combination of them:

- 58 (a) to pay a fine;
- 59 (b) to removal or disqualification from public or private office;
- 60 (c) to probation unless otherwise specifically provided by law;
- 61 (d) to imprisonment;
- 62 (e) on or after April 27, 1992, to life in prison without parole; or
- 63 (f) to death.

64 (3) (a) This chapter does not deprive a court of authority conferred by law to:

- 65 (i) forfeit property;
- 66 (ii) dissolve a corporation;
- 67 (iii) suspend or cancel a license;
- 68 (iv) permit removal of a person from office;
- 69 (v) cite for contempt; or
- 70 (vi) impose any other civil penalty.

71 (b) A civil penalty may be included in a sentence.

72 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary  
73 damages, in addition to any other sentence it may impose, the court shall order that the  
74 defendant make restitution to the victims, or for conduct for which the defendant has agreed to  
75 make restitution as part of a plea agreement.

76 (b) In determining whether restitution is appropriate, the court shall follow the criteria  
77 and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

78 (5) (a) In addition to any other sentence the court may impose, the court shall order the  
79 defendant to pay restitution of governmental transportation expenses if the defendant was:

- 80 (i) transported pursuant to court order from one county to another within the state at  
81 governmental expense to resolve pending criminal charges;
- 82 (ii) charged with a felony or a class A, B, or C misdemeanor; and
- 83 (iii) convicted of a crime.

84 (b) The court may not order the defendant to pay restitution of governmental  
85 transportation expenses if any of the following apply:

86 (i) the defendant is charged with an infraction or on a subsequent failure to appear a  
87 warrant is issued for an infraction; or

88 (ii) the defendant was not transported pursuant to a court order.

89 (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i)  
90 shall be calculated according to the following schedule:

91 (A) \$75 for up to 100 miles a defendant is transported;

92 (B) \$125 for 100 up to 200 miles a defendant is transported; and

93 (C) \$250 for 200 miles or more a defendant is transported.

94 (ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant  
95 transported regardless of the number of defendants actually transported in a single trip.

96 (d) If a defendant has been extradited to this state under Title 77, Chapter 30,  
97 Extradition, to resolve pending criminal charges and is convicted of criminal activity in the  
98 county to which he has been returned, the court may, in addition to any other sentence it may  
99 impose, order that the defendant make restitution for costs expended by any governmental  
100 entity for the extradition.

101 (6) (a) In addition to any other sentence the court may impose, and unless otherwise  
102 ordered by the court [~~shall order~~] pursuant to Subsection (6)(c), the defendant [~~to~~] shall pay  
103 [~~court-ordered~~] restitution to the county for the cost of incarceration in the county correctional  
104 facility before and after sentencing if:

105 (i) the defendant is convicted of criminal activity that results in incarceration in the  
106 county correctional facility; and

107 (ii) (A) the defendant is not a state prisoner housed in a county correctional facility  
108 through a contract with the Department of Corrections; or

109 (B) the reimbursement does not duplicate the reimbursement provided under Section  
110 64-13c-301 if the defendant is a state prisoner housed in a county correctional facility as a  
111 condition of probation under Subsection 77-18-1(8).

112 (b) (i) The costs of incarceration under Subsection (6)(a) are the amount determined by  
113 the county correctional facility, but may not exceed:

114 (A) the daily core inmate incarceration costs and medical and transportation costs  
115 established under Section 64-13c-302; and

116 (B) the costs of transportation services and medical care that exceed the negotiated  
117 reimbursement rate established under Subsection 64-13c-302(2).

118 (ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred  
119 by the county correctional facility in providing reasonable accommodation for an inmate  
120 qualifying as an individual with a disability as defined and covered by the federal Americans  
121 with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental  
122 health treatment for the inmate's disability.

123 (c) In determining [~~the monetary sum and other conditions for the court-ordered~~  
124 ~~restitution under this Subsection (6)] whether to order that the restitution required under this  
125 Subsection (6) be reduced or that the defendant be exempted from the restitution, the court  
126 shall consider the criteria [~~provided~~] under Subsections 77-38a-302(5)(c)(i) through (iv) and  
127 shall enter the reason for its order on the record.~~

128 (d) If on appeal the defendant is found not guilty of the criminal activity under  
129 Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall  
130 reimburse the defendant for restitution the defendant paid for costs of incarceration under  
131 Subsection (6)(a).

132 (7) (a) If a statute under which the defendant was convicted mandates that one of three  
133 stated minimum terms shall be imposed, the court shall order imposition of the term of middle  
134 severity unless there are circumstances in aggravation or mitigation of the crime, except as  
135 provided in Subsection (8).

136 (b) Prior to or at the time of sentencing, either party may submit a statement identifying  
137 circumstances in aggravation or mitigation or presenting additional facts. If the statement is in  
138 writing, it shall be filed with the court and served on the opposing party at least four days prior  
139 to the time set for sentencing.

140 (c) In determining whether there are circumstances that justify imposition of the  
141 highest or lowest term, the court may consider the record in the case, the probation officer's

142 report, other reports, including reports received under Section 76-3-404, statements in  
143 aggravation or mitigation submitted by the prosecution or the defendant, and any further  
144 evidence introduced at the sentencing hearing.

145 (d) The court shall set forth on the record the facts supporting and reasons for imposing  
146 the upper or lower term.

147 (e) In determining a just sentence, the court shall consider sentencing guidelines  
148 regarding aggravating and mitigating circumstances promulgated by the Sentencing  
149 Commission.

150 (8) (a) The defendant shall be sentenced to the highest minimum term in prison if the  
151 trier of fact finds that:

152 (i) during the commission of any of the following offenses the defendant causes  
153 substantial bodily injury to the child:

154 (A) Section 76-5-301.1, child kidnapping;

155 (B) Section 76-5-402.1, rape of a child;

156 (C) Section 76-5-402.3, object rape of a child; or

157 (D) Section 76-5-403.1, sodomy on a child; or

158 (ii) at the time of the commission of any of the offenses in Subsections (8)(a)(i)(A)  
159 through (D), the defendant had been previously convicted of:

160 (A) Section 76-5-402, rape;

161 (B) Section 76-5-402.1, rape of a child;

162 (C) Section 76-5-402.2, object rape;

163 (D) Section 76-5-402.3, object rape of a child;

164 (E) Subsection 76-5-403(2), forcible sodomy;

165 (F) Section 76-5-403.1, sodomy on a child;

166 (G) Section 76-5-404, forcible sexual abuse;

167 (H) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;

168 (I) Section 76-5-405, aggravated sexual assault;

169 (J) any offense in any other state or federal jurisdiction which constitutes or would

170 constitute a crime in Subsections (8)(a)(ii)(A) through (I); or  
171 (K) the attempt to commit any of the offenses in Subsections (8)(a)(ii)(A) through (J).  
172 (b) This Subsection (8) takes precedence over any conflicting provision of law.  
173 Section 2. Section **77-38a-404** is amended to read:  
174 **77-38a-404. Priority.**  
175 (1) If restitution to more than one person, agency, or entity is [~~set~~] required at the same  
176 time, the department shall establish the following priorities of payment, except as provided in  
177 Subsection (3):  
178 (a) the crime victim;  
179 (b) the Office of Crime Victim Reparations;  
180 (c) any other government agency which has provided reimbursement to the victim as a  
181 result of the offender's criminal conduct;  
182 (d) the person, entity, or governmental agency that has offered and paid a reward under  
183 Section 76-3-201.1 or 78-3a-118;  
184 (e) any insurance company which has provided reimbursement to the victim as a result  
185 of the offender's criminal conduct; and  
186 (f) any county correctional facility to which [~~the court has ordered~~] the defendant is  
187 required to pay restitution under Subsection 76-3-201(6).  
188 (2) Restitution ordered under Subsection (1)(f) is paid after criminal fines and  
189 surcharges are paid.  
190 (3) If the offender is required under Section 53-10-404 to reimburse the department for  
191 the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after  
192 restitution to the crime victim under Subsection (1)(a).  
193 (4) All money collected for court-ordered obligations from offenders by the department  
194 will be applied:  
195 (a) first, to victim restitution, except the \$30 per month required to be collected by the  
196 department under Section 64-13-21, if applicable; and  
197 (b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection

198 (3).