

RESTITUTION AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin S. Garn

Senate Sponsor: _____

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;
- ▶ adds payment of restitution to the requirements for juvenile expungements; and
- ▶ requires complete orders of restitution to be entered separately, listing the victims separately as judgment creditors.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-38a-401, as enacted by Chapter 137, Laws of Utah 2001

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:



28 78-3a-122, Utah Code Annotated 1953



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

31 Section 1. Section 77-38a-401 is amended to read:

32 **77-38a-401. Entry of judgment -- Interest -- Civil actions -- Lien.**

33 (1) Upon the court determining that a defendant owes restitution, the clerk of the court
34 shall enter an order of complete restitution as defined in Section 77-38a-302 on the civil
35 judgment docket and provide notice of the order to the parties. The order of complete
36 restitution shall be entered separately from the other orders of the court and list each victim,
37 victims, or the estate of the victim as the judgment creditor in accordance with the provisions
38 of Section 77-18-6.

39 (2) The order shall be considered a legal judgment, enforceable under the Utah Rules
40 of Civil Procedure. In addition, the department may, on behalf of the person in whose favor the
41 restitution order is entered, enforce the restitution order as judgment creditor under the Utah
42 Rules of Civil Procedure.

43 (3) If the defendant fails to obey a court order for payment of restitution and the victim
44 or department elects to pursue collection of the order by civil process, the victim shall be
45 entitled to recover reasonable [attorney's] attorney fees.

46 (4) A judgment ordering restitution when recorded in a registry of judgments docket
47 shall have the same affect and is subject to the same rules as a judgment in a civil action.
48 Interest shall accrue on the amount ordered from the time of sentencing, including prejudgment
49 interest.

50 (5) The department shall make rules permitting the restitution payments to be credited
51 to principal first and the remainder of payments credited to interest in accordance with Title 63,
52 Chapter 46a, Utah Administrative Rulemaking Act.

53 Section 2. Section 78-3a-121 is amended to read:

54 **78-3a-121. Continuing jurisdiction of juvenile court -- Period of and termination**
55 **of jurisdiction -- Notice of discharge from custody of local mental health authority or**
56 **Utah State Developmental Center -- Transfer of continuing jurisdiction to other district.**

57 (1) Jurisdiction of a minor obtained by the court through adjudication under Section
58 78-3a-118 continues for purposes of this chapter until he becomes 21 years of age, unless

59 terminated earlier. [~~However, the~~]

60 (a) The court [retains] may retain jurisdiction beyond the age of 21 of a person who has
61 refused or failed to pay any fine or victim restitution ordered by the court, but only for the
62 purpose of causing compliance with existing orders.

63 (b) If the court chooses not to retain jurisdiction beyond the age of 21 of a person who
64 has failed to pay court ordered fines or restitution, it shall follow the requirements of Section
65 78-3a-122.

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

67 (i) upon order of the court;

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

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

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

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

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

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

82 **78-3a-122. Entry of judgement for fine or restitution -- Transfer for collection.**

83 (1) If, prior to the entry of any order terminating jurisdiction of a juvenile in custody
84 reaching the age of 21, there remains any unpaid balance for any fine or restitution ordered by
85 the court, the court shall record all pertinent information in the juvenile's file and transfer
86 responsibility to collect all unpaid fines and restitution to the Office of State Debt Collection.

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

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

93 Section 4. Section **78-3a-905** is amended to read:

94 **78-3a-905. Expungement of juvenile court record -- Petition -- Procedure.**

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

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

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

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

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

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

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

113 (ii) The court shall provide a victim with the opportunity to request notice of a petition
114 for expungement. A victim shall receive notice of a petition for expungement at least 30 days
115 prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a
116 child or a person who is incapacitated or deceased, the victim's next of kin or authorized
117 representative, submits a written and signed request for notice to the court in the judicial
118 district in which the crime occurred or judgment was entered. The notice shall include a copy
119 of the petition and statutes and rules applicable to the petition.

120 (2) (a) At the hearing, the county attorney or district attorney, a victim, and any other

121 person who may have relevant information about the petitioner may testify.

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

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

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

131 (A) felony; or

132 (B) misdemeanor involving moral turpitude; ~~and~~

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

135 (iii) the judgment for restitution entered pursuant to the provisions of Section
136 78-3a-122 on the conviction for which the expungement is sought has been satisfied.

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

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

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

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

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

151 (6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments

152 as provided in Section 78-3a-502 may petition the court for expungement of the person's record
153 if the person:

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

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

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

Legislative Review Note

as of 1-24-07 9:24 AM

Office of Legislative Research and General Counsel

H.B. 147 - Restitution Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will require a one-time \$4,000 General Fund appropriation in FY 2008 to the Courts for database programming costs.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund, One-Time	\$0	\$4,000	\$0	\$0	\$0	\$0
Total	\$0	\$4,000	\$0	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
