

Representative Sheryl L. Allen proposes the following substitute bill:

RESTITUTION AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin S. Garn

Senate Sponsor: Gregory S. Bell

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



26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

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

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

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

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

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

(i) upon order of the court;

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

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

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

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

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

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

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

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

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

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

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

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

65 **78-3a-905. Expungement of juvenile court record -- Petition -- Procedure.**

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

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

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

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

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

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

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

84 (ii) The court shall provide a victim with the opportunity to request notice of a petition
85 for expungement. A victim shall receive notice of a petition for expungement at least 30 days
86 prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a
87 child or a person who is incapacitated or deceased, the victim's next of kin or authorized

88 representative, submits a written and signed request for notice to the court in the judicial
89 district in which the crime occurred or judgment was entered. The notice shall include a copy
90 of the petition and statutes and rules applicable to the petition.

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

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

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

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

102 (A) felony; or

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

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

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

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

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

118 (5) The court may not expunge a juvenile court record if the record contains an

119 adjudication of:

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

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

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

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

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

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

H.B. 147 1st Sub. (Buff) - 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 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 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.