

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:



28 None

29 **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



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).

Legislative Review Note
as of 1-5-07 3:02 PM

Office of Legislative Research and General Counsel

H.B. 263 - Jail Expenses Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill could result in additional revenues to county correctional facilities from inmate reimbursements. Depending on financial status, some inmates will now be required to pay for costs of incarceration.

1/18/2007, 12:40:01 PM, Lead Analyst: Byrne, D.

Office of the Legislative Fiscal Analyst