

1 **COURT-ORDERED RESTITUTION FOR COSTS**
2 **OF INCARCERATION**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis Oda**

6 Senate Sponsor: Jon J. Greiner

8 **LONG TITLE**

9 **General Description:**

10 This bill amends sentencing provisions of the Utah Criminal Code relating to
11 determining the costs of incarceration of an inmate in the custody of a county
12 correctional facility.

13 **Highlighted Provisions:**

14 This bill:

15 ▸ provides that, when determining the costs of incarceration in a county correctional
16 facility for purposes of ordering restitution by a county inmate, the cost will be the
17 amount determined by the county correctional facility, but may not exceed the daily
18 inmate incarceration costs and medical and transportation costs for the county
19 correctional facility.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **76-3-201**, as last amended by Laws of Utah 2007, Chapters 154, 339, and 353

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

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

30 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**
31 **penalties -- Hearing.**

32 (1) As used in this section:

33 (a) "Conviction" includes a:

34 (i) judgment of guilt; and

35 (ii) plea of guilty.

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

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

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

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

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

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

52 (a) to pay a fine;

53 (b) to removal or disqualification from public or private office;

54 (c) to probation unless otherwise specifically provided by law;

55 (d) to imprisonment;

56 (e) on or after April 27, 1992, to life in prison without parole; or

57 (f) to death.

58 (3) (a) This chapter does not deprive a court of authority conferred by law to:
59 (i) forfeit property;
60 (ii) dissolve a corporation;
61 (iii) suspend or cancel a license;
62 (iv) permit removal of a person from office;
63 (v) cite for contempt; or
64 (vi) impose any other civil penalty.
65 (b) A civil penalty may be included in a sentence.

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

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

72 (5) (a) In addition to any other sentence the court may impose, the court shall order the
73 defendant to pay restitution of governmental transportation expenses if the defendant was:
74 (i) transported pursuant to court order from one county to another within the state at
75 governmental expense to resolve pending criminal charges;
76 (ii) charged with a felony or a class A, B, or C misdemeanor; and
77 (iii) convicted of a crime.

78 (b) The court may not order the defendant to pay restitution of governmental
79 transportation expenses if any of the following apply:
80 (i) the defendant is charged with an infraction or on a subsequent failure to appear a
81 warrant is issued for an infraction; or
82 (ii) the defendant was not transported pursuant to a court order.

83 (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i)
84 shall be calculated according to the following schedule:
85 (A) \$75 for up to 100 miles a defendant is transported;

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

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

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

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

95 (6) (a) In addition to any other sentence the court may impose, and unless otherwise
96 ordered by the court pursuant to Subsection (6)(c), the defendant shall pay restitution to the
97 county for the cost of incarceration in the county correctional facility before and after
98 sentencing if:

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

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

103 (B) the reimbursement does not duplicate the reimbursement provided under Section
104 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or
105 a state parole inmate, as defined in Section 64-13e-102.

106 (b) (i) The costs of incarceration under Subsection (6)(a) are the amount determined by
107 the county correctional facility, but may not exceed the daily inmate incarceration costs and
108 medical and transportation costs for the county correctional facility.

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

114 (c) In determining whether to order that the restitution required under this Subsection
115 (6) be reduced or that the defendant be exempted from the restitution, the court shall consider
116 the criteria under Subsections 77-38a-302(5)(c)(i) through (iv) and shall enter the reason for its
117 order on the record.

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