

1 **ASSET PRESERVATION AMENDMENTS**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gregory H. Hughes**

5 Senate Sponsor: Margaret Dayton

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Code of Criminal Procedure regarding the Crime Victims
10 Restitution Act and the preservation of assets.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ amends the judicial process for preserving assets in a prosecution, when it appears
14 likely that the assets may otherwise be disposed of prior to conviction and an order
15 of restitution, by:

- 16 • removing the provision that limits an order preserving assets to 90 days; and
- 17 • allowing the court to base its finding of probable cause to take action to
18 preserve assets upon reliable hearsay.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **77-38a-601**, as enacted by Laws of Utah 2004, Chapter 160

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

28 Section 1. Section **77-38a-601** is amended to read:

29 **77-38a-601. Preservation of assets.**

30 (1) ~~[At] Prior to or at the time a criminal information, indictment charging a violation,~~
31 ~~or a petition alleging delinquency is filed, or at any time during the prosecution of the case, a~~
32 ~~prosecutor may, if in the prosecutor's best judgment there is a substantial likelihood that a~~
33 ~~conviction will be obtained and restitution will be ordered in the case, petition the court to:~~

34 (a) ~~enter a temporary restraining order [or], an injunction, or both;~~

35 (b) ~~require the execution of a satisfactory performance bond[;]; or~~

36 (c) ~~take any other action to preserve the availability of property which may be~~
37 ~~necessary to satisfy an anticipated restitution order [if, in the prosecutor's best judgement,~~
38 ~~there is a substantial likelihood that a conviction will be obtained and restitution will be~~
39 ~~ordered].~~

40 ~~[(a) Upon receiving a petition from a prosecutor under this Subsection (1), and after~~
41 ~~notice and a hearing, the court may enter a restraining order or injunction, require the~~
42 ~~execution of a satisfactory performance bond, or take any action necessary to preserve the~~
43 ~~availability of property which may be necessary to satisfy an anticipated restitution order.]~~

44 ~~[(b) An order entered under this Subsection (1) is effective for up to 90 days, unless~~
45 ~~extended by the court for good cause shown.]~~

46 ~~[(2) Prior to the filing of a criminal information, indictment charging a violation, or a~~
47 ~~petition alleging delinquency, a prosecutor may petition the court to enter a restraining order~~
48 ~~or injunction, require the execution of a satisfactory performance bond, or take any other~~
49 ~~action to preserve the availability of property which may be necessary to satisfy an anticipated~~
50 ~~restitution order if, in the prosecutor's best judgement, there is a substantial likelihood that a~~
51 ~~conviction will be obtained and restitution will be ordered.]~~

52 (2) (a) Upon receiving a request from a prosecutor under [this] Subsection [(2);] (1),
53 and after notice to persons appearing to have an interest in the property and affording them an
54 opportunity to be heard, the court may ~~[enter a restraining order or injunction, require the~~
55 ~~execution of a satisfactory performance bond, or take any action necessary to preserve the~~
56 ~~availability of property which may be necessary to satisfy an anticipated restitution order after~~
57 ~~notice to persons appearing to have an interest in the property and affording them an~~

58 ~~opportunity to be heard,]~~ take action as requested by the prosecutor if the court determines
59 ~~[that]:~~

60 (i) there is probable cause to believe that a crime has been committed and that the
61 defendant committed it, and that failure to enter the order will likely result in the property
62 being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or
63 otherwise be made unavailable for restitution; and

64 (ii) the need to preserve the availability of the property or prevent its sale, distribution,
65 exhibition, destruction, or removal through the entry of the requested order outweighs the
66 hardship on any party against whom the order is to be entered.

67 (b) In a hearing conducted pursuant to this section, a court may consider reliable
68 hearsay as defined in Utah Rules of Evidence, Rule 1102.

69 ~~[(b)]~~ (c) An order for an injunction entered under this ~~[Subsection (2)]~~ section is
70 effective for the period of time given in the order.

71 (3) (a) Upon receiving a request for a temporary restraining order from a prosecutor
72 under ~~[Subsection (2), and notwithstanding Subsection (2)(a)(i)]~~ this section, a court may
73 enter a temporary restraining order against an owner with respect to specific property without
74 notice or opportunity for a hearing if:

75 (i) the prosecutor demonstrates that there is a substantial likelihood that the property
76 with respect to which the order is sought appears to be necessary to satisfy an anticipated
77 restitution order under this chapter; and

78 (ii) ~~[that]~~ provision of notice would jeopardize the availability of the property to
79 satisfy any restitution order or judgment.

80 (b) The temporary order in this Subsection (3) expires not more than ten days after it is
81 entered unless extended for good cause shown or the party against whom it is entered consents
82 to an extension.

83 (4) A hearing concerning an order entered under this section shall be held as soon as
84 possible, and prior to the expiration of the temporary order.