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SENATE BILL 211

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Mark Moores and Jacob R. Candelaria

AN ACT

RELATING TO RESTITUTION; PROVIDING THAT A CRIMINAL DEFENDANT'S OBLIGATION TO PAY RESTITUTION CONTINUES AFTER COMPLETION OF ANY PROBATION OR PAROLE PERIODS; PROVIDING THAT A COURT SHALL AWARD FULL RESTITUTION IN MOST CASES; REQUIRING A DEFENDANT TO PREPARE FINANCIAL DISCLOSURE STATEMENTS; PROVIDING THAT AN ORDER OF RESTITUTION SATISFIES THE APPLICATION REQUIREMENTS FOR WRITS OF GARNISHMENT AND ATTACHMENT OF DEFENDANT'S PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-17-1 NMSA 1978 (being Laws 1977, Chapter 217, Section 2, as amended) is amended to read:

"31-17-1. VICTIM RESTITUTION--STOLEN PROPERTY---

A. It is the policy of this state that full restitution be made by each ~~[violator of]~~ person who commits a crime, whether in the Criminal Code or not, to the victims of

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1 [his] the defendant's criminal activities to the extent that
2 the defendant is reasonably able to do so. This section shall
3 be interpreted and administered to effectuate this policy. As
4 used in this section, unless the context otherwise requires:

5 (1) "victim" means any person who has suffered
6 actual damages as a result of the defendant's criminal
7 activities;

8 (2) "actual damages" means all damages [~~which~~]
9 that a victim could recover against the defendant in a civil
10 action arising out of the same facts or event, except punitive
11 damages and damages for pain, suffering, mental anguish and
12 loss of consortium. Without limitation, "actual damages"
13 includes damages for wrongful death;

14 (3) "criminal activities" includes any crime
15 for which there is a plea of guilty or verdict of guilty, upon
16 which a judgment may be rendered and any other crime committed
17 after July 1, 1977 [~~which~~] that is admitted or not contested by
18 the defendant; [~~and~~]

19 (4) "restitution" means [~~full or partial~~]
20 payment of actual damages to a victim; and

21 (5) "lost income" means wages, salaries, other
22 compensation and commission income that is established by
23 evidence of commission-based earnings during the twelve months
24 preceding the loss, lost as a result of a defendant's criminal
25 activities.

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1 ~~[B. If the trial court exercises either of the~~
2 ~~sentencing options under Section 31-20-6 NMSA 1978, the court~~
3 ~~shall require as a condition of probation or parole that the]~~

4 B. In every case in which a victim has suffered
5 injury, death or economic loss as a result of a defendant's
6 criminal activities, the court shall require the defendant to
7 make full restitution of actual damages to the victim or
8 victims in an amount established by court order. Full
9 restitution shall be ordered unless the court finds compelling
10 or extraordinary reasons for not doing so and states its
11 reasons on the record. A defendant's mere inability to pay
12 shall not be a compelling or extraordinary reason not to order
13 full restitution.

14 C. The order of restitution shall identify each
15 victim and the loss to each victim and shall be of an amount
16 that is sufficient to fully reimburse each victim for actual
17 damages incurred as the result of a defendant's criminal
18 conduct, including:

19 (1) the cost to replace stolen property;

20 (2) the actual cost to repair damaged
21 property, if repair is possible;

22 (3) medical expenses;

23 (4) mental health or counseling expenses;

24 (5) lost income of a victim due to the
25 victim's injury;

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1 (6) lost income of a minor victim's parent or
2 legal guardian due to the parent's or legal guardian's need to
3 care for the injured minor victim;

4 (7) lost income of a victim due to the victim
5 serving as a witness or assisting law enforcement in
6 investigating or prosecuting the defendant; and

7 (8) a victim's funeral expenses.

8 D. A sentencing court shall require a defendant, in
9 cooperation with the probation or parole officer assigned to
10 the defendant, to promptly prepare a plan of restitution,
11 including a specific amount of restitution to each victim and a
12 schedule of restitution payments, if [~~the defendant is~~
13 ~~currently unable to make any restitution but there is a~~
14 ~~reasonable possibility that the defendant may be able to do so~~
15 ~~at some time during his probation or parole period, the plan of~~
16 ~~restitution shall also state the conditions under which or the~~
17 ~~event after which the defendant will make restitution. If the~~
18 ~~defendant believes that he will not be able to make any~~
19 ~~restitution, he shall so state and shall specify the reasons.~~
20 ~~If the defendant believes that no person suffered actual~~
21 ~~damages as a result of the defendant's criminal activities, he~~
22 ~~shall so state] applicable. The defendant shall prepare and
23 sign, under oath, a financial disclosure statement on a form
24 approved by the supreme court. The financial disclosure
25 statement shall identify all income, liabilities and assets in~~

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1 which the defendant holds or controls a present or future
2 interest as of the date of the defendant's arrest, or if the
3 defendant was not arrested, then as of the date of the
4 defendant's criminal activity. A prepared and signed financial
5 disclosure statement shall be provided to the defendant's
6 probation and parole officer and the applicable district
7 attorney's office five days before the defendant's sentencing
8 hearing and may be used in determining an appropriate
9 restitution plan.

10 [~~G.~~] E. The defendant's plan of restitution and the
11 recommendations of [~~his~~] the defendant's probation or parole
12 officer shall be submitted promptly to the court. The
13 defendant shall be afforded a hearing on the amount and plan of
14 restitution. The court shall [~~promptly~~] enter an order
15 approving, disapproving or modifying the plan, taking into
16 account the factors enumerated in Subsection [~~D~~] G of this
17 section. Compliance with the [~~plan~~] order of restitution [~~as~~
18 ~~approved or modified by the court~~] shall be a condition of [~~the~~
19 ~~defendant's~~] any probation or parole periods the defendant is
20 required to serve. Restitution payments shall be made to the
21 clerk of the court during any period of probation or parole,
22 unless otherwise directed by the court. Before the end of all
23 applicable probation or parole periods, the court [~~thereafter~~]
24 may modify the plan of restitution at any time upon the
25 defendant's request, the request of the district attorney's

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1 office or upon the court's own motion. If the [~~plan as~~
2 ~~approved or modified~~] order of restitution does not require
3 full payment of actual damages to all victims or if the court
4 determines [~~that the defendant is not able and will not be able~~
5 ~~to make any restitution at any time during his probation or~~
6 ~~parole period or~~] that no person suffered actual damages as a
7 result of the defendant's criminal activities, the court shall
8 file a specific written statement of its reasons for and the
9 facts supporting its action or determination, including any
10 compelling or extraordinary reasons for not awarding full
11 restitution. After the defendant has completed all applicable
12 probation and parole periods, the order of restitution shall no
13 longer be subject to modification and any remaining balance due
14 to the victim or victims may be enforced in the same manner as
15 a civil judgment as provided in Subsection F of this section.

16 [~~D-~~] F. An order requiring an offender to pay
17 restitution, validly entered pursuant to this section,
18 constitutes a judgment and lien against all property of a
19 defendant for the amount the defendant is obligated to pay
20 under the order and may be recorded in any office for the
21 filing of liens against real or personal property, or for
22 garnishment. [~~A judgment~~] An order of restitution may be
23 enforced by the state, a victim entitled under the order to
24 receive restitution, a deceased victim's estate or any other
25 beneficiary of the [~~judgment~~] order in the same manner as a

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1 civil judgment. An order of restitution [~~is enforceable, if~~
2 ~~valid, pursuant to this section, the Victims of Crime Act or~~
3 ~~Article 2, Section 24 of the constitution of New Mexico.~~
4 ~~Nothing in this section shall be construed to limit the ability~~
5 ~~of a victim to pursue full civil legal remedies] shall be in a
6 form approved by the supreme court and shall satisfy the
7 application requirements for a writ of garnishment and a writ
8 of attachment of a defendant's property pursuant to the Rules
9 of Civil Procedure for the District Courts.~~

10 [E.] G. The probation or parole officer, when
11 assisting the defendant in preparing the plan of restitution,
12 and the court, before [~~approving, disapproving or modifying the~~
13 ~~plan~~] entering an order of restitution, shall consider the
14 physical and mental health and condition of the defendant; the
15 defendant's age, education, employment circumstances, potential
16 for employment and vocational training, family circumstances
17 and financial condition; the number of victims; the actual
18 damages of each victim; what plan of restitution will most
19 effectively aid the rehabilitation of the defendant; and such
20 other factors as shall be appropriate. The probation or parole
21 officer shall attempt to determine the name and address of each
22 victim and the amount of pecuniary damages of each victim.

23 [F.] H. The clerk of the court shall mail to each
24 known victim a copy of the court's order [~~approving or~~
25 ~~modifying the plan~~] of restitution, including the court's

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1 statement, if any, pursuant to the provisions of Subsection [G]
2 E of this section.

3 [~~G.~~] I. At any time during the applicable probation
4 or parole period, the defendant or the victim may request and
5 the court shall grant a hearing on any matter related to the
6 [~~plan~~] order of restitution.

7 [~~H.~~] J. If it appears that the restitution ordered
8 by the court will not be paid in full prior to the defendant's
9 scheduled release from probation or parole, the defendant shall
10 prepare and sign, under oath, an updated financial disclosure
11 statement sixty days prior to release from probation or parole
12 and provide it to the defendant's probation and parole officer
13 and the applicable district attorney's office. The updated
14 statement shall identify all income, liabilities and assets in
15 which the defendant holds or controls or has held or controlled
16 a present or future interest during the defendant's period of
17 probation or parole. Failure of the defendant to comply with
18 this subsection or Subsection [B] D of this section or to
19 comply with the [~~plan~~] order of restitution [~~as approved or~~
20 ~~modified by the court~~] may constitute a violation of the
21 conditions of probation or parole. [~~Without limitation, the~~
22 ~~court may modify the plan of restitution or extend the period~~
23 ~~of time for restitution, but not beyond the maximum probation~~
24 ~~or parole period specified in Section 31-21-10 NMSA 1978.]~~

25 K. If the restitution ordered by the court has not

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1 been paid in full after completion of all applicable probation
2 or parole periods, the state may enforce the order of
3 restitution and recover any remaining amounts due to the victim
4 or victims under the order by filing liens against the
5 defendant's property, garnishment of wages or other remedies
6 available at law or equity.

7 [F.] L. This section and proceedings pursuant to
8 this section shall not limit or impair the rights of victims to
9 recover damages from the defendant in a civil action or
10 otherwise pursue full civil legal remedies.

11 [J.] M. The rightful owner of any stolen property
12 is the individual from whom the property was stolen. When
13 recovering [~~his~~] the rightful owner's property, the rightful
14 owner of the stolen property shall not be civilly liable to any
15 subsequent holder, possessor or retainer of the property for
16 the purchase or sale price of the property or for any other
17 costs or expenses associated with the property. Any subsequent
18 holder, possessor or retainer of [~~returned~~] stolen property
19 shall return the property to the rightful owner. The
20 subsequent holder, possessor or retainer shall have a cause of
21 action against the person from whom [~~he~~] the subsequent holder,
22 possessor or retainer obtained the property for actual
23 damages."

24 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
25 provisions of this act is July 1, 2018.

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