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## FISCAL IMPACT REPORT

SPONSOR Moore/Candelaria ORIGINAL DATE 2/05/18  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Payment of Restitution for Crimes SB 211

ANALYST Sánchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		None	None	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
New Mexico Attorney General's Office (NMAG)  
New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 211 proposes to amend the victim restitution requirement in the Criminal Code requiring offenders to continue making restitution payments after completion of probation or parole supervision if the restitution has not been paid in full.

### FISCAL IMPLICATIONS

The Crime Victims Reparation Commission (CVRC) reports that this bill may provide additional revenue to allocate to future victims of crime.

During the past five years, the New Mexico Corrections Department (NMCD) Probation and Parole Division (PPD) collected approximately \$21.4 million in restitution payments from offenders. However, during that same period, approximately \$29 million in restitution went uncollected because the offender's probation or parole supervision expired before all restitution owed had been paid. This bill could provide a mechanism for collecting unpaid restitution from offenders after the expiration of their probation and/or parole terms.

## SIGNIFICANT ISSUES

The New Mexico Attorney General’s Office (NMAG) reports that SB211 may conflict with NMSA 1978, Section 39–1–6 which provides that a money judgment shall constitute a lien on the real estate of the judgment debtor and cites State v. Steele, 1983-NMCA-078, ¶ 8, 100 N.M. 492, 493, 672 P.2d 665, 666, the New Mexico Court of Appeals, relying on State v. Lack, 98 N.M. 500, 650 P.2d 22 (Ct.App.1982) found:

“[a] condition of restitution by a court placing a defendant on probation creates neither a debt nor a debtor-creditor relationship between the persons making and receiving restitution.” Section 31–17–1(C) permits the court to modify the order of restitution at any time, thus removing the certainty of and absolute right to payment from the ordinary characteristics of a judgment debt to which NMSA 1978, § 39–1–6, applies. A lien in the instant circumstance would be inconsistent with the provisions of § 31–17–1(C).

NMAG continues that it remains unclear whether SB211 creates a debt or debtor-creditor relationship, thus creating an absolute right to payment pursuant to Section 39-1-6 NMSA 1978.

CVRC currently provides district attorneys statewide with restitution information on all victim compensation applications with an identified offender to ensure accurate restitution is listed on the judgment and sentence. In FY17, CVRC received 2.17 percent in restitution payments from convicted offenders and less than one percent in promissory notes from offenders discharged from probation and parole supervision. Although, this bill could generate some additional revenue for CVRC and victims, there is no legal remedy or identified agency for enforcement of these promissory notes or payment of restitution after offenders are discharged.

## PERFORMANCE IMPLICATIONS

This bill may have an impact on the following performance measures:

- NMCD:
  - Percent of prisoners reincarcerated within thirty-six months due to technical parole violations, and
  - Average standard caseload per probation and parole officer.

## ADMINISTRATIVE IMPLICATIONS

NMCD states that the bill requires NMCD to gather information about victims and the amount of restitution owed. PPD workload may be impacted since PPD staff will have to obtain information about an offender’s financial situation, names and restitution owed to victims and any other relevant information before the court enters an order of restitution whether that activity is because PPD takes the initiative to obtain the information or because the court orders it. NMCD PDD already collects most of the required information so staff workload should not be negatively impacted.

NMCD suggests that it would be beneficial to standardize how the restitution information is gathered from the various district attorneys’ offices so that the process is similar from one office to another. Gathering the information when victims are working closely with the victim advocates at the district attorney’s office makes the process more efficient.

SB211 requires the defendant to provide his prepared and signed financial disclosure statement to the probation and parole officer and the applicable district attorney's office five days before the defendant's sentencing hearing. According to NMCD, PPD will need more than five days to have sufficient time to research the issues and then be able to intelligently discuss the matter with the court at the sentencing hearing. NMCD proposes amending language to increase the time period from five days to fifteen days. Additionally, PPD staff will have to closely monitor completion of the financial disclosure statement and in some cases will have to inform the judge that the offender is refusing or is very slow to provide the statement.

The bill also requires offenders to sign an updated financial disclosure statement and provide it to the district attorney sixty days prior to release from probation or parole if the restitution will not be paid in full prior to release from parole or probation. The updating process is beneficial as it will prompt PPD and the offender or defendant to not only follow up on restitution matters, but prompt either a probation violation or the timely filing of an unsatisfactory discharge for the offender's record if the restitution is not timely paid off.

### **OTHER SUBSTANTIVE ISSUES**

According to CVRC, most victims do not seek civil remedies on owed restitution. Other states have instituted such laws to facilitate civil remedies on behalf of victims of crime.

### **TECHNICAL ISSUES**

NMAG suggests the following changes to the bill

The word "or" should be substituted for the word "and" on: pg. 5, ln. 6; pg. 6, ln 12; pg. 8, ln 12 to read ". . . probation or parole. . .".

References made in SB 211 to the district attorney's office might also include a reference to the NMAG since many criminal cases are prosecuted by NMAG *See* pg. 5, ln 6-7; ln 25; pg. 8 ln 13.

NMCD suggests the following changes:

On page 5, amend lines 20-22 to read "Restitution payments shall be made to the Probation and Parole Division of the New Mexico Corrections Department during any period on probation or parole, unless otherwise directed by the court."

On page 5, amend line 7 to read "fifteen days" instead of "five days."

ABS/al