

1 HOUSE BILL 133

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

4 Joshua Hernandez

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10 AN ACT

11 RELATING TO VICTIM RESTITUTION; CLARIFYING THAT MUNICIPAL
12 COURTS HAVE STATUTORY AUTHORITY TO ORDER RESTITUTION FOR
13 VIOLATIONS OF MUNICIPAL ORDINANCES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "31-17-1. VICTIM RESTITUTION.--

19 A. It is the policy of this state that restitution
20 be made by each violator of the Criminal Code or applicable
21 municipal ordinance to the victims of ~~[his]~~ the violator's
22 criminal activities to the extent that the defendant is
23 reasonably able to do so. This section shall be interpreted
24 and administered to effectuate this policy. As used in this
25 section, unless the context otherwise requires:

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

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

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

15 (4) "restitution" means full or partial
16 payment of actual damages to a victim.

17 B. If the trial court exercises either of the
18 sentencing options under Section 31-20-6 NMSA 1978, the court
19 shall require as a condition of probation or parole that the
20 defendant, in cooperation with the probation or parole officer
21 assigned to the defendant, promptly prepare a plan of
22 restitution, including a specific amount of restitution to each
23 victim and a schedule of restitution payments. If the
24 defendant is currently unable to make any restitution but there
25 is a reasonable possibility that the defendant may be able to

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1 do so at some time during ~~[his]~~ the defendant's probation or
2 parole period, the plan of restitution shall also state the
3 conditions under which or the event after which the defendant
4 will make restitution. If the defendant believes that ~~[he]~~ the
5 defendant will not be able to make any restitution, ~~[he]~~ the
6 defendant shall so state and shall specify the reasons. If the
7 defendant believes that no person suffered actual damages as a
8 result of the defendant's criminal activities, ~~[he]~~ the
9 defendant shall so state.

10 C. 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 court
13 shall promptly enter an order approving, disapproving or
14 modifying the plan, taking into account the factors enumerated
15 in Subsection D of this section. Compliance with the plan of
16 restitution as approved or modified by the court shall be a
17 condition of the defendant's probation or parole. Restitution
18 payments shall be made to the clerk of the court unless
19 otherwise directed by the court. The court thereafter may
20 modify the plan at any time upon the defendant's request or
21 upon the court's own motion. If the plan as approved or
22 modified does not require full payment of actual damages to all
23 victims or if the court determines that the defendant is not
24 able and will not be able to make any restitution at any time
25 during ~~[his]~~ the defendant's probation or parole period or that

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1 no person suffered actual damages as a result of the
2 defendant's criminal activities, the court shall file a
3 specific written statement of its reasons for and the facts
4 supporting its action or determination.

5 D. An order requiring an offender to pay
6 restitution, validly entered pursuant to this section,
7 constitutes a judgment and lien against all property of a
8 defendant for the amount the defendant is obligated to pay
9 under the order and may be recorded in any office for the
10 filing of liens against real or personal property, or for
11 garnishment. A judgment of restitution may be enforced by the
12 state, a victim entitled under the order to receive
13 restitution, a deceased victim's estate or any other
14 beneficiary of the judgment in the same manner as a civil
15 judgment. An order of restitution is enforceable, if valid,
16 pursuant to this section, the Victims of Crime Act, ~~[or]~~
17 Article 2, Section 24 of the constitution of New Mexico or
18 applicable municipal ordinance. Nothing in this section shall
19 be construed to limit the ability of a victim to pursue full
20 civil legal remedies.

21 E. The probation or parole officer, when assisting
22 the defendant in preparing the plan of restitution, and the
23 court, before approving, disapproving or modifying the plan of
24 restitution, shall consider the physical and mental health and
25 condition of the defendant; the defendant's age, education,

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1 employment circumstances, potential for employment and
2 vocational training, family circumstances and financial
3 condition; the number of victims; the actual damages of each
4 victim; what plan of restitution will most effectively aid the
5 rehabilitation of the defendant; and such other factors as
6 shall be appropriate. The probation or parole officer shall
7 attempt to determine the name and address of each victim and
8 the amount of pecuniary damages of each victim.

9 F. The clerk of the court shall mail to each known
10 victim a copy of the court's order approving or modifying the
11 plan of restitution, including the court's statement, if any,
12 pursuant to the provisions of Subsection C of this section.

13 G. At any time during the probation or parole
14 period, the defendant or the victim may request and the court
15 shall grant a hearing on any matter related to the plan of
16 restitution.

17 H. Failure of the defendant to comply with
18 Subsection B of this section or to comply with the plan of
19 restitution as approved or modified by the court may constitute
20 a violation of the conditions of probation or parole. Without
21 limitation, the court may modify the plan of restitution or
22 extend the period of time for restitution, but not beyond the
23 maximum probation or parole period specified in Section
24 31-21-10 NMSA 1978.

25 I. This section and proceedings pursuant to this
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1 section shall not limit or impair the rights of victims to
2 recover damages from the defendant in a civil action.

3 J. The rightful owner of any stolen property is the
4 individual from whom the property was stolen. When recovering
5 ~~[his]~~ the rightful owner's property, the rightful owner of the
6 stolen property shall not be civilly liable to any subsequent
7 holder, possessor or retainer of the property for the purchase
8 or sale price of the property or for any other costs or
9 expenses associated with the property. Any subsequent holder,
10 possessor or retainer of returned stolen property shall return
11 the property to the rightful owner. The subsequent holder,
12 possessor or retainer shall have a cause of action against the
13 person from whom ~~[he]~~ the subsequent holder, possessor or
14 retainer obtained the property for actual damages."