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HOUSE BILL 555

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO CRIME VICTIM RESTITUTION; ESTABLISHING RESTITUTION
AS A PERMISSIBLE LIEN.

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. --

A. It is the policy of this state that restitution
be made by each violator of the Criminal Code to the victims of
his criminal activities to the extent that the defendant is
reasonably able to do so. This section shall be interpreted
and administered to effectuate this policy. As used in this
section, unless the context otherwise requires:

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

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1 activities;

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

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

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

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

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1 state the conditions under which or the event after which the
2 defendant will make restitution. If the defendant believes
3 that he will not be able to make any restitution, he shall so
4 state and shall specify the reasons. If the defendant believes
5 that no person suffered actual damages as a result of the
6 defendant's criminal activities, he shall so state.

7 C. The defendant's plan of restitution and the
8 recommendations of his probation or parole officer shall be
9 submitted promptly to the court. The court shall promptly
10 enter an order approving, disapproving or modifying the plan,
11 taking into account the factors enumerated in Subsection D of
12 this section. Compliance with the plan of restitution as
13 approved or modified by the court shall be a condition of the
14 defendant's probation or parole. Restitution payments shall be
15 made to the clerk of the court unless otherwise directed by the
16 court. The court thereafter may modify the plan at any time
17 upon the defendant's request or upon the court's own motion.
18 If the plan as approved or modified does not require full
19 payment of actual damages to all victims or if the court
20 determines that the defendant is not able and will not be able
21 to make any restitution at any time during his probation or
22 parole period or that no person suffered actual damages as a
23 result of the defendant's criminal activities, the court shall
24 file a specific written statement of its reasons for and the
25 facts supporting its action or determination.

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

16 ~~D.~~ E. The probation or parole officer, when
17 assisting the defendant in preparing the plan of restitution,
18 and the court, before approving, disapproving or modifying the
19 plan of restitution, shall consider the physical and mental
20 health and condition of the defendant; ~~his~~ the defendant's
21 age, ~~his~~ education, ~~his~~ employment circumstances, ~~his~~
22 potential for employment and vocational training, ~~his~~ family
23 circumstances ~~his~~ and financial condition; the number of
24 victims; the actual damages of each victim; what plan of
25 restitution will most effectively aid the rehabilitation of the

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1 defendant; and such other factors as shall be appropriate. The
2 probation or parole officer shall attempt to determine the name
3 and address of each victim and the amount of ~~[his]~~ pecuniary
4 damages of each victim.

5 ~~[E.]~~ F. The clerk of the court shall mail to each
6 known victim a copy of the court's order approving or modifying
7 the plan of restitution, including the court's statement, if
8 any, ~~[under]~~ pursuant to the provisions of Subsection C of this
9 section.

10 ~~[F.]~~ G. At any time during the probation or parole
11 period, the defendant or the victim may request and the court
12 shall grant a hearing on any matter related to the plan of
13 restitution.

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

22 ~~[H.]~~ I. This section and proceedings ~~[under]~~
23 pursuant to this section shall not limit or impair the rights
24 of victims to recover damages from the defendant in a civil
25 action.

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