

1 SENATE BILL 207

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Mark Moores

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10 AN ACT

11 RELATING TO RESTITUTION; PROVIDING THAT A CRIMINAL DEFENDANT'S
12 OBLIGATION TO PAY RESTITUTION CONTINUES AFTER COMPLETION OF ANY
13 PROBATION OR PAROLE PERIODS; PROVIDING THAT A COURT SHALL AWARD
14 FULL RESTITUTION IN MOST CASES; REQUIRING A DEFENDANT TO
15 PREPARE FINANCIAL DISCLOSURE STATEMENTS; PROVIDING THAT AN
16 ORDER OF RESTITUTION SATISFIES THE APPLICATION REQUIREMENTS FOR
17 WRITS OF GARNISHMENT AND ATTACHMENT OF DEFENDANT'S PROPERTY;
18 ALLOWING DISTRICT ATTORNEYS TO ENFORCE ORDERS OF RESTITUTION.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

23 "31-17-1. VICTIM RESTITUTION--STOLEN PROPERTY.--

24 A. It is the policy of this state that full
25 restitution be made by each ~~[violation of]~~ person who commits a

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1 crime, whether in the Criminal Code or not, to the victims of
2 [~~his~~] the defendant's criminal activities to the extent that
3 the defendant is reasonably able to do so. This section shall
4 be interpreted and administered to effectuate this policy. As
5 used in this section, unless the context otherwise requires:

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

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

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

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

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

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1 activities.

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

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

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

- 20 (1) the cost to replace stolen property;
- 21 (2) the actual cost to repair damaged
22 property, if repair is possible;
- 23 (3) medical expenses;
- 24 (4) mental health or counseling expenses;
- 25 (5) lost income of a victim due to the

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1 victim's injury;

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

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

8 (8) a victim's funeral expenses.

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

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

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

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

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

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

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

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

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1 ~~modifying the plan~~] of restitution, including the court's
2 statement, if any, pursuant to the provisions of Subsection [G]
3 E of this section.

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

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

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1 K. If the restitution ordered by the court has not
2 been paid in full after completion of all applicable probation
3 or parole periods, the district attorney's office may enforce
4 the order of restitution and recover any remaining amounts due
5 to the victim or victims under the order by filing liens
6 against the defendant's property, garnishment of wages or other
7 remedies available at law or equity.

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

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

25 SECTION 2. Section 36-1-18 NMSA 1978 (being Laws 1909,

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1 Chapter 22, Section 2, as amended) is amended to read:

2 "36-1-18. DUTIES OF DISTRICT ATTORNEY.--

3 A. Each district attorney shall:

4 (1) prosecute and defend for the state in all
5 courts of record of the counties of [~~his~~] the district
6 attorney's district all cases, criminal and civil, in which the
7 state or any county in [~~his~~] the district may be a party or may
8 be interested;

9 (2) represent the county before the board of
10 county commissioners of any county in [~~his~~] the district
11 attorney's district in all matters before the board whenever
12 requested to do so by the board, and [~~he~~] the district attorney
13 may appear before the board when sitting as a board of
14 equalization without request;

15 (3) advise all county and state officers
16 whenever requested; and

17 (4) represent any county in [~~his~~] the district
18 attorney's district in all civil cases in which the county may
19 be concerned in the supreme court or court of appeals, but not
20 in suits brought in the name of the state.

21 B. A district attorney may enforce orders of
22 restitution and recover any amounts due to the victim or
23 victims pursuant to those orders by filing liens against the
24 defendant's property, garnishment of wages or other remedies
25 available at law or equity.

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1 ~~[B-]~~ C. A district attorney may contract with an
2 Indian nation, tribe or pueblo within the boundaries of the
3 district attorney's judicial district for the purpose of
4 authorizing the district attorney or ~~[his]~~ the district
5 attorney's staff to:

- 6 (1) serve as a tribal prosecutor; or
7 (2) prosecute alleged violations of tribal
8 codes by tribal members in tribal courts."

9 **SECTION 3. EFFECTIVE DATE.**--The effective date of the
10 provisions of this act is July 1, 2013.