

1 SENATE BILL 322

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

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
13 PROBATION OR PAROLE PERIODS; REQUIRING A COURT TO AWARD FULL
14 RESTITUTION EXCEPT UNDER COMPELLING OR EXTRAORDINARY
15 CIRCUMSTANCES; REQUIRING A DEFENDANT TO PREPARE FINANCIAL
16 DISCLOSURE STATEMENTS; REQUIRING AN ORDER OF RESTITUTION TO
17 SATISFY THE APPLICATION REQUIREMENTS FOR WRITS OF GARNISHMENT
18 AND ATTACHMENT OF DEFENDANT'S PROPERTY; ALLOWING VICTIMS,
19 DISTRICT ATTORNEYS AND ATTORNEYS GENERAL TO ENFORCE ORDERS OF
20 RESTITUTION.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

25 "31-17-1. VICTIM RESTITUTION--STOLEN PROPERTY.--

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1 A. It is the policy of this state that full
2 restitution be made by each [~~violator of the Criminal Code~~]
3 person who is convicted of a crime to the [~~victims~~] victim of
4 [~~his~~] the defendant's criminal activities to the extent that
5 the defendant is reasonably able to do so. This section shall
6 be interpreted and administered to effectuate this policy. As
7 used in this section, unless the context otherwise requires:

8 (1) "victim" means [~~any~~] a person who has
9 suffered actual damages as a result of [~~the~~] a defendant's
10 criminal activities;

11 (2) "actual damages" means all damages of
12 which a defendant's criminal activities are a proximate cause,
13 that a victim could recover against the defendant in a civil
14 action arising out of the same facts or event, [~~except~~] and:

15 (a) includes: 1) without limitation,
16 damages for wrongful death; 2) the value of stolen property; 3)
17 a victim's funeral expenses; 4) a victim's actual lost income,
18 from the date of a defendant's criminal activities through the
19 date of the defendant's sentencing; and 5) any other damages
20 that a victim suffered as a result of a defendant's criminal
21 activities; but

22 (b) does not include: 1) punitive
23 damages [~~and~~]; or 2) damages for pain, suffering, mental
24 anguish [~~and~~] or loss of consortium [~~Without limitation,~~
25 ~~"actual damages" includes damages for wrongful death~~];

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1 (3) "criminal activities" includes any crime
2 for which there is a plea of no contest or guilty or a verdict
3 of guilty, upon which a judgment may be rendered and any other
4 crime committed after July 1, 1977 [~~which~~] that is admitted or
5 not contested by the defendant; [~~and~~]

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

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

11 (5) "lost income" means wages, salaries, other
12 compensation and commission income that is established by
13 evidence of commission-based earnings during the twelve months
14 preceding the loss that is lost as a result of a defendant's
15 criminal activities.

16 B. In every case in which a victim has suffered
17 actual damages as a result of a defendant's criminal
18 activities, the court shall make a written finding of the
19 amount of full restitution of actual damages to the victim.
20 Full restitution, reduced by any compensation that the victim
21 received or is owed from insurance or another source, shall be
22 ordered from the defendant unless the court finds compelling or
23 extraordinary reasons for not ordering the restitution and
24 states those reasons on the record.

25 C. A sentencing court shall require a defendant, in

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1 cooperation with the defendant's probation or parole officer
2 [~~assigned to the defendant~~], to promptly prepare a plan of
3 restitution, including a specific amount of restitution to each
4 victim and a schedule of restitution payments, if [~~the~~
5 ~~defendant is currently unable to make any restitution but there~~
6 ~~is a reasonable possibility that the defendant may be able to~~
7 ~~do so at some time during his probation or parole period, the~~
8 ~~plan of restitution shall also state the conditions under which~~
9 ~~or the event after which the defendant will make restitution.~~
10 ~~If the defendant believes that he will not be able to make any~~
11 ~~restitution, he shall so state and shall specify the reasons.~~
12 ~~If the defendant believes that no person suffered actual~~
13 ~~damages as a result of the defendant's criminal activities, he~~
14 ~~shall so state] applicable. The defendant shall sign, under
15 oath, a financial disclosure statement. The financial
16 disclosure statement shall identify all income, liabilities and
17 assets in which the defendant holds or controls a present or
18 future interest as of the date of the defendant's arrest. A
19 prepared and signed financial disclosure statement shall be
20 provided to the defendant's probation or parole officer and to
21 the applicable district attorney's office no more than five
22 days before the defendant's sentencing hearing and may be used
23 in determining an appropriate restitution plan.~~

24 [~~G.~~] D. The defendant's plan of restitution and the
25 recommendations of [~~his~~] the defendant's probation or parole

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1 officer shall be submitted promptly to the court. The
2 defendant shall be afforded a hearing on the amount and plan of
3 restitution. The court shall [~~promptly~~] enter an order
4 approving, disapproving or modifying the plan, taking into
5 account the factors enumerated in Subsection [D] F of this
6 section. Compliance with the [~~plan~~] order of restitution [~~as~~
7 ~~approved or modified by the court~~] shall be a condition of [~~the~~
8 ~~defendant's~~] any probation or parole periods that the defendant
9 is required to serve. Restitution payments shall be made to
10 the clerk of the court during any period of probation or
11 parole, unless otherwise directed by the court. Before the end
12 of all applicable probation or parole periods, the court
13 [~~thereafter~~] may modify the [~~plan~~] order of restitution at any
14 time upon the defendant's request, upon the request of the
15 applicable district attorney's office or upon the court's own
16 motion. If the [~~plan as approved or modified~~] order of
17 restitution does not require full payment of actual damages to
18 all victims or if the court determines [~~that the defendant is~~
19 ~~not able and will not be able to make any restitution at any~~
20 ~~time during his probation or parole period or~~] that no person
21 suffered actual damages as a result of the defendant's criminal
22 activities, the court shall file a specific written statement
23 of its reasons for and the facts supporting its action or
24 determination, including any compelling or extraordinary
25 reasons for not awarding full restitution. After the defendant

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1 has completed all applicable probation or parole periods, the
2 order of restitution shall no longer be subject to modification
3 and any remaining balance due to a victim may be enforced in
4 the same manner as a civil judgment as provided in Subsection E
5 of this section.

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

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1 ~~[E-]~~ F. The probation or parole officer, when
2 assisting the defendant in preparing the plan of restitution,
3 and the court, before ~~[approving, disapproving or modifying the~~
4 ~~plan]~~ entering an order of restitution, shall consider the
5 physical and mental health and condition of the defendant; the
6 defendant's age, education, employment circumstances, potential
7 for employment and vocational training, family circumstances
8 and financial condition; the number of victims; the actual
9 damages of each victim; what plan of restitution will most
10 effectively aid the rehabilitation of the defendant; and such
11 other factors as shall be appropriate. The probation or parole
12 officer shall attempt to determine the name and address of each
13 victim and the amount of pecuniary damages of each victim.

14 ~~[F-]~~ G. The clerk of the court shall mail to each
15 known victim a copy of the court's order ~~[approving or~~
16 ~~modifying the plan]~~ of restitution, including the court's
17 statement, if any, pursuant to the provisions of Subsection ~~[G]~~
18 D of this section.

19 ~~[G-]~~ H. At any time during the applicable probation
20 or parole period, the defendant or the victim may request and
21 the court shall grant a hearing on any matter related to the
22 ~~[plan]~~ order of restitution.

23 ~~[H-]~~ I. If it appears that the restitution ordered
24 by the court will not be paid in full before the defendant's
25 scheduled release from probation or parole, the defendant shall

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1 sign, under oath, an updated financial disclosure statement no
2 more than sixty days before the defendant's release from
3 probation or parole and shall provide it to the defendant's
4 probation or parole officer and to the applicable district
5 attorney's office. The updated statement shall identify all
6 income, liabilities and assets in which the defendant holds or
7 controls or has held or controlled a present or future interest
8 during the defendant's period of probation or parole. Failure
9 of the defendant to comply with this subsection or Subsection
10 [B] C of this section or to comply with the [~~plan~~] order of
11 restitution [~~as approved or modified by the court~~] may
12 constitute a violation of the conditions of probation or
13 parole. Without limitation, the court may modify the [~~plan~~]
14 order of restitution or extend the period of time for
15 restitution, but not beyond the maximum probation or parole
16 period specified in Section 31-21-10 NMSA 1978.

17 J. If the restitution ordered by the court has not
18 been paid in full after a defendant has completed all
19 applicable probation or parole periods, the district attorney's
20 office, the attorney general's office or the victim may enforce
21 the order of restitution and recover any remaining amounts due
22 to a victim pursuant to the order by filing liens against the
23 defendant's property or a garnishment of the defendant's wages
24 or by pursuing other remedies available at law or equity.

25 [~~F.~~] K. This section and proceedings pursuant to

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