

1 HOUSE BILL 533

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CRIMINAL JUSTICE REFORM; ESTABLISHING THE RIGHT OF
12 CRIME VICTIMS TO RECEIVE NOTICE FROM LAW ENFORCEMENT AND THE
13 DISTRICT ATTORNEY OF THE AVAILABILITY OF AND PROCEDURE FOR
14 APPLYING FOR CRIME VICTIMS REPARATION; AMENDING CERTAIN
15 PROCEDURES IN THE CRIME VICTIMS REPARATION ACT; EXPANDING
16 ELIGIBILITY FOR CRIME VICTIMS REPARATION; MAKING AN
17 APPROPRIATION.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. Section 31-22-7 NMSA 1978 (being Laws 1981,
21 Chapter 325, Section 7, as amended) is amended to read:

22 "31-22-7. ELIGIBILITY FOR REPARATION.--

23 A. [~~In the event any~~] If a person is injured or
24 killed by [~~any~~] an act or omission of [~~any other~~] another
25 person coming within the criminal jurisdiction of the state

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1 after ~~[the effective date of the Crime Victims Reparation Act]~~
2 July 1, 1981, which act or omission includes a crime enumerated
3 in Section 31-22-8 NMSA 1978, and upon application for
4 reparation, the commission may award reparation in accordance
5 with the Crime Victims Reparation Act:

6 (1) to the victim;

7 (2) in the case of the victim's death, to or
8 for the benefit of any one or more of the deceased victim's
9 dependents; or

10 (3) to any individual who voluntarily assumes
11 funeral or medical expenses of the victim.

12 B. For the purpose of the Crime Victims Reparation
13 Act, a person shall be deemed to have intentionally committed
14 an act or omission constituting a crime, notwithstanding that
15 by reason of age, insanity, drunkenness or otherwise ~~[he]~~ the
16 person was legally incapable of forming a criminal intent.

17 C. In determining whether to make an order under
18 this section, the commission may consider any circumstances it
19 determines to be relevant. The commission shall consider the
20 behavior of the victim and whether, because of provocation or
21 otherwise, the victim bears responsibility for the act or
22 omission constituting a crime that caused ~~[his]~~ the victim's
23 injury or death and shall reduce the amount of reparation in
24 accordance with its assessment of the degree of responsibility
25 attributable to the victim.

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1 D. An order may be made under this section whether
2 or not any person is prosecuted for or convicted of a crime
3 enumerated in Section 31-22-8 NMSA 1978; provided an arrest has
4 been made or the act or omission constituting ~~[such]~~ a crime
5 has been reported to the police in a reasonable time or the act
6 or omission constituting a crime has been reported to a
7 licensed medical, mental health or counseling provider or
8 tribal health provider. No order may be made under this
9 section unless the commission finds that:

10 (1) the act or omission constituting a crime
11 did occur;

12 (2) the injury or death of the victim resulted
13 from the act or omission constituting a crime; and

14 (3) the claimant or victim fully cooperated
15 with the appropriate law enforcement agencies or the commission
16 finds that the claimant or victim acted reasonably under the
17 circumstances.

18 E. Upon application from the district attorney of
19 the appropriate district, the commission may suspend
20 proceedings under the Crime Victims Reparation Act for such
21 period as it deems desirable on the ~~[ground]~~ grounds that a
22 prosecution for the act or omission constituting a crime has
23 commenced or is imminent."

24 SECTION 2. Section 31-22-14 NMSA 1978 (being Laws 1981,
25 Chapter 325, Section 14, as amended) is amended to read:

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1 "31-22-14. LIMITATIONS ON AWARD--COLLATERAL RECOVERY--
2 PRELIMINARY AWARD.--

3 A. No order for the payment of reparation shall be
4 made unless application has been made within two years after
5 the date of the injury or death and the injury or death was the
6 result of a crime enumerated in Section 31-22-8 NMSA 1978 [~~that~~
7 ~~had been reported to the police within thirty days after its~~
8 ~~occurrence unless a longer period is allowed pursuant to~~
9 ~~Subsection F of this section~~]. An application for reparation
10 shall be made within two years after the injury or death,
11 except for minors who are victims of criminal activity under
12 the provisions of Section 30-6-1 NMSA 1978, regarding
13 abandonment or abuse of a child, Section 30-9-11 NMSA 1978,
14 regarding criminal sexual penetration, or Section 30-9-13 NMSA
15 1978, regarding criminal sexual contact of a minor. [~~The date~~
16 ~~of incident for minors who are victims of these types of~~
17 ~~criminal activity shall be the date the victim attains the age~~
18 ~~of eighteen years or the date that the criminal activity is~~
19 ~~reported to a law enforcement agency, whichever occurs first.~~
20 ~~The commission may extend the time for filing an application~~
21 ~~for good cause shown by a claimant or a victim.~~]

22 B. No award of reparation shall be in excess of
23 twenty thousand dollars (\$20,000) per victim, except that the
24 commission may award up to an additional thirty thousand
25 dollars (\$30,000) for extraordinary pecuniary losses, if the

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1 personal injury to a victim is catastrophic and results in a
2 permanent total disability. The extraordinary losses
3 compensated may include:

- 4 (1) loss of wages;
- 5 (2) the cost of home health care;
- 6 (3) the cost of making a home or automobile
7 accessible;
- 8 (4) the cost of training in the use of special
9 application; or
- 10 (5) job training.

11 C. Except as provided by Subsection E of this
12 section, the commission shall deduct from any reparation
13 awarded any payments received from a collateral source or from
14 the United States or the state or any of its political
15 subdivisions for injury or death subject to reparation under
16 the Crime Victims Reparation Act. If the claimant receives an
17 award of reparation from the commission and also receives
18 payment as set forth in the preceding sentence for which no
19 deduction was made, the claimant shall refund to the state the
20 lesser of the amount of reparation paid or the sums not so
21 deducted.

22 D. If the claimant receives an award of reparation
23 from the commission and also receives an award pursuant to a
24 civil judgment arising from a criminal occurrence for which a
25 reparation award was paid, the claimant shall refund to the

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1 state the amount of the reparation paid to the claimant. The
2 commission may negotiate a reasonable settlement regarding
3 repayment of the reparation award if special circumstances
4 exist.

5 E. If it appears that a final award of reparation
6 will be made by the commission, a preliminary award may be
7 authorized by the director of the commission or the
8 commission's designee when the commission chair concurs. The
9 amount of the preliminary award shall be deducted from any
10 final award made by the commission.

11 ~~[F. The commission may grant a waiver to the~~
12 ~~requirement in Subsection A of this section that a crime be~~
13 ~~reported to the police within thirty days of its occurrence~~
14 ~~for:~~

15 ~~(1) a victim of domestic violence or sexual~~
16 ~~assault if reported to the police within one hundred eighty~~
17 ~~days of the occurrence; or~~

18 ~~(2) a crime against a child that was reported~~
19 ~~within thirty days of its occurrence to the children, youth and~~
20 ~~families department, a domestic violence or sexual assault~~
21 ~~service provider, a teacher or a health care provider; provided~~
22 ~~that a police report shall be filed before the commission~~
23 ~~approves payment.]"~~

24 SECTION 3. Section 31-26-4 NMSA 1978 (being Laws 1994,
25 Chapter 144, Section 4, as amended) is amended to read:

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1 "31-26-4. VICTIM'S RIGHTS.--A victim shall have the right
2 to:

3 A. be treated with fairness and respect for the
4 victim's dignity and privacy throughout the criminal justice
5 process;

6 B. timely disposition of the case;

7 C. be reasonably protected from the accused
8 throughout the criminal justice process;

9 D. notification of court proceedings;

10 E. attend all public court proceedings the accused
11 has the right to attend;

12 F. confer with the prosecution;

13 G. make a statement to the court at sentencing and
14 at any post-sentencing hearings for the accused;

15 H. restitution from the person convicted of the
16 criminal offense that caused the victim's loss or injury;

17 I. information about the conviction, sentencing,
18 imprisonment, escape or release of the accused;

19 J. have the prosecuting attorney notify the
20 victim's employer, if requested by the victim, of the necessity
21 of the victim's cooperation and testimony in a court proceeding
22 that may necessitate the absence of the victim from work for
23 good cause;

24 K. promptly receive any property belonging to the
25 victim that is being held for evidentiary purposes by a law

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1 enforcement agency or the prosecuting attorney, unless there
2 are compelling evidentiary reasons for retention of the
3 victim's property; ~~and~~

4 L. be informed by the court at a sentencing
5 proceeding that the offender is eligible to earn meritorious
6 deductions from the offender's sentence and the amount of
7 meritorious deductions that may be earned by the offender; and

8 M. be notified by law enforcement and the district
9 attorney of the availability of and procedures to apply for
10 crime victims reparation."

11 SECTION 4. Section 31-26-8 NMSA 1978 (being Laws 1994,
12 Chapter 144, Section 8) is amended to read:

13 "31-26-8. PROCEDURES FOR PROVIDING VICTIMS WITH
14 PRELIMINARY INFORMATION--LAW ENFORCEMENT AGENCIES.--The law
15 enforcement agency that investigates a criminal offense shall:

16 A. inform the victim of medical services and crisis
17 intervention services available to victims;

18 B. provide the victim with the police report number
19 for the criminal offense and a copy of the following statement:
20 "If within thirty days you are not notified of an arrest in
21 your case, you may call (telephone number for the law
22 enforcement agency) to obtain information on the status of your
23 case."; ~~and~~

24 C. provide the victim with the name of the district
25 attorney for the judicial district in which the criminal

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1 offense was committed and the address and telephone number for
2 that district attorney's office; and

3 D. provide the victim or, if appropriate, a member
4 of the victim's family with a written notification in a manner
5 and form prescribed by the crime victims reparation commission
6 of the availability of crime victims reparation and eligibility
7 to apply."

8 SECTION 5. Section 31-26-9 NMSA 1978 (being Laws 1994,
9 Chapter 144, Section 9, as amended) is amended to read:

10 "31-26-9. PROCEDURES FOR PROVIDING VICTIMS WITH NOTICE OF
11 RIGHTS AND INFORMATION REGARDING PROSECUTION OF A CRIMINAL
12 OFFENSE--DISTRICT ATTORNEYS.--

13 A. Within seven working days after a district
14 attorney files a formal charge against the accused for a
15 criminal offense, the district attorney shall provide the
16 victim of the criminal offense with:

17 (1) a copy of Article 2, Section 24 of the
18 constitution of New Mexico, regarding victims' rights;

19 (2) a copy of the Victims of Crime Act;

20 (3) a copy of the charge filed against the
21 accused for the criminal offense;

22 (4) a clear and concise statement of the
23 procedural steps generally involved in prosecuting a criminal
24 offense; ~~and~~

25 (5) the name of a person within the district

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1 attorney's office whom the victim may contact for additional
2 information regarding prosecution of the criminal offense; and
3 (6) written notification in a manner and form
4 prescribed by the crime victims reparation commission of the
5 availability of crime victims reparation and eligibility to
6 apply.

7 B. The district attorney's office shall provide the
8 victim with oral or written notice, in a timely fashion, of a
9 scheduled court proceeding attendant to the criminal offense."

10 SECTION 6. Section 36-1-26 NMSA 1978 (being Laws 1984,
11 Chapter 110, Section 2) is amended to read:

12 "36-1-26. DIRECTOR--DUTIES.--The director of the
13 administrative office of the district attorneys shall, under
14 the supervision of the elected or appointed district attorneys:

15 A. assist in the preparation and presentation of
16 fiscal and budgetary matters to the department of finance and
17 administration, the legislative finance committee and the
18 legislature;

19 B. prepare personnel pay plans [~~and~~];

20 C. develop a comprehensive [~~data base~~] database on
21 case management;

22 [~~G.~~] D. prepare and distribute uniform forms and
23 procedures manuals and develop uniform systems for use by
24 district attorneys' offices with respect to administrative,
25 personnel and budgetary matters;

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1 ~~[D-]~~ E. prepare and distribute forms and procedures
2 for the establishment of a uniform worthless check program;

3 ~~[E-]~~ F. prepare, update and distribute a district
4 attorneys' trial manual;

5 ~~[F-]~~ G. prepare and conduct training and education
6 programs for district attorneys;

7 ~~[G-]~~ H. prosecute conflict of interest and other
8 cases at the request of an elected or appointed district
9 attorney;

10 ~~[H-]~~ I. submit an annual report to the department
11 of finance and administration and the legislative finance
12 committee detailing the activities of the office and
13 statistical and other data relating to all district attorneys'
14 offices;

15 J. prepare and distribute forms for collecting
16 victim impact information; and

17 ~~[I-]~~ K. perform such other duties in furtherance of
18 the administration of justice and the administration of the
19 business of the district attorneys as directed by the elected
20 or appointed district attorneys."

21 SECTION 7. APPROPRIATION.--Five hundred fifty thousand
22 dollars (\$550,000) is appropriated from the general fund to the
23 crime victims reparation fund for expenditure in fiscal year
24 2020 to cover additional crime victims seeking reparations
25 pursuant to the Crime Victims Reparation Act. Any unexpended

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1 or unencumbered balance remaining at the end of fiscal year
2 2020 shall revert to the general fund.

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