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**HOUSE BILL 752**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Danice R. Picraux**

**AN ACT**

**RELATING TO CRIMES; CHANGING DEFINITIONS; PROVIDING FOR CERTAIN WAIVERS; PROVIDING FOR A REPARATION AWARD FOR EXTRAORDINARY PECUNIARY LOSS; CLARIFYING CONFIDENTIALITY OF RECORDS; AMENDING SECTIONS OF THE NMSA 1978.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 31-22-3 NMSA 1978 (being Laws 1981, Chapter 325, Section 3, as amended) is amended to read:**

**"31-22-3. DEFINITIONS. --As used in the Crime Victims Reparation Act:**

**A. "child" means an unmarried person who is under the age of majority and includes a stepchild and an adopted child;**

**B. "collateral source" includes benefits for economic loss otherwise reparable under the Crime Victims**

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1       Reparation Act which the victim or claimant has received or  
2       which are readily available to him from:

3                       (1) the offender;

4                       (2) social security, medicare and medicaid;

5                       (3) workers' compensation;

6                       ~~[(4) any program of any employer for~~  
7       ~~continuation of wages in the event of the illness or injury of~~  
8       ~~an employee;~~

9                       ~~(5)]~~ (4) proceeds of a contract of insurance  
10       payable to the victim;

11                      ~~[(6)]~~ (5) a contract providing prepaid  
12       hospital and other health care services or benefits for  
13       disability, except for the benefits of any life insurance  
14       policy;

15                      ~~[(7)]~~ (6) applicable indigent funds; or

16                      ~~[(8)]~~ (7) cash donations;

17                      C. "commission" means the crime victims reparation  
18       commi ssi on;

19                      D. "dependents" means those relatives of the  
20       deceased or disabled victim who are more than fifty percent  
21       dependent upon the victim's income at the time of his death or  
22       disability and includes the child of a victim born after his  
23       death or disability;

24                      E. "family relationship group" means any person  
25       related to another person within the fourth degree of

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1 consanguinity or affinity;

2 F. "injury" means actual bodily harm or  
3 disfigurement and includes pregnancy and extreme mental  
4 distress. For the purposes of this subsection, "extreme  
5 mental distress" means a substantial personal disorder of  
6 emotional processes, thought or cognition that impairs  
7 judgment, behavior or ability to cope with the ordinary  
8 demands of life;

9 G. "permanent total physical disability" means the  
10 loss of both legs, both arms, one leg and one arm, total loss  
11 of eyesight, paralysis or other physical condition that  
12 permanently incapacitates the worker from performing any work  
13 in a gainful occupation.

14 [~~G.~~] H. "relative" means a person's spouse,  
15 parent, grandparent, stepfather, stepmother, child,  
16 grandchild, [~~minor~~] brother, [~~minor~~] sister, [~~minor~~]  
17 half-brother, [~~minor~~] half-sister or spouse's parents; and

18 [~~H.~~] I. "victim" means:

19 (1) a person in New Mexico who is injured or  
20 killed by any act or omission of any other person that is a  
21 crime enumerated in Section 31-22-8 NMSA 1978;

22 (2) a resident of New Mexico who is injured  
23 or killed by such a crime occurring in a state other than New  
24 Mexico if that state does not have an eligible crime victims  
25 compensation program; or

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1 (3) a resident of New Mexico who is injured  
2 or killed by an act of international terrorism, as provided in  
3 18 U. S. C. Section 2331. "

4 Section 2. Section 31-22-8 NMSA 1978 (being Laws 1981,  
5 Chapter 325, Section 8, as amended) is amended to read:

6 "31-22-8. CRIMES ENUMERATED. - -

7 A. The crimes to which the Crime Victims  
8 Reparation Act applies and for which reparation to victims may  
9 be made are the following enumerated offenses and all other  
10 offenses in which any enumerated offense is necessarily  
11 included:

- 12 (1) arson resulting in bodily injury;
- 13 (2) aggravated arson;
- 14 (3) aggravated assault or aggravated battery;
- 15 (4) dangerous use of explosives;
- 16 (5) negligent use of a deadly weapon;
- 17 (6) murder;
- 18 (7) voluntary manslaughter;
- 19 (8) involuntary manslaughter;
- 20 (9) kidnapping;
- 21 (10) criminal sexual penetration;
- 22 (11) criminal sexual contact of a minor;
- 23 (12) homicide by vehicle or great bodily  
24 injury by vehicle, as provided in Section 66-8-101 NMSA 1978;
- 25 (13) abandonment or abuse of a child;

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1 (14) aggravated indecent exposure, as  
2 provided in Section 30-9-14.3 NMSA 1978; and

3 (15) aggravated stalking, as provided in  
4 Section [~~30-3A-3~~] 30-3A-3.1 NMSA 1978 [~~when the offender has~~  
5 ~~at least one prior conviction for stalking~~].

6 B. No award shall be made for any loss or damage  
7 to property. "

8 Section 3. Section 31-22-14 NMSA 1978 (being Laws 1981,  
9 Chapter 325, Section 14, as amended) is amended to read:

10 "31-22-14. LIMITATIONS ON AWARD--COLLATERAL RECOVERY--  
11 PRELIMINARY AWARD--PECUNIARY LOSS. --

12 A. Except as provided in Subsection B of this  
13 section, no order for the payment of reparation shall be made  
14 unless application has been made within two years after the  
15 date of the injury or death and the injury or death was the  
16 result of a crime enumerated in Section 31-22-8 NMSA 1978  
17 [~~that had been~~] and was reported to the police within thirty  
18 days after its occurrence. In no event shall reparation be  
19 given unless application has been made within two years after  
20 the date of the injury or death, except for minors who are  
21 victims of criminal activity under the provisions of Section  
22 30-6-1 NMSA 1978, regarding abandonment or abuse of a child,  
23 Section 30-9-11 NMSA 1978, regarding criminal sexual  
24 penetration, or Section 30-9-13 NMSA 1978, regarding criminal  
25 sexual contact of a minor. The date of incident for minors

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1 who are victims of these types of criminal activity shall be  
2 the date the victim attains the age of eighteen years or the  
3 date that the criminal activity is reported to a law  
4 enforcement agency, whichever occurs first.

5 B. The commission may grant a waiver to a victim  
6 of domestic violence or sexual assault of the requirement,  
7 provided in Subsection A of this section, that no order for  
8 payment of reparation shall be made unless the victim reports  
9 the injury to the police within thirty days of the date of the  
10 injury; provided that the maximum time permitted for the  
11 victim of domestic violence or sexual assault to report the  
12 injury to the police shall be one hundred eighty days from the  
13 date of the injury. The commission may, in a case involving a  
14 crime against a child, accept in good faith a report that is  
15 made within thirty days of the injury or death to the  
16 children, youth and families department, a domestic violence  
17 or sexual assault service provider, a teacher or a health care  
18 provider, instead of a timely police report in order to meet  
19 the thirty-day report requirement as provided in Subsection A  
20 of this section. In such a case, a police report shall  
21 nonetheless be filed prior to the issuance of an order for the  
22 payment of reparation.

23 [~~B.~~] C. No award of reparation shall be in excess  
24 of twenty thousand dollars (\$20,000) per victim, except that  
25 the commission may award an additional thirty thousand dollars

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1 (\$30,000) for extraordinary pecuniary losses if the personal  
2 injury to the victim is catastrophic and results in a  
3 permanent total physical disability. The expenses relating to  
4 an extraordinary pecuniary loss may include, but are not  
5 limited to, loss of wages, home health care services,  
6 providing accessibility to a home or an automobile, training  
7 in the use of special applications or job training. The  
8 commission may, by rule, establish limitations on any other  
9 pecuniary loss compensated pursuant to this section.

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

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

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1 him. The commission may negotiate a reasonable settlement  
2 regarding repayment of the reparation award if special  
3 circumstances exist.

4 [E.] F. If it appears that a final award of  
5 reparation will be made by the commission, a preliminary award  
6 [not to exceed three thousand five hundred dollars (\$3,500)]  
7 may be authorized by the director of the commission or the  
8 commission's designee when the commission chairman concurs.  
9 The amount of the preliminary award shall be deducted from any  
10 final award made by the commission. "

11 Section 4. Section 31-22-18 NMSA 1978 (being Laws 1981,  
12 Chapter 325, Section 18, as amended) is amended to read:

13 "31-22-18. CONFIDENTIALITY OF RECORDS, REPORTS AND CLAIM  
14 FILES. -- [Any] A record or report acquired by the commission,  
15 the confidentiality of which is protected by law, rule or  
16 regulation, shall be disclosed only under the same terms and  
17 conditions [which] that protected its confidentiality prior to  
18 such acquisition. The claim file, which contains [the  
19 victim's name, address, telephone number and other personal  
20 information regarding the victim] confidential reports,  
21 records and personal information, shall not be released. "