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HOUSE BILL 104

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Gail Chasey

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIME VICTIM REPARATION; PROVIDING A REPARATION  
AWARD TO CHILDREN OF MURDER VICTIMS; PROVIDING SERVICES AND  
PROGRAMS TO FAMILY MEMBERS OF MURDER VICTIMS; CREATING THE  
MURDER VICTIM FAMILY SERVICES FUND; AMENDING AND ENACTING  
SECTIONS OF THE CRIME VICTIMS REPARATION ACT; MAKING  
APPROPRIATIONS.

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;

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1           B. "collateral source" includes benefits for  
2 economic loss otherwise reparable under the Crime Victims  
3 Reparation Act ~~[which]~~ that the victim or claimant has received  
4 or ~~[which]~~ that are readily available to ~~[him]~~ the victim or  
5 claimant from:

- 6                           (1) the offender;  
7                           (2) social security, medicare and medicaid;  
8                           (3) workers' compensation;  
9                           (4) proceeds of a contract of insurance  
10 payable to the victim;  
11                           (5) a contract providing prepaid hospital and  
12 other health care services or benefits for disability, except  
13 for the benefits of any life insurance policy;  
14                           (6) applicable indigent funds; or  
15                           (7) cash donations;

16           C. "commission" means the crime victims reparation  
17 commission;

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

23           E. "director" means the director of the commission;

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

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1 consanguinity or affinity;

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

8 H. "parent" means a natural parent, adoptive parent  
9 or stepparent;

10 [G-] I. "permanent total disability" means loss of  
11 both legs or arms, loss of one leg and one arm, total loss of  
12 eyesight, paralysis or other physical condition permanently  
13 incapacitating the worker from performing any work at any  
14 gainful occupation;

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

19 [I-] K. "victim" means:

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

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

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1 compensation program; or

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

5 Section 2. Section 31-22-7 NMSA 1978 (being Laws 1981,  
6 Chapter 325, Section 7, as amended) is amended to read:

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

8 A. In the event [~~any~~] a person is injured or killed  
9 by [~~any~~] an act or omission of [~~any other~~] another person  
10 coming within the criminal jurisdiction of the state after [~~the~~  
11 ~~effective date of the Crime Victims Reparation Act~~] July 1,  
12 1981, which act or omission includes a crime enumerated in  
13 Section 31-22-8 NMSA 1978, and upon application for reparation,  
14 the commission may award reparation in accordance with the  
15 Crime Victims Reparation Act:

16 (1) to the victim;

17 (2) in the case of the victim's death, to or  
18 for the benefit of any one or more of the deceased victim's  
19 dependents or children; or

20 (3) to [~~any~~] an individual who voluntarily  
21 assumes funeral or medical expenses of the victim.

22 B. For the purpose of the Crime Victims Reparation  
23 Act, a person shall be deemed to have intentionally committed  
24 an act or omission, notwithstanding that by reason of age,  
25 insanity, drunkenness or otherwise [~~he~~] the person was legally

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1 incapable of forming a criminal intent.

2 C. In determining whether to make an order under  
3 this section, the commission may consider any circumstances it  
4 determines to be relevant. The commission shall consider the  
5 behavior of the victim and whether, because of provocation or  
6 otherwise, the victim bears responsibility for the crime that  
7 caused ~~[his]~~ the victim's injury or death and shall reduce the  
8 amount of reparation in accordance with its assessment of the  
9 degree of responsibility attributable to the victim.

10 D. An order may be made under this section whether  
11 or not any person is prosecuted for or convicted of a crime  
12 enumerated in Section 31-22-8 NMSA 1978; provided an arrest has  
13 been made or the act or omission constituting such a crime has  
14 been reported to the police in a reasonable time. No order may  
15 be made under this section unless the commission finds that:

- 16 (1) the crime did occur;
- 17 (2) the injury or death of the victim resulted  
18 from the crime; and
- 19 (3) the claimant or victim fully cooperated  
20 with the appropriate law enforcement agencies.

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

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

3           "31-22-8. CRIMES ENUMERATED.--

4           A. The crimes to which the Crime Victims Reparation  
5 Act applies and for which reparation [~~to victims~~] may be made  
6 are the following enumerated offenses and all other offenses in  
7 which any enumerated offense is necessarily included:

- 8                           (1) arson resulting in bodily injury;
- 9                           (2) aggravated arson;
- 10                          (3) aggravated assault or aggravated battery;
- 11                          (4) dangerous use of explosives;
- 12                          (5) negligent use of a deadly weapon;
- 13                          (6) murder;
- 14                          (7) voluntary manslaughter;
- 15                          (8) involuntary manslaughter;
- 16                          (9) kidnapping;
- 17                          (10) criminal sexual penetration;
- 18                          (11) criminal sexual contact of a minor;
- 19                          (12) homicide by vehicle or great bodily  
20 injury by vehicle, as provided in Section 66-8-101 NMSA 1978;
- 21                          (13) abandonment or abuse of a child;
- 22                          (14) aggravated indecent exposure, as provided  
23 in Section 30-9-14.3 NMSA 1978; and
- 24                          (15) aggravated stalking, as provided in  
25 Section 30-3A-3.1 NMSA 1978.

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1           B. No award shall be made for any loss or damage to  
2 property."

3           Section 4. Section 31-22-9 NMSA 1978 (being Laws 1981,  
4 Chapter 325, Section 9, as amended) is amended to read:

5           "31-22-9. AWARD OF REPARATION.--The commission may order  
6 payment of reparation for:

7           A. expenses actually and reasonably incurred as a  
8 result of the victim's injury or death;

9           B. loss to the victim of earning power as a result  
10 of total or partial incapacity;

11           C. loss of a parent to murder when the child is  
12 under twenty-six years of age at the time of the loss;

13           [~~E.~~] D. any other pecuniary loss directly resulting  
14 from the victim's injury or death [~~which~~] that the commission  
15 determines to be reasonable and proper; and

16           [~~D.~~] E. any expenses incurred for rehabilitation  
17 services provided to a victim of child abuse or neglect,  
18 including child sexual abuse, but awards made pursuant to this  
19 subsection shall be made directly to the provider of the  
20 rehabilitation services for payment of those services."

21           Section 5. Section 31-22-14 NMSA 1978 (being Laws 1981,  
22 Chapter 325, Section 14, as amended) is amended to read:

23           "31-22-14. LIMITATIONS ON AWARD--COLLATERAL RECOVERY--  
24 PRELIMINARY AWARD.--

25           A. No order for the payment of reparation shall be

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1 made unless application has been made within two years after  
2 the date of the injury or death and the injury or death was the  
3 result of a crime enumerated in Section 31-22-8 NMSA 1978 that  
4 had been reported to the police within thirty days after its  
5 occurrence unless a longer period is allowed pursuant to  
6 Subsection F of this section. In no event shall reparation be  
7 given unless application has been made within two years after  
8 the injury or death, except for minors who are victims of  
9 criminal activity under the provisions of Section 30-6-1 NMSA  
10 1978, regarding abandonment or abuse of a child, Section  
11 30-9-11 NMSA 1978, regarding criminal sexual penetration, or  
12 Section 30-9-13 NMSA 1978, regarding criminal sexual contact of  
13 a minor. The date of incident for minors who are victims of  
14 these types of criminal activity shall be the date the victim  
15 attains the age of eighteen years or the date that the criminal  
16 activity is reported to a law enforcement agency, whichever  
17 occurs first.

18 B. No award of reparation shall be in excess of  
19 twenty thousand dollars (\$20,000) per victim except that the  
20 commission may award up to:

21 (1) an additional ten thousand dollars  
22 (\$10,000) to a child who loses a parent to murder when the  
23 child is under twenty-six years of age at the time of the loss;  
24 or

25 (2) an additional thirty thousand dollars

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1 (\$30,000) for extraordinary pecuniary losses, if the personal  
2 injury to a victim is catastrophic and results in a permanent  
3 total disability. The extraordinary losses compensated may  
4 include:

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

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

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

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1 reparation award was paid, the claimant shall refund to the  
2 state the amount of the reparation paid to ~~[him]~~ the claimant.  
3 The commission may negotiate a reasonable settlement regarding  
4 repayment of the reparation award if special circumstances  
5 exist.

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

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

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

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

25 Section 6. A new section of the Crime Victims Reparation  
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1 Act is enacted to read:

2 "[NEW MATERIAL] MURDER VICTIM FAMILY SERVICES FUND--  
3 CREATED--PURPOSE--ADMINISTRATION--DISBURSEMENTS.--

4 A. The "murder victim family services fund" is  
5 created as a nonreverting fund in the state treasury. The fund  
6 shall be administered by the crime victims reparation  
7 commission and shall consist of appropriations, gifts, grants,  
8 donations and bequests made to the fund.

9 B. Money in the murder victim family services fund  
10 is subject to appropriation by the legislature to the crime  
11 victims reparation commission for awarding grants to nonprofit  
12 organizations for the provision of cost-effective services,  
13 victim advocacy, support and educational programs to children  
14 and adults who have lost a person within their family  
15 relationship group to murder. Money in the fund may also be  
16 used to administer the fund.

17 C. The crime victims reparation commission shall  
18 adopt rules on qualifications for grants and shall specify the  
19 format, procedure and deadlines for grant applications. The  
20 director shall review all grant applications and shall submit  
21 those applications recommended for final approval to the  
22 commission.

23 D. Disbursements from the murder victim family  
24 services fund shall be made upon vouchers issued and signed by  
25 the director or the director's designee upon warrants drawn by

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1 the secretary of finance and administration. Disbursements of  
2 grants made pursuant to this section shall not be subject to  
3 the Procurement Code."

4 Section 7. Section 31-22-15 NMSA 1978 (being Laws 1981,  
5 Chapter 325, Section 15) is amended to read:

6 "31-22-15. EXEMPTION FROM EXECUTION.--No reparation  
7 payable under the Crime Victims Reparation Act shall be, prior  
8 to its actual receipt by the victim or [~~dependents~~] others  
9 entitled thereto or their legal representatives, assignable or  
10 subject to garnishment, execution, attachment or other process  
11 whatsoever, including process to satisfy an order or judgment  
12 for support or alimony."

13 Section 8. Section 31-22-16 NMSA 1978 (being Laws 1981,  
14 Chapter 325, Section 16) is amended to read:

15 "31-22-16. SURVIVAL OR ABATEMENT.--The rights to  
16 reparation created by the Crime Victims Reparation Act are  
17 personal and shall not survive the death of the victim or  
18 [~~dependents~~] others entitled thereto; provided that if such  
19 death occurs after an application for reparation has been filed  
20 with the commission, the proceeding shall not abate but may be  
21 continued by the legal representative of the decedent's  
22 estate."

23 Section 9. Section 31-22-21 NMSA 1978 (being Laws 1981,  
24 Chapter 325, Section 21, as amended) is amended to read:

25 "31-22-21. CRIME VICTIMS REPARATION FUND CREATED--

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1 PURPOSES.--

2 A. There is created in the state treasury the  
3 "crime victims reparation fund".

4 B. Money in the crime victims reparation fund may  
5 be expended by the commission to:

6 (1) pay any award of reparation [~~to victims~~]  
7 made pursuant to the Crime Victims Reparation Act;

8 (2) pay costs and expenses, including staff  
9 salaries and expenses incurred in carrying out the provisions  
10 of the Crime Victims Reparation Act; and

11 (3) contract with one or more attorneys or law  
12 firms on a per-hour basis to provide legal services to the  
13 commission.

14 [~~C. The provisions of this section are effective~~  
15 ~~July 1, 1990.~~]"

16 Section 10. APPROPRIATIONS.--

17 A. Five hundred thousand dollars (\$500,000) is  
18 appropriated from the general fund to the crime victims  
19 reparation fund for expenditure in fiscal year 2009 to provide  
20 reparation to children of murder victims pursuant to the Crime  
21 Victims Reparation Act. Any unexpended or unencumbered balance  
22 remaining at the end of fiscal year 2009 shall revert to the  
23 general fund.

24 B. One million dollars (\$1,000,000) is appropriated  
25 from the general fund to the murder victim family services fund

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1 for expenditure in fiscal year 2009 and subsequent fiscal years  
2 for awarding grants to nonprofit organizations for services,  
3 victim advocacy, support and educational programs to persons  
4 who have lost a person within their family relationship group  
5 to murder and for administration of the fund. Any unexpended  
6 or unencumbered balance remaining at the end of a fiscal year  
7 shall not revert to the general fund.

8 Section 11. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2008.

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