

1 SENATE BILL 367

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

4 Sander Rue

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9  
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 [~~violate~~ 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.

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

25 B. In every case in which a victim has suffered

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1 injury, death or economic loss as a result of a defendant's  
2 criminal activities, the court shall require the defendant to  
3 make full restitution of actual damages to the victim or  
4 victims in an amount established by court order. The order of  
5 restitution shall identify each victim and the loss to each  
6 victim and shall be of an amount that is sufficient to fully  
7 reimburse each victim for actual damages incurred as the result  
8 of a defendant's criminal conduct. Full restitution shall be  
9 ordered unless the court finds compelling or extraordinary  
10 reasons for not doing so and states its reasons on the record.  
11 A defendant's mere inability to pay shall not be a compelling  
12 or extraordinary reason not to order full restitution.

13 C. A sentencing court shall require a defendant, in  
14 cooperation with the probation or parole officer assigned to  
15 the defendant, to promptly prepare a plan of restitution,  
16 including a specific amount of restitution to each victim and a  
17 schedule of restitution payments, [If the defendant is  
18 currently unable to make any restitution but there is a  
19 reasonable possibility that the defendant may be able to do so  
20 at some time during his probation or parole period, the plan of  
21 restitution shall also state the conditions under which or the  
22 event after which the defendant will make restitution. If the  
23 defendant believes that he will not be able to make any  
24 restitution, he shall so state and shall specify the reasons.  
25 If the defendant believes that no person suffered actual

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1 ~~damages as a result of the defendant's criminal activities, he~~  
2 ~~shall so state~~ if applicable. The defendant shall prepare and  
3 sign, under oath, a financial disclosure statement on a form  
4 approved by the supreme court. The financial disclosure  
5 statement shall identify all income, liabilities and assets in  
6 which the defendant holds or controls a present or future  
7 interest as of the date of the defendant's arrest, or if the  
8 defendant was not arrested, then as of the date of the offense.  
9 A prepared and signed financial disclosure statement shall be  
10 provided to the defendant's probation and parole officer and  
11 the district attorney's office five days before the defendant's  
12 sentencing hearing and may be used in determining an  
13 appropriate restitution plan.

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

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

21 [~~D-~~] E. An order requiring an offender to pay  
22 restitution, validly entered pursuant to this section,  
23 constitutes a judgment and lien against all property of a  
24 defendant for the amount the defendant is obligated to pay  
25 under the order and may be recorded in any office for the

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1 filing of liens against real or personal property, or for  
2 garnishment. [~~A judgment~~] An order of restitution may be  
3 enforced by the state, a victim entitled under the order to  
4 receive restitution, a deceased victim's estate or any other  
5 beneficiary of the [~~judgment~~] order in the same manner as a  
6 civil judgment. [~~An order of restitution is enforceable, if  
7 valid, pursuant to this section, the Victims of Crime Act or  
8 Article 2, Section 24 of the constitution of New Mexico.  
9 Nothing in this section shall be construed to limit the ability  
10 of a victim to pursue full civil legal remedies.] An order of  
11 restitution shall be in a form approved by the supreme court  
12 and shall satisfy the application requirements for a writ of  
13 garnishment and a writ of attachment of a defendant's property  
14 pursuant to the Rules of Civil Procedure.~~

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

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1 officer shall attempt to determine the name and address of each  
2 victim and the amount of pecuniary damages of each victim.

3 ~~[F.]~~ G. The clerk of the court shall mail to each  
4 known victim a copy of the court's order [~~approving or~~  
5 ~~modifying the plan~~] of restitution, including the court's  
6 statement, if any, pursuant to the provisions of Subsection [E]  
7 D of this section.

8 ~~[G.]~~ H. At any time during the probation or parole  
9 period, the defendant or the victim may request and the court  
10 shall grant a hearing on any matter related to the [~~plan~~] order  
11 of restitution.

12 ~~[H.]~~ I. If it appears that the restitution ordered  
13 by the court will not be paid in full prior to the defendant's  
14 scheduled release from probation or parole, the defendant shall  
15 prepare and sign, under oath, an updated financial disclosure  
16 statement sixty days prior to release from probation or parole  
17 and provide it to the defendant's probation and parole officer  
18 and the district attorney's office. The updated statement  
19 shall identify all income, liabilities and assets in which the  
20 defendant holds or controls or has held or controlled a present  
21 or future interest during the defendant's period of probation  
22 or parole. Failure of the defendant to comply with this  
23 subsection or Subsection [B] C of this section or to comply  
24 with the [~~plan~~] order of restitution [~~as approved or modified~~  
25 ~~by the court~~] may constitute a violation of the conditions of

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1 probation or parole. [~~Without limitation, the court may modify~~  
2 ~~the plan of restitution or extend the period of time for~~  
3 ~~restitution, but not beyond the maximum probation or parole~~  
4 ~~period specified in Section 31-21-10 NMSA 1978.~~]

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

12 [~~F.~~] K. This section and proceedings pursuant to  
13 this section shall not limit or impair the rights of victims to  
14 recover damages from the defendant in a civil action or  
15 otherwise pursue full civil legal remedies.

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

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1 against the person from whom [~~he~~] the subsequent holder,  
2 possessor or retainer obtained the property for actual  
3 damages."

4 SECTION 2. Section 36-1-18 NMSA 1978 (being Laws 1909,  
5 Chapter 22, Section 2, as amended) is amended to read:

6 "36-1-18. DUTIES OF DISTRICT ATTORNEY.--

7 A. Each district attorney shall:

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

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

19 (3) advise all county and state officers  
20 whenever requested; and

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

25 B. A district attorney may enforce orders of

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1 restitution and recover any amounts due to the victim or  
2 victims pursuant to those orders by filing liens against the  
3 defendant's property, garnishment of wages or other remedies  
4 available at law or equity.

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

- 10 (1) serve as a tribal prosecutor; or  
11 (2) prosecute alleged violations of tribal  
12 codes by tribal members in tribal courts."

13 SECTION 3. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is July 1, 2012.