

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 4: DISPOSITION OF OFFENDERS

§ 4109. Restitution, Compensation, or Forfeiture.

(a) If a person is convicted of any offense defined in this title or any violation of the Commonwealth Code, the court shall, if appropriate, order the person to pay restitution as a condition of probation. This section also authorizes or the forfeiture of wrongfully obtained property to the Commonwealth.

(b) For the purposes of this Title, “restitution” means reimbursement or compensation to the victim or victims, as defined in 6 CMC § 9101, for every determined economic loss incurred as a result of the person’s criminal conduct, including, but not limited to:

(1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is feasible;

(2) Medical expenses;

(3) Mental health counseling expenses;

(4) Burial, funeral, cremation or other expenses incurred by the family or estate of a homicide victim as a result of the crime;

(5) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor’s parent, parents, guardian or guardians, while caring for the injured minor;

(6) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor’s parent, parents, guardian or guardians, due to time spent as a witness or in assisting the police or prosecution;

(7) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to the victim or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime;

(8) Expenses incurred by an adult victim of a crime involving domestic violence to install or increase residential security incurred related to the crime, including, but not limited to, a home security device or system, or replacing or increasing the number of locks;

(9) Expenses incurred by an adult victim of a crime involving domestic violence in relocating away from the probationer, including, but not limited to, deposits for utilities or phone service, deposits for rental housing, temporary lodging and food expenses, clothing and personal items. Expenses incurred pursuant to this section must be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim;

(10) Pre-judgment or post-judgment interest, as provided by statute or court rule, that accrues as of the date of loss or sentencing, as determined by the court;

(11) Actual and reasonable attorney’s fees and costs of collection accrued by a private entity on behalf of the victim.

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(c) *Garnishment.* The Court may order that a probationer's wages from employment be garnished to satisfy any outstanding restitution sum.

(d) In determining the amount of any restitution award, the court shall order the probationer to pay full restitution, unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. If the amount of the award cannot be determined at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. A probationer's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of any restitution order.

(e) The probationer has the right to a hearing before the sentencing judge to contest the amount of the restitution. The court may modify the amount, on its own motion, or on that of the prosecutor, the victim or victims, or the probationer. If a motion for hearing on the restitution amount is filed, the victim shall be notified at least 10 days prior to the hearing on the motion. The amount of restitution shall be determined by the judge, and proven by a preponderance of the evidence.

(f) A restitution order under this section does not limit any civil liability of the probationer arising from the probationer's conduct. Nor is the amount of restitution ordered pursuant to this section affected by the indemnification or subrogation rights of any third party.

(g) Regardless of whether restitution is ordered as a condition of probation or as part of a direct sentence, a restitution order under this section is not discharged by the completion of any period of probation, or by the serving of any sentence imposed.

(h) A restitution order under this section is a judgment lien that:

- (1) Attaches to the property of the person subject to the order;
- (2) May be perfected; and

(3) May be enforced against a probationer as if the order were a civil judgment enforceable by execution, to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued, or the person's assignee. Nothing in this section limits the authority of the court to enforce fines and orders of restitution to victims, including, but not limited to, the court's authority to revoke the probationer's probation for failure to comply with any part of the restitution order.

(i) If the probationer defaults in the payment of any fine or restitution, or in any installment payment authorized by the court for periodic payment of a fine or restitution, the court may order the probationer to show cause why the probationer should not be held in contempt of court for nonpayment and, if the payment was made a condition of the probationer's probation, may revoke the probationer's probation, pursuant to the procedures set out in 6 CMC § 4105. In a contempt or probation revocation proceeding brought as a result of the probationer's failure to pay a fine, restitution, or other financial obligation imposed as part of a sentence or probation condition, it is an affirmative defense that the probationer

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was unable to pay despite having made continuing good faith efforts to do so. If the court finds the probationer was unable to pay despite having made continuing good faith efforts to do so, the probationer may not be imprisoned solely because of the inability to pay. If the court does not find the probationer's default attributable to an inability to pay, despite continuing good faith efforts, the court may revoke all or part of the suspended sentence. A term of imprisonment or any contempt sanction imposed solely for failure to pay restitution may be consecutive to any portion of the probationer's sentence revoked for other noncompliance with conditions of probation, and may not exceed one day for each \$50 of the unpaid fine or restitution, or one year, whichever is shorter.

(j) A probationer who has been sentenced to pay a fine or restitution may request a hearing regarding the probationer's ability to pay the fine or restitution. The court may deny the request for hearing if it has previously considered the probationer's ability to pay and the probationer's request does not allege a substantial change in circumstances. The victim shall be notified at least 10 days prior to the hearing, and shall be given an opportunity to be heard at the hearing. If at the hearing under this subsection, the probationer proves by a preponderance of the evidence that the probationer will be unable to pay through good faith efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the order so that the probationer can pay the fine or restitution through good faith efforts. The court may, for good cause shown, reduce the fine or restitution ordered, change the payment schedule, extend the probationer's probation up to the maximum period of time allowed under the law, or otherwise modify the order.

(k) Nothing in this section prohibits a person who has been ordered to pay restitution from satisfying the obligation by means of traditional or customary restitution, barter, or other means, with the consent of the victim, unless the crime for which the restitution has been ordered is a crime involving domestic violence, or the court has ordered the defendant not to have any contact with the victim during the period of probation.

(l) In the event that any restitution paid is unclaimed by the victim more than 180 days after it is paid, it may be forfeited by order of the court. The Office of Adult Probation shall file with the court a notice of intent to seek forfeiture, summarizing its efforts to locate the victim, and shall publish the notice in a publication of general distribution for three consecutive weeks after the notice is filed with the court, stating the name of the victim entitled to the restitution, the amount of the restitution, and the date and time of the forfeiture hearing set by the court. At that hearing, if the court finds a diligent, good faith effort has been made to locate the victim prior to forfeiture, and if it appears unlikely that the victim will claim the restitution in the future, the court may order it forfeited in whole or in part to programs providing aid to victims of domestic violence, sexual assault and sexual abuse, provided such programs are approved by the Attorney General.

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Source: PL 3-71, § 1 (§ 1209); amended by PL 15-46, § 6.

Commission Comment: See N.M.I. Const. art. I, § 11.

PL 15-46 was enacted on January 29, 2007, and contained, among other enactments (1 CMC § 2204, 6 CMC §§ 4104, 4105, 4113, 9101(a), and 4291-4298 [Adult Diversion Program]), a short title, findings and purpose, severability, and savings clause provisions. See the comment to 6 CMC § 4104 regarding PL 15-46.