

ASSEMBLY, No. 454

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ROMA

1 AN ACT concerning restitution and revising parts of the statutory law.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. N.J.S.2C:1-2 is amended to read as follows:

7 2C:1-2. Purposes; Principles of Construction. a. The general
8 purposes of the provisions governing the definition of offenses are:

9 (1) To forbid, prevent, and condemn conduct that unjustifiably and
10 inexcusably inflicts or threatens serious harm to individual or public
11 interests;

12 (2) To insure the public safety by preventing the commission of
13 offenses through the deterrent influence of the sentences authorized,
14 the rehabilitation of those convicted, and their confinement when
15 required in the interests of public protection;

16 (3) To subject to public control persons whose conduct indicates
17 that they are disposed to commit offenses;

18 (4) To give fair warning of the nature of the conduct proscribed
19 and of the sentences authorized upon conviction;

20 (5) To differentiate on reasonable grounds between serious and
21 minor offenses; and

22 (6) To define adequately the act and mental state which constitute
23 each offense, and limit the condemnation of conduct as criminal when
24 it is without fault.

25 b. The general purposes of the provisions governing the sentencing
26 of offenders are:

27 (1) To prevent and condemn the commission of offenses;

28 (2) To promote the correction and rehabilitation of offenders;

29 (3) To insure the public safety by preventing the commission of
30 offenses through the deterrent influence of sentences imposed
31 confinement of offenders when required in the interest of public
32 protection;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 (4) To safeguard offenders against excessive, disproportionate or
2 arbitrary punishment;

3 (5) To give fair warning of the nature of the sentences that may be
4 imposed on conviction of an offense;

5 (6) To differentiate among offenders with a view to a just
6 individualization in their treatment; [and]

7 (7) To advance the use of generally accepted scientific methods
8 and knowledge in sentencing offenders[.]; and

9 (8) To promote reparation to victims for harm suffered as a result
10 of criminal conduct.

11 c. The provisions of the code shall be construed according to the
12 fair import of their terms but when the language is susceptible of
13 differing constructions it shall be interpreted to further the general
14 purposes stated in this section and the special purposes of the
15 particular provision involved. The discretionary powers conferred by
16 the code shall be exercised in accordance with the criteria stated in the
17 code and, insofar as such criteria are not decisive, to further the
18 general purposes stated in this section.

19 d. Nothing contained in this code shall limit the right of a
20 defendant and, subject only to the federal and State constitutions, the
21 right of the State to appeal or seek leave to appeal pursuant to law and
22 Rules of Court.

23 (cf: P.L.1979, c.178, s.2)

24

25 2. N.J.S.2C:1-14 is amended to read as follows:

26 2C:1-14. General Definitions. In this code, unless a different
27 meaning plainly is required:

28 a. "Statute" includes the Constitution and a local law or ordinance
29 of a political subdivision of the State;

30 b. "Act" or "action" means a bodily movement whether voluntary
31 or involuntary;

32 c. "Omission" means a failure to act;

33 d. "Conduct" means an action or omission and its accompanying
34 state of mind, or, where relevant, a series of acts and omissions;

35 e. "Actor" includes, where relevant, a person guilty of an omission;

36 f. "Acted" includes, where relevant, "omitted to act";

37 g. "Person," "he," and "actor" include any natural person and,
38 where relevant, a corporation or an unincorporated association;

39 h. "Element of an offense" means (1) such conduct or (2) such
40 attendant circumstances or (3) such a result of conduct as

41 (a) Is included in the description of the forbidden conduct in the
42 definition of the offense;

43 (b) Establishes the required kind of culpability;

44 (c) Negatives an excuse or justification for such conduct;

45 (d) Negatives a defense under the statute of limitations; or

46 (e) Establishes jurisdiction or venue;

1 i. "Material element of an offense" means an element that does not
2 relate exclusively to the statute of limitations, jurisdiction, venue or to
3 any other matter similarly unconnected with (1) the harm or evil,
4 incident to conduct, sought to be prevented by the law defining the
5 offense, or (2) the existence of a justification or excuse for such
6 conduct;

7 j. "Reasonably believes" or "reasonable belief" designates a belief
8 the holding of which does not make the actor reckless or criminally
9 negligent[.];

10 k. "Offense" means a crime, a disorderly persons offense or a petty
11 disorderly persons offense unless a particular section in this code is
12 intended to apply to less than all three[.];

13 l. "County Court" shall mean the Superior Court after December
14 7, 1978[.];

15 m. "Amount involved," "benefit," and other terms of value. Where
16 it is necessary in this act to determine value, for purposes of fixing the
17 degree of an offense, that value shall be the fair market value at the
18 time and place of the operative act[.];

19 n. "Victim" means any person who suffers physical, financial or
20 emotional injury caused by the conduct of the offender;

21 o. "Gain" means the amount of money or value of property derived
22 by the offender from his criminal conduct;

23 p. "Loss" means the amount of value separated from the victim or
24 the victim's family incurred as a result of the conduct constituting the
25 offense including medical expenses and related costs, services rendered
26 in accordance with a method of healing recognized by the laws of the
27 State funeral and burial expenses, lost income and property loss or
28 damage.

29 (cf: P.L.1979, c.178, s.8)

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31 3. N.J.S.2C:43-3 is amended to read as follows:

32 2C:43-3. Fines and Restitutions. A person who has been convicted
33 of an offense may be sentenced to pay a fine, to make restitution, or
34 both, such fine not to exceed:

35 a. \$100,000.00, when the conviction is of a crime of the first or
36 second degree;

37 b. \$7,500.00, when the conviction is of a crime of the third or
38 fourth degree;

39 c. \$1,000.00, when the conviction is of a disorderly persons
40 offense;

41 d. \$500.00, when the conviction is of a petty disorderly persons
42 offense;

43 e. Any higher amount equal to double the pecuniary gain to the
44 offender or loss to the victim caused by the conduct constituting the
45 offense by the offender. In such case the court shall make a finding as
46 to the amount of the gain or loss, and if the record does not contain

1 sufficient evidence to support such a finding the court may conduct a
2 hearing upon the issue. [For purposes of this section the terms "gain"
3 means the amount of money or the value of property derived by the
4 offender and "loss" means the amount of value separated from the
5 victim;]

6 f. Any higher amount specifically authorized by another section of
7 this code or any other statute.

8 g. In the case of violations of chapter 35, any higher amount equal
9 to three times the street value of the controlled dangerous substance
10 or controlled substance analog. The street value for purposes of this
11 section shall be determined pursuant to subsection e. of N.J.S.2C:44-2.

12 A person who has been convicted of an offense in Superior Court
13 shall be ordered to pay restitution to the victim or victim's family
14 where the victim has suffered a loss caused by the conduct constituting
15 the offense.

16 The restitution order shall be mandatory unless waived by the
17 victim or victim's representative.

18 In property cases, mandatory restitution shall be limited to the value
19 of the property unlawfully taken or damaged. In cases involving injury
20 to a person, mandatory restitution shall include such items as medical
21 expenses and related costs, services rendered in accordance with a
22 method of healing recognized by the laws of this State, reasonable
23 funeral and burial expenses and lost income up to any definite date
24 ascertainable at the time of sentencing; mandatory restitution shall not
25 include compensation for such items as valuation of life or loss or
26 impairment of the function of any bodily member or organ, loss of
27 future earnings not readily ascertainable at the time of sentencing, pain
28 and suffering or loss of consortium.

29 Except where the amount of restitution is not in dispute between
30 the victim and defendant, the amount of restitution payable shall be
31 determined by the court at sentencing. The amount of restitution due
32 the victim under this section shall be the actual amount of compensable
33 loss caused by the defendant's actions and shall not be limited by a
34 reduction in charges pursuant to a plea agreement. Proof may be by
35 affidavit, which the victim may submit through the local Office of
36 Victim-Witness Advocacy, describing the loss caused by the
37 defendant's conduct. The defendant may submit to the court an
38 affidavit or affidavits on this subject. In making its finding, the court
39 may also take judicial notice of any evidence adduced at the trial, plea
40 hearing or other court proceeding and may consider the presentence
41 report. The presentence report shall identify the source of the
42 information bearing upon the issue of restitution and indicate how the
43 amount of loss was calculated. If the record, including the
44 presentence report and any submitted affidavits, does not contain a
45 sufficient basis to support a finding of the amount of restitution due
46 the victim or victim's family, the court may take evidence upon the

1 issue.

2 The court shall file a copy of the restitution order with the clerk of
3 the Superior Court who shall enter upon the record of docketed
4 judgments the name of the convicted person as judgment debtor, and
5 of the victim as judgment creditor, a statement that the restitution is
6 ordered under this section, the amount of restitution, and the date of
7 the order. This entry shall have the same force as a judgment
8 docketed in the Superior Court. If restitution to more than one victim
9 is set at the same time, the court shall set priorities of payment to the
10 victims.

11 The ordering of restitution pursuant to this section shall not operate
12 as a bar to the seeking of civil recovery by the victim based on the
13 incident underlying the criminal conviction. Restitution ordered under
14 this section is to be in addition to any civil remedy which a victim may
15 possess, but any amount due the victim under any civil remedy shall be
16 reduced by the amount ordered under this section and the initial
17 restitution judgment shall remain in full force and effect.

18 The restitution ordered paid to the victim shall not exceed his loss.
19 Any restitution imposed on a person shall be in addition to any fine
20 which may be imposed pursuant to this section.

21 (cf: P.L.1987, c.106, s.10)

22

23 4. N.J.S.2C:43-4 is amended to read as follows:

24 2C:43-4. Penalties Against Corporations; Forfeiture of Corporate
25 Charter or Revocation of Certificate Authorizing Foreign Corporation
26 to do Business in the State. a. The court may suspend the imposition
27 of sentence of a corporation which has been convicted of an offense
28 or may sentence it to pay a fine of up to three times the fine provided
29 for in [section] N.J.S.2C:43-3 [or make] in addition to any restitution
30 [authorized] required by [section] N.J.S.2C:43-3.

31 b. When a corporation is convicted of an offense or a high
32 managerial agent of a corporation, as defined in [section] N.J.S.2C:2-7
33 is convicted of an offense committed in conducting the affairs of the
34 corporation, the court may request the Attorney General to institute
35 appropriate proceedings to dissolve the corporation, forfeit its charter,
36 revoke any franchises held by it, or to revoke the certificate
37 authorizing the corporation to conduct business in this State.

38 (cf: N.J.S.2C:43-4)

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40 5. N.J.S.2C:43-13 is amended to read as follows:

41 2C:43-13. Supervisory Treatment Procedure. a. Agreement. The
42 terms and duration of the supervisory treatment shall be set forth in
43 writing, signed by the prosecutor and agreed to and signed by the
44 participant. If the participant is represented by counsel, defense
45 counsel shall also sign the agreement. Each order of supervisory
46 treatment shall be filed with the county clerk.

1 In every case in which the victim has suffered a loss as a result of
2 the conduct of the participant, the participant shall be required, (as
3 part of the terms of the agreement, to make restitution to the victim or
4 victim's family. The assignment judge or his designee shall make a
5 finding as to the amount of restitution, as under N.J.S.2C:43-3.

6 b. Charges, During a period of supervisory treatment the charge or
7 charges on which the participant is undergoing supervisory treatment
8 shall be held in an inactive status pending termination of the
9 supervisory treatment pursuant to subsection d. or e. of this section.

10 c. Period of treatment. Supervisory treatment may be for such
11 period, as determined by the designated judge or the assignment judge,
12 not to exceed one year, provided, however, that the period of
13 supervisory treatment may be shortened or terminated as the program
14 director may determine with the consent of the prosecutor and the
15 approval of the court.

16 d. Dismissal. Upon completion of supervisory treatment, and with
17 the consent of the prosecutor, the complaint, indictment or accusation
18 against the participant may be dismissed with prejudice.

19 e. Violation of conditions. Upon violation of the conditions of
20 supervisory treatment, the court shall determine, after summary
21 hearing, whether said violation warrants the participant's dismissal
22 from the supervisory treatment program or modification of the
23 conditions of continued participation in that or another supervisory
24 treatment program. Upon dismissal of participant from the
25 supervisory treatment program, the charges against the participant may
26 be reactivated and the prosecutor may proceed as though no
27 supervisory treatment had been commenced.

28 f. Evidence. No statement or other disclosure by a participant
29 undergoing supervisory treatment made or disclosed to the person
30 designated to provide such supervisory treatment shall be disclosed,
31 at any time, to the prosecutor in connection with the charge or charges
32 against the participant, nor shall any such statement or disclosure be
33 admitted as evidence in any civil or criminal proceeding against the
34 participant. Nothing provided herein, however, shall prevent the
35 person providing supervisory treatment from informing the prosecutor,
36 or the court, upon request or otherwise as to whether or not the
37 participant is satisfactorily responding to supervisory treatment.

38 g. Delay. No participant agreeing to undergo supervisory
39 treatment shall be permitted to complain of a lack of speedy trial for
40 any delay caused by the commencement of supervisory treatment.

41 (cf: P.L.1979, c.178, s.89)

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43 6. N.J.S.2C:44-2 is amended to read as follows:

44 2C:44-2. Criteria for Imposing Fines and Restitutions. a. The
45 court may sentence a defendant to pay a fine [or make restitution, or
46 both,]in addition to a sentence of imprisonment or probation if:

1 (1) The defendant has derived a pecuniary gain from the offense;
2 or

3 (2) The court is of opinion that a fine [or restitution, or both,]is
4 specially adapted to deterrence of the type of offense involved or to
5 the correction of the offender.

6 b. The court may sentence a defendant to pay a fine [or make
7 restitution, or both,]if the defendant is able, or given a fair opportunity
8 to do so, will be able to pay the fine [or make restitution, or both].
9 The court may sentence a defendant to pay a fine only if the fine will
10 not prevent the defendant from making restitution to the victim of the
11 offense.

12 c. In determining the amount of the fine and method of payment of
13 a fine or restitution, the court shall take into account the financial
14 resources of the defendant and the nature of the burden that its
15 payment will impose.

16 d. Nonpayment. When a defendant is sentenced to pay a fine or
17 make restitution, or both, the court shall not impose at the same time
18 an alternative sentence to be served in the event that the fine or
19 restitution is not paid. The response of the court to nonpayment shall
20 be determined only after the fine or restitution has not been paid, as
21 provided in [section] N.J.S.2C:46-2.

22 e. Whenever the maximum potential fine which may be imposed on
23 a conviction for an offense defined in chapter 35 (Controlled
24 Dangerous Substances) depends on the street value of the controlled
25 dangerous substance or controlled substance analog involved and the
26 court intends to impose a fine in excess of the maximum ordinary fine
27 applicable to the offense for which defendant was convicted, and
28 where the fine has not been agreed to pursuant to the provisions of
29 N.J.S.2C:35-12, the court at the time of sentence shall determine the
30 street value at the time and place of the offense based on the amount
31 and purity of the controlled dangerous substance or controlled
32 substance analog involved. The sentencing court's finding as to the
33 street value may be based on expert opinion in the form of live
34 testimony or by affidavit, or by such other means as the court deems
35 appropriate. The court's finding as to street value shall not be subject
36 to modification by an appellate court except upon a showing that the
37 finding was totally lacking in support on the record or was arbitrary or
38 capricious.

39 (cf: P.L.1987, c.106, s.15)

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41 7. N.J.S.2C:45-1 is amended to read as follows:

42 2C:45-1. Conditions of Suspension or Probation.

43 a. When the court suspends the imposition of sentence on a person
44 who has been convicted of an offense or sentences him to be placed on
45 probation, it shall attach such reasonable conditions, authorized by this
46 section, as it deems necessary to insure that he will lead a law-abiding

1 life or is likely to assist him to do so. These conditions may be set
2 forth in a set of standardized conditions promulgated by the county
3 probation department and approved by the court.

4 b. The court, as a condition of its order, may require the defendant:

5 (1) To support his dependents and meet his family responsibilities;

6 (2) To find and continue in gainful employment;

7 (3) To undergo available medical or psychiatric treatment and to
8 enter and remain in a specified institution, when required for that
9 purpose;

10 (4) To pursue a prescribed secular course of study or vocational
11 training;

12 (5) To attend or reside in a facility established for the instruction,
13 recreation or residence of persons on probation;

14 (6) To refrain from frequently unlawful or disreputable places or
15 consorting with disreputable persons;

16 (7) Not to have in his possession any firearm or other dangerous
17 weapon unless granted written permission;

18 (8) To make restitution [of the fruits of his offense, in an amount
19 he can afford to pay, for the loss or damage caused thereby] ordered
20 pursuant to 2C:43-3;

21 (9) To remain within the jurisdiction of the court and to notify the
22 court or the probation officer of any change in his address or his
23 employment;

24 (10) To report as directed to the court or the probation officer, to
25 permit the officer to visit his home, and to answer all reasonable
26 inquiries by the probation officer;

27 (11) To pay a fine;

28 (12) To satisfy any other conditions reasonably related to the
29 rehabilitation of the defendant and not unduly restrictive of his liberty
30 or incompatible with his freedom of conscience;

31 (13) To require the performance of community-related service[:];

32 (14) To pay a penalty assessment pursuant to section 2 of
33 P.L.1979, c.396 (C.2C:43-3.1).

34 c. When the court sentences a person who has been convicted of
35 a crime to be placed on probation, it may require him to serve a term
36 of imprisonment not exceeding 364 days as an additional condition of
37 its order. When the court sentences a person convicted of a
38 disorderly persons offense to be placed on probation, it may require
39 him to serve a term of imprisonment not exceeding 90 days as an
40 additional condition of its order. In imposing a term of imprisonment
41 pursuant to this subsection, the sentencing court shall specifically place
42 on the record the reasons which justify the sentence imposed. The
43 term of imprisonment imposed hereunder shall be treated as part of the
44 sentence, and in the event of a sentence of imprisonment upon the
45 revocation of probation, the term of imprisonment served hereunder
46 shall be credited toward service of such subsequent sentence. A term

1 of imprisonment imposed under this section shall be governed by the
2 "Parole Act of 1979," P.L.1979, c.441 (C.30:4-123.45 et seq.)

3 Whenever a person is serving a term of parole as a result of a
4 sentence of incarceration imposed as a condition of probation,
5 supervision over that person shall be maintained pursuant to the
6 provisions of the law governing parole. Upon termination of the
7 period of parole supervision provided by law, the county probation
8 department shall assume responsibility for supervision of the person
9 under sentence of probation. Nothing contained in this section shall
10 prevent the sentencing court from at any time proceeding under the
11 provisions of this chapter against any person for a violation of
12 probation.

13 d. The defendant shall be given a copy of the terms of his probation
14 or suspension of sentence and any requirements imposed pursuant to
15 this section, stated with sufficient specificity to enable him to guide
16 himself accordingly. The defendant shall acknowledge, in writing, his
17 receipt of these documents and his consent to their terms.

18 (cf: P.L.1983, c.124, s.2)

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20 8. This act shall take effect immediately and shall be applicable to
21 offenses committed after the effective date.

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STATEMENT

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26 This bill provides for mandatory restitution by criminal defendants
27 to the victim or victim's family. Only the victim or his representative
28 may waive this requirement. In property cases restitution is limited to
29 the value of the property taken or damaged. In cases involving
30 personal injuries restitution shall include medical expenses, funeral and
31 burial expenses, and lost income. Items such as valuation of life or
32 loss or impairment of the function of an organ or limb, loss of future
33 earnings, pain and suffering and loss of consortium are not included.

34 The amount of restitution shall not be limited by a reduction in
35 charges or pursuant to a plea bargain.

36 The order for restitution shall be docketed in the Superior Court
37 under the name of the defendant as judgement debtor and the victim
38 as judgment creditor.

39 Restitution shall be in addition to any civil remedy available to a
40 victim, but any amount recoverable in a civil proceeding shall be
41 reduced by the amount of restitution ordered pursuant to this bill.

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Requires mandatory restitution for crime victims.