

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1712

H. P. 1474

House of Representatives, April 25, 1977

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Shute of Stockton Springs.

Cosponsors: Mr. Drinkwater of Belfast, Mr. Tozier of Unity and Mrs. Hutchings of Lincolnville.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Encourage Restitution.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 15 MRSA § 2611, sub-§ 4, ¶ F, sub-¶ (1), is enacted to read:

(1) The court may require restitution in accordance with Title 17-A, chapter 54, as a condition of probation. In addition to the limitations placed on restitution by Title 17-A, chapter 54, such restitution may only be authorized if:

(a) The child is not deprived of the schooling which is appropriate to his age, needs and specific rehabilitative goals;

(b) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child and is combined with counselling from a probation counselor, court worker or other guidance personnel; and

(c) The supervised work program assignment is made for a period of time not exceeding 180 days;

Sec. 2. 17-A MRSA § 1152, sub-§ 2-A, is enacted to read:

2-A. Every natural person convicted of a crime may be required to make restitution as authorized by chapter 54. Subject to the limitations of chapter 54, restitution may be imposed as a condition of probation or may be imposed in addition to a sentence authorized by chapter 51 or a fine authorized by chapter 53.

Sec. 3. 17-A MRSA § 1204, sub-§ 2-A, ¶ B, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

B. To make restitution pursuant to chapter 54 to each victim of his crime, or to the county where the offense is prosecuted if the identity of the victim cannot be ascertained or if the victim voluntarily refuses the restitution.

Sec. 4. 17-A MRSA c. 54 is enacted to read:

CHAPTER 54
RESTITUTION

§ 1321. Purpose

The Legislature finds and declares that the victims of crimes often suffer losses through no fault of their own and for which there is no compensation. It is also found that repayment, in whole or in part, by the offender to the victim of his crime can operate to rehabilitate the offender in certain instances. It is the purpose of this chapter to encourage the compensation of victims by the person most responsible for the loss incurred by the victim, the offender. Restitution by the offender can serve to reinforce the offender's sense of responsibility for the offense, to provide him the opportunity to pay his debt to society and to his victim in a constructive manner, and to ease the burden of the victim as a result of the criminal conduct.

§ 1322. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Collateral source. "Collateral source" means a source of benefits or advantages for economic loss resulting from criminal conduct, which the victim has received, or which is readily available to him from:

- A. The Government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of 2 or more states unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this chapter;
- B. Social security, Medicare and Medicaid;
- C. State required temporary nonoccupational disability insurance;
- D. Workmen's compensation;
- E. Wage continuation programs of any employer;
- F. Proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminal conduct; or
- G. A contract providing prepaid hospital and other health care services or benefits for disability.

2. **Criminal conduct.** "Criminal conduct" means conduct that occurs or is attempted in this State and constitutes a crime as determined by statute.

3. **Dependent.** "Dependent" means a natural person who is wholly or partially dependent upon the victim for care or support and includes a child of the victim born after his death.

4. **Economic loss.** "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss and, if injury causes death, dependent's economic loss, dependent's replacement services loss and property loss. Noneconomic detriment is not loss. Economic detriment is loss although caused by pain and suffering or physical impairment.

A. **Allowable expense.** "Allowable expense" means reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care. The term includes a total charge not in excess of \$500 for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless other accommodations are medically required.

B. **Dependent's economic loss.** "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to his dependents, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death.

C. **Dependent's replacement services loss.** "Dependent's replacement loss" means loss reasonably incurred by dependents after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death and not subtracted in calculating dependent's economic loss.

D. **Property loss.** "Property loss" means the value of property taken from the victim, or of property destroyed or otherwise broken or harmed.

E. **Replacement services loss.** "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

F. **Work loss.** "Work loss" means loss of income from work the injured person would have performed if he had not been injured and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income for substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake.

5. Noneconomic detriment. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and other nonpecuniary damage.

6. Offender. "Offender" means any natural person convicted of a crime.

7. Restitution. "Restitution" means:

A. Monetary reimbursement, in whole or in part, for economic loss;

B. Work or service provided to a victim for economic loss; or

C. Any combination of service or monetary reimbursement by an offender to the victim of his crime or to other authorized claimants, either directly or indirectly.

8. Victim. "Victim" means a person who suffers personal injury, death or economic loss as a result of criminal conduct, and the good faith effort of any person to prevent criminal conduct, or the good faith effort of any person to apprehend a person suspected of engaging in criminal conduct.

§ 1323. Restitution authorized

Any offender may be sentenced to make restitution. Such restitution may be in addition to a fine and may be a condition of probation or parole. Restitution may also be authorized as a condition of any work release program administered under Title 34, including county jail prisoners released for employment.

§ 1324. Authorized claimants

Restitution may be authorized for:

1. Victim. The victim or a dependent of a deceased victim;

2. County. The county where the offense was prosecuted if the victim voluntarily refuses restitution or if the identity of the victim cannot be ascertained;

3. Person providing recovery. Any person, firm, organization, corporation or government entity which has provided recovery to the victim as a collateral source, but only to the extent that such recovery was actually made; and

4. Person acting on behalf of victim. Any person legally authorized to act on behalf of the victim.

§ 1325. Criteria for restitution

1. Restitution authorized. Restitution may be authorized, in whole or in part, as compensation for economic loss. In determining the amount of restitution authorized, the following shall be considered:

A. The contributory misconduct of the victim;

B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and

- C. The financial ability of the offender to pay the crime.**
2. Restitution not authorized. Restitution shall not be authorized:
- A. To a victim without that victim's consent;**
- B. To a victim who is an accomplice of the offender;**
- C. To a victim who has otherwise been compensated from a collateral source, but economic loss in excess of the collateral compensation may be authorized; and**
- D. When the amount and method of payment of monetary restitution or the performance of service restitution will create an excessive financial hardship on the offender or dependent of the offender. In making this determination, all relevant factors shall be considered, including, but not limited to the following:**
- (1) The number of the offender's dependents;
 - (2) The usual living expenses of the offender and his dependents;
 - (3) The special needs of the offender and his dependents, including necessary travel expense to and from work;
 - (4) The offender's income and potential earning capacity; and
 - (5) The offender's resources.

§ 1326. Time and method of restitution

When restitution is authorized, the time and method of payment or of the performance of the services shall be specified. Monetary compensation which is not to be paid in installments or at a later specified time shall be paid to the clerk of the court having jurisdiction over the offender. In those cases, the clerk shall make the disbursement to the victim or other authorized claimant. All other payments and disbursements shall be made by the appropriate governmental agency or institution having jurisdiction or custody of the offender.

Sec. 5. 34 MRSA § 527, 1st sentence, as repealed and replaced by PL 1969, c. 171, is amended to read:

The Bureau of Corrections is authorized to adopt and implement rehabilitative programs, including work release and restitution as authorized by Title 17-A, chapter 54, within the penal and correctional institutions under its control.

Sec. 6. 34 MRSA § 1007, sub-§ 1, ¶ F, is enacted to read:

F. To work or provide service to the victim of his crime in accordance with Title 17-A, chapter 54, but only with the express approval of the victim.

Sec. 7. 34 MRSA § 1007, sub-§ 5, ¶ D, as enacted by PL 1967, c. 150, is amended to read:

D. Payment, either in full or ratably, of restitution, and of the prisoner's obligations, acknowledged by him in writing, as authorized by Title 17-A, or which have been reduced to judgment;

Sec. 8. 34 MRSA § 1552, sub-§ 1, ¶ E is enacted to read:

E. The board may authorize and impose as a condition of parole that the individual make restitution to his victim or other authorized claimant in accordance with the provisions of Title 17-A, chapter 54.

STATEMENT OF FACT

This bill provides the means for a criminal offender to repay, in whole or in part, the victim of his crime either by work or service or by monetary compensation. This restitution may be implemented as a condition of probation or parole, as a part of a work release program or in addition to a fine. Current law and regulations provide for disbursement of the funds of prisoners and persons on probation and parole. This bill utilizes those means currently available to distribute any restitution payments to the victim. Restitution may not be authorized in certain instances, including those cases which would impose a financial hardship on the offender's dependents. In juvenile cases, restitution is further restricted by taking into account the child's age and educational needs. Restitution under this plan may not be imposed on an unwilling victim, but is readily available in other cases.