

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1072

H.P. 775

House of Representatives, March 28, 1995

**An Act to Provide a Specific Formula to Determine Restitution of
Economic Loss.**

Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MARSHALL of Eliot.
Cosponsored by Representatives: BAILEY of Township 27, HICHBORN of LaGrange,
LANE of Enfield, LOOK of Jonesboro, LUMBRA of Bangor, WATERHOUSE of Bridgton,
Senator: LORD of York.

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

2
4 **Sec. 1. 17-A MRSA §1322, sub-§3, ¶¶C-3 and C-4** are enacted to read:

6 C-3. "Income-bearing property" means property that is used
8 by the victim for the purposes of producing income.

10 C-4. "Nonbusiness property" means property that is not
12 income-bearing property.

14 **Sec. 2. 17-A MRSA §1323, sub-§2**, as repealed and replaced by PL 1983, c. 352, §3, is repealed.

16 **Sec. 3. 17-A MRSA §1323, sub-§3**, as enacted by PL 1987, c. 157, §4, is repealed.

18 **Sec. 4. 17-A MRSA §1325, sub-§1**, as enacted by PL 1977, c. 455, §3, is repealed and the following enacted in its place:

20 1. Restitution authorized; formula. In any case when proof
22 of economic loss is submitted, the court shall order the
24 defendant to pay restitution according to the following formula:

26 A. For the loss of nonbusiness property, the amount of
28 restitution required is the replacement of the property and
30 twice the value of the property;

32 B. For the loss of income-bearing property, the amount of
34 restitution required is the replacement of the property and
36 three times the value of the property or 4 times the value
38 if the property can not be replaced; and

40 C. Any reasonable out-of-pocket expenses incurred by the
42 victim to recover restitution.

44 **Sec. 5. 17-A MRSA §1325, sub-§2**, as enacted by PL 1977, c. 455, §3, is amended to read:

46 **2. Restitution not authorized.** Restitution shall ~~may~~ not be authorized:

48 A. To a victim without that victim's consent;

 B. To a victim who is an accomplice of the offender; and

 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~~

2 D. ---When---the---amount---and---method---of---payment---of---monetary
3 restitution---or---the---performance---of---service---restitution---will
4 create---an---excessive---financial---hardship---on---the---offender---or
5 dependent---of---the---offender.---In---making---this---determination,---all
6 relevant---factors---shall---be---considered,---including,---but---not
7 limited---to---the---following:--

8 (1)---The---number---of---the---offender's---dependents;

10 (2)---The---usual---living---expenses---of---the---offender---and---his
12 dependents;

14 (3)---The---special---needs---of---the---offender---and---his
16 dependents,---including---necessary---travel---expense---to---and
from---work;

18 (4)---The---offender's---income---and---potential---earning
20 capacity;---and

22 (5)---The---offender's---resources.

24 **Sec. 6. 17-A MRSA §1325, sub-§3**, as enacted by PL 1987, c.
157, §5, is repealed.

26 **Sec. 7. 17-A MRSA §1325, sub-§§4 and 5** are enacted to read:

28 **4. Juvenile offender.** Notwithstanding any provision to the
30 contrary, if the offender is under the age of majority and is not
32 an emancipated minor, the court shall order the parents or legal
guardians to pay any authorized restitution.

34 **5. Nonviolent crimes.** Notwithstanding any provision to the
36 contrary, if the court determines that the offense for which
restitution is authorized is a nonviolent crime, then the court
shall suspend the entire term of imprisonment if the restitution
is paid.

38 For the purposes of this subsection, "nonviolent crime" means an
40 offense that does not involve bodily injury, either threatened or
42 real.

44 **Sec. 8. 17-A MRSA §1328, sub-§1**, as enacted by PL 1977, c.
455, §3, is amended to read:

46 **1. Petition.** A convicted person, who has been sentenced to
48 pay restitution and who has not inexcusably inexcusably
50 defaulted in payment thereof, may at any time petition the
sentencing court which sentenced him for a revocation of any
unpaid portion thereof of the restitution. If the court finds

2 that the circumstances which that warranted the imposition of the
3 restitution have changed, ~~or that it would otherwise be unjust to~~
4 ~~require payment~~ so that the restitution is not authorized as
5 required by section 1325, the court may revoke the unpaid portion
6 thereof of the restitution, in whole or in part, or modify the
7 time and method of payment.

8

9 STATEMENT OF FACT

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11 This bill provides a specific formula to determine the
12 economic loss of a victim and requires the court to order
13 restitution based upon that formula. This bill removes the
14 discretion of the court to consider the financial hardship on the
15 offender or dependent of the offender.

16

17 If the offender is a minor, the parents are required to pay
18 the restitution.

20

19 This bill also requires the court to suspend the entire
20 sentence of incarceration of an offender of a nonviolent crime if
21 the offender pays restitution.
22