

LEGISLATIVE BILL 956

Approved by the Governor April 17, 1986

Introduced by Schmit, 23; Pirsch, 10; Sieck, 24;
Hoagland, 6

AN ACT relating to crimes and punishments; to amend section 29-2262, Reissue Revised Statutes of Nebraska, 1943, section 28-933, Revised Statutes Supplement, 1984, and section 28-101, Revised Statutes Supplement, 1985; to authorize orders of restitution as prescribed; to provide powers and duties; to define the crime of terroristic threats; to provide a penalty; to eliminate an obsolete statute relating to terroristic threats; to harmonize provisions; and to repeal the original sections, and also section 28-311, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. Whenever the court believes that restitution may be a proper sentence or the victim of any offense or the prosecuting attorney requests, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the actual damages sustained by the victim.

Sec. 2. To determine the amount of restitution, the court may hold a hearing at the time of sentencing. The amount of restitution shall be based on the actual damages sustained by the victim and shall be supported by evidence which shall become a part of the court record. The court shall consider the defendant's earning ability, employment status, financial resources, and family or other legal obligations and shall balance such considerations against the obligation to the victim. A person may not be granted or denied probation or parole either solely or primarily due to his or her financial resources or ability or inability to pay restitution. The court may order that restitution be made immediately, in specified installments, or within a specified period of time, not to exceed five years after

the date of judgment or defendant's final release date from imprisonment, whichever is later.

Sec. 3. In determining restitution, if the offense results in damage, destruction, or loss of property, the court may require: (1) Return of the property to the victim, if possible; (2) payment of the reasonable value of repairing the property, including property returned by the defendant; or (3) payment of the reasonable replacement value of the property, if return or repair is impossible, impractical, or inadequate. If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury. If the offense results in the death of the victim, the court may require payment to be made to the estate of the victim for the cost of any medical care prior to death and for funeral and burial expenses.

Sec. 4. The court shall not impose restitution for a loss for which the victim has received compensation, except that the court may order payment by the defendant to any person who has compensated the victim to the extent that such compensation has been provided. Any amount paid to a victim pursuant to an order of restitution shall be set off against any amount later recovered as compensatory damages in a civil action.

Sec. 5. If the defendant is placed on probation or paroled, the court may revoke probation, and the Board of Parole may revoke parole if the defendant fails to comply with the restitution order. In determining whether to revoke probation or parole, the court or Board of Parole shall consider the defendant's earning ability and financial resources, the willfulness of the defendant's failure to pay, and any special circumstances affecting the defendant's ability to pay. Probation or parole may not be revoked unless noncompliance with the restitution order is attributable to an intentional refusal to obey the order or a failure to make a good faith effort to comply with the order.

Sec. 6. A defendant, victim, or the personal representative of the victim's estate may petition the sentencing court to adjust or otherwise waive payment or performance of any ordered restitution or any unpaid or unperformed portion thereof. The court may schedule a hearing and give the parties notice of the hearing date, place, and time and inform the parties that he or she will have an opportunity to be heard. If the court

finds that the circumstances upon which it based the imposition or amount and method of payment or other restitution ordered no longer exist or that it otherwise would be unjust to require payment or other restitution as imposed, the court may adjust or waive payment of the unpaid portion thereof or other restitution or modify the time or method of making restitution.

Sec. 7. An order of restitution may be enforced by a victim named in the order to receive the restitution or the personal representative of the victim's estate in the same manner as a judgment in a civil action. If the victim is deceased and no claim is filed by the personal representative of the estate or if the victim cannot be found, the Attorney General may enforce such order of restitution for the benefit of the Victim's Compensation Fund.

Sec. 8. (1) Sections 1 to 10 of this act shall not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action.

(2) The findings in the sentencing hearing and the fact that restitution was required or paid shall not be admissible as evidence in a civil action and shall have no legal effect on the merits of a civil action.

(3) Any restitution paid by the defendant to the victim shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

Sec. 9. If restitution is imposed on an organization, it shall be the duty of any person authorized to order the disbursement of assets of the organization, and his or her superiors, to pay the restitution from assets of the organization under his or her control. Failure to do so shall render a person subject to an order to show cause why he or she should not be held in contempt of court.

Sec. 10. (1) Whenever a victim is paid by the Victim's Compensation Fund for loss arising out of a criminal act, the fund shall be subrogated to the rights of the victim to any restitution ordered by the court.

(2) The rights of the Victim's Compensation Fund shall be subordinate to the claims of victims who have suffered loss arising out of the offenses or any transaction which is part of the same continuous scheme of criminal activity.

Sec. 11. (1) A person commits terroristic

threats if he or she threatens to commit any crime of violence:

(a) With the intent to terrorize another;

(b) With the intent of causing the evacuation of a building, place of assembly, or facility of public transportation; or

(c) In reckless disregard of the risk of causing such terror or evacuation.

(2) Terroristic threats is a Class IV felony.

Sec. 12. That section 28-101, Revised Statutes Supplement, 1985, be amended to read as follows:

28-101. Sections 28-101 to 28-1348 and section 11 of this act shall be known as the Nebraska Criminal Code.

Sec. 13. That section 28-933, Revised Statutes Supplement, 1984, be amended to read as follows:

28-933. (1) Any person who is legally confined in a jail or correctional or penal institution and who commits (a) assault in the first, second, or third degree as defined in sections 28-308 to 28-310, (b) terroristic threats as defined in section ~~28-311~~ 11 of this act, (c) kidnapping as defined in section 28-313, or (d) false imprisonment in the first or second degree as defined in sections 28-314 and 28-315, against any person for the purpose of compelling or inducing the performance of any act by such person or any other person shall be guilty of a Class II felony.

(2) Sentences imposed under subsection (1) of this section shall be served consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this section.

Sec. 14. That section 29-2262, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2262. (1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life.

(2) The court, as a condition of its sentence, may require the offender:

(a) To refrain from unlawful conduct;

(b) To be confined periodically in the county jail or to return to custody after specified hours, but

not to exceed ninety days;

(c) To meet his or her family responsibilities;

(d) To devote himself or herself to a specific employment or occupation;

(e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for that such purpose;

(f) To pursue a prescribed secular course of study or vocational training;

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

(h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(i) To have in his or her possession no firearm or other dangerous weapon unless granted written permission;

~~{j} To make restitution of the fruits of his crime or to make such reparation as the court determines to be appropriate for the loss or damage caused thereby;~~

~~{k} {j} To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment;~~

~~{l} {k} To report as directed to the court or a probation officer and to permit the officer to visit his or her home;~~

~~{m} {l} To pay a fine in one or more payments, as ordered;~~

~~{n} {m} To work, in lieu of or in addition to any fine, on public streets, parks, or other public property for a period not exceeding twenty working days. Such work shall be under the supervision of the probation officer or a law enforcement officer in the jurisdiction in which the work is performed;~~

~~{o} {n} To pay for blood, urine, or breath alcohol tests, psychological evaluations, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services; or~~

~~{p} {o} To satisfy any other conditions reasonably related to the rehabilitation of the offender.~~

(3) In all cases in which the offender is guilty of assault or battery and the victim is the offender's spouse, a condition of probation shall be mandatory counseling as provided by ~~sections 42-901 to~~

42-927 the Protection from Domestic Abuse Act.

Sec. 15. That original section 29-2262, Reissue Revised Statutes of Nebraska, 1943, section 28-933, Revised Statutes Supplement, 1984, and section 28-101, Revised Statutes Supplement, 1985, and also section 28-311, Reissue Revised Statutes of Nebraska, 1943, are repealed.