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## Criminal Procedure; Restitution

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# Criminal Procedure

## Criminal Procedure; restitution

NEV. REV. STAT. §§176.189, 209.4825, 209.4839 (amended).  
SB 111 (Committee on Judiciary); 1983 STAT. Ch 190  
SB 244 (Committee on Judiciary); 1983 STAT. Ch 165

Prior to the enactment of Chapter 165, the court had discretion to order a defendant convicted of a crime to make restitution<sup>1</sup> as a condition of probation or the suspension of a sentence.<sup>2</sup> Chapter 165 now *requires* the court to order restitution as a condition of probation or the suspension of a sentence unless restitution is impracticable.<sup>3</sup> If, however, restitution is not ordered, the court must state the circumstances making restitution impracticable.<sup>4</sup> Moreover, Chapter 165 specifies that the court may order either full or partial restitution.<sup>5</sup>

Under existing law, restitution can include payments for the medical treatment of a person injured by the defendant.<sup>6</sup> Chapter 165 expands this coverage by permitting the court to order payments for psychological treatment.<sup>7</sup>

Prior law provided that victims<sup>8</sup> of crime were eligible for restitution only if they had been injured as a direct<sup>9</sup> result of the criminal act for

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1. See *Korby v. Nevada*, 93 Nev. 326, 327, 565 P.2d 1006, 1006 (1977). Restitution is the restoration of money or property to the victim for the offense of which the defendant is found guilty. *Id.*

2. 1981 Nev. Stat. c. 616, §1, at 1341 (amending NEV. REV. STAT. §176.189).

3. NEV. REV. STAT. §176.189(1) (amended by 1983 Nev. Stat. c. 165, §1, at 383). Noncompliance with the terms of a restitution order is a violation of a condition of probation unless the defendant can show the failure was caused by economic hardship. *Id.* §176.189(4).

4. NEV. REV. STAT. §176.189(3) (amended by 1983 Nev. Stat. c. 165, §1, at 383).

5. *Id.* §176.189(1) (amended by 1983 Nev. Stat. c. 165, §1, at 383); see *id.* §176.189(2) (amended by 1983 Nev. Stat. c. 165, §1(2), at 383). Money received by the Department of Parole and Probation for restitution for one victim may be deposited with the state treasurer, while restitution received for more than one victim must be deposited with the treasurer for credit to the restitution trust fund. *Id.*

6. *Id.* §176.189(1) (amended by 1983 Nev. Stat. c. 165, §1, at 383).

7. Compare *id.* §176.189(1) (amended by 1983 Nev. Stat. c. 165, §1, at 383) with 1981 Nev. Stat. c. 616, §1, at 1341 (amending NEV. REV. STAT. §176.189(1)).

8. NEV. REV. STAT. §209.4825 "victim" is defined as (1) a natural person, (2) the person's spouse, children, or dependents, (3) a governmental agency, or (4) an unincorporated association or business organization. *Id.*

9. See *State v. Fouquette*, 67 Nev. 505, 529, 221 P.2d 404, 427 (1950) providing that "the res gestae embraces not only the actual facts of the transaction and the circumstances surrounding it, but the matters immediately antecedent to [the transaction] and [that] have a direct causal connection with it, as well as acts immediately following it and so closely connected with it as to form in reality a part of the occurrence". *Id.*

which the offender was incarcerated.<sup>10</sup> In addition, prior to the enactment of Chapter 190, restitution could be made only for losses incurred as a direct result of the crime.<sup>11</sup> Chapter 190 expands the definition of victim to include persons injured as an *indirect*<sup>12</sup> result of a criminal act,<sup>13</sup> and authorizes recovery for losses incurred as an *indirect* result of the crime.<sup>14</sup>

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10. 1981 Nev. Stat. c. 335, §4(1), at 615 (enacting NEV. REV. STAT. §209.4825(1)).

11. *Id.* c. 335, §10(1), at 616 (enacting NEV. REV. STAT. §209.4839(1)).

12. *See* State of Nevada v. Smith, 10 Nev. 106, 123 (1875) (discussion of proximate causation).

13. *Compare* NEV. REV. STAT. §209.4825(1) (amended by 1983 Nev. Stat. c. 190, §1(1), at 449) with 1981 Nev. Stat. c. 335, §4(1), at 615 (enacting NEV. REV. STAT. §209.4825(1)).

14. *Compare* NEV. REV. STAT. §209.4839(1) (amended by 1983 Nev. Stat. c. 190, §2(1), at 449), with 1981 Nev. Stat. c. 335 §10(1), at 616 (enacting NEV. REV. STAT. 209.4839(1)).

### **Criminal Procedure; victim compensation—preliminary awards**

NEV. REV. STAT. §217.— (new); §217.020 (amended).  
SB 369 (Robinson); 1983 STAT. Ch 367

The express policy of the state of Nevada is to provide aid to victims<sup>1</sup> of violent crimes or to their dependents.<sup>2</sup> Under existing law, awards of pecuniary compensation from the state cannot exceed \$5000<sup>3</sup> for (1) medical<sup>4</sup> and funeral<sup>5</sup> expenses, (2) a loss of earnings,<sup>6</sup> (3) pecuniary losses to dependents,<sup>7</sup> or (4) any other loss resulting from the personal injury<sup>8</sup> or death of the victim that the hearing officer<sup>9</sup> determines to be reasonable.<sup>10</sup> Chapter 367 creates an expedited process to grant a preliminary award for specified losses<sup>11</sup> to victims whose monthly income does not exceed \$750.<sup>12</sup>

With the enactment of Chapter 367, a preliminary award can be made for two types of losses.<sup>13</sup> First, compensation of up to \$400 is

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1. NEV. REV. STAT. §217.070 (definition of victim).

2. *Id.* §§217.010, 217.040 (definition of dependent); *see also id.* §§209.4821-.4843 (program of restitution by offenders).

3. *Id.* §217.200(3).

4. *Id.* §217.200(1)(a).

5. *Id.* §217.200(1)(d).

6. *Id.* §217.200(1)(b).

7. *Id.* §217.200(1)(c).

8. *Id.* §217.050 (definition of personal injury).

9. *Id.* §217.045 (definition of hearing officer).

10. *Id.* §217.200(1)(e).

11. 1983 Nev. Stat. c. 367, §1(2), at 888. Any preliminary award must be deducted from any subsequent award. *Id.* c. 367, §1(4), at 888.

12. *Id.* c. 367, §1(1), at 888.

13. *Id.* c. 367, §1(2), at 888.