

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 449

Short Title: Improve Restitution Collection/AB.

(Public)

Sponsors: Representatives Rayfield; Barbee, Carpenter, Clary, Cocklereece, Cummings, Decker, Gardner, Justus, Kiser, Lemmond, McComas, Preston, and Russell.

Referred to: Judiciary II.

March 9, 1995

A BILL TO BE ENTITLED

1
2 AN ACT TO REQUIRE THAT AN AMOUNT OF RESTITUTION BE ORDERED IN
3 ALL CASES WHERE A CRIME VICTIM HAS SUFFERED INJURY, PROPERTY
4 DAMAGE, OR OTHER LOSS; TO PROVIDE FOR THE DOCKETING,
5 PAYMENT, AND COLLECTION OF RESTITUTION JUDGMENTS, AND TO
6 MAKE OTHER CONFORMING STATUTORY CHANGES PERTAINING TO
7 RESTITUTION FOR CRIME VICTIMS.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 1-209 reads as rewritten:

10 **"§ 1-209. Judgments authorized to be entered by clerk; sale of property;**
11 **continuance pending sale; writs of assistance and possession.**

12 The clerks of the superior courts are authorized to enter the following judgments:

13 (1) All judgments of voluntary nonsuit.

14 (2) All consent judgments.

15 (3) In all actions upon notes, bills, bonds, stated

16 accounts, balances struck, and other evidences of indebtedness within the
17 jurisdiction of the superior court.

18 (4) All judgments by default final and default and inquiry as are authorized
19 by Rule 55 of the Rules of Civil Procedure, and in this section provided.

1 (5) In all cases where the clerks of the superior court enter judgment by
2 default final upon any debt secured by mortgage, deed of trust,
3 conditional sale contract or other conveyance of any kind, either real or
4 personal property, or by a pledge of property, the said clerks of the
5 superior court are authorized and empowered to order a foreclosure of
6 such mortgage, deed of trust, conditional sale contract, or other
7 conveyance, and order a sale of the property so conveyed or pledged
8 upon such terms as appear to be just; and the said clerks of the superior
9 court shall have all the power and authority now exercised by the judges
10 of the superior court to appoint commissioners to make such sales, to
11 receive the reports thereof, and to confirm the report of sale or to order a
12 resale, and to that end they are authorized to continue such causes from
13 time to time as may be required to complete the sale, and in the final
14 judgment in said causes they shall order the execution and delivery of
15 all necessary deeds and make all necessary orders disbursing the funds
16 arising from the sale, and may issue writs of assistance and possession
17 upon ten days' notice to parties in possession. The commissioners
18 appointed to make foreclosure sales, as herein authorized, may proceed
19 to advertise such sales immediately after the date of entering judgment
20 and order of foreclosure, unless otherwise provided in said judgment
21 and order.

22 (6) All judgments of restitution entered in criminal district and superior
23 courts.

24 In any tax foreclosure action pending on March 15, 1939 or thereafter brought under
25 the provisions of G.S. 105-414 in which there is filed no answer which seeks to prevent
26 entry of judgment of sale, the clerk of the superior court may render judgment of sale and
27 make all necessary subsequent orders and judgments to the same extent as permitted by
28 this section in actions brought to foreclose a mortgage. All such judgments and orders
29 heretofore rendered or made by a clerk of the superior court in such tax foreclosure
30 actions are hereby, as to the authority of the said clerk, ratified and confirmed."

31 Sec 2. Article 23 of Chapter 1 of the General Statutes is amended by adding a
32 new section to read:

33 "**§ 1-233.1. Docketing criminal judgments of restitution.**

34 Every criminal court judgment of the superior or district court which contains an
35 order of restitution shall be entered by the clerk of said superior court on the judgment
36 docket of the court. The entry must contain the name and address of the defendant and
37 indicate that judgment was rendered against the person, the date of judgment, the date,
38 hour, and minute of docketing and the clerk shall keep a cross-index of the whole, with
39 the dates and numbers thereof; however error or omission in the entry of the address or
40 addresses shall in no way affect the validity, finality, or priority of the judgment
41 docketed.

42 All judgments rendered in any county by the superior or district court, during a
43 session of court, and docketed during the same session, or within 10 days thereafter, are

1 held and deemed to have been rendered and docketed on the first day of said session for
2 the purpose only of establishing equity of priority as among judgments."

3 Sec. 3. G.S. 7A-304 reads as rewritten:

4 "**§ 7A-304. Costs in criminal actions.**

5 (a) In every criminal case in the superior or district court, wherein the defendant is
6 convicted, or enters a plea of guilty or **nolo contendere**, or when costs are assessed
7 against the prosecuting witness, the following costs shall be assessed and collected,
8 except that when the judgment imposes an active prison sentence, costs shall be assessed
9 and collected only when the judgment specifically so provides, and that no costs may be
10 assessed when a case is dismissed.

11 (1) For each arrest or personal service of criminal process, including
12 citations and subpoenas, the sum of five dollars (\$5.00), to be remitted
13 to the county wherein the arrest was made or process was served, except
14 that in those cases in which the arrest was made or process served by a
15 law-enforcement officer employed by a municipality, the fee shall be
16 paid to the municipality employing the officer.

17 (2) For the use of the courtroom and related judicial facilities, the sum of
18 six dollars (\$6.00) in the district court, including cases before a
19 magistrate, and the sum of twenty-four dollars (\$24.00) in superior
20 court, to be remitted to the county in which the judgment is rendered. In
21 all cases where the judgment is rendered in facilities provided by a
22 municipality, the facilities fee shall be paid to the municipality. Funds
23 derived from the facilities fees shall be used exclusively by the county
24 or municipality for providing, maintaining, and constructing adequate
25 courtroom and related judicial facilities, including: adequate space and
26 furniture for judges, district attorneys, public defenders, magistrates,
27 juries, and other court related personnel; office space, furniture and
28 vaults for the clerk; jail and juvenile detention facilities; free parking for
29 jurors; and a law library (including books) if one has heretofore been
30 established or if the governing body hereafter decides to establish one.
31 In the event the funds derived from the facilities fees exceed what is
32 needed for these purposes, the county or municipality may, with the
33 approval of the Administrative Officer of the Courts as to the amount,
34 use any or all of the excess to retire outstanding indebtedness incurred
35 in the construction of the facilities, or to reimburse the county or
36 municipality for funds expended in constructing or renovating the
37 facilities (without incurring any indebtedness) within a period of two
38 years before or after the date a district court is established in such
39 county, or to supplement the operations of the General Court of Justice
40 in the county.

41 (3) For the retirement and insurance benefits of both State and local
42 government law-enforcement officers, the sum of seven dollars and
43 twenty-five cents (\$7.25), to be remitted to the State Treasurer. Fifty

1 cents (50¢) of this sum shall be administered as is provided in Article
2 12C of Chapter 143 of the General Statutes. Five dollars and seventy-
3 five cents (\$5.75) of this sum shall be administered as is provided in
4 Article 12E of Chapter 143 of the General Statutes, with one dollar and
5 twenty-five cents (\$1.25) being administered in accordance with the
6 provisions of G.S. 143-166.50(e). One dollar (\$1.00) of this sum shall
7 be administered as is provided in Article 12F of Chapter 143 of the
8 General Statutes.

9 (3a) For the supplemental pension benefits of sheriffs, the sum of seventy-
10 five cents (75¢), to be remitted to the Department of Justice and
11 administered under the provisions of Article 12G of Chapter 143 of the
12 General Statutes.

13 (4) For support of the General Court of Justice, the sum of forty-one dollars
14 (\$41.00) in the district court, including cases before a magistrate, and
15 the sum of forty-eight dollars (\$48.00) in the superior court, to be
16 remitted to the State Treasurer.

17 (5) For using pretrial release services, the district or superior court judge
18 shall, upon conviction, impose a fee of fifteen dollars (\$15.00) to be
19 remitted to the county providing the pretrial release services. This cost
20 shall be assessed and collected only if the defendant had been accepted
21 and released to the supervision of the agency providing the pretrial
22 release services.

23 (6) For support of the General Court of Justice, for the issuance by the clerk
24 of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2,
25 the sum of fifty dollars (\$50.00), to be remitted to the State Treasurer.
26 Upon a showing to the court that the defendant failed to appear because
27 of an error or omission of a judicial official, a prosecutor, or a law-
28 enforcement officer, the court shall waive this fee.

29 (a1) The costs assessed pursuant to subsection (a) may also be collected by clerks
30 of court for charges in which a party elects to pay the court's costs to satisfy the
31 requirements of G.S. 20-7.2. Costs collected pursuant to this subsection shall be
32 allocated in the same manner as other costs collected pursuant to this section. If a party
33 elects to pay the costs of court to satisfy the requirements of G.S. 20-7.2 and is
34 subsequently adjudged guilty of the same charge by the court, he shall not be required to
35 pay the costs of court again for that charge, but he is subject to any other orders of the
36 court, including an order to pay a fine.

37 (b) On appeal, costs are cumulative, and costs assessed before a magistrate shall be
38 added to costs assessed in the district court, and costs assessed in the district court shall
39 be added to costs assessed in the superior court, except that the fee for the Law-
40 Enforcement Officers' Benefit and Retirement Fund and the Sheriffs' Supplemental
41 Pension Fund and the fee for pretrial release services shall be assessed only once in each
42 case. No superior court costs shall be assessed against a defendant who gives notice of
43 appeal from the district court but withdraws it prior to the expiration of the 10-day period

1 for entering notice of appeal. When a case is reversed on appeal, the defendant shall not
2 be liable for costs, and the State shall be liable for the cost of printing records and briefs
3 in the Appellate Division.

4 (c) Witness fees, expenses for blood tests and comparisons incurred by G.S. 8-
5 50.1(a), jail fees and cost of necessary trial transcripts shall be assessed as provided by
6 law in addition to other costs set out in this section. Nothing in this section shall limit the
7 power or discretion of the judge in imposing fines or forfeitures or ordering restitution.

8 (d) In any criminal case in which the liability for costs, fines, restitution, or any
9 other lawful charge has been finally determined, the clerk of superior court shall, unless
10 otherwise ordered by the presiding judge, disburse such funds when paid in accordance
11 with the following priorities:

- 12 (1) Costs due the county;
- 13 (2) Costs due the city;
- 14 (3) Fines to the county school fund;
- 15 (4) Sums in restitution prorated among the persons entitled thereto;
- 16 (5) Costs due the State;
- 17 (6) Attorney's fees.

18 ~~Sums in restitution received by the clerk of superior court shall be disbursed when:~~

- 19 ~~(1) Complete restitution has been received; or~~
- 20 ~~(2) When, in the opinion of the clerk, additional payments in restriction will~~
21 ~~not be collected; or~~
- 22 ~~(3) Upon the request of the person or persons entitled thereto; and~~
- 23 ~~(4) In any event, at least once each calendar year.~~

24 (e) Unless otherwise provided by law, the costs assessed pursuant to this section
25 for criminal actions disposed of in the district court are also applicable to infractions
26 disposed of in the district court. The costs assessed in superior court for criminal actions
27 appealed from district court to superior court are also applicable to infractions appealed
28 to superior court. If an infraction is disposed of in the superior court pursuant to G.S. 7A-
29 271(d), costs applicable to the original charge are applicable to the infraction.

30 (f) Sums in restitution received by the clerk of superior court shall be disbursed
31 after deducting the administrative fee pursuant to G.S. 15A-1334.1 or the five percent
32 (5%) fee pursuant to G.S. 7A-304.1, at least quarterly when the amount received is at
33 least fifty dollars (\$50.00), and in any event, at least once each calendar year. The clerk
34 shall pay restitution to the Crime Victims Compensation Commission when the
35 Commission has paid an aggrieved party either part or all, of the restitution owed."

36 Sec. 4. Article 28 of Chapter 7A of the General Statutes is amended by adding
37 a new section to read:

38 **§ 7A-304.1. Restitution; debt collection setoff.**

39 In accordance with Chapter 105A of the General Statutes, the clerk of superior court
40 shall report through the Administrative Office of the Courts to the Department of
41 Revenue the amounts of restitution owed by any criminal defendant, including the twenty
42 percent (20%) administrative collection fee. The report, which may be done
43 electronically, shall include such information as required by the Department of Revenue.

1 The Department of Revenue shall return to the clerk of superior court any income tax
2 refund due a defendant in order to pay restitution in accordance with Chapter 105A of the
3 General Statutes. Upon receipt of such funds, the clerk shall, after deducting a five
4 percent (5%) administrative collection fee, pay the restitution to the person or persons
5 entitled thereto."

6 Sec. 5. Article 81 of Chapter 15A is amended by adding a new section to read:
7 **"§ 15A-1334.1. Restitution required.**

8 The sentencing judge in every court judgment shall determine if injury, property
9 damage, or other loss occurred to a person, firm, or corporation as a result of the
10 defendant's crime. The trial court shall obtain all available information concerning the
11 extent of such loss and shall fix an amount of restitution based upon available
12 information. Unless the defendant pays on the day that judgment is entered, the court
13 shall add twenty percent (20%) to the amount of restitution as an administration fee for
14 the cost of collecting restitution. The court shall then determine the defendant's ability to
15 pay and shall establish a payment schedule for any defendant placed on probation. The
16 amount of restitution contained in the criminal judgment shall be entered on the civil
17 judgment docket by the clerk and shall be considered for all purposes a civil judgment
18 against the defendant. This judgment shall not preclude a civil action by such a victim,
19 but monies paid by any defendant in restitution shall be credited toward any civil
20 judgment."

21 Sec. 6. G.S. 15A-1343(d) reads as rewritten:

22 "(d) Restitution as a Condition of Probation. – As a condition of probation, a
23 defendant ~~may~~ shall be required to make restitution or reparation to an aggrieved party or
24 parties who shall be named by the court for the damage or loss caused by the defendant
25 arising out of the offense or offenses committed by the defendant. The court shall fix an
26 amount which will adequately compensate each aggrieved party. The court shall then
27 order full payment or partial payment restitution as a condition of probation. ~~When~~
28 restitution or reparation is a condition imposed, ~~When determining the amount of restitution~~
29 to be paid as a condition of probation, the court shall take into consideration the resources
30 of the defendant, including all real and personal property owned by the defendant and the
31 income derived from such property, his ability to earn, his obligation to support
32 dependents, and such other matters as shall pertain to his ability to make restitution or
33 reparation, but the court is not required to make findings of fact or conclusions of law on
34 these matters when the sentence is imposed. The amount must be limited to that
35 supported by the record, and the court may order partial restitution or reparation when it
36 appears that the damage or loss caused by the offense or offenses is greater than that
37 which the defendant is able to pay. An order providing for restitution or reparation shall
38 in no way abridge the right of any aggrieved party to bring a civil action against the
39 defendant for money damages arising out of the offense or offenses committed by the
40 defendant, but any amount paid by the defendant under the terms of an order as provided
41 herein shall be credited against any judgment rendered against the defendant in such civil
42 action. As used herein, "restitution" shall mean (i) compensation for damage or loss as
43 could ordinarily be recovered by an aggrieved party in a civil action, and (ii)

1 reimbursement to the State for the total amount of a judgment authorized by G.S. 7A-
2 455(b). As used herein, "reparation" shall include but not be limited to the performing of
3 community services, volunteer work, or doing such other acts or things as shall aid the
4 defendant in his rehabilitation. As used herein "aggrieved party" includes individuals,
5 firms, corporations, associations, other organizations, and government agencies, whether
6 federal, State or local, including the Crime Victims Compensation Fund established by
7 G.S. 15B-23. Provided, that no government agency shall benefit by way of restitution
8 except for particular damage or loss to it over and above its normal operating costs and
9 except that the State may receive restitution for the total amount of a judgment authorized
10 by G.S. 7A-455(b). A government agency may benefit by way of reparation even though
11 the agency was not a party to the crime provided that when reparation is ordered,
12 community service work shall be rendered only after approval has been granted by the
13 owner or person in charge of the property or premises where the work will be done.
14 Provided further, that no third party shall benefit by way of restitution or reparation as a
15 result of the liability of that third party to pay indemnity to an aggrieved party for the
16 damage or loss caused by the defendant, but the liability of a third party to pay indemnity
17 to an aggrieved party or any payment of indemnity actually made by a third party to an
18 aggrieved party does not prohibit or limit in any way the power of the court to require the
19 defendant to make complete and full restitution or reparation to the aggrieved party for
20 the total amount of the damage or loss caused by the defendant. Restitution or reparation
21 measures are ancillary remedies to promote rehabilitation of criminal offenders, to
22 provide for compensation to victims of crime, and to reimburse the Crime Victims
23 Compensation Fund established by G.S. 15B-23, and shall not be construed to be a fine
24 or other punishment as provided for in the Constitution and laws of this State."

25 Sec. 7. Article 82 of Chapter 15A of the General Statutes is amended by
26 adding a new section to read:

27 **"§ 15A-1344.2. Garnishment for enforcement of restitution.**

28 (a) Notwithstanding any other provision of the law, in any case in which a
29 defendant is under a court judgment or has entered into a written agreement pursuant to
30 G.S. 15A-1344.2 or G.S. 15A-1344.3 to make restitution, a judge of the district or
31 superior court in the county where the defendant resides or is found, or in the county
32 where the victim resides or is found may enter an order of garnishment whereby no more
33 than twenty percent (20%) of the defendant's monthly disposable earnings shall be
34 garnished to pay the restitution. For purposes of this section, 'disposable earnings' means
35 as that part of the compensation paid or payable to the defendant for personal services,
36 whether denominated as wages, salary, commission, bonus, or otherwise, including
37 periodic payments pursuant to a pension, retirement, or other deferred compensation
38 program, which remains after the deduction of any amounts required by law to be
39 withheld. 'Garnishee' means the person, firm, association, or corporation by whom the
40 defendant is employed.

41 (b) The mother, father, custodian, or guardian of a child-victim or any designated
42 representative interested in the support of a child-victim, the victim, the probation officer,
43 district attorney, or Attorney General may move the court for an order of garnishment.

1 The motion shall be verified and shall state that the defendant is under court order or has
2 entered into a written agreement pursuant to G.S. 15A-1344.3 or G.S. 15A-1344.4 to pay
3 restitution. The motion shall state that said defendant is delinquent or not willfully
4 paying restitution or has been erratic in making restitution payments, the name and
5 address of the employer of the defendant, the defendant's monthly disposable earnings
6 from said employer, which may be based upon information and belief, and the amount
7 sought to be garnished, not to exceed twenty percent (20%) of the defendant's monthly
8 disposable earnings. The motion for the wage garnishment order along with a motion to
9 join the alleged employer as a third-party garnishee defendant shall be served on both the
10 defendant and the alleged employer in accordance with the provisions of G.S. 1A-1,
11 Rules of Civil Procedure. The time period for answering or otherwise responding to
12 pleadings, motions, and other papers issued pursuant to this section shall be in
13 accordance with the time periods set forth in G.S. 1A-1, Rules of Civil Procedure, except
14 that the alleged employer third-party garnishee shall have 10 days from the date of
15 service of process to answer both the motion to join him as a defendant garnishee and the
16 motion for the wage garnishment order.

17 (b1) In addition to the foregoing method for instituting a continuing wage
18 garnishment proceeding for restitution through motion, the mother, father, custodian, or
19 guardian of a child-victim or any designated representative interested in the support of a
20 dependent child, the victim, the probation officer, district attorney, or Attorney General
21 may in an independent proceeding petition the court for an order of continuing wage
22 garnishment. The petition shall be verified and shall state that the defendant is under
23 court order or has entered into a written agreement pursuant to G.S. 15A-1344.3 or G.S.
24 15A-1344.4 to make restitution, that said defendant is delinquent in such restitution or
25 has been erratic in making restitution payments, the name and address of the alleged
26 employer garnishee of the defendant, the defendant's monthly disposable earnings from
27 said employer, which may be based on information and belief, and the amount sought to
28 be garnished, not to exceed twenty percent (20%) of the defendant's monthly disposable
29 earnings. The petition shall be served on both the defendant and his alleged employer in
30 accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The
31 time period for answering or otherwise responding to process issued pursuant to this
32 section shall be in accordance with the time periods set forth in G.S. 1A-1, Rules of Civil
33 Procedure.

34 (c) Following the hearing held pursuant to this section, the court may enter an
35 order of garnishment not to exceed twenty percent (20%) of the defendant's monthly
36 disposable earnings. If an order of garnishment is entered, a copy of same shall be served
37 on the defendant and the garnishee either personally or by certified or registered mail,
38 return receipt requested. The order shall set forth sufficient findings of fact to support the
39 action by the court and the amount to be garnished for each pay period. The amount
40 garnished shall be increased by an additional one dollar (\$1.00) processing fee to be
41 assessed and retained by the employer for each payment under the order. The order shall
42 be subject to review for modification and dissolution upon the filing of a motion in the
43 cause.

1 (d) Upon receipt of an order of garnishment, the garnishee shall transmit without
2 delay to the clerk of superior court the amount ordered by the court to be garnished.
3 These funds shall be disbursed to the party designated by the court or provided by law.

4 (e) Any garnishee who violates the terms of an order of garnishment shall be
5 subject to punishment as for contempt."

6 Sec. 8. Article 82 of Chapter 15A of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 15A-1344.3. Assignment of wages for restitution.**

9 The court may require the defendant to execute an assignment of wages, salary, or
10 other income due or to become due whenever his employer's voluntary written
11 acceptance of the wage assignment under G.S. 95-31 is filed with the court. Such
12 acceptance remains effective until the employer files an express written revocation with
13 the court. The amount assigned shall be increased by an additional one dollar (\$1.00)
14 processing fee to be assessed and retained by the employer for each payment under the
15 order."

16 Sec. 9. Article 82 of Chapter 15A of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 15A-1344.4. Use of unemployment compensation benefits for restitution.**

19 (a) A defendant may voluntarily assign unemployment compensation benefits to
20 pay restitution. An assignment of less than the full amount of the restitution shall not
21 relieve the defendant of liability for the remaining amount.

22 (b) Upon notification of a voluntary assignment by the clerk of superior court, the
23 Employment Security Commission shall deduct and withhold the amount assigned by the
24 defendant as provided in G.S. 96-17.

25 (c) Any amount deducted and withheld shall be paid by the Employment Security
26 Commission to the clerk of superior court of the county wherein the restitution was
27 ordered for distribution as required by law.

28 (d) Voluntary assignment of unemployment compensation benefits shall remain
29 effective until the Employment Security Commission receives notification from the clerk
30 of superior court of an express written revocation by the defendant.

31 (e) The clerk of superior court shall ensure that payments received under this
32 section are properly credited against the defendant's restitution obligation.

33 (f) In the absence of a voluntary assignment of unemployment compensation
34 benefits, the clerk of superior court shall implement income withholding as provided in
35 this Article for IV-D cases. The amount withheld shall not exceed twenty percent (20%)
36 of the unemployment compensation benefits. Notice of the requirement to withhold shall
37 be served upon the Employment Security Commission and payment shall be made by the
38 Employment Security Commission directly to the clerk of superior court pursuant to G.S.
39 96-17."

40 Sec. 10. G.S. 15A-1372 reads as rewritten:

41 **"§ 15A-1372. Length and effect of parole term.**

42 (a) Term of Parole. – The term of parole for any person released from
43 imprisonment may be no greater than one year.

1 (b) Repealed by Session Laws 1993, c. 538, s. 23, effective October 1, 1994.

2 (c) Termination of Sentence. – When a parolee completes his period of parole, the
3 sentence or sentences from which he was paroled are terminated.

4 (d) Repealed by Session Laws 1993, c. 538, s. 23, effective October 1, 1994.

5 (e) Notwithstanding the provisions of subsection (a) of this section, the term of
6 parole may be extended to more than twice the lengths set forth in subsection (a) of this
7 section in order to require the person to pay restitution to any aggrieved party."

8 Sec. 11. 148-33.2 reads as rewritten:

9 "**§ 148-33.2. Restitution by prisoners with work-release privileges.**

10 (a) Repealed by Session Laws 1985, c. 474, s. 4.

11 (b) As a rehabilitative measure, the Secretary of the Department of Correction is
12 ~~authorized to~~ shall require any prisoner granted work-release privileges to make restitution
13 or reparation to an aggrieved party from any earnings gained by the defendant while on
14 work release when the sentencing court ~~recommends that~~ establishes an amount of
15 restitution or reparation be paid by the defendant out of any earnings gained by the defendant if
16 he is granted work-release privileges and out of other resources of the defendant, including all
17 real and personal property owned by the defendant and the income derived from such property.
18 to be paid by the prisoner. The Secretary shall consider the amount of earnings gained by
19 work-release privileges and other resources of the defendant, including all real and
20 personal property by the defendant and the income derived from the property. The
21 Secretary shall not be bound by such recommendation, but if they elect not to implement the
22 recommendation, they shall state in writing the reasons therefor, and shall forward the same to
23 the sentencing court.

24 (c) ~~When an active sentence is imposed, the court shall consider whether, as a~~
25 ~~rehabilitative measure, it should recommend to the Secretary of Correction that restitution~~
26 ~~or reparation be made by the defendant out of any earnings gained by the defendant if he~~
27 ~~is granted work-release privileges and out of other resources of the defendant, including~~
28 ~~all real and personal property owned by the defendant, and income derived from such~~
29 ~~property. If the court determines that restitution or reparation should not be~~
30 ~~recommended, it shall so indicate on the commitment. If, however, the court determines~~
31 ~~that restitution or reparation should be recommended, the court shall make its~~
32 ~~recommendation a part of the order committing the defendant to custody. The~~
33 ~~recommendation shall be in accordance with the applicable provisions of G.S. 15A-~~
34 ~~1343(d). If the offense is one in which there is evidence of physical, mental or sexual~~
35 ~~abuse of a minor, the court may order the defendant to pay from work-release earnings~~
36 ~~the cost of rehabilitative treatment for the minor. The Administrative Office of the Courts~~
37 ~~shall prepare and distribute forms which provide ample space to make restitution or~~
38 ~~reparation recommendations incident to commitments, which forms shall be conveniently~~
39 ~~structured to enable the sentencing court to make its recommendation.~~

40 (d) The Secretary of the Department of Correction shall establish rules and
41 regulations to implement this section, which shall include adequate notice to the prisoner
42 that the payment of restitution or reparation from any earnings gained by the prisoner
43 while on work release is being considered as a condition of any work-release privileges

1 granted the prisoner, and opportunity for the prisoner to be heard. Such rules and
2 regulations shall also provide additional methods whereby facts may be obtained to
3 supplement the recommendation of the sentencing court."

4 Sec. 12. Article 3 of Chapter 148 of the General Statutes is amended by
5 adding a new section to read:

6 **"§ 148-33.3. Restitution by incarcerated prisoners.**

7 As a rehabilitative measure, the Secretary of the Department of Correction shall
8 require all prisoners to make restitution or reparation to any aggrieved party from any
9 earnings, gifts, benefits, or real or personal property owned by the prisoner other than
10 monies received by or available to the prisoner while incarcerated. The amount of
11 restitution or reparation contained in the sentencing court judgment shall be binding on
12 the Secretary. The Secretary of the Department of Correction shall adopt rules for
13 implementation of this section."

14 Sec. 13. G.S. 148-57.1 reads as rewritten:

15 **"§ 148-57.1. Restitution as a condition of parole or post-release supervision.**

16 (a) Repealed by Session Laws 1985, c. 474, s. 5.

17 (b) As a rehabilitative measure, the Post-Release Supervision and Parole
18 Commission ~~is authorized to~~ shall require a prisoner to whom parole or post-release
19 supervision is granted to make restitution or reparation to an aggrieved party as a
20 condition of parole or post-release supervision when the sentencing court ~~recommends that~~
21 ~~restitution or reparation to an aggrieved party be made a condition of any parole or post-release~~
22 ~~supervision granted the defendant.~~ establishes an amount of restitution. When imposing
23 restitution as a condition and setting up a payment schedule for the restitution, the Post-
24 Release Supervision and Parole Commission shall take into consideration the resources
25 of the defendant, including all real and personal property owned by the defendant and the
26 income derived from such property, his ability to earn, and his obligation to support
27 dependents. ~~The Post-Release Supervision and Parole Commission shall not be bound by such~~
28 ~~recommendation, but if it elects not to implement the recommendation, it shall state in writing~~
29 ~~the reasons therefor, and shall forward the same to the sentencing court.~~

30 (c) ~~When an active sentence is imposed, the court shall consider whether, as a~~
31 ~~rehabilitative measure, it should recommend to the Post-Release Supervision and Parole~~
32 ~~Commission that restitution or reparation by the defendant be made a condition of any~~
33 ~~parole or post-release supervision granted the defendant. If the court determines that~~
34 ~~restitution or reparation should not be recommended, it shall so indicate on the~~
35 ~~commitment. If, however, the court determines that restitution or reparation should be~~
36 ~~recommended, the court shall make its recommendation a part of the order committing~~
37 ~~the defendant to custody. The recommendation shall be in accordance with the~~
38 ~~applicable provisions of G.S. 15A-1343(d). The Administrative Office of the Courts~~
39 ~~shall prepare and distribute forms which provide ample space to make restitution or~~
40 ~~reparation recommendations incident to commitments, which forms shall be conveniently~~
41 ~~structured to enable the sentencing court to make its recommendation.~~

1 ~~If the offense is one in which there is evidence of physical, mental or sexual abuse of~~
2 ~~a minor, the court may order, as a condition of parole or post-release supervision, that the~~
3 ~~defendant pay the cost of any rehabilitative treatment for the minor.~~

4 (d) The Post-Release Supervision and Parole Commission shall establish rules and
5 regulations to implement this section, which shall include adequate notice to the prisoner
6 that the payment of restitution or reparation by the prisoner is being considered as a
7 condition of any parole or post-release supervision granted the prisoner, and opportunity
8 for the prisoner to be heard. Such rules and regulations shall also provide additional
9 methods whereby facts may be obtained to supplement the recommendation of the
10 sentencing court."

11 Sec. 14. This act becomes effective December 1, 1995, as follows:

12 (1) Sections 1, 2, 4, and 5 apply to any defendant sentenced or judgment
13 entered on or after that date; and

14 (2) Sections 3, 6, 7, 8, 9, 10, 11, 12, and 13 shall apply to any defendant
15 owing restitution on or after that date.