

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 324

Short Title: Fee/Victims Compensation Fund/AB.

(Public)

Sponsors: Senators Rand, Perdue, Gulley, Cooper, Winner, Martin of Guilford, Warren, Dannelly, Albertson, Martin of Pitt, Hoyle, Kerr, Soles, Speed, Lucas, Simpson, Ballance, Parnell, Sherron, Odom, Hobbs, Edwards, Hartsell, East, Forrester, Plyler, Jordan, Carrington, Davis, Cochrane, Conder, Plexico, Ballantine, Horton, Little, and Webster.

Referred to: Judiciary II/Election Laws

March 8, 1995

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT A COURT MAY ORDER PAYMENT OF A FEE TO
2 THE VICTIMS COMPENSATION FUND BY A DEFENDANT PLACED ON
3 PROBATION.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 15A-1343 reads as rewritten:

7 "**§ 15A-1343. Conditions of probation.**

8 (a) In General. – The court may impose conditions of probation reasonably
9 necessary to insure that the defendant will lead a law-abiding life or to assist him to do
10 so.

11 (b) Regular Conditions. – As regular conditions of probation, a defendant must:

12 (1) Commit no criminal offense in any jurisdiction.

13 (2) Remain within the jurisdiction of the court unless granted written
14 permission to leave by the court or his probation officer.

15 (3) Report as directed by the court or his probation officer to the officer at
16 reasonable times and places and in a reasonable manner, permit the

- 1 officer to visit him at reasonable times, answer all reasonable inquiries
2 by the officer and obtain prior approval from the officer for, and notify
3 the officer of, any change in address or employment.
- 4 (4) Satisfy child support and other family obligations as required by the
5 court. If the court requires the payment of child support, the amount of
6 the payments shall be determined as provided in G.S. 50-13.4(c).
- 7 (5) Possess no firearm, explosive device or other deadly weapon listed in
8 G.S. 14-269 without the written permission of the court.
- 9 (6) Pay a supervision fee as specified in subsection (c1).
- 10 (7) Remain gainfully and suitably employed or faithfully pursue a course of
11 study or of vocational training that will equip him for suitable
12 employment. A defendant pursuing a course of study or of vocational
13 training shall abide by all of the rules of the institution providing the
14 education or training, and the probation officer shall forward a copy of
15 the probation judgment to that institution and request to be notified of
16 any violations of institutional rules by the defendant.
- 17 (8) Notify the probation officer if he fails to obtain or retain satisfactory
18 employment.
- 19 (9) Pay the costs of court, any fine ordered by the court, and make
20 restitution or reparation as provided in subsection (d).
- 21 (10) Pay the State of North Carolina for the costs of appointed counsel,
22 public defender, or appellate defender to represent him in the case(s) for
23 which he was placed on probation.
- 24 (11) At a time to be designated by his probation officer, visit with his
25 probation officer a facility maintained by the Division of Prisons.
- 26 (12) Pay a Crime Victims Compensation Fund fee as provided in subsection
27 (c2) of this section.

28 In addition to these regular conditions of probation, a defendant required to serve an
29 active term of imprisonment as a condition of special probation pursuant to G.S. 15A-
30 1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey
31 the rules and regulations of the Department of Correction governing the conduct of
32 inmates while imprisoned and report to a probation officer in the State of North Carolina
33 within 72 hours of his discharge from the active term of imprisonment.

34 Regular conditions of probation apply to each defendant placed on supervised
35 probation unless the presiding judge specifically exempts the defendant from one or more
36 of the conditions in open court and in the judgment of the court. It is not necessary for
37 the presiding judge to state each regular condition of probation in open court, but the
38 conditions must be set forth in the judgment of the court.

39 Defendants placed on unsupervised probation are subject to the provisions of this
40 subsection, except that defendants placed on unsupervised probation are not subject to the
41 regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

1 (b1) Special Conditions. – In addition to the regular conditions of probation
2 specified in subsection (b), the court may, as a condition of probation, require that during
3 the probation the defendant comply with one or more of the following special conditions:

4 (1) Undergo available medical or psychiatric treatment and remain in a
5 specified institution if required for that purpose.

6 (2) Attend or reside in a facility providing rehabilitation, counseling,
7 treatment, social skills, or employment training, instruction, recreation,
8 or residence for persons on probation.

9 (2a) Submit to a period of imprisonment in a facility for youthful offenders
10 for a minimum of 90 days or a maximum of 120 days under special
11 probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide
12 by all rules and regulations as provided in conjunction with the
13 Intensive Motivational Program of Alternative Correctional Treatment
14 (IMPACT), which provides an atmosphere for learning personal
15 confidence, personal responsibility, self-respect, and respect for
16 attitudes and value systems.

17 (3) Submit to imprisonment required for special probation under G.S. 15A-
18 1351(a) or G.S. 15A-1344(e).

19 (3a) Remain in one or more specified places for a specified period or periods
20 each day, and wear a device that permits the defendant's compliance
21 with the condition to be monitored electronically.

22 (3b) Submit to supervision by officers assigned to the Intensive Probation
23 Program established pursuant to G.S. 143B-262(c), and abide by the
24 rules adopted for that Program.

25 (4) Surrender his driver's license to the clerk of superior court, and not
26 operate a motor vehicle for a period specified by the court.

27 (5) Compensate the Department of Environment, Health, and Natural
28 Resources or the North Carolina Wildlife Resources Commission, as the
29 case may be, for the replacement costs of any marine and estuarine
30 resources or any wildlife resources which were taken, injured, removed,
31 harmfully altered, damaged or destroyed as a result of a criminal offense
32 of which the defendant was convicted. If any investigation is required
33 by officers or agents of the Department of Environment, Health, and
34 Natural Resources or the Wildlife Resources Commission in
35 determining the extent of the destruction of resources involved, the
36 court may include compensation of the agency for investigative costs as
37 a condition of probation. This subdivision does not apply in any case
38 governed by G.S. 143-215.3(a)(7).

39 (6) Perform community or reparation service and pay any fee required by
40 law or ordered by the court for participation in the community or
41 reparation service program.

42 (7) Submit at reasonable times to warrantless searches by a probation
43 officer of his person and of his vehicle and premises while he is present,

1 for purposes specified by the court and reasonably related to his
2 probation supervision, but the probationer may not be required to
3 submit to any other search that would otherwise be unlawful. Whenever
4 the warrantless search consists of testing for the presence of illegal
5 drugs, the probationer may also be required to reimburse the
6 Department of Correction for the actual cost of drug screening and drug
7 testing, if the results are positive.

8 (8) Not use, possess, or control any illegal drug or controlled substance
9 unless it has been prescribed for him by a licensed physician and is in
10 the original container with the prescription number affixed on it; not
11 knowingly associate with any known or previously convicted users,
12 possessors or sellers of any such illegal drugs or controlled substances;
13 and not knowingly be present at or frequent any place where such illegal
14 drugs or controlled substances are sold, kept, or used.

15 (8a) Purchase the least expensive annual statewide license or combination of
16 licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-
17 270.5, 113-271, 113-272, and 113-272.2 that would be required to
18 engage lawfully in the specific activity or activities in which the
19 defendant was engaged and which constitute the basis of the offense or
20 offenses of which he was convicted.

21 (9) If the offense is one in which there is evidence of physical, mental or
22 sexual abuse of a minor, the court should encourage the minor and the
23 minor's parents or custodians to participate in rehabilitative treatment
24 and may order the defendant to pay the cost of such treatment.

25 (10) Satisfy any other conditions determined by the court to be reasonably
26 related to his rehabilitation.

27 (c) Statement of Conditions. – A defendant released on supervised probation must
28 be given a written statement explicitly setting forth the conditions on which he is being
29 released. If any modification of the terms of that probation is subsequently made, he
30 must be given a written statement setting forth the modifications.

31 (c1) Supervision Fee. – Any person placed on supervised probation pursuant to
32 subsection (a) shall pay a supervision fee of twenty dollars (\$20.00) per month, unless
33 exempted by the court. The court may exempt a person from paying the fee only for
34 good cause and upon written motion of the person placed on supervised probation. No
35 person shall be required to pay more than one supervision fee per month. The court may
36 require that the fee be paid in advance or in a lump sum or sums, and a probation officer
37 may require payment by such methods if he is authorized by subsection (g) to determine
38 the payment schedule. Supervision fees must be paid to the clerk of court for the county
39 in which the judgment was entered or the deferred prosecution agreement was filed. Fees
40 collected under this subsection shall be transmitted to the State for deposit into the State's
41 General Fund.

42 (c2) Crime Victims Compensation Fund Fee. - Any person placed on probation
43 pursuant to subsection (a) shall pay a Crime Victims Compensation Fund fee of twenty

1 dollars (\$20.00). This fee shall be paid in advance and in a lump sum. The fee shall be
2 paid to the clerk of court for the county in which the judgment was entered or in which
3 the deferred prosecution agreement was filed. Fees collected under this subsection shall
4 be transmitted to the State for deposit in the Crime Victims Compensation Fund
5 established pursuant to G.S. 15B-23.

6 (d) Restitution as a Condition of Probation. – As a condition of probation, a
7 defendant may be required to make restitution or reparation to an aggrieved party or
8 parties who shall be named by the court for the damage or loss caused by the defendant
9 arising out of the offense or offenses committed by the defendant. When restitution or
10 reparation is a condition imposed, the court shall take into consideration the resources of
11 the defendant, including all real and personal property owned by the defendant and the
12 income derived from such property, his ability to earn, his obligation to support
13 dependents, and such other matters as shall pertain to his ability to make restitution or
14 reparation, but the court is not required to make findings of fact or conclusions of law on
15 these matters when the sentence is imposed. The amount must be limited to that
16 supported by the record, and the court may order partial restitution or reparation when it
17 appears that the damage or loss caused by the offense or offenses is greater than that
18 which the defendant is able to pay. An order providing for restitution or reparation shall
19 in no way abridge the right of any aggrieved party to bring a civil action against the
20 defendant for money damages arising out of the offense or offenses committed by the
21 defendant, but any amount paid by the defendant under the terms of an order as provided
22 herein shall be credited against any judgment rendered against the defendant in such civil
23 action. As used herein, 'restitution' shall mean (i) compensation for damage or loss as
24 could ordinarily be recovered by an aggrieved party in a civil action, and (ii)
25 reimbursement to the State for the total amount of a judgment authorized by G.S. 7A-
26 455(b). As used herein, 'reparation' shall include but not be limited to the performing of
27 community services, volunteer work, or doing such other acts or things as shall aid the
28 defendant in his rehabilitation. As used herein 'aggrieved party' includes individuals,
29 firms, corporations, associations, other organizations, and government agencies, whether
30 federal, State or local, including the Crime Victims Compensation Fund established by
31 G.S. 15B-23. Provided, that no government agency shall benefit by way of restitution
32 except for particular damage or loss to it over and above its normal operating costs and
33 except that the State may receive restitution for the total amount of a judgment authorized
34 by G.S. 7A-455(b). A government agency may benefit by way of reparation even though
35 the agency was not a party to the crime provided that when reparation is ordered,
36 community service work shall be rendered only after approval has been granted by the
37 owner or person in charge of the property or premises where the work will be done.
38 Provided further, that no third party shall benefit by way of restitution or reparation as a
39 result of the liability of that third party to pay indemnity to an aggrieved party for the
40 damage or loss caused by the defendant, but the liability of a third party to pay indemnity
41 to an aggrieved party or any payment of indemnity actually made by a third party to an
42 aggrieved party does not prohibit or limit in any way the power of the court to require the
43 defendant to make complete and full restitution or reparation to the aggrieved party for

1 the total amount of the damage or loss caused by the defendant. Restitution or reparation
2 measures are ancillary remedies to promote rehabilitation of criminal offenders, to
3 provide for compensation to victims of crime, and to reimburse the Crime Victims
4 Compensation Fund established by G.S. 15B-23, and shall not be construed to be a fine
5 or other punishment as provided for in the Constitution and laws of this State.

6 (e) Costs of Court and Appointed Counsel. – Unless the court finds there are
7 extenuating circumstances, any person placed upon supervised or unsupervised probation
8 under the terms set forth by the court shall, as a condition of probation, be required to pay
9 all court costs and costs for appointed counsel or public defender in the case in which he
10 was convicted. The court shall determine the amount due and the method of payment.

11 (f) Repealed by Session Laws 1983, ch. 561, s. 5.

12 (g) Probation Officer May Determine Payment Schedules. – If a person placed on
13 supervised probation is required as a condition of that probation to pay any moneys to the
14 clerk of superior court, the court may delegate to a probation officer the responsibility to
15 determine the payment schedule. The court may also authorize the probation officer to
16 transfer the person to unsupervised probation after all the moneys are paid to the clerk. If
17 the probation officer transfers a person to unsupervised probation, he must notify the
18 clerk of that action."

19 Sec. 2. This act becomes effective December 1, 1995, and applies to any
20 person placed on probation on or after that date.