

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 403

Short Title: Require Restitution If Possible.

(Public)

Sponsors: Senators Odom and Carpenter.

Referred to: Judiciary I/Constitution

March 20, 1995

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE VICTIM IMPACT STATEMENTS, TO PROVIDE THAT A
2 VICTIM MAY EXPECT RESTITUTION BE ORDERED AS A CONDITION OF
3 PROBATION WHEN APPROPRIATE, TO MAKE RESTITUTION A TOP
4 PRIORITY WHEN DISBURSING COURT COLLECTED FUNDS, AND TO
5 EXTEND THE MAXIMUM AMOUNT OF TIME A PERSON CAN BE PLACED
6 ON PROBATION TO PAY RESTITUTION.
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8 The General Assembly of North Carolina enacts:

9 Section 1. Chapter 15A of the General Statutes is amended by adding a new
10 section to read:

11 "**§ 15A-825.1. Victim impact statements.**

12 Notwithstanding the provisions of G.S. 15A-825, the district attorney shall seek to
13 obtain from each victim of a crime, as defined in this Article, a victim impact statement
14 and present it to the court."

15 Sec. 2. G.S. 15A-826 reads as rewritten:

16 "**§ 15A-826. Victim and witness assistants.**

17 Victim and witness assistants are responsible for coordinating efforts within the law-
18 enforcement and judicial systems to assure that each victim and witness is treated in
19 accordance with this Article. Victim and witness assistants are also responsible for
20 providing assistance to victims in completing victim impact statements."

1 Sec. 3. G.S. 15A-1343(d) reads as rewritten:

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

1 crime, and to reimburse the Crime Victims Compensation Fund established by G.S. 15B-
2 23, and shall not be construed to be a fine or other punishment as provided for in the
3 Constitution and laws of this State."

4 Sec. 4. G.S. 15A-825 is amended by adding a new subdivision to read:

5 "(9b) Can expect, after court review of a victim impact statement, that a
6 judge would order restitution in all cases where it is appropriate."

7 Sec. 5. G.S. 7A-304(d) reads as rewritten:

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) Sums in restitution prorated among the persons entitled to
13 restitution;

14 ~~(1)~~(2) Costs due the county;

15 ~~(2)~~(3) Costs due the city;

16 ~~(3)~~(4) Fines to the county school fund;

17 (4) ~~Sums in restitution prorated among the persons entitled thereto;~~

18 (5) Costs due the State;

19 (6) Attorney's fees.

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

21 (1) Complete restitution has been received; or

22 (2) When, in the opinion of the clerk, additional payments in restriction
23 will not be collected; or

24 (3) Upon the request of the person or persons entitled thereto; and

25 (4) In any event, at least once each calendar year."

26 Sec. 6. G.S. 15A-1342(a) reads as rewritten:

27 "(a) Period. – The court may place a convicted offender on probation for the
28 appropriate period as specified in G.S. 15A-1343.2(d), not to exceed a maximum of five
29 years. The court may place a defendant as to whom prosecution has been deferred on
30 probation for a maximum of two years. The probation remains conditional and subject to
31 revocation during the period of probation imposed, unless terminated as provided in
32 subsection (b) or G.S. 15A-1341(c).

33 Extension. – The court with the consent of the defendant may extend the period of
34 probation beyond the original period (i) for the purpose of allowing the defendant to
35 complete a program of restitution, or (ii) to allow the defendant to continue medical or
36 psychiatric treatment ordered as a condition of the probation. If the offender was
37 convicted, then the ~~The~~ period of extension shall not exceed three-five years beyond the
38 original period of probation. If prosecution was deferred, then the period of extension
39 shall not exceed three years beyond the original period of probation. The special
40 extension authorized herein may be ordered only in the last six months of the original
41 period of probation. Any probationary judgment form provided to a defendant on
42 supervised probation shall state that probation may be extended pursuant to this
43 subsection."

1 Sec. 7. G.S. 15A-1343.2(d) reads as rewritten:

2 "(d) Lengths of Probation Terms Under Structured Sentencing. – Unless the court
3 makes specific findings that longer or shorter periods of probation are necessary, the
4 length of the original period of probation for offenders sentenced under Article 81B shall
5 be as follows:

- 6 (1) For misdemeanants sentenced to community punishment, not less
7 than six nor more than 18 months;
8 (2) For misdemeanants sentenced to intermediate punishment, not less
9 than 12 nor more than 24 months;
10 (3) For felons sentenced to community punishment, not less than 12 nor
11 more than 30 months; and
12 (4) For felons sentenced to intermediate punishment, not less than 18
13 nor more than 36 months.

14 If the court finds at the time of sentencing that a longer period of probation is
15 necessary, that period may not exceed a maximum of five years, as specified in G.S.
16 15A-1342 and G.S. 15A-1351.

17 Extension. – The court may with the consent of the offender extend the original
18 period of the probation if necessary to complete a program of restitution or to complete
19 medical or psychiatric treatment ordered as a condition of probation. This extension may
20 be for no more than ~~three~~ five years, and may only be ordered in the last six months of the
21 original period of probation."

22 Sec. 8. This act becomes effective December 1, 1995, and applies to offenses
23 committed on or after that date.