

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 788
Committee Substitute Favorable 7/27/05

Short Title: Crime Victims Restitution Improvement Act.

(Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

1 AN ACT TO IMPROVE THE COLLECTION AND DISTRIBUTION OF
2 RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA AND TO
3 DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY
4 THIRD-PARTY COLLECTION FOR THE COLLECTION OF RESTITUTION
5 AND OTHER COURT COSTS.
6

7 The General Assembly of North Carolina enacts:

8 RESTITUTION FOR FUNERAL EXPENSES MANDATORY

9 **SECTION 1.** G.S. 15A-1340.36(b) reads as rewritten:

10 "(b) ~~The court may require the defendant to make full restitution no later than a~~
11 ~~certain date or, if the circumstances warrant, may allow the defendant to make~~
12 ~~restitution in installments over a specified time period.~~Funeral and Burial Expenses
13 Mandatory. – When a defendant is convicted of an offense that proximately resulted in
14 the death of a victim, the amount of restitution shall always include all necessary
15 expenses incurred by or on behalf of the victim's estate for funeral and burial expenses
16 and related services, including the cost of a headstone, if any."

17 ABILITY TO PAY NOT A FACTOR IN DETERMINING AMOUNT OF
18 RESTITUTION

19 **SECTION 2.1.** G.S. 15A-1340.34 reads as rewritten:

20 "**§ 15A-1340.34. Restitution generally.**

21 (a) When sentencing a defendant convicted of a criminal offense, the court shall
22 determine whether the defendant shall be ordered to make restitution to any victim of
23 the offense in question. For purposes of this Article, the term "victim" means a person
24 directly and proximately harmed as a result of the defendant's commission of the
25 criminal offense.

26 (b) If the defendant is being sentenced for an offense for which the victim is
27 entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any
28 penalty authorized by law, ~~require that the defendant make restitution to the victim or~~
29 ~~the victim's estate for any injuries or damages arising directly and proximately out of~~

1 the offense committed by the defendant. If the defendant is placed on probation or
2 post-release supervision, any restitution ordered under this subsection shall be a
3 condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release
4 supervision as provided in G.S. 148-57.1; law:

5 (1) Enter a judgment against the defendant in favor of the victim or the
6 victim's estate under G.S. 15A-1340.38 for the full amount of the
7 restitution, which shall be determined in accordance with
8 G.S. 15A-1340.35 and G.S. 15A-1340.36(a);

9 (2) If the defendant is placed on probation, require payment of restitution
10 as a condition of probation, in the amount which the court determines
11 the defendant is able to pay as provided in G.S. 15A-1340.36.1(b); and

12 (3) If the defendant is sentenced to active punishment, recommend that the
13 defendant be required to pay restitution out of work release earnings
14 and as a condition of post-release supervision.

15 (c) When subsection (b) of this section does not apply, the court may, in addition
16 to any other penalty authorized by law, require that the defendant make restitution to ~~the~~
17 ~~victim or the victim's estate~~ any other person for any injuries or damages arising directly
18 and proximately out of the offense committed by the ~~defendant.~~ defendant, but no
19 judgment shall be entered under G.S. 15A-1340.38 in favor of the person and the
20 remedies in G.S. 15A-1340.39 and G.S. 15A-1340.40 shall not apply."

21 **SECTION 2.2.** G.S. 15A-1340.36, as amended by Section 1 of this act,
22 reads as rewritten:

23 "**§ 15A-1340.36. Determination of restitution.**~~the amount of restitution due each~~
24 **victim; entry of civil judgment.**

25 (a) Amount of Restitution. – ~~In determining the amount of restitution to be made,~~
26 ~~the court shall take into consideration the resources of the defendant including all real~~
27 ~~and personal property owned by the defendant and the income derived from the~~
28 ~~property, the defendant's ability to earn, the defendant's obligation to support~~
29 ~~dependents, and any other matters that pertain to the defendant's ability to make~~
30 ~~restitution, but the court is not required to make findings of fact or conclusions of law~~
31 ~~on these matters. The amount of restitution must be limited to that supported by the~~
32 ~~record, and the court may order partial restitution when it appears that the damage or~~
33 ~~loss caused by the offense is greater than that which the defendant is able to pay. If the~~
34 ~~court orders partial restitution, the court shall state on the record the reasons for such an~~
35 ~~order.~~ The court shall determine the total amount of restitution to which each victim is
36 entitled considering only the factors specified in G.S. 15A-1340.35. The court shall not
37 consider the defendant's ability to pay in making this determination. The total amount of
38 the restitution must be limited to that supported by the record.

39 (b) Funeral and Burial Expenses Mandatory. – When a defendant is convicted of
40 an offense that proximately resulted in the death of a victim, the amount of restitution
41 shall always include all necessary expenses incurred by or on behalf of the victim's
42 estate for funeral and burial expenses and related services, including the cost of a
43 headstone, if any.

1 (c) ~~When an active sentence is imposed, the court shall consider whether it~~
2 ~~should recommend to the Secretary of Correction that restitution be made by the~~
3 ~~defendant out of any earnings gained by the defendant if the defendant is granted~~
4 ~~work-release privileges, as provided in G.S. 148-33.2. The court shall also consider~~
5 ~~whether it should recommend to the Post-Release Supervision and Parole Commission~~
6 ~~that restitution by the defendant be made a condition of any parole or post-release~~
7 ~~supervision granted the defendant, as provided in G.S. 148-57.1.~~Entry of Judgment. –
8 Upon determining the total amount of restitution owed to each victim, the court shall
9 enter a judgment in accordance with G.S. 15A-1340.38 in favor of each victim and
10 against the defendant for that amount."

11 **SECTION 2.3.** Article 81C of Chapter 15A of the General Statutes is
12 amended by adding a new section to read:

13 **"§ 15A-1340.36.1. Determination of restitution payment schedule.**

14 (a) Payment Upon Sentencing. – If, at the time of sentencing, the defendant is
15 able to pay all or any portion of the total amount of restitution ordered pursuant to
16 G.S. 15A-1340.36, the court shall require payment of that amount by 5:00 P.M. of the
17 day on which the defendant is sentenced. The court shall establish a schedule of
18 payments for the remainder of that total in accordance with this section.

19 (b) Payment While on Probation. – If the defendant is placed on supervised or
20 unsupervised probation, the court shall:

21 (1) Determine the portion of the total amount of restitution ordered that
22 the defendant will be able to pay during the term of probation.

23 (2) Require as a condition of probation that the defendant pay the entire
24 portion that the defendant is able to pay. If the defendant is able to pay
25 the total amount of restitution ordered, the court shall require payment
26 of that total. If the defendant is able to pay only a portion of that total,
27 the court shall require payment of that entire portion.

28 (3) Establish a schedule of payments or other method of payment that
29 assures that the defendant will, before the end of the term of probation,
30 pay the entire portion that the defendant is able to pay or delegate to a
31 probation officer the authority to do so.

32 (c) Payment While Serving Active Sentence. – If the defendant is sentenced to an
33 active sentence and the court recommends that the defendant pay restitution out of work
34 release earnings, the court shall enter in the sentencing judgment the total amount of
35 restitution, as determined under G.S. 15A-1340.36, but shall not specify the portion to
36 be paid out of work release earnings. At the time when the defendant is granted work
37 release privileges, the Department of Correction shall:

38 (1) Determine the portion of the total restitution that the defendant will be
39 able to pay from work release earnings.

40 (2) Deduct from the defendant's work release earnings and apply, as
41 provided in G.S. 148-33.2, the entire portion of restitution that the
42 defendant is able to pay. If the defendant is able to pay the total
43 amount of restitution, the Department shall require payment of that

1 total. If the defendant is able to pay only a portion of that total, the
2 Department shall require payment of that entire portion.

3 (d) Payment While on Post-Release Supervision. – If the defendant is sentenced
4 to an active sentence and the court recommends that the defendant pay restitution as a
5 condition of release under post-release supervision, the court shall enter in the
6 sentencing judgment the total amount of restitution, as determined under
7 G.S. 15A-1340.36, but shall not specify the portion to be paid as a condition of release
8 under post-release supervision. At the time when the defendant is released under
9 post-release supervision, the Parole and Post-Release Supervision Commission shall:

10 (1) Determine the portion of the total restitution that the defendant will be
11 able to pay during the term of post-release supervision.

12 (2) Require as a condition of release under post-release supervision that
13 the defendant pay the entire portion that the defendant is able to pay. If
14 the defendant is able to pay the total amount ordered, the Commission
15 shall require payment of that total. If the defendant is able to pay only
16 a portion of that total, the Commission shall require payment of that
17 entire portion.

18 (3) Establish a schedule of payments or other method of payment that
19 assures that the defendant will, before the end of the term of
20 post-release supervision, pay the entire amount that the defendant is
21 able to pay or delegate to a post-release supervision officer the
22 authority to do so.

23 (e) Factors for Determining Ability to Pay and Payment Schedule. – In
24 determining the defendant's ability to pay restitution and the manner in which the
25 restitution is to be made, all the resources of the defendant shall be taken into
26 consideration, including without limitation:

27 (1) All real and personal property owned by the defendant and the income
28 derived from the property.

29 (2) The defendant's present and potential future ability to earn,

30 (3) The defendant's obligation to support dependents,

31 (4) Restitution owed to other victims, and

32 (5) Any other matters that pertain to the defendant's ability to make
33 restitution.

34 The court is not required to make findings of fact or conclusions of law under this
35 subsection."

36 **SECTION 2.4.** G.S. 15A-1343(d) reads as rewritten:

37 "(d) Restitution as a Condition of Probation. – As a condition of probation, a
38 defendant may be required to make restitution or reparation to an aggrieved party or
39 parties who shall be named by the court for the damage or loss caused by the defendant
40 arising out of the offense or offenses committed by the defendant. ~~When restitution or~~
41 ~~reparation is a condition imposed~~ When a person is entitled to restitution under Article
42 46 of this Chapter, the court shall take into consideration the factors set out determine
43 and require payment of restitution as provided in G.S. 15A-1340.35 and
44 G.S. 15A-1340.36. G.S. 15A-1340.35, 15A-1340.36, and 15A-1340.36.1. As used herein,

1 "reparation" shall include but not be limited to the performing of community services,
2 volunteer work, or doing such other acts or things as shall aid the defendant in his
3 rehabilitation. As used herein "aggrieved party" includes individuals, firms,
4 corporations, associations, other organizations, and government agencies, whether
5 federal, State or local, including the Crime Victims Compensation Fund established by
6 G.S. 15B-23. A government agency may benefit by way of reparation even though the
7 agency was not a party to the crime provided that when reparation is ordered,
8 community service work shall be rendered only after approval has been granted by the
9 owner or person in charge of the property or premises where the work will be done."

10 **SECTION 2.5.** G.S. 148-33.2 reads as rewritten:

11 **"§ 148-33.2. Restitution by prisoners with work-release privileges.**

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

13 (b) As a rehabilitative measure, the Secretary of the Department of Correction is
14 authorized to require any prisoner granted work-release privileges to make restitution or
15 reparation to an aggrieved party from any earnings gained by the defendant while on
16 work release when the sentencing court recommends that restitution or reparation be
17 paid by the defendant out of any earnings gained by the defendant if he is granted
18 work-release privileges and out of other resources of the defendant, including all real
19 and personal property owned by the defendant and the income derived from such
20 property. The—Except when restitution is recommended for a victim entitled to
21 restitution under Article 46 of Chapter 15A of the General Statutes, the Secretary shall
22 not be bound by such recommendation, but if they elect not to implement the
23 recommendation, they shall state in writing the reasons therefor, and shall forward the
24 same to the sentencing court.

25 (c) When an active sentence is imposed, the court shall consider whether, as a
26 rehabilitative measure, it should recommend to the Secretary of Correction that
27 restitution or reparation be made by the defendant out of any earnings gained by the
28 defendant if he is granted work-release privileges and out of other resources of the
29 defendant, including all real and personal property owned by the defendant, and income
30 derived from such property. If the court determines that restitution or reparation should
31 not be recommended, it shall so indicate on the commitment. If, however, the court
32 determines that restitution or reparation should be recommended, the court shall make
33 its recommendation a part of the order committing the defendant to custody. The
34 recommendation shall be in accordance with the applicable provisions of
35 G.S. 15A-1343(d) and Article 81C of Chapter 15A of the General Statutes. If the
36 offense is one in which there is evidence of physical, mental or sexual abuse of a minor,
37 the court may order the defendant to pay from work release earnings the cost of
38 rehabilitative treatment for the minor. The Administrative Office of the Courts shall
39 prepare and distribute forms which provide ample space to make restitution or
40 reparation recommendations incident to commitments, which forms shall be
41 conveniently structured to enable the sentencing court to make its recommendation.

42 (d) The Secretary of the Department of Correction shall establish rules and
43 regulations to implement this section, which shall include adequate notice to the
44 prisoner that the payment of restitution or reparation from any earnings gained by the

1 prisoner while on work release is being considered as a condition of any work-release
2 privileges granted the prisoner, and opportunity for the prisoner to be heard. Such rules
3 and regulations shall also provide additional methods whereby facts may be obtained to
4 supplement the recommendation of the sentencing court. When work release privileges
5 are granted to a prisoner who has been ordered to pay restitution to a victim entitled to
6 restitution under Article 46 of Chapter 15A of the General Statutes, the amount to be
7 deducted from the prisoner's work release earnings shall be determined as provided in
8 G.S. 15A-1340.35, 15A-1340.36, and 15A-1340.36.1, and that amount shall be so
9 deducted."

10 **SECTION 2.6.** G.S. 148-57.1 reads as rewritten:

11 "**§ 148-57.1. Restitution as a condition of parole or post-release supervision.**

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

13 (b) As a rehabilitative measure, the Post-Release Supervision and Parole
14 Commission is authorized to require a prisoner to whom parole or post-release
15 supervision is granted to make restitution or reparation to an aggrieved party as a
16 condition of parole or post-release supervision when the sentencing court recommends
17 that restitution or reparation to an aggrieved party be made a condition of any parole or
18 post-release supervision granted the defendant. When imposing restitution as a
19 condition and setting up a payment schedule for the restitution, the Post-Release
20 Supervision and Parole Commission shall take into consideration the resources of the
21 defendant, including all real and personal property owned by the defendant and the
22 income derived from such property, his ability to earn, and his obligation to support
23 dependents. ~~The~~ Except when restitution is recommended for a victim entitled to
24 restitution under Article 46 of Chapter 15A of the General Statutes, the Post-Release
25 Supervision and Parole Commission shall not be bound by such recommendation, but if
26 it elects not to implement the recommendation, it shall state in writing the reasons
27 therefor, and shall forward the same to the sentencing court.

28 (c) When an active sentence is imposed, the court shall consider whether, as a
29 rehabilitative measure, it should recommend to the Post-Release Supervision and Parole
30 Commission that restitution or reparation by the defendant be made a condition of any
31 parole or post-release supervision granted the defendant. If the court determines that
32 restitution or reparation should not be recommended, it shall so indicate on the
33 commitment. If, however, the court determines that restitution or reparation should be
34 recommended, the court shall make its recommendation a part of the order committing
35 the defendant to custody. The recommendation shall be in accordance with the
36 applicable provisions of Article 81C of Chapter 15A of the General Statutes. The
37 Administrative Office of the Courts shall prepare and distribute forms which provide
38 ample space to make restitution or reparation recommendations incident to
39 commitments, which forms shall be conveniently structured to enable the sentencing
40 court to make its recommendation.

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

1 (d) The Post-Release Supervision and Parole Commission shall establish rules
2 and regulations to implement this section, which shall include adequate notice to the
3 prisoner that the payment of restitution or reparation by the prisoner is being considered
4 as a condition of any parole or post-release supervision granted the prisoner, and
5 opportunity for the prisoner to be heard. Such rules and regulations shall also provide
6 additional methods whereby facts may be obtained to supplement the recommendation
7 of the sentencing court. When a prisoner is released under post-release supervision, the
8 Commission shall determine and require payment of restitution as provided in
9 G.S. 15A-1340.35, 15A-1340.36, and 15A-1340.36.1."

10 NO EARLY TERMINATION OF PROBATION UNTIL COMPLETION OF
11 RESTITUTION OBLIGATION

12 **SECTION 3.** G.S. 15A-1342(b) reads as rewritten:

13 "(b) Early Termination. – The court may terminate a period of probation and
14 discharge the defendant at any time earlier than that provided in subsection (a) if
15 warranted by the conduct of the defendant and the ends of ~~justice~~-justice, provided that
16 the court shall not terminate a period of probation or discharge the defendant at any time
17 earlier than that provided in subsection (a) unless the defendant has paid in full all
18 restitution payable, as a condition of probation, to a victim entitled to restitution under
19 Article 46 of this Chapter."

20 DISTRIBUTION OF RESTITUTION PAYMENTS TO VICTIM'S NEXT OF KIN
21 AFTER CLOSING OF ESTATE

22 **SECTION 4.** Article 21 of Chapter 28A of the General Statutes is amended
23 by adding a new section to read:

24 **"§ 28A-21-3.2. Restitution payments; list of next of kin.**

25 (a) The following definitions apply in this section:

26 (1) "Victim" means a victim as defined in G.S. 15A-830(a)(7).

27 (2) "Restitution payment" means any amount payable to a victim pursuant
28 to Article 81C of Chapter 15A of the General Statutes.

29 (3) "Next of kin" means any residuary beneficiary under the victim's will,
30 if any. If no will exists, then "next of kin" means the same as defined
31 in G.S. 15A-830(a)(6).

32 (b) A personal representative or collector of the estate of a victim may file, along
33 with a final account, a list of the victim's next of kin who are entitled to exercise the
34 victim's rights pursuant to G.S. 15A-830(b) if all of the following conditions are met:

35 (1) There are no unsatisfied creditors.

36 (2) There are no unsatisfied general monetary bequests.

37 (3) All assets other than any potential future restitution payments have
38 been distributed.

39 (c) A list of next of kin, signed under oath, must contain the following
40 information:

41 (1) The name and address of the personal representative or collector.

42 (2) The name and social security number of the decedent.

43 (3) The name and address, if known, of all next of kin who are entitled to
44 exercise the victim's rights pursuant to G.S. 15A-830(b).

1 (4) The share of each next of kin in the restitution payable to the victim.

2 (d) The clerk of superior court must review the list of next of kin to determine if
3 the listed next of kin and their shares of potential future restitution payments are in
4 accordance with the provisions of the victim's will, if any, and if no will exists, then in
5 accordance with the Intestate Succession Act. If so, the clerk shall accept the list of next
6 of kin for filing and endorse the clerk's approval thereon, which shall be prima facie
7 evidence of correctness.

8 (e) Upon determination by the clerk of superior court that the estate of a victim
9 has been closed, all restitution payments may be paid directly to those next of kin and in
10 those shares set forth on a list of next of kin filed under this section, without the estate's
11 having to be reopened under G.S. 28A-23-5.

12 (f) The estate of a decedent who is entitled to any restitution payment may be
13 reopened, if necessary, in accordance with G.S. 28A-23-5 in order to file a list of next of
14 kin under this section."

15 INCOME WITHHOLDING

16 **SECTION 5.1.** G.S. 15A-832 is amended by adding a new subsection to
17 read:

18 "(h) In order to aid the court in ordering income withholding under
19 G.S. 15A-1340.39, the prosecuting attorney shall make reasonable efforts to identify all
20 of the defendant's sources of disposable income as defined in that section and shall, at
21 the sentencing hearing, provide the court with the name and address of each employer
22 paying disposable income to the defendant and the amount of the defendant's disposable
23 income from each such employer."

24 **SECTION 5.2.** Article 81C of Chapter 15A of the General Statutes is
25 amended by adding a new section to read:

26 "§ 15A-1340.39. Income withholding to enforce restitution as a condition of
27 probation.

28 (a) Definitions. – The following definitions apply in this section:

29 (1) "Defendant" means a person who is convicted of a crime to which the
30 Crime Victims' Rights Act applies, and who is required to pay
31 restitution as a condition of probation.

32 (2) "Disposable income" means any form of periodic payment to an
33 individual, regardless of sources, including but not limited to wages,
34 salary, commission, self-employment income, bonus pay, severance
35 pay, sick pay, incentive pay, vacation pay, compensation as an
36 independent contractor, worker's compensation, disability, annuity,
37 survivor's benefits, pension and retirement benefits, interest, dividends,
38 rents, royalties, trust income and other similar payments, which remain
39 after the deduction of amounts for federal, State, and local taxes,
40 Social Security, and involuntary retirement contributions. However,
41 Supplemental Security Income, Work First Family Assistance, and
42 other public assistance payments shall be excluded from disposable
43 income. For wage payors, disposable income means "wage" as it is
44 defined by G.S. 95-25.2(16).

- 1 (3) "Division" means the Division of Community Correction of the
2 Department of Correction.
- 3 (4) "Employer" means any employer or other payor of disposable income.
- 4 (b) Entry of Income Withholding Order. – Whenever the court places a defendant
5 on supervised or unsupervised probation and requires payment of restitution as a
6 condition of probation, the court shall enter an order for income withholding pursuant to
7 this section, if both of the following conditions are also met:
- 8 (1) The term of probation is six months or longer.
- 9 (2) The defendant is required to make periodic payments throughout the
10 term of probation, according to a schedule set by the court or by a
11 probation officer.
- 12 (c) Determinations by Court. – Before entering an order for income withholding,
13 the court shall determine all of the following:
- 14 (1) The defendant's total disposable income from all sources.
- 15 (2) The names and addresses of the defendant's employers.
- 16 (3) The defendant's pay period for each employer (e.g. weekly, biweekly,
17 semimonthly or monthly).
- 18 (4) The amount to be withheld by each employer for each pay period.
- 19 (d) Multiple Withholding Orders. – If, at the time of sentencing, a defendant is
20 already subject to one or more withholding orders under this section:
- 21 (1) The defendant shall so notify the court at the time of sentencing.
- 22 (2) The court shall then determine whether the defendant has enough
23 disposable income so that, after all prior withholding orders are
24 complied with, further amounts may be withheld under this section
25 without exceeding the aggregate withholding limits specified in
26 section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. §
27 1673.
- 28 (3) If so, the court shall order that any available amount be withheld from
29 the defendant's disposable income.
- 30 (4) If not, the court shall deny withholding.
- 31 (e) Amount Withheld. – The amount to be withheld shall include:
- 32 (1) The lesser of:
- 33 a. The amount of the periodic payment that the defendant is
34 required to make as a condition of probation, prorated if
35 necessary per pay period,
- 36 b. The amount ordered withheld pursuant to subsection (d) of this
37 section,
- 38 c. The maximum withholding allowable under section 303(b) of
39 the Consumer Credit Protection Act, 15 U.S.C. § 1673, and
- 40 (2) A processing fee of two dollars (\$2.00) to cover the cost of
41 withholding, to be retained by the employer for each withholding
42 unless waived by the employer.

1 (f) Notice to Employers. – Immediately upon entry of an income withholding
2 order under this section, a notice of obligation to withhold shall be served on each
3 employer, subject to the following provisions:

4 (1) The notice shall include all of the following:

- 5 a. The amount of disposable income upon which the withholding
6 is based.
7 b. The pay period upon which the withholding is based.
8 c. The amount to be withheld each pay period.
9 d. The maximum percentage of the defendant's disposable income
10 that may be withheld under section 303(b) of the Consumer
11 Credit Protection Act, 15 U.S.C. §1673.
12 e. The address of the clerk of superior court to which the amounts
13 withheld shall be remitted.
14 f. All of the employer's duties under subsections (g), (n), and (o)
15 of this section and the penalties for failing to perform those
16 duties.
17 g. The case number of the case in which the income withholding
18 has been ordered.

19 (2) The notice shall be served pursuant to Rule 5 of the North Carolina
20 Rules of Civil Procedure, G.S. 1A-1, Rule 5. If the notice is mailed,
21 service shall be effective upon mailing.

22 (3) If the defendant is placed on supervised probation, the Division shall
23 serve the notice.

24 (4) If the defendant is placed on unsupervised probation, the clerk of
25 superior court shall service the notice.

26 (g) Employer's Responsibilities. – Upon service of a notice of obligation to
27 withhold, each employer shall do all of the following:

28 (1) If the defendant's disposable income is equal to or greater than that
29 specified in the notice, withhold the amount specified in the notice
30 from the defendant's disposable income.

31 (2) If a lesser amount of disposable income is available for any pay period,
32 withhold a proportionate part of the lesser amount.

33 (3) Begin withholding from the defendant's disposable income for the first
34 pay period that begins 14 or more days after service of the notice.

35 (4) Remit the amount withheld to the clerk of superior court at the address
36 provided in the notice.

37 (5) Include with the remission the name of the defendant, the amount
38 remitted and the case number of the case in which the withholding was
39 ordered.

40 (6) Continue withholding until further notice from the court.

41 (7) Withhold under this section after withholding for child support and
42 before withholding for any other obligation.

43 (8) Promptly notify the court, in writing, if the employer has been served
44 with one or more other orders to withhold income under this section.

1 (9) Notify the court immediately when the defendant terminates
2 employment or otherwise ceases to be entitled to disposable income
3 from the employer and provide the defendant's last known address and
4 the name and address of the defendant's new employer, if known.

5 (h) Proceeding to Impose Sanctions. – The court shall impose sanctions as
6 provided in subsection (i) of this section if it finds that an employer has failed to comply
7 with any of its duties under subsection (g) of this section. The procedure shall be as
8 follows:

9 (1) A proceeding to impose sanctions shall be commenced by filing a
10 motion in the criminal case in which the judgment containing the
11 withholding order was entered.

12 (2) A motion under this subsection may be filed by the following:

13 a. The Division, if the defendant is on supervised probation.

14 b. The clerk of superior court, if the defendant is on unsupervised
15 probation.

16 c. The victim, if the victim has verified information showing that
17 the employer has failed to comply with any of its duties under
18 subsection (g) of this section, and no motion has been filed by
19 the Division or the clerk of superior court.

20 (3) When filed, each motion shall be placed on the civil motion calendar
21 for the trial division in which the judgment was entered and scheduled
22 for the earliest available date that is not less than 30 days after the
23 motion is filed.

24 (4) The moving party shall immediately serve a copy of the motion and a
25 notice of the hearing on the employer.

26 (5) Service shall be made pursuant to Rule 4 of the North Carolina Rules
27 of Civil Procedure, G.S. 1A-1, Rule 4.

28 (6) If, after the hearing, the court finds by a preponderance of the evidence
29 that the employer has, willfully and without justification or excuse,
30 failed to perform one or more of its duties under subsection (g) of this
31 section, the court shall impose sanctions as provided in subsection (i)
32 of this section.

33 (i) Sanctions. – The sanctions that may be imposed upon an employer for failure
34 to perform one or more of its duties under subsection (g) of this section are:

35 (1) First incident:

36 a. An order that the employer commence withholding beginning
37 with the first pay period that commences after the order, and

38 b. An order to comply promptly with any other duty under
39 subsection (g) of this section.

40 (2) Second incident:

41 a. Any sanction authorized under subdivision (1) of this
42 subsection, and

43 b. Civil or criminal contempt.

44 (3) Third and subsequent incidents:

- 1 a. Any sanction authorized under subdivisions (1) or (2) of this
2 subsection, and
3 b. For cases of failure to withhold, a civil penalty not greater than
4 the total amount that has not been withheld since original
5 service of the notice, which penalty shall be remitted to the
6 Civil Penalty and Forfeiture Fund in accordance with
7 G.S. 115C-457.2.
- 8 (j) Modification or Termination. – The court may modify or terminate an income
9 withholding order entered under this section, as follows:
- 10 (1) The following are grounds for modification or termination:
- 11 a. An employer is unable for any reason to comply with
12 withholding as ordered by the court.
- 13 b. The defendant's employer or disposable income has changed
14 since an order for withholding was most recently entered in the
15 case.
- 16 c. Any other good cause shown.
- 17 (2) A motion under this section may be filed by an employer, the victim,
18 the Division, or a prosecuting attorney.
- 19 (3) When filed, each motion shall be placed on the civil motion calendar
20 for the trial division in which the judgment was entered and scheduled
21 for the earliest available date that is not less than 30 days after the
22 motion is filed.
- 23 (4) The moving party shall serve a copy of the motion and a notice of the
24 hearing on the other parties specified in subdivision (1).
- 25 (5) Service shall be made pursuant to Rule 5 of the North Carolina Rules
26 of Civil Procedure, G.S. 1A-1, Rule 5. If service is made by mail,
27 service is effective upon mailing.
- 28 (6) If, after the hearing, the court finds by a preponderance of the evidence
29 that one or more grounds for modification or termination of
30 withholding exist, it shall terminate or appropriately modify the
31 withholding.
- 32 (k) Change in Employment. – When a defendant changes employers after service
33 on a current employer of a notice of obligation to withhold under this section:
- 34 (1) The defendant shall promptly provide the following information:
- 35 a. The name and street address of the new employer,
36 b. The defendant's disposable income from that employer.
- 37 (2) The information shall be provided to:
- 38 a. The Division, if the defendant is on supervised probation,
39 b. The clerk of superior court, if the defendant is on unsupervised
40 probation.
- 41 (3) Upon receipt of new employer information under this subsection, a
42 notice of obligation to withhold shall be served on the new employer
43 as provided in subsection (h) of this section.

1 (l) Termination Upon Completion of Probation. – All income withholding orders
2 entered under this section shall terminate when the defendant's probation is revoked or
3 terminated or expires at the end of the term of probation. Notice of termination shall be
4 given to each employer that is under a current obligation to withhold under this section.
5 Notice shall be given by:

6 (1) The Division, if the defendant is on supervised probation.

7 (2) The clerk of superior court, if the defendant is on unsupervised
8 probation.

9 (m) Clerk's Responsibilities. – Upon receipt of any funds remitted by an employer
10 under this section, the clerk of superior court shall enter the amount remitted as a partial
11 payment on all of the defendant's monetary conditions of probation and shall disburse
12 those funds as provided by law. If a restitution judgment has been docketed in favor of
13 the victim, payments received through income withholding shall be applied to that
14 judgment as provided in G.S. 15A-1340.38(c).

15 (n) Civil Penalty for Wrongful Violation by Employer. – An employer shall not
16 discharge from employment, refuse to employ, or otherwise take disciplinary action
17 against any defendant solely because the defendant is subject to withholding under this
18 section. When an employer violates this subsection:

19 (1) The employer shall be liable, in a proceeding pursuant to subsection
20 (h) of this section, for a civil penalty as follows:

21 a. For a first offense, the civil penalty shall be one hundred dollars
22 (\$100.00).

23 b. For the second offense, the civil penalty shall be five hundred
24 dollars (\$500.00).

25 c. For the third and each subsequent offense, the civil penalty shall
26 be one thousand dollars (\$1,000), respectively.

27 d. The clear proceeds of a civil penalty collected pursuant to this
28 subdivision shall be remitted to the Civil Penalty and Forfeiture
29 Fund in accordance with G.S. 115C-457.2.

30 (2) Any employer shall also be liable, in a civil action, for reasonable
31 damages suffered by a defendant as a result of the violation, and a
32 defendant discharged or demoted in violation of this paragraph shall be
33 entitled to be reinstated to his former position. The statute of
34 limitations for actions under this subdivision shall be one year
35 pursuant to G.S. 1-54.

36 (o) Criminal Penalty for Wrongful Violation by Employer. – An employer that
37 withholds any amount from the disposable income of a defendant, and fails to remit any
38 portion of the amount so withheld as required by this section, is guilty of a Class 1
39 misdemeanor, provided that the employer shall not be found guilty under this subsection
40 if the employer remits the total amount so withheld promptly after being charged with
41 the misdemeanor."

42 **SECTION 5.3.** G.S. 15A-1343(b) is amended by adding a new subdivision
43 to read:

1 "(9a) If income withholding is ordered under G.S. 1340.39, comply with all the
2 duties of the defendant that are specified in that section."

3 SETOFF DEBT COLLECTION OF RESTITUTION JUDGMENTS

4 **SECTION 6.1.** G.S. 105A-2(2) reads as rewritten:

5 "(2) Debt. – Any of the following:

- 6 a. A sum owed to a claimant agency that has accrued through
7 contract, subrogation, tort, operation of law, or any other legal
8 theory regardless of whether there is an outstanding judgment
9 for the sum.
- 10 b. A sum a claimant agency is authorized or required by law to
11 collect, such as child support payments collectible under Title
12 IV, Part D of the Social Security ~~Act.~~Act or restitution
13 collectible under G.S. 15A-1340.40.
- 14 c. A sum owed as a result of an intentional program violation or a
15 violation due to inadvertent household error under the Food
16 Stamp Program enabled by Chapter 108A, Article 2, Part 5.
- 17 d. Reserved for future codification purposes.
- 18 e. A sum owed as a result of having obtained public assistance
19 payments under any of the following programs through an
20 intentional false statement, intentional misrepresentation,
21 intentional failure to disclose a material fact, or inadvertent
22 household error:
- 23 1. The Work First Program provided in Article 2 of Chapter
24 108A of the General Statutes.
 - 25 2. The State-County Special Assistance for Adults Program
26 enabled by Part 3 of Article 2 of Chapter 108A of the
27 General Statutes.
 - 28 3. A successor program of one of these programs."

29 **SECTION 6.2.** G.S. 105A-13(a) reads as rewritten:

30 "(a) State Setoff. – To recover the costs incurred by the Department in collecting
31 debts under this Chapter, a collection assistance fee of five dollars (\$5.00) is imposed on
32 each debt collected through setoff. The Department must collect this fee as part of the
33 debt and retain it. The collection assistance fee shall not be added to child support debts
34 or debts for restitution collected under G.S. 15A-1340.40 or collected as part of child
35 support ~~debts.~~debts or of debts for restitution collected pursuant to G.S. 15A-1340.40.
36 Instead, the Department shall retain from collections under Division II of Article 4 of
37 Chapter 105 of the General Statutes the cost of collecting child support debts under this
38 Chapter."

39 **SECTION 6.3.** G.S. 15A-1340.38(d) reads as rewritten:

40 "(d) An appeal of the conviction upon which the order of restitution is based shall
41 stay execution on the judgment and setoff debt collection of the judgment until the
42 appeal is completed. If the conviction is overturned, the judgment shall be cancelled."

43 **SECTION 6.4.** G.S. 15A-1340.38 is amended by adding a new subsection to
44 read:

1 "(e) The court, before entering an order for restitution that is to be docketed as a
2 civil judgment under this section, shall require the defendant to provide the defendant's
3 complete, current, and correct social security number or other taxpayer identification
4 number. Failure to comply with this requirement is punishable as a contempt of court.
5 The defendant's social security number or other taxpayer identification shall be entered
6 in the records of the court for the purpose of collecting the judgment through setoff debt
7 collection pursuant to G.S. 15A-1340.40."

8 **SECTION 6.5.** Article 81C of Chapter 15A of the General Statutes is
9 amended by adding a new section to read:

10 **"§ 15A-1340.40. Setoff debt collection.**

11 (a) The Administrative Office of the Courts, as a claimant agency under Chapter
12 105A of the General Statutes, is authorized to collect the amount of each restitution
13 judgment docketed pursuant to G.S. 15A-1340.38, through use of the setoff debt
14 collection procedures specified in that Chapter, subject to the following conditions:

15 (b) The Administrative Office of the Courts shall initiate setoff debt collection to
16 collect each restitution judgment upon the later of the following:

17 (1) If the defendant, upon conviction, is sentenced to an active sentence,
18 immediately upon entry of the judgment imposing the sentence,

19 (2) If the defendant, upon conviction, is placed on probation, whether
20 supervised or unsupervised, immediately upon revocation or
21 termination of the probation or expiration of the probation term.

22 (c) The total amount of each restitution judgment, less all payments credited
23 against the judgment from other sources, shall be collectible through setoff debt
24 collection.

25 (d) The total amount collected from each defendant through setoff debt collection
26 shall be credited against all judgments for attorneys' fees docketed against the defendant
27 under G.S. 7A-455 and for restitution docketed against the defendant under
28 G.S. 15A-1340.38, in the order in which the judgments were docketed pursuant to
29 G.S. 1-234.

30 (e) The Administrative Office of the Courts shall disburse all amounts collected
31 on each restitution judgment directly to the victim named in the judgment and shall
32 immediately notify the clerk of superior court of the county in which the judgment is
33 docketed of the full amount so disbursed. The clerk shall then enter the amount so
34 disbursed in full or partial satisfaction of the restitution judgment.

35 (f) For each restitution judgment, setoff debt collection shall continue until the
36 earliest of the following:

37 (1) The date upon which the judgment is fully paid and satisfied,

38 (2) The date upon which the judgment becomes unenforceable under
39 G.S. 1-306.

40 (g) Neither a clerk of superior court, nor the Administrative Office of the Courts,
41 nor the State of North Carolina, nor any officer or employee of any of them, shall be
42 liable to any person for any error or omission made in carrying out setoff debt collection
43 pursuant to this section."

1 **SECTION 6.6.** The Administrative Office of the Courts shall, as promptly
2 as is reasonably possible considering its available technology resources and the other
3 demands on their use, adapt its current setoff debt collection technology so that it is also
4 able to collect restitution pursuant to this section. This section shall become effective as
5 of the date on which the Administrative Office of the Courts certifies in writing to the
6 Joint Legislative Committee on Governmental Operations that it has done so and shall
7 apply to all restitution judgments docketed on and after that date.

8 **SECTION 6.7.** There is appropriated to the Judicial Department in the
9 current operating budget for the 2005-2007 fiscal biennium an amount sufficient to
10 cover all costs to be incurred in implementing the setoff debt collection of restitution
11 under this section.

12 **SECTION 6.8.** There is appropriated to the Office of Indigent Defense
13 Services in the current operations budget for the 2005-2007 fiscal biennium an amount
14 sufficient to compensate it for the amount that is currently being collected through
15 setoff debt collection on attorneys' fee judgments and that will be transferred to
16 restitution judgments as a result of the enactment of this section.

17 **AOC STUDY ON THIRD-PARTY COLLECTION**

18 **SECTION 7.** The Administrative Office of the Courts shall study the use of
19 third-party collection as a means to improve the collection of restitution and other court
20 fines, fees, and costs. The Administrative Office of the Courts shall report its findings
21 and recommendations to the 2006 Regular Session of the 2005 General Assembly upon
22 its convening.

23 **EFFECTIVE DATE**

24 **SECTION 8.** Sections 7 and 8 of this act are effective when they become
25 law. Sections 6.1 through 6.6 of this act are effective and apply as provided in Section
26 6.6 of this act. The remainder of this act becomes effective December 1, 2005, and
27 applies to all offenses committed on and after that date.