

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1284

Short Title: Restitution/Civil Judgment.

(Public)

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Sponsors: Representatives McCrary, Culpepper, Hensley, R. Hunter, Neely; G. Miller and Warner.

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Referred to: Judiciary II.

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May 22, 1996

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW THE ENFORCEMENT OF RESTITUTION IN A CRIMINAL  
2 CASE IN THE SAME MANNER AS A CIVIL JUDGMENT, TO CREATE AN  
3 EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF  
4 SUCH A JUDGMENT, AND TO CHANGE THE ORDER OF PRIORITY FOR  
5 DISBURSEMENT OF FUNDS IN A CRIMINAL CASE.  
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7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 15A-1343(d) reads as rewritten:

9 "(d) Restitution as a Condition of Probation. – As a condition of probation, a  
10 defendant may be required to make restitution or reparation to an aggrieved party or  
11 parties who shall be named by the court for the damage or loss caused by the defendant  
12 arising out of the offense or offenses committed by the defendant. When restitution or  
13 reparation is a condition imposed, the court shall hold a hearing to determine the amount  
14 of restitution or reparation due the aggrieved party or parties. The court shall take into  
15 consideration the resources of the defendant, including all real and personal property  
16 owned by the defendant and the income derived from such property, his ability to earn,  
17 his obligation to support dependents, and such other matters as shall pertain to his ability  
18 to make restitution or reparation, but the court is not required to make findings of fact or  
19 conclusions of law on these matters when the sentence is imposed. The amount must be

1 limited to that supported by the record, and the court may order partial restitution or  
2 reparation when it appears that the damage or loss caused by the offense or offenses is  
3 greater than that which the defendant is able to pay. An order providing for restitution or  
4 reparation, as a condition of supervised or unsupervised probation, except an order  
5 resulting from a worthless check, may be enforced in the same manner as a civil  
6 judgment as provided in this subsection. Upon a finding that restitution in a sum certain  
7 remains due and payable, and that the defendant's probation should be terminated or  
8 revoked, the judge presiding at the probation termination or revocation hearing shall  
9 order that a judgment be docketed pursuant to G.S. 1-233 et seq., in the county of the  
10 original conviction as of the date of notification to the clerk in that county. The clerk  
11 shall add to the amount of the judgment to be docketed amounts equal to the standard  
12 fees for docketing, copying, certification, and mailing, as appropriate, and shall collect  
13 any other fees or charges incurred as in the enforcement of other civil judgments. The  
14 clerk shall notify the victim by first-class mail at the victim's last known address of the  
15 docketing of the judgment and provide the victim with a certified copy of the order  
16 directing entry of the civil judgment. An order providing for restitution or reparation or a  
17 civil judgment under this section shall in no way abridge the right of any aggrieved party  
18 to bring a civil action against the defendant for money damages arising out of the offense  
19 or offenses committed by the defendant, but any amount paid by the defendant under the  
20 terms of an order for restitution or civil judgment as provided herein shall be credited  
21 against any judgment rendered against the defendant in such civil action. As used herein,  
22 'restitution' shall mean (i) compensation for damage or loss as could ordinarily be  
23 recovered by an aggrieved party in a civil action, and (ii) reimbursement to the State for  
24 the total amount of a judgment authorized by G.S. 7A-455(b). As used herein,  
25 'reparation' shall include but not be limited to the performing of community services,  
26 volunteer work, or doing such other acts or things as shall aid the defendant in his  
27 rehabilitation. As used herein 'aggrieved party' includes individuals, firms, corporations,  
28 associations, other organizations, and government agencies, whether federal, State or  
29 local, including the Crime Victims Compensation Fund established by G.S. 15B-23.  
30 Provided, that no government agency shall benefit by way of restitution except for  
31 particular damage or loss to it over and above its normal operating costs and except that  
32 the State may receive restitution for the total amount of a judgment authorized by G.S.  
33 7A-455(b). A government agency may benefit by way of reparation even though the  
34 agency was not a party to the crime provided that when reparation is ordered, community  
35 service work shall be rendered only after approval has been granted by the owner or  
36 person in charge of the property or premises where the work will be done. Provided  
37 further, that no third party shall benefit by way of restitution or reparation as a result of  
38 the liability of that third party to pay indemnity to an aggrieved party for the damage or  
39 loss caused by the defendant, but the liability of a third party to pay indemnity to an  
40 aggrieved party or any payment of indemnity actually made by a third party to an  
41 aggrieved party does not prohibit or limit in any way the power of the court to require the  
42 defendant to make complete and full restitution or reparation to the aggrieved party for  
43 the total amount of the damage or loss caused by the defendant. Restitution or reparation

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

5 Sec. 2. G.S. 148-57.1 is amended by adding a new subsection to read:

6 "(c1) If the court recommends restitution as provided in subsection (c) of this  
7 section, the judge shall order the clerk of court in the county of conviction to, upon the  
8 date the conviction becomes final, docket a civil judgment pursuant to G.S. 1-233 et seq.,  
9 in the amount of recommended restitution. The clerk shall add to the amount of the  
10 judgment to be docketed amounts equal to the standard fees for docketing, copying,  
11 certification, and mailing, as appropriate, and shall collect any other fees or charges  
12 incurred as in the enforcement of other civil judgments. The clerk shall notify the victim  
13 by first-class mail at the victim's last known address of the docketing of the judgment and  
14 provide the victim with a certified copy of the order directing entry of the civil judgment.  
15 An order providing for a civil judgment under this subsection shall in no way abridge the  
16 right of any aggrieved party to bring a civil action against the defendant for money  
17 damages arising out of the offense or offenses committed by the defendant, but any  
18 amount paid by the defendant under the terms of a civil judgment as provided herein shall  
19 be credited against any judgment rendered against the defendant in such civil action."

20 Sec. 3. G.S. 1C-1601(e) reads as rewritten:

21 "(e) Exceptions. – The exemptions provided in this Article are inapplicable to  
22 ~~claims-claims:~~

- 23 (1) Of the United States or its agencies as provided by federal law;
- 24 (2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary  
25 bonds;
- 26 (3) Of lien by a laborer for work done and performed for the person  
27 claiming the exemption, but only as to the specific property affected;
- 28 (4) Of lien by a mechanic for work done on the premises, but only as to the  
29 specific property affected;
- 30 (5) For payment of obligations contracted for the purchase of the specific  
31 real property affected;
- 32 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6,  
33 effective September 1, 1982;
- 34 (7) For contractual security interests in the specific property affected;  
35 provided, that the exemptions shall apply to the debtor's household  
36 goods notwithstanding any contract for a nonpossessory, nonpurchase  
37 money security interest in any such goods;
- 38 (8) For statutory liens, on the specific property affected, other than judicial  
39 liens;
- 40 (9) For child support, alimony or distributive award order pursuant to  
41 Chapter 50 of the General ~~Statutes-Statutes~~;
- 42 (10) For criminal restitution orders docketed as civil judgments pursuant to  
43 G.S. 15A-1343(d) or G.S. 148-57.1(c1)."

1           Sec. 4. G.S. 7A-304(d) reads as rewritten:

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

6           (1) Sums in restitution prorated among the persons entitled thereto;

7           ~~(+)(2)~~ Costs due the county;

8                               ~~(2)(3)~~ Costs due the city;

9           ~~(3)(4)~~ Fines to the county school fund;

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

11          (5) Costs due the State;

12          (6) Attorney's fees.

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

14          (1) Complete restitution has been received; or

15          (2) When, in the opinion of the clerk, additional payments in restitution will  
16 not be collected; or

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

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

19          Sec. 5. This act becomes effective December 1, 1996, and applies to criminal  
20 convictions entered on or after that date.