

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 430
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Short Title: Fee/Victims Compensation Fund/AB.

(Public)

Sponsors: Representatives Thompson; Berry, Black, Brawley, Capps, Culp, Gardner, Justus, Kiser, Linney, McMahan, Mercer, K. Miller, Pulley, Richardson, Robinson, Russell, Sexton, and Sherrill.

Referred to: Judiciary II.

March 9, 1995

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

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
17 officer to visit him at reasonable times, answer all reasonable inquiries

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

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

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

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

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

- 1 (1) Undergo available medical or psychiatric treatment and remain in a
2 specified institution if required for that purpose.
- 3 (2) Attend or reside in a facility providing rehabilitation, counseling,
4 treatment, social skills, or employment training, instruction, recreation,
5 or residence for persons on probation.
- 6 (2a) Submit to a period of imprisonment in a facility for youthful offenders
7 for a minimum of 90 days or a maximum of 120 days under special
8 probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide
9 by all rules and regulations as provided in conjunction with the
10 Intensive Motivational Program of Alternative Correctional Treatment
11 (IMPACT), which provides an atmosphere for learning personal
12 confidence, personal responsibility, self-respect, and respect for
13 attitudes and value systems.
- 14 (3) Submit to imprisonment required for special probation under G.S. 15A-
15 1351(a) or G.S. 15A-1344(e).
- 16 (3a) Remain in one or more specified places for a specified period or periods
17 each day, and wear a device that permits the defendant's compliance
18 with the condition to be monitored electronically.
- 19 (3b) Submit to supervision by officers assigned to the Intensive Probation
20 Program established pursuant to G.S. 143B-262(c), and abide by the
21 rules adopted for that Program.
- 22 (4) Surrender his driver's license to the clerk of superior court, and not
23 operate a motor vehicle for a period specified by the court.
- 24 (5) Compensate the Department of Environment, Health, and Natural
25 Resources or the North Carolina Wildlife Resources Commission, as the
26 case may be, for the replacement costs of any marine and estuarine
27 resources or any wildlife resources which were taken, injured, removed,
28 harmfully altered, damaged or destroyed as a result of a criminal offense
29 of which the defendant was convicted. If any investigation is required
30 by officers or agents of the Department of Environment, Health, and
31 Natural Resources or the Wildlife Resources Commission in
32 determining the extent of the destruction of resources involved, the
33 court may include compensation of the agency for investigative costs as
34 a condition of probation. This subdivision does not apply in any case
35 governed by G.S. 143-215.3(a)(7).
- 36 (6) Perform community or reparation service and pay any fee required by
37 law or ordered by the court for participation in the community or
38 reparation service program.
- 39 (7) Submit at reasonable times to warrantless searches by a probation
40 officer of his person and of his vehicle and premises while he is present,
41 for purposes specified by the court and reasonably related to his
42 probation supervision, but the probationer may not be required to
43 submit to any other search that would otherwise be unlawful. Whenever

1 the warrantless search consists of testing for the presence of illegal
2 drugs, the probationer may also be required to reimburse the
3 Department of Correction for the actual cost of drug screening and drug
4 testing, if the results are positive.

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

12 (8a) Purchase the least expensive annual statewide license or combination of
13 licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-
14 270.5, 113-271, 113-272, and 113-272.2 that would be required to
15 engage lawfully in the specific activity or activities in which the
16 defendant was engaged and which constitute the basis of the offense or
17 offenses of which he was convicted.

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

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

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

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

39 (c2) Crime Victims Compensation Fund Fee. – Any person placed on probation
40 pursuant to subsection (a) shall pay a Crime Victims Compensation Fund fee of twenty
41 dollars (\$20,00). This fee shall be paid in advance and in a lump sum. The fee shall be
42 paid to the clerk of court for the county in which the judgment was entered or in which
43 the deferred prosecution agreement was filed. Fees collected under this subsection shall

1 be transmitted to the State for deposit in the Crime Victims Compensation Fund
2 established pursuant to G.S. 15B-23.

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

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

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

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

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

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