

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 397
HOUSE BILL 1162

AN ACT TO PROVIDE THAT A DEFENDANT'S REAL PROPERTY, PERSONAL
PROPERTY, AND INCOME MAY BE ATTACHED TO OBTAIN
RESTITUTION.

The General Assembly of North Carolina enacts:

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

"(d) Restitution as a Condition of Probation. – As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, his obligation to support dependents, and such other matters as shall pertain to his ability to make restitution or reparation, but the court is not required to make findings of fact or conclusions of law on these matters when the sentence is imposed. The amount must be limited to that supported by the record, and the court may order partial restitution or reparation when it appears that the damage or loss caused by the offense or offenses is greater than that which the defendant is able to pay. An order providing for restitution or reparation shall in no way abridge the right of any aggrieved party to bring a civil action against the defendant for money damages arising out of the offense or offenses committed by the defendant, but any amount paid by the defendant under the terms of an order as provided herein shall be credited against any judgment rendered against the defendant in such civil action. As used herein, 'restitution' shall mean (i) compensation for damage or loss as could ordinarily be recovered by an aggrieved party in a civil action, and (ii) reimbursement to the State for the total amount of a judgment authorized by G.S. 7A-455(b). As used herein, 'reparation' shall include but not to be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein, 'aggrieved party' shall include individuals, firms, corporations, associations or other organizations, and government agencies, whether federal, State or local. Provided, that no government agency shall benefit by way of restitution except for particular damage or loss to it over and above its normal operating costs and except that the State may receive restitution for the total amount of a judgment authorized by G.S. 7A-455(b). A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after

approval has been granted by the owner or person in charge of the property or premises where the work will be done. Provided further, that no third party shall benefit by way of restitution or reparation as a result of the liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused by the defendant, but the liability of a third party to pay indemnity to an aggrieved party or any payment of indemnity actually made by a third party to an aggrieved party does not prohibit or limit in any way the power of the court to require the defendant to make complete and full restitution or reparation to the aggrieved party for the total amount of the damage or loss caused by the defendant. Restitution or reparation measures are ancillary remedies to promote rehabilitation of criminal offenders and to provide for compensation to victims of crime, and shall not be construed to be a fine or other punishment as provided for in the Constitution and laws of this State."

Sec. 2. G.S. 148-33.2(b) is amended by deleting the period at the end of the first sentence and adding the following: "and out of other resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property."

Sec. 3. G.S. 148-33.2(c) is amended by deleting the period at the end of the first sentence and adding a new phrase to read: "and out of other resources of the defendant, including all real and personal property owned by the defendant, and income derived from such property."

Sec. 4. G.S. 148-57.1(b) is amended by inserting a new sentence between the first and second sentences to read: "When imposing restitution as a condition and setting up a payment schedule for the restitution, the Parole Commission shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, and his obligation to support dependents."

Sec. 5. This act shall become effective October 1, 1987, and shall apply to all offenses committed on or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 1987.