

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1716\*

Short Title: Restit./Victim Impact Statements.

(Public)

Sponsors: Representatives Michaux; R. Hunter, Sexton, and Gardner.

Referred to: Judiciary I.

May 26, 1994

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT RECOMMENDATIONS OF NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO PROVIDE FOR VICTIM IMPACT STATEMENTS FOR PRESENTATION TO THE COURT, TO ORDER RESTITUTION TO VICTIMS WHERE APPROPRIATE, TO MAKE RESTITUTION A FIRST PRIORITY, AND TO EXTEND PROBATION FOR THE PAYMENT OF RESTITUTION.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

Sec. 3. 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

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

44 Sec. 4. G.S. 15A-825 reads as rewritten:

1 **"§ 15A-825. Treatment due victims and witnesses.**

2 To the extent reasonably possible and subject to available resources, the employees  
3 of law-enforcement agencies, the prosecutorial system, the judicial system, and the  
4 correctional system should make a reasonable effort to assure that each victim and  
5 witness within their jurisdiction:

6 (1) Is provided information regarding immediate medical assistance when  
7 needed and is not detained for an unreasonable length of time before  
8 having such assistance administered.

9 (2) Is provided information about available protection from harm and  
10 threats of harm arising out of cooperation with law-enforcement  
11 prosecution efforts, and receives such protection.

12 (2a) Is provided information that testimony as to one's home address is not  
13 relevant in every case, and that the victim or witness may request the  
14 district attorney to raise an objection should he/she deem it appropriate  
15 to this line of questioning in the case at hand.

16 (3) Has any stolen or other personal property expeditiously returned by  
17 law-enforcement agencies when it is no longer needed as evidence,  
18 and its return would not impede an investigation or prosecution of the  
19 case. When feasible, all such property, except weapons, currency,  
20 contraband, property subject to evidentiary analysis, and property  
21 whose ownership is disputed, should be photographed and returned to  
22 the owner within a reasonable period of time of being recovered by  
23 law-enforcement officials.

24 (4) Is provided appropriate employer intercession services to seek the  
25 employer's cooperation with the criminal justice system and minimize  
26 the employee's loss of pay and other benefits resulting from such  
27 cooperation whenever possible.

28 (5) Is provided, whenever practical, a secure waiting area during court  
29 proceedings that does not place the victim or witness in close  
30 proximity to defendants and families or friends of defendants.

31 (6) Is informed of the procedures to be followed to apply for and receive  
32 any appropriate witness fees or victim compensation.

33 (6a) Is informed of the right to be present throughout the entire trial of the  
34 defendant, subject to the right of the court to sequester witnesses.

35 (7) Is given the opportunity to be present during the final disposition of  
36 the case or is informed of the final disposition of the case, if he has  
37 requested to be present or be informed.

38 (8) Is notified, whenever possible, that a court proceeding to which he has  
39 been subpoenaed will not occur as scheduled.

40 (9) Has a victim impact statement prepared for consideration by the court.

41 (9a) Prior to trial, is provided information about plea bargaining procedures  
42 and is told that the district attorney may recommend a plea bargain to  
43 the court.

- 1           (9b) Can expect, after court review of a victim impact statement, that a  
 2           judge would order restitution in all cases where it is appropriate.  
 3           (10) Is informed that civil remedies may be available and that statutes of  
 4           limitation apply in civil cases.  
 5           (11) Upon the victim's written request, is notified before a proceeding is  
 6           held at which the release of the offender from custody is considered, if  
 7           the crime for which the offender was placed in custody is a Class G or  
 8           more serious felony.  
 9           (12) Upon the victim's written request, is notified if the offender escapes  
 10          from custody or is released from custody, if the crime for which the  
 11          offender was placed in custody is a Class G or more serious felony.  
 12          (13) Has family members of a homicide victim offered all the guarantees in  
 13          this section, except those in subdivision (1).

14 Nothing in this section shall be construed to create a cause of action for failure to  
 15 comply with its requirements."

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

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

21           (1) Sums in restitution prorated among the persons entitled to restitution;

22           ~~(1)(2)~~ Costs due the county;

23           ~~(2)(3)~~ Costs due the city;

24                           ~~(3)(4)~~ Fines to the county school fund;

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

26           (5) Costs due the State;

27           (6) Attorney's fees.

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

29           (1) Complete restitution has been received; or

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

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

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

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

35           "(a) Period. – The court may place a convicted offender on probation for a  
 36 maximum of five years. The court may place a defendant as to whom prosecution has  
 37 been deferred on probation for a maximum of two years. The probation remains  
 38 conditional and subject to revocation during the period of probation imposed, unless  
 39 terminated as provided in subsection (b) or G.S. 15A-1341(c).

40           The court with the consent of the defendant may extend the period of probation  
 41 beyond five ~~years~~ years, or beyond two years if prosecution was deferred, (i) for  
 42 the purpose of allowing the defendant to complete a program of restitution, or (ii) to  
 43 allow the defendant to continue medical or psychiatric treatment ordered as a condition  
 44 of the probation. If the offender was convicted, then the ~~The~~ period of extension shall

1 not exceed ~~three~~ five years beyond the original period of probation. If prosecution was  
2 deferred, then the period of extension shall not exceed three years beyond the original  
3 period of probation. The special extension authorized herein may be ordered only in the  
4 last six months of the probation term. Any probationary judgment form provided to a  
5 defendant on supervised probation shall state that probation may be extended pursuant  
6 to this subsection."

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

8 "(d) Lengths of Probation Terms Under Structured Sentencing. – Unless the court  
9 makes specific findings that longer or shorter periods of probation are necessary, the  
10 length of the term of probation for offenders sentenced under Article 81B shall be as  
11 follows:

- 12 (1) For misdemeanants sentenced to community punishment, not less than  
13 six nor more than 18 months;
- 14 (2) For misdemeanants sentenced to intermediate punishment, not less  
15 than 12 nor more than 24 months;
- 16 (3) For felons sentenced to community punishment, not less than 12 nor  
17 more than 30 months; and
- 18 (4) For felons sentenced to intermediate punishment, not less than 18 nor  
19 more than 36 months.

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

25 Sec. 8. This act is effective upon ratification, and applies to offenses  
26 committed on or after that date.