

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1716\*  
Committee Substitute Favorable 6/28/94

Short Title: Restit./Victim Impact Statements.

(Public)

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Sponsors:

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Referred to:

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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.**

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. The victim impact statement shall be prepared on a standard form which will be devised, and amended from time to time, by the Administrative Office of the Courts."

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:

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

1 construed to be a fine or other punishment as provided for in the Constitution and laws  
2 of this State."

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

4 **"§ 15A-825. Treatment due victims and witnesses.**

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

- 9 (1) Is provided information regarding immediate medical assistance when  
10 needed and is not detained for an unreasonable length of time before  
11 having such assistance administered.
- 12 (2) Is provided information about available protection from harm and  
13 threats of harm arising out of cooperation with law-enforcement  
14 prosecution efforts, and receives such protection.
- 15 (2a) Is provided information that testimony as to one's home address is not  
16 relevant in every case, and that the victim or witness may request the  
17 district attorney to raise an objection should he/she deem it appropriate  
18 to this line of questioning in the case at hand.
- 19 (3) Has any stolen or other personal property expeditiously returned by  
20 law-enforcement agencies when it is no longer needed as evidence,  
21 and its return would not impede an investigation or prosecution of the  
22 case. When feasible, all such property, except weapons, currency,  
23 contraband, property subject to evidentiary analysis, and property  
24 whose ownership is disputed, should be photographed and returned to  
25 the owner within a reasonable period of time of being recovered by  
26 law-enforcement officials.
- 27 (4) Is provided appropriate employer intercession services to seek the  
28 employer's cooperation with the criminal justice system and minimize  
29 the employee's loss of pay and other benefits resulting from such  
30 cooperation whenever possible.
- 31 (5) Is provided, whenever practical, a secure waiting area during court  
32 proceedings that does not place the victim or witness in close  
33 proximity to defendants and families or friends of defendants.
- 34 (6) Is informed of the procedures to be followed to apply for and receive  
35 any appropriate witness fees or victim compensation.
- 36 (6a) Is informed of the right to be present throughout the entire trial of the  
37 defendant, subject to the right of the court to sequester witnesses.
- 38 (7) Is given the opportunity to be present during the final disposition of  
39 the case or is informed of the final disposition of the case, if he has  
40 requested to be present or be informed.
- 41 (8) Is notified, whenever possible, that a court proceeding to which he has  
42 been subpoenaed will not occur as scheduled.
- 43 (9) Has a victim impact statement prepared for consideration by the ~~court~~  
44 court, as required by G.S. 15A-825.1.

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

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

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

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

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

25 ~~(1)(2)~~ Costs due the county;

26 ~~(2)(3)~~ Costs due the city;

27 ~~(3)(4)~~ Fines to the county school fund;

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

29 (5) Costs due the State;

30 (6) Attorney's fees.

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

32 (1) Complete restitution has been received; or

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

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

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

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

38 "(a) Period. – The court may place a convicted offender on probation for the  
39 appropriate period as specified in G.S. 15A-1343.2(d), not to exceed a maximum of five  
40 years. The court may place a defendant as to whom prosecution has been deferred on  
41 probation for a maximum of two years. The probation remains conditional and subject  
42 to revocation during the period of probation imposed, unless terminated as provided in  
43 subsection (b) or G.S. 15A-1341(c).

1        Extension. – The court with the consent of the defendant may extend the period of  
2 probation beyond ~~five years~~ the original period (i)        for the purpose of allowing the  
3 defendant to complete a program of restitution, or (ii) to allow the defendant to continue  
4 medical or psychiatric treatment ordered as a condition of the probation. If the offender  
5 was convicted, then the ~~The~~ period of extension shall not exceed ~~three~~ five years beyond  
6 the original period of probation. If prosecution was deferred, then the period of  
7 extension shall not exceed three years beyond the original period of probation. The  
8 special extension authorized herein may be ordered only in the last six months of the  
9 ~~probation term.~~ original period of probation. Any probationary judgment form provided  
10 to a defendant on supervised probation shall state that probation may be extended  
11 pursuant to this subsection."

12            Sec. 6.1. G.S. 15A-1351(a) reads as rewritten:

13        "(a) The judge may sentence to special probation a defendant convicted of a  
14 criminal offense other than impaired driving under G.S. 20-138.1, if based on the  
15 defendant's prior record or conviction level as found pursuant to Article 81B of this  
16 Chapter, an intermediate punishment is authorized for the class of offense of which the  
17 defendant has been convicted. A defendant convicted of impaired driving under G.S.  
18 20-138.1 may also be sentenced to special probation. Under a sentence of special  
19 probation, the court may suspend the term of imprisonment and place the defendant on  
20 probation as provided in Article 82, Probation, and in addition require that the defendant  
21 submit to a period or periods of imprisonment in the custody of the Department of  
22 Correction or a designated local confinement or treatment facility at whatever time or  
23 intervals within the period of probation, consecutive or nonconsecutive, the court  
24 determines. In addition to any other conditions of probation which the court may  
25 impose, the court shall impose, when imposing a period or periods of imprisonment as a  
26 condition of special probation, the condition that the defendant obey the Rules and  
27 Regulations of the Department of Correction governing conduct of inmates, and this  
28 condition shall apply to the defendant whether or not the court imposes it as a part of the  
29 written order. If imprisonment is for continuous periods, the confinement may be in the  
30 custody of either the Department of Correction or a local confinement facility.  
31 Noncontinuous periods of imprisonment under special probation may only be served in  
32 a designated local confinement or treatment facility. Except for probationary sentences  
33 of impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed  
34 as an incident of special probation, but not including an activated suspended sentence,  
35 may not exceed six months or one fourth the maximum sentence of imprisonment  
36 imposed for the offense, whichever is less, and no confinement other than an activated  
37 suspended sentence may be required beyond two years of conviction. For probationary  
38 sentences for impaired driving under G.S. 20-138.1, the total of all periods of  
39 confinement imposed as an incident of special probation, but not including an activated  
40 suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law.  
41 In imposing a sentence of special probation, the judge may credit any time spent  
42 committed or confined, as a result of the charge, to either the suspended sentence or to  
43 the imprisonment required for special probation. The original period of probation,  
44 including the period of imprisonment required for special probation, shall be as

1 specified in G.S. 15A-1343.2(d), but may not exceed a maximum of five years, except  
2 as provided by G.S. 15A-1342(a). The court may revoke, modify, or terminate special  
3 probation as otherwise provided for probationary sentences."

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

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

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

17 If the court finds at the time of sentencing that a longer period of probation is necessary,  
18 that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and  
19 G.S. 15A-1351.

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

25 Sec. 8. This act becomes effective October 1, 1994. Prosecution for, or  
26 sentences based on, offenses occurring before the effective date of this act are not  
27 abated or affected by the repeal or amendment in this act of any statute, and the statutes  
28 that would be applicable to those prosecutions or sentences but for the provisions of this  
29 act remain applicable to those prosecutions or sentences.