

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 161

Short Title: Restit'n-Ins. Cos./Govt. Agency.

(Public)

Sponsors: Representatives Joye; and Lemmond.

Referred to: Judiciary II.

February 14, 1994

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE COURT TO ORDER RESTITUTION TO INSURANCE
COMPANIES OR GOVERNMENT AGENCIES.

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)

1 reimbursement to the State for the total amount of a judgment authorized by G.S. 7A-
2 455(b). As used herein, 'reparation' shall include but not be limited to the performing of
3 community services, volunteer work, or doing such other acts or things as shall aid the
4 defendant in his rehabilitation. As used herein 'aggrieved party' includes individuals,
5 firms, corporations, associations, other organizations, and government agencies,
6 whether federal, State or local, including the Crime Victims Compensation Fund
7 established by G.S. 15B-23. Provided, that no government agency shall benefit by way
8 of restitution except for particular damage or loss to it over and above its normal
9 operating ~~costs~~ costs, for costs directly attributable to the prosecution of this defendant,
10 and except that the State may receive restitution for the total amount of a judgment
11 authorized by G.S. 7A-455(b). A government agency may benefit by way of reparation
12 even though the agency was not a party to the crime provided that when reparation is
13 ordered, community service work shall be rendered only after approval has been granted
14 by the owner or person in charge of the property or premises where the work will be
15 done. Provided further, that no third party shall benefit by way of restitution or
16 reparation as a result of the liability of that third party to pay indemnity to an aggrieved
17 party for the damage or loss caused by the defendant, except that the court may order
18 restitution, in lieu of subrogation, to a third party to the extent of payments actually
19 made to indemnify an aggrieved party for the damage or loss caused by the defendant,
20 but the liability of a third party to pay indemnity to an aggrieved party or any payment
21 of indemnity actually made by a third party to an aggrieved party does not prohibit or
22 limit in any way the power of the court to require the defendant to make complete and
23 full restitution or reparation to the aggrieved party for the total amount of the damage or
24 loss caused by the defendant. Restitution or reparation measures are ancillary remedies
25 to promote rehabilitation of criminal offenders, to provide for compensation to victims
26 of crime, and to reimburse the Crime Victims Compensation Fund established by G.S.
27 15B-23, and shall not be construed to be a fine or other punishment as provided for in
28 the Constitution and laws of this State."

29 Sec. 2. This act becomes effective October 1, 1994.