

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 267

Short Title: Restitution/Civil Judgment.

(Public)

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Sponsors: Representatives Michaux, Hensley, R. Hunter, and McCrary.

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Referred to: Judiciary II.

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February 23, 1995

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ENFORCEMENT OF AN ORDER FOR RESTITUTION  
IN A CRIMINAL CASE IN THE SAME MANNER AS A CIVIL JUDGMENT.

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 hold a hearing to determine the amount of restitution or reparation due the aggrieved party or parties. 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 may be enforced in the same manner as a civil judgment. The order shall be

1 docketed and indexed in the same manner as a civil judgment pursuant to G.S. 1-233 et  
2 seq., in the amount then owing, upon the later of (i) the date upon which the conviction  
3 becomes final if the defendant is not ordered, as a condition of probation, to pay  
4 restitution or (ii) the date upon which the defendant's probation is terminated or revoked  
5 if the defendant is so ordered. An order providing for restitution or reparation shall in no  
6 way abridge the right of any aggrieved party to bring a civil action against the defendant  
7 for money damages arising out of the offense or offenses committed by the defendant,  
8 but any amount paid by the defendant under the terms of an order as provided herein shall  
9 be credited against any judgment rendered against the defendant in such civil action. As  
10 used herein, 'restitution' shall mean (i) compensation for damage or loss as could  
11 ordinarily be recovered by an aggrieved party in a civil action, and (ii) reimbursement to  
12 the State for the total amount of a judgment authorized by G.S. 7A-455(b). As used  
13 herein, 'reparation' shall include but not be limited to the performing of community  
14 services, volunteer work, or doing such other acts or things as shall aid the defendant in  
15 his rehabilitation. As used herein 'aggrieved party' includes individuals, firms,  
16 corporations, associations, other organizations, and government agencies, whether  
17 federal, State or local, including the Crime Victims Compensation Fund established by  
18 G.S. 15B-23. Provided, that no government agency shall benefit by way of restitution  
19 except for particular damage or loss to it over and above its normal operating costs and  
20 except that the State may receive restitution for the total amount of a judgment authorized  
21 by G.S. 7A-455(b). A government agency may benefit by way of reparation even though  
22 the agency was not a party to the crime provided that when reparation is ordered,  
23 community service work shall be rendered only after approval has been granted by the  
24 owner or person in charge of the property or premises where the work will be done.  
25 Provided further, that no third party shall benefit by way of restitution or reparation as a  
26 result of the liability of that third party to pay indemnity to an aggrieved party for the  
27 damage or loss caused by the defendant, but the liability of a third party to pay indemnity  
28 to an aggrieved party or any payment of indemnity actually made by a third party to an  
29 aggrieved party does not prohibit or limit in any way the power of the court to require the  
30 defendant to make complete and full restitution or reparation to the aggrieved party for  
31 the total amount of the damage or loss caused by the defendant. Restitution or reparation  
32 measures are ancillary remedies to promote rehabilitation of criminal offenders, to  
33 provide for compensation to victims of crime, and to reimburse the Crime Victims  
34 Compensation Fund established by G.S. 15B-23, and shall not be construed to be a fine  
35 or other punishment as provided for in the Constitution and laws of this State."

36       Sec. 2. This act becomes effective December 1, 1995, and applies to offenses  
37 committed on or after that date.