

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 430

Short Title: Fee/Victims Compensation Fund/AB.

(Public)

Sponsors: Representatives Thompson; Berry, Blue, Brawley, Capps, Culp, Gardner, Justus, Kiser, Linney, McMahan, Mercer, K. Miller, Pulley, Richardson, Robinson, Russell, Sexton, and Sherrill.

Referred to: Judiciary II.

March 9, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A COURT MAY ORDER PAYMENT OF A FEE TO THE VICTIMS COMPENSATION FUND BY A DEFENDANT PLACED ON PROBATION.

The General Assembly of North Carolina enacts:

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

"§ 15A-1343. Conditions of probation.

(a) In General. – The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(b) Regular Conditions. – As regular conditions of probation, a defendant must:

- (1) Commit no criminal offense in any jurisdiction.
- (2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
- (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
- (4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

- 1 (5) Possess no firearm, explosive device or other deadly weapon listed in
2 G.S. 14-269 without the written permission of the court.
- 3 (6) Pay a supervision fee as specified in subsection (c1).
- 4 (7) Remain gainfully and suitably employed or faithfully pursue a course
5 of study or of vocational training that will equip him for suitable
6 employment. A defendant pursuing a course of study or of vocational
7 training shall abide by all of the rules of the institution providing the
8 education or training, and the probation officer shall forward a copy of
9 the probation judgment to that institution and request to be notified of
10 any violations of institutional rules by the defendant.
- 11 (8) Notify the probation officer if he fails to obtain or retain satisfactory
12 employment.
- 13 (9) Pay the costs of court, any fine ordered by the court, and make
14 restitution or reparation as provided in subsection (d).
- 15 (10) Pay the State of North Carolina for the costs of appointed counsel,
16 public defender, or appellate defender to represent him in the case(s)
17 for which he was placed on probation.
- 18 (11) At a time to be designated by his probation officer, visit with his
19 probation officer a facility maintained by the Division of Prisons.
- 20 (12) Pay a Crime Victims Compensation Fund fee as provided in
21 subsection (c2) of this section.

22 In addition to these regular conditions of probation, a defendant required to serve an
23 active term of imprisonment as a condition of special probation pursuant to G.S. 15A-
24 1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey
25 the rules and regulations of the Department of Correction governing the conduct of
26 inmates while imprisoned and report to a probation officer in the State of North
27 Carolina within 72 hours of his discharge from the active term of imprisonment.

28 Regular conditions of probation apply to each defendant placed on supervised
29 probation unless the presiding judge specifically exempts the defendant from one or
30 more of the conditions in open court and in the judgment of the court. It is not
31 necessary for the presiding judge to state each regular condition of probation in open
32 court, but the conditions must be set forth in the judgment of the court.

33 Defendants placed on unsupervised probation are subject to the provisions of this
34 subsection, except that defendants placed on unsupervised probation are not subject to
35 the regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

36 (b1) Special Conditions. – In addition to the regular conditions of probation
37 specified in subsection (b), the court may, as a condition of probation, require that
38 during the probation the defendant comply with one or more of the following special
39 conditions:

- 40 (1) Undergo available medical or psychiatric treatment and remain in a
41 specified institution if required for that purpose.
- 42 (2) Attend or reside in a facility providing rehabilitation, counseling,
43 treatment, social skills, or employment training, instruction, recreation,
44 or residence for persons on probation.

- 1 (2a) Submit to a period of imprisonment in a facility for youthful offenders
2 for a minimum of 90 days or a maximum of 120 days under special
3 probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide
4 by all rules and regulations as provided in conjunction with the
5 Intensive Motivational Program of Alternative Correctional Treatment
6 (IMPACT), which provides an atmosphere for learning personal
7 confidence, personal responsibility, self-respect, and respect for
8 attitudes and value systems.
- 9 (3) Submit to imprisonment required for special probation under G.S.
10 15A-1351(a) or G.S. 15A-1344(e).
- 11 (3a) Remain in one or more specified places for a specified period or
12 periods each day, and wear a device that permits the defendant's
13 compliance with the condition to be monitored electronically.
- 14 (3b) Submit to supervision by officers assigned to the Intensive Probation
15 Program established pursuant to G.S. 143B-262(c), and abide by the
16 rules adopted for that Program.
- 17 (4) Surrender his driver's license to the clerk of superior court, and not
18 operate a motor vehicle for a period specified by the court.
- 19 (5) Compensate the Department of Environment, Health, and Natural
20 Resources or the North Carolina Wildlife Resources Commission, as
21 the case may be, for the replacement costs of any marine and estuarine
22 resources or any wildlife resources which were taken, injured,
23 removed, harmfully altered, damaged or destroyed as a result of a
24 criminal offense of which the defendant was convicted. If any
25 investigation is required by officers or agents of the Department of
26 Environment, Health, and Natural Resources or the Wildlife Resources
27 Commission in determining the extent of the destruction of resources
28 involved, the court may include compensation of the agency for
29 investigative costs as a condition of probation. This subdivision does
30 not apply in any case governed by G.S. 143-215.3(a)(7).
- 31 (6) Perform community or reparation service and pay any fee required by
32 law or ordered by the court for participation in the community or
33 reparation service program.
- 34 (7) Submit at reasonable times to warrantless searches by a probation
35 officer of his person and of his vehicle and premises while he is
36 present, for purposes specified by the court and reasonably related to
37 his probation supervision, but the probationer may not be required to
38 submit to any other search that would otherwise be unlawful.
39 Whenever the warrantless search consists of testing for the presence of
40 illegal drugs, the probationer may also be required to reimburse the
41 Department of Correction for the actual cost of drug screening and
42 drug testing, if the results are positive.
- 43 (8) Not use, possess, or control any illegal drug or controlled substance
44 unless it has been prescribed for him by a licensed physician and is in

1 the original container with the prescription number affixed on it; not
2 knowingly associate with any known or previously convicted users,
3 possessors or sellers of any such illegal drugs or controlled substances;
4 and not knowingly be present at or frequent any place where such
5 illegal drugs or controlled substances are sold, kept, or used.

6 (8a) Purchase the least expensive annual statewide license or combination
7 of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3,
8 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to
9 engage lawfully in the specific activity or activities in which the
10 defendant was engaged and which constitute the basis of the offense or
11 offenses of which he was convicted.

12 (9) If the offense is one in which there is evidence of physical, mental or
13 sexual abuse of a minor, the court should encourage the minor and the
14 minor's parents or custodians to participate in rehabilitative treatment
15 and may order the defendant to pay the cost of such treatment.

16 (10) Satisfy any other conditions determined by the court to be reasonably
17 related to his rehabilitation.

18 (c) Statement of Conditions. – A defendant released on supervised probation
19 must be given a written statement explicitly setting forth the conditions on which he is
20 being released. If any modification of the terms of that probation is subsequently made,
21 he must be given a written statement setting forth the modifications.

22 (c1) Supervision Fee. – Any person placed on supervised probation pursuant to
23 subsection (a) shall pay a supervision fee of twenty dollars (\$20.00) per month, unless
24 exempted by the court. The court may exempt a person from paying the fee only for
25 good cause and upon written motion of the person placed on supervised probation. No
26 person shall be required to pay more than one supervision fee per month. The court
27 may require that the fee be paid in advance or in a lump sum or sums, and a probation
28 officer may require payment by such methods if he is authorized by subsection (g) to
29 determine the payment schedule. Supervision fees must be paid to the clerk of court for
30 the county in which the judgment was entered or the deferred prosecution agreement
31 was filed. Fees collected under this subsection shall be transmitted to the State for
32 deposit into the State's General Fund.

33 (c2) Crime Victims Compensation Fund Fee. – Any person placed on probation
34 pursuant to subsection (a) shall pay a Crime Victims Compensation Fund fee of twenty
35 dollars (\$20,00). This fee shall be paid in advance and in a lump sum. The fee shall be
36 paid to the clerk of court for the county in which the judgment was entered or in which
37 the deferred prosecution agreement was filed. Fees collected under this subsection shall
38 be transmitted to the State for deposit in the Crime Victims Compensation Fund
39 established pursuant to G.S. 15B-23.

40 (d) Restitution as a Condition of Probation. – As a condition of probation, a
41 defendant may be required to make restitution or reparation to an aggrieved party or
42 parties who shall be named by the court for the damage or loss caused by the defendant
43 arising out of the offense or offenses committed by the defendant. When restitution or
44 reparation is a condition imposed, the court shall take into consideration the resources of

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

40 (e) Costs of Court and Appointed Counsel. – Unless the court finds there are
41 extenuating circumstances, any person placed upon supervised or unsupervised
42 probation under the terms set forth by the court shall, as a condition of probation, be
43 required to pay all court costs and costs for appointed counsel or public defender in the

1 case in which he was convicted. The court shall determine the amount due and the
2 method of payment.

3 (f) Repealed by Session Laws 1983, ch. 561, s. 5.

4 (g) Probation Officer May Determine Payment Schedules. – If a person placed on
5 supervised probation is required as a condition of that probation to pay any moneys to
6 the clerk of superior court, the court may delegate to a probation officer the
7 responsibility to determine the payment schedule. The court may also authorize the
8 probation officer to transfer the person to unsupervised probation after all the moneys
9 are paid to the clerk. If the probation officer transfers a person to unsupervised
10 probation, he must notify the clerk of that action."

11 Sec. 2. This act becomes effective December 1, 1995, and applies to any
12 person placed on probation on or after that date.