

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 267
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Short Title: Restitution/Civil Judgment.

(Public)

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

Referred to: Judiciary II.

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, except an order resulting from a worthless check, may be enforced in the same manner as a civil judgment. The order shall be docketed and indexed in the same manner as a civil judgment pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction

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

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