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SENATE BILL 763
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Short Title: Crime Victims' Rights Act.

(Public)

Sponsors:

Referred to:

April 8, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST VICTIMS
3 OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF ORDERS
4 FOR RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL
5 JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY
6 EXEMPTIONS FOR EXECUTION OF RESTITUTION JUDGMENTS, TO
7 CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN
8 CRIMINAL CASES, AND TO MAKE CHANGES TO THE CRIME VICTIMS
9 COMPENSATION ACT.

10 The General Assembly of North Carolina enacts:

11 Section 1. The title to Article 45 of Subchapter VIII of Chapter 15A of the
12 General Statutes reads as rewritten:

13 "**SUBCHAPTER VIII-A. RIGHTS OF CRIME VICTIMS AND WITNESSES.**

14 **"ARTICLE 45.**

15 **"FAIR TREATMENT FOR CERTAIN VICTIMS AND WITNESSES."**

16 Section 2. G.S. 15A-824 reads as rewritten:

17 "**§ 15A-824. Definitions.**

18 As used in this Article, unless the context clearly requires otherwise:

- 1 (1) 'Crime' means a felony or serious misdemeanor as determined in the
2 sole discretion of the district attorney, ~~any felony, except those included~~
3 in Article 45A of this Chapter, or any act committed by a juvenile that,
4 if committed by a competent adult, would constitute a ~~felony.~~ felony or
5 serious misdemeanor.
- 6 (2) 'Family member' means a spouse, child, parent or legal guardian, or the
7 closest living relative.
- 8 (3) 'Victim' means a person against whom there is probable cause to believe
9 a crime has been committed.
- 10 (4) 'Witness' means a person who has been or is expected to be summoned
11 to testify for the prosecution in a criminal action concerning a felony, or
12 who by reason of having relevant information is subject to being called
13 or is likely to be called as a witness for the prosecution in such an
14 action, whether or not an action or proceeding has been commenced."

15 Section 3. Subchapter VIII-A of Chapter 15A of the General Statutes, as
16 enacted in Section 1 of this act, is amended by adding a new Article to read:

17 **"ARTICLE 45A.**

18 **"CRIME VICTIMS' RIGHTS ACT.**

19 **"§ 15A-830. Definitions.**

20 (a) The following definitions apply in this Article:

- 21 (1) Accused. – A person who has been arrested and charged with
22 committing a crime covered by this Article.
- 23 (2) Arresting law enforcement agency. – The law enforcement agency that
24 makes the arrest of an accused.
- 25 (3) Custodial agency. – The agency that has legal custody of an accused or
26 defendant arising from a charge or conviction of a crime covered by this
27 Article including, but not limited to, local jails or detention facilities,
28 regional jails or detention facilities, or the Department of Correction.
- 29 (4) Investigating law enforcement agency. – The law enforcement agency
30 with primary responsibility for investigating the crime committed
31 against the victim.
- 32 (5) Law enforcement agency. – An arresting law enforcement agency, a
33 custodial agency, or an investigating law enforcement agency.
- 34 (6) Next of kin. – The victim's spouse, children, parents, siblings, or
35 grandparents. The term does not include the accused unless the charges
36 are dismissed or the person is found not guilty.
- 37 (7) Victim. – A person against whom there is probable cause to believe one
38 of the following crimes was committed:
- 39 a. A Class A, B1, B2, C, D, or E felony.
- 40 b. A Class F felony if it is a violation of one of the following: G.S.
41 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-
42 32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3;
43 14-190.17; 14-190.19; 14-202.1; 14-288.9; or 20-138.5.

- 1 c. A Class G felony if it is a violation of one of the following: G.S.
2 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.
- 3 d. A Class H felony if it is a violation of one of the following: G.S.
4 14-32.3(a); 14-32.3(c); or 14-33.2.
- 5 e. A Class I felony if it is a violation of one of the following: G.S.
6 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.
- 7 f. An attempt of any of the felonies listed in this subdivision if the
8 attempted felony is punishable as a felony.
- 9 g. Any of the following misdemeanor offenses when the offense is
10 committed between persons who have a personal relationship as
11 defined in G.S. 50B-1(b); G.S. 14-33(c)(1); 14-33(c)(2); 14-
12 33(a); 14-34; 14-134.3; or 14-277.3.

13 (b) If the victim is deceased, then the next of kin, in the order set forth in the
14 definition contained in this section, is entitled to the victim's rights under this Article.
15 However, the right contained in G.S. 15A-834 may only be exercised by the personal
16 representative of the victim's estate. An individual entitled to exercise the victim's rights
17 as a member of the class of next of kin may designate anyone in the class to act on behalf
18 of the class.

19 **§ 15A-831. Responsibilities of law enforcement agency.**

20 (a) As soon as practicable but within 72 hours after identifying a victim covered
21 by this Article, the investigating law enforcement agency shall provide the victim with
22 the following information:

- 23 (1) The availability of medical services, if needed.
- 24 (2) The availability of crime victims' compensation funds under Chapter
25 15B of the General Statutes and the address and telephone number of
26 the agency responsible for dispensing the funds.
- 27 (3) The address and telephone number of the district attorney's office that
28 will be responsible for prosecuting the victim's case.
- 29 (4) The name and telephone number of an investigating law enforcement
30 agency employee whom the victim may contact if the victim has not
31 been notified of an arrest in the victim's case within six months after the
32 crime was reported to the law enforcement agency.
- 33 (5) Information about an accused's opportunity for pretrial release.
- 34 (6) The name and telephone number of an investigating law enforcement
35 agency employee whom the victim may contact to find out whether the
36 accused has been released from custody.

37 (b) As soon as practicable but within 72 hours after the arrest of a person believed
38 to have committed a crime covered by this Article, the arresting law enforcement agency
39 shall inform the investigating law enforcement agency of the arrest. As soon as
40 practicable but within 72 hours of being notified of the arrest, the investigating law
41 enforcement agency shall notify the victim of the arrest.

42 (c) As soon as practicable but within 72 hours after receiving notification from the
43 arresting law enforcement agency that the accused has been arrested, the investigating

1 law enforcement agency shall forward to the district attorney's office that will be
2 responsible for prosecuting the case the victim's name, address, date of birth, social
3 security number, race, sex, and telephone number, unless the victim refuses to disclose
4 any or all of the information, in which case, the investigating law enforcement agency
5 shall so inform the district attorney's office.

6 (d) Upon receiving the information in subsection (a) of this section, the victim
7 shall, on a form provided by the investigating law enforcement agency, indicate whether
8 the victim wishes to receive any further notices from the investigating law enforcement
9 agency. If the victim elects to receive further notices, the victim shall be responsible for
10 notifying the investigating law enforcement agency of any changes in the victim's name,
11 address, and telephone number.

12 **"§ 15A-832. Responsibilities of the district attorney's office.**

13 (a) Within 21 days after the arrest of the accused, but not less than 24 hours before
14 the accused's first scheduled probable cause hearing, the district attorney's office shall
15 provide to the victim a pamphlet or other written material that explains in a clear and
16 concise manner the following:

17 (1) The victim's rights under this Article, including the right to confer with
18 the attorney prosecuting the case about the disposition of the case and
19 the right to provide a victim impact statement.

20 (2) The responsibilities of the district attorney's office under this Article.

21 (3) The victim's eligibility for compensation under the Crime Victims
22 Compensation Act and the deadlines by which the victim must file a
23 claim for compensation.

24 (4) The steps generally taken by the district attorney's office when
25 prosecuting a felony case.

26 (5) Suggestions on what the victim should do if threatened or intimidated
27 by the accused or someone acting on the accused's behalf.

28 (6) The name and telephone number of a victim and witness assistant in the
29 district attorney's office whom the victim may contact for further
30 information.

31 (b) Upon receiving the information in subsection (a) of this section, the victim
32 shall, on a form provided by the district attorney's office, indicate whether the victim
33 wishes to receive notices of some, all, or none of the trial and posttrial proceedings
34 involving the accused. If the victim elects to receive notices, the victim shall be
35 responsible for notifying the district attorney's office or any other department or agency
36 that has a responsibility under this Article of any changes in the victim's address and
37 telephone number. The victim may alter the request for notification at any time by
38 notifying the district attorney's office and completing the form provided by the district
39 attorney's office.

40 (c) The district attorney's office shall notify a victim of the date, time, and place of
41 all trial court proceedings of the type which the victim has elected to receive notice. All
42 notices required to be given by the district attorney's office shall be given in a manner

1 that is reasonably calculated to be received by the victim prior to the date of the court
2 proceeding.

3 (d) Whenever practical, the district attorney's office shall provide a secure waiting
4 area during court proceedings that does not place the victim in close proximity to the
5 defendant or the defendant's family.

6 (e) When the victim is to be called as a witness in a court proceeding, the court
7 shall make every effort to permit the fullest attendance possible by the victim in the
8 proceedings. This subsection shall not be construed to interfere with the defendant's right
9 to a fair trial.

10 (f) Prior to the disposition of the case, the district attorney's office shall offer the
11 victim the opportunity to consult with the prosecuting attorney to obtain the views of the
12 victim about the disposition of the case, including the victim's views about dismissal, plea
13 or negotiations, sentencing, and any pretrial diversion programs.

14 (g) At the sentencing hearing, the prosecuting attorney shall submit to the court a
15 copy of a form containing the identifying information set forth in G.S. 15A-831(c) about
16 any victim electing to receive further notices under this Article. The form shall be
17 included with the final judgment and commitment transmitted to the Department of
18 Correction or other agency receiving custody of the defendant and shall be maintained by
19 the custodial agency as a confidential file.

20 **"§ 15A-833. Evidence of victim impact.**

21 (a) A victim has the right to offer admissible evidence of the impact of the crime,
22 which shall be considered by the court or jury in sentencing the defendant. The evidence
23 may include the following:

24 (1) A description of the nature and extent of any physical, psychological, or
25 emotional injury suffered by the victim as a result of the offense
26 committed by the defendant.

27 (2) An explanation of any economic or property loss suffered by the victim
28 as a result of the offense committed by the defendant.

29 (3) A request for restitution and an indication of whether the victim has
30 applied for or received compensation under the Crime Victims
31 Compensation Act.

32 (b) No victim shall be required to offer evidence of the impact of the crime. No
33 inference or conclusion shall be drawn from a victim's decision not to offer evidence of
34 the impact of the crime.

35 **"§ 15A-834. Restitution.**

36 A victim has the right to receive restitution as ordered by the court pursuant to Article
37 81C of Chapter 15A of the General Statutes.

38 **"§ 15A-835. Posttrial responsibilities.**

39 (a) Within 30 days after the final trial court proceeding in the case, the district
40 attorney's office shall notify the victim, in writing, of:

41 (1) The final disposition of the case.

42 (2) The crimes of which the defendant was convicted.

43 (3) The defendant's right to appeal, if any.

1 (b) Upon a defendant's giving notice of appeal to the Court of Appeals or the
2 Supreme Court, the district attorney's office shall forward to the Attorney General's office
3 the victim's name, address, and telephone number. Upon receipt of this information, and
4 thereafter as the circumstances require, the Attorney General's office shall provide the
5 victim with the following:

6 (1) A clear and concise explanation of how the appellate process works,
7 including information about possible actions that may be taken by the
8 appellate court.

9 (2) Notice of the date, time, and place of any appellate proceedings
10 involving the defendant. Notice shall be given in a manner that is
11 reasonably calculated to be received by the victim prior to the date of
12 the proceedings.

13 (3) The final disposition of an appeal.

14 (c) If the defendant has been released on bail pending the outcome of the appeal,
15 the agency that has custody of the defendant shall notify the investigating law
16 enforcement agency as soon as practicable, and within 72 hours of receipt of the
17 notification the investigating law enforcement agency shall notify the victim that the
18 defendant has been released.

19 (d) If the defendant's conviction is overturned, and the district attorney's office
20 decides to retry the case or the case is remanded to superior court for a new trial, the
21 victim shall be entitled to the same rights under this Article as if the first trial did not take
22 place.

23 (e) The Conference of District Attorneys shall maintain a repository relating to
24 victims' identities, addresses, and other appropriate information for use by agencies
25 charged with responsibilities under this Article.

26 **"§ 15A-836. Responsibilities of agency with custody of defendant.**

27 (a) When a form is included with the final judgment and commitment pursuant to
28 G.S. 15A-832(g), or when the victim has otherwise filed a written request for notification
29 with the custodial agency, the custodial agency shall notify the victim of:

30 (1) The projected date by which the defendant can be released from
31 custody. The calculation of the release date shall be as exact as
32 possible, including earned time and disciplinary credits if the sentence
33 of imprisonment exceeds 90 days.

34 (2) An inmate's assignment to a minimum custody unit and the address of
35 the unit. This notification shall include notice that the inmate's
36 minimum custody status may lead to the inmate's participation in one or
37 more community-based programs such as work release or supervised
38 leaves in the community.

39 (3) The victim's right to submit any concerns to the agency with custody
40 and the procedure for submitting such concerns.

41 (4) The defendant's escape from custody, within 72 hours.

42 (5) The defendant's capture, within 72 hours.

1 (6) The date the defendant is scheduled to be released from the facility.
2 Whenever practical, notice shall be given 60 days before release. In no
3 event shall notice be given less than seven days before release.

4 (7) The defendant's death.

5 (b) Notifications required in this section shall be provided within 30 days of the
6 date the custodial agency takes custody of the defendant or within 30 days of the event
7 requiring notification, or as otherwise specified in subsection (a) of this section.

8 **"§ 15A-837. Responsibilities of Division of Adult Probation and Parole.**

9 (a) The Division of Adult Probation and Parole shall notify the victim of:

10 (1) The defendant's regular conditions of probation or post-release
11 supervision, special or added conditions, supervision requirements, and
12 any subsequent changes.

13 (2) The date of a hearing to determine whether the defendant's supervision
14 should be revoked, continued, modified, or terminated.

15 (3) The final disposition of any hearing referred to in subdivision (2) of
16 this section.

17 (4) Any restitution modification.

18 (5) The defendant's movement into or out of any intermediate sanction as
19 defined in G.S. 15A-1340.11(6).

20 (6) The defendant absconding supervision, within 72 hours.

21 (7) The capture of a defendant described in subdivision (6) of this section,
22 within 72 hours.

23 (8) The date when the defendant is terminated or discharged.

24 (9) The defendant's death.

25 (b) Notifications required in this section shall be provided within 30 days of the
26 event requiring notification, or as otherwise specified in subsection (a) of this section.

27 **"§ 15A-838. Notice of commuted sentence or pardon.**

28 The Governor's Clemency Office shall notify a victim when it is considering
29 commuting the defendant's sentence or pardoning the defendant. The Governor's
30 Clemency Office shall also give notice that the victim has the right to present a written
31 statement to be considered by the Office before the defendant's sentence is commuted or
32 the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its
33 decision. Notice shall be given in a manner that is reasonably calculated to allow for a
34 timely response to the commutation or pardon decision.

35 **"§ 15A-839. No money damages.**

36 This Article does not create a claim for damages against the State, a county, or a
37 municipality, or any of its agencies, instrumentalities, officers, or employees.

38 **"§ 15A-840. No ground for relief.**

39 The failure or inability of any person to provide a right or service under this Article
40 may not be used by a defendant in a criminal case, by an inmate, by any other accused, or
41 by any victim, as a ground for relief in any criminal or civil proceeding, except in suits
42 for a writ of mandamus by the victim.

43 **"§ 15A-841. Incompetent victim's rights exercised.**

1 2. The value of the property on the date of sentencing, less
2 the value of any part of the property that is returned.

3 (3) Any measure of restitution specifically provided by law for the offense
4 committed by the defendant.

5 (4) In the case of an offense resulting in bodily injury that results in the
6 death of the victim, the cost of the victim's necessary funeral and related
7 services, in addition to the items set out in subdivisions (1),(2), and (3)
8 of this subsection.

9 (b) The court may require that the victim or the victim's estate provide admissible
10 evidence that documents the costs claimed by the victim or the victim's estate under this
11 section. Any such documentation shall be shared with the defendant before the
12 sentencing hearing.

13 **"§ 15A-1340.26. Determination of restitution.**

14 (a) In determining the amount of restitution to be made, the court shall take into
15 consideration the resources of the defendant including all real and personal property
16 owned by the defendant and the income derived from the property, the defendant's ability
17 to earn, the defendant's obligation to support dependents, and any other matters that
18 pertain to the defendant's ability to make restitution, but the court is not required to make
19 findings of fact or conclusions of law on these matters. The amount of restitution must
20 be limited to that supported by the record, and the court may order partial restitution
21 when it appears that the damage or loss caused by the offense is greater than that which
22 the defendant is able to pay. If the court orders partial restitution, the court shall state on
23 the record the reasons for such an order.

24 (b) The court may require the defendant to make full restitution no later than a
25 certain date or, if the circumstances warrant, may allow the defendant to make restitution
26 in installments over a specified time period.

27 (c) When an active sentence is imposed, the court shall consider whether it should
28 recommend to the Secretary of Correction that restitution be made by the defendant out
29 of any earnings gained by the defendant if the defendant is granted work-release
30 privileges, as provided in G.S. 148-33.2. The court shall also consider whether it should
31 recommend to the Post-Release Supervision and Parole Commission that restitution by
32 the defendant be made a condition of any parole or post-release supervision granted the
33 defendant, as provided in G.S. 148-57.1.

34 **"§ 15A-1340.27. Effect of restitution order; beneficiaries.**

35 (a) An order providing for restitution does not abridge the right of a victim or the
36 victim's estate to bring a civil action against the defendant for damages arising out of the
37 offense committed by the defendant. Any amount paid by the defendant under the terms
38 of a restitution order under this Article shall be credited against any judgment rendered
39 against the defendant in favor of the same victim in a civil action arising out of the
40 criminal offense committed by the defendant.

41 (b) The court may order the defendant to make restitution to a person other than
42 the victim, or to any organization, corporation, or association, including the Crime
43 Victims Compensation Fund, that provided assistance to the victim following the

1 commission of the offense by the defendant and is subrogated to the rights of the victim.
2 Restitution shall be made to the victim or the victim's estate before it is made to any other
3 person, organization, corporation, or association under this subsection.

4 (c) No government agency shall benefit by way of restitution except for particular
5 damage or loss to it over and above its normal operating costs and except that the State
6 may receive restitution for the total amount of a judgment authorized by G.S. 7A-455(b).

7 (d) No third party shall benefit by way of restitution as a result of the liability of
8 that third party to pay indemnity to an aggrieved party for the damage or loss caused by
9 the defendant, but the liability of a third party to pay indemnity to an aggrieved party or
10 any payment of indemnity actually made by a third party to an aggrieved party does not
11 prohibit or limit in any way the power of the court to require the defendant to make
12 complete and full restitution to the aggrieved party for the total amount of the damage or
13 loss caused by the defendant.

14 **"§ 15A-1340.28. Enforcement of certain orders for restitution.**

15 (a) In addition to the provisions of G.S. 15A-1340.26, when an order for
16 restitution under G.S. 15A-1340.24(b) requires the defendant to pay restitution in an
17 amount in excess of two hundred fifty dollars (\$250.00) to a victim, the order may be
18 enforced in the same manner as a civil judgment, subject to the provisions of this section.

19 (b) The order for restitution under G.S. 15A-1340.24(b) shall be docketed and
20 indexed in the county of the original conviction in the same manner as a civil judgment
21 pursuant to G.S. 1-233, et seq., and may be docketed in any other county pursuant to G.S.
22 1-234. The judgment may be collected in the same manner as a civil judgment unless the
23 order to pay restitution is a condition of probation. If the order to pay restitution is a
24 condition of probation, the judgment may only be executed upon in accordance with
25 subsection (c) of this section.

26 (c) If the defendant is ordered to pay restitution under G.S. 15A-1340.24(b) as a
27 condition of probation, a judgment docketed under this section may be collected in the
28 same manner as a civil judgment. However, the docketed judgment for restitution may
29 not be executed upon the property of the defendant until the date of notification to the
30 clerk of superior court in the county of the original conviction that the judge presiding at
31 the probation termination or revocation hearing has made a finding that restitution in a
32 sum certain remains due and payable, that the defendant's probation has been terminated
33 or revoked, and that the remaining balance of restitution owing may be collected by
34 execution on the judgment. The clerk shall then enter upon the judgment docket the
35 amount that remains due and payable on the judgment, together with amounts equal to
36 the standard fees for docketing, copying, certifying, and mailing, as appropriate, and shall
37 collect any other fees or charges incurred as in the enforcement of other civil judgments,
38 including accrued interest. However, no interest shall accrue on the judgment until the
39 entry of an order terminating or revoking probation and finding the amount remaining
40 due and payable, at which time interest shall begin to accrue at the legal rate pursuant to
41 G.S. 24-5. The interest shall be applicable to the amount determined at the termination or
42 revocation hearing to be then due and payable. The clerk shall notify the victim by first-
43 class mail at the victim's last known address that the judgment may be executed upon,

1 together with the amount of the judgment. Until the clerk receives notification of
2 termination or revocation of probation and the amount that remains due and payable on
3 the order of restitution, the clerk shall not be required to update the judgment docket to
4 reflect partial payments on the order of restitution as a condition of probation. The stay
5 of execution under this subsection shall not apply to property of the defendant after the
6 transfer or conveyance of the property to another person. When the criminal order of
7 restitution has been paid in full, the civil judgment indexed under this section shall be
8 deemed satisfied and the judgment shall be cancelled. Payment satisfying the civil
9 judgment shall also be credited against the order of restitution.

10 (d) An appeal of the conviction upon which the order of restitution is based shall
11 stay execution on the judgment until the appeal is completed. If the conviction is
12 overturned, the judgment shall be cancelled."

13 Section 5. G. S. 15A-1021(d) reads as rewritten:

14 "(d) When restitution or reparation by the defendant is a part of the plea
15 arrangement agreement, if the judge concurs in the proposed disposition he may order
16 that restitution or reparation be made as a condition of special probation pursuant to the
17 provisions of G.S. 15A-1351, or probation pursuant to the provisions of G.S. 15A-
18 1343(d). If an active sentence is imposed the court may recommend that the defendant
19 make restitution or reparation out of any earnings gained by the defendant if he is granted
20 work release privileges under the provisions of G.S. 148-33.1, or that restitution or
21 reparation be imposed as a condition of parole in accordance with the provisions of G.S.
22 148-57.1. The order or recommendation providing for restitution or reparation shall be in
23 accordance with the applicable provisions of ~~G.S. 15A-1343(d)~~ G.S. 15A-1343(d) and
24 Article 81C of this Chapter.

25 If the offense is one in which there is evidence of physical, mental or sexual abuse of
26 a minor, the court should encourage the minor and the minor's parents or custodians to
27 participate in rehabilitative treatment and the plea agreement may include a provision that
28 the defendant will be ordered to pay for such treatment.

29 When restitution or reparation is recommended as part of a plea arrangement that
30 results in an active sentence, the sentencing court shall enter as a part of the commitment
31 that restitution or reparation is recommended as part of the plea arrangement. The
32 Administrative Office of the Courts shall prepare and distribute forms which provide for
33 ample space to make restitution or reparation recommendations incident to
34 commitments."

35 Section 6. G.S. 15A-1343(d) reads as rewritten:

36 "(d) Restitution as a Condition of Probation. – As a condition of probation, a
37 defendant may be required to make restitution or reparation to an aggrieved party or
38 parties who shall be named by the court for the damage or loss caused by the defendant
39 arising out of the offense or offenses committed by the defendant. When restitution or
40 reparation is a condition imposed, the court shall take into consideration the ~~resources of~~
41 ~~the defendant, including all real and personal property owned by the defendant and the income~~
42 ~~derived from such property, his ability to earn, his obligation to support dependents, and such~~
43 ~~other matters as shall pertain to his ability to make restitution or reparation, but the court is not~~

1 required to make findings of fact or conclusions of law on these matters when the sentence is
2 imposed. The amount must be limited to that supported by the record, and the court may order
3 partial restitution or reparation when it appears that the damage or loss caused by the offense or
4 offenses is greater than that which the defendant is able to pay. An order providing for restitution
5 or reparation shall in no way abridge the right of any aggrieved party to bring a civil action
6 against the defendant for money damages arising out of the offense or offenses committed by the
7 defendant, but any amount paid by the defendant under the terms of an order as provided herein
8 shall be credited against any judgment rendered against the defendant in such civil action. As
9 used herein, "restitution" shall mean (i) compensation for damage or loss as could ordinarily be
10 recovered by an aggrieved party in a civil action, and (ii) reimbursement to the State for the total
11 amount of a judgment authorized by G.S. 7A-455(b). factors set out in G.S. 15A-1340.25 and
12 G.S. 15A-1340.26. As used herein, 'reparation' shall include but not be limited to the
13 performing of community services, volunteer work, or doing such other acts or things as
14 shall aid the defendant in his rehabilitation. As used herein 'aggrieved party' includes
15 individuals, firms, corporations, associations, other organizations, and government
16 agencies, whether federal, State or local, including the Crime Victims Compensation
17 Fund established by G.S. 15B-23. ~~Provided, that no government agency shall benefit by way~~
18 ~~of restitution except for particular damage or loss to it over and above its normal operating costs~~
19 ~~and except that the State may receive restitution for the total amount of a judgment authorized by~~
20 ~~G.S. 7A-455(b).~~ A government agency may benefit by way of reparation even though the
21 agency was not a party to the crime provided that when reparation is ordered, community
22 service work shall be rendered only after approval has been granted by the owner or
23 person in charge of the property or premises where the work will be done. ~~Provided~~
24 ~~further, that no third party shall benefit by way of restitution or reparation as a result of the~~
25 ~~liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused~~
26 ~~by the defendant, but the liability of a third party to pay indemnity to an aggrieved party or any~~
27 ~~payment of indemnity actually made by a third party to an aggrieved party does not prohibit or~~
28 ~~limit in any way the power of the court to require the defendant to make complete and full~~
29 ~~restitution or reparation to the aggrieved party for the total amount of the damage or loss caused~~
30 ~~by the defendant. Restitution or reparation measures are ancillary remedies to promote~~
31 ~~rehabilitation of criminal offenders, to provide for compensation to victims of crime, and to~~
32 ~~reimburse the Crime Victims Compensation Fund established by G.S. 15B-23, and shall not be~~
33 ~~construed to be a fine or other punishment as provided for in the Constitution and laws of this~~
34 ~~State."~~

35 Section 7. G.S. 148-33.2(c) reads as rewritten:

36 "(c) When an active sentence is imposed, the court shall consider whether, as a
37 rehabilitative measure, it should recommend to the Secretary of Correction that restitution
38 or reparation be made by the defendant out of any earnings gained by the defendant if he
39 is granted work-release privileges and out of other resources of the defendant, including
40 all real and personal property owned by the defendant, and income derived from such
41 property. If the court determines that restitution or reparation should not be
42 recommended, it shall so indicate on the commitment. If, however, the court determines
43 that restitution or reparation should be recommended, the court shall make its
44 recommendation a part of the order committing the defendant to custody. The
45 recommendation shall be in accordance with the applicable provisions of G.S. 15A-

1 ~~1343(d)~~ G.S. 15A-1343(d) and Article 81C of Chapter 15A of the General Statutes. If
2 the offense is one in which there is evidence of physical, mental or sexual abuse of a
3 minor, the court may order the defendant to pay from work release earnings the cost of
4 rehabilitative treatment for the minor. The Administrative Office of the Courts shall
5 prepare and distribute forms which provide ample space to make restitution or reparation
6 recommendations incident to commitments, which forms shall be conveniently structured
7 to enable the sentencing court to make its recommendation."

8 Section 8. G.S. 148-57.1(c) reads as rewritten:

9 "(c) When an active sentence is imposed, the court shall consider whether, as a
10 rehabilitative measure, it should recommend to the Post-Release Supervision and Parole
11 Commission that restitution or reparation by the defendant be made a condition of any
12 parole or post-release supervision granted the defendant. If the court determines that
13 restitution or reparation should not be recommended, it shall so indicate on the
14 commitment. If, however, the court determines that restitution or reparation should be
15 recommended, the court shall make its recommendation a part of the order committing
16 the defendant to custody. The recommendation shall be in accordance with the
17 applicable provisions of ~~G.S. 15A-1343(d)~~ Article 81C of Chapter 15A of the General
18 Statutes. The Administrative Office of the Courts shall prepare and distribute forms
19 which provide ample space to make restitution or reparation recommendations incident to
20 commitments, which forms shall be conveniently structured to enable the sentencing
21 court to make its recommendation.

22 If the offense is one in which there is evidence of physical, mental or sexual abuse of
23 a minor, the court may order, as a condition of parole or post-release supervision, that the
24 defendant pay the cost of any rehabilitative treatment for the minor."

25 Section 9. G.S. 1-234 reads as rewritten:

26 "**§ 1-234. Where and how docketed; lien.**

27 Upon filing a judgment roll upon a judgment affecting the title of real property, or
28 directing in whole or in part the payment of money, it shall be docketed on the judgment
29 docket of the court of the county where the judgment roll was filed, and may be docketed
30 on the judgment of the court of any other county upon the filing with the clerk thereof of
31 a transcript of the original docket, and is a lien on the real property in the county where
32 the same is docketed of every person against whom any such judgment is rendered, and
33 which he has at the time of the docketing thereof in the county in which such real
34 property is situated, or which he acquires at any time thereafter, for 10 years from the
35 date of the rendition of the judgment. But the time during which the party recovering or
36 owning such judgment shall be, or shall have been, restrained from proceeding thereon
37 by an order of injunction, or other order, or by the operation of any appeal, or by a
38 statutory prohibition, does not constitute any part of the 10 years aforesaid, as against the
39 defendant in such judgment, or the party obtaining such orders or making such appeal, or
40 any other person who is not a purchaser, creditor or mortgagee in good faith.

41 A judgment docketed pursuant to G.S. 15A-1340.28 shall constitute a lien against the
42 property of a defendant as provided for under this section."

43 Section 10. G.S. 1C-1601(e) reads as rewritten:

1 "(e) Exceptions. – The exemptions provided in this Article are inapplicable to
2 claims

- 3 (1) Of the United States or its agencies as provided by federal law;
- 4 (2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary
5 bonds;
- 6 (3) Of lien by a laborer for work done and performed for the person
7 claiming the exemption, but only as to the specific property affected;
- 8 (4) Of lien by a mechanic for work done on the premises, but only as to the
9 specific property affected;
- 10 (5) For payment of obligations contracted for the purchase of the specific
11 real property affected;
- 12 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6;
- 13 (7) For contractual security interests in the specific property affected;
14 provided, that the exemptions shall apply to the debtor's household
15 goods notwithstanding any contract for a nonpossessory, nonpurchase
16 money security interest in any such goods;
- 17 (8) For statutory liens, on the specific property affected, other than judicial
18 liens;
- 19 (9) For child support, alimony or distributive award order pursuant to
20 Chapter 50 of the General Statutes-Statutes;
- 21 (10) For criminal restitution orders docketed as civil judgments pursuant to
22 G.S. 15A-1340.28."

23 Section 11. G.S. 7A-304(d) reads as rewritten:

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

- 28 (1) Sums in restitution to the victim entitled thereto;
- 29 ~~(1)~~(2) Costs due the county;
- 30 ~~(2)~~(3) Costs due the city;
- 31 ~~(3)~~(4) Fines to the county school fund;
- 32 ~~(4)~~(5) Sums in restitution prorated among the persons other than the
33 victim entitled thereto;
- 34 ~~(5)~~(6) Costs due the State;
- 35 ~~(6)~~(7) Attorney's fees.

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

- 37 (1) Complete restitution has been received; or
- 38 (2) When, in the opinion of the clerk, additional payments in restitution will
39 not be collected; or
- 40 (3) Upon the request of the person or persons entitled thereto; and
- 41 (4) In any event, at least once each calendar year."

42 Section 12. G.S. 15B-2 reads as rewritten:

43 **"§ 15B-2. Definitions.**

1 As used in this Chapter, unless the context requires otherwise:

- 2 (1) 'Allowable expense' means reasonable charges incurred for reasonably
3 needed products, services, and accommodations, including those for
4 medical care, rehabilitation, medically related property, and other
5 remedial treatment and care.

6 Allowable expense includes a total charge not in excess of three
7 thousand five hundred dollars (\$3,500) for expenses related to funeral,
8 cremation, and burial, including transportation of a body, but excluding
9 expenses for flowers, gravestone, and other items not directly related to
10 the funeral service.

- 11 (2) 'Claimant' means any of the following persons who claims an award of
12 compensation under this Chapter:

- 13 a. A victim;
14 b. A dependent of a deceased victim;
15 c. A third person who is not a collateral source and who provided
16 benefit to the victim or his family other than in the course or
17 scope of his employment, business, or profession;
18 d. A person who is authorized to act on behalf of a victim, a
19 dependent, or a third person described in subdivision c.

20 The claimant, however, may not be the offender or an accomplice of the
21 offender who committed the criminally injurious conduct.

- 22 (3) 'Collateral source' means a source of benefits or advantages for
23 economic loss otherwise compensable that the victim or claimant has
24 received or that is readily available to him from any of the following
25 sources:

- 26 a. The offender;
27 b. The government of the United States or any of its agencies, a
28 state or any of its political subdivisions, or an instrumentality of
29 two or more states;
30 c. Social security, medicare, and medicaid;
31 d. State-required, temporary, nonoccupational disability insurance;
32 e. Worker's compensation;
33 f. Wage continuation programs of any employer;
34 g. Proceeds of a contract of insurance payable to the victim for loss
35 that he sustained because of the criminally injurious conduct;
36 h. A contract providing prepaid hospital and other health care
37 services, or benefits for disability.

- 38 (4) 'Commission' means the Crime Victims Compensation Commission
39 established by G.S. 15B-3.

- 40 (5) 'Criminally injurious conduct' means conduct that by its nature poses a
41 substantial threat of personal injury or death, and is punishable by fine
42 or imprisonment or death, or would be so punishable but for the fact that
43 the person engaging in the conduct lacked the capacity to commit the

1 crime under the laws of this State. Criminally injurious conduct includes
2 conduct that amounts to an offense involving impaired driving as
3 defined in G.S. 20-4.01(24a), and conduct that amounts to a violation of
4 G.S. 20-166 if the victim was a pedestrian or was operating a vehicle
5 moved solely by human power or a mobility impairment device. For
6 purposes of this Chapter, a mobility impairment device is a device that
7 is designed for and intended to be used as a means of transportation for
8 a person with a mobility impairment, is suitable for use both inside and
9 outside a building, and whose maximum speed does not exceed 12 miles
10 per hour when the device is being operated by a person with a mobility
11 impairment. Criminally injurious conduct does not include conduct
12 arising out of the ownership, maintenance, or use of a motor vehicle
13 when the conduct is punishable only as a violation of other provisions of
14 Chapter 20 of the General Statutes. Criminally injurious conduct shall
15 also include an act of terrorism, as defined in 18 U.S.C. § 2331, that is
16 committed outside of the United States against a citizen of this State.

17 (6) 'Dependent' means an individual wholly or substantially dependent upon
18 the victim for care and support and includes a child of the victim born
19 after his death.

20 (7) 'Dependent's economic loss' means loss after a victim's death of
21 contributions of things of economic value to his dependents, not
22 including services they would have received from the victim if he had
23 not suffered the fatal injury, less expenses of the dependents avoided by
24 reason of the victim's death.

25 (8) 'Dependent's replacement service loss' means loss reasonably incurred
26 by dependents after a victim's death in obtaining ordinary and necessary
27 services in lieu of those the victim would have performed for their
28 benefit if he had not suffered the fatal injury, less expenses of the
29 dependents avoided by reason of the victim's death and not subtracted in
30 calculating dependent's economic loss.

31 Dependent's replacement service loss will be limited to a 26-week
32 period commencing from the date of the injury and compensation shall
33 not exceed two hundred dollars (\$200.00) per week.

34 (9) 'Director' means the Director of the Commission appointed under G.S.
35 15B-3(g).

36 (10) 'Economic loss' means economic detriment consisting only of allowable
37 expense, work loss, ~~and replacement services loss~~, and household
38 support loss. If criminally injurious conduct causes death, economic
39 loss includes a dependent's economic loss and a dependent's
40 replacement service loss. Noneconomic detriment is not economic loss,
41 but economic loss may be caused by pain and suffering or physical
42 impairment.

1 (11) 'Noneconomic detriment' means pain, suffering, inconvenience, physical
2 impairment, or other nonpecuniary damage.

3 (12) 'Replacement services loss' means expenses reasonably incurred in
4 obtaining ordinary and necessary services in lieu of those the injured
5 person would have performed, not for income but for the benefit of
6 himself or his family, if he had not been injured.

7 Replacement service loss will be limited to a 26-week period
8 commencing from the date of the injury, and compensation may not
9 exceed two hundred dollars (\$200.00) per week.

10 (12a) 'Substantial evidence' means relevant evidence that a reasonable mind
11 might accept as adequate to support a conclusion.

12 (13) 'Victim' means a person who suffers personal injury or death
13 proximately caused by criminally injurious conduct.

14 (14) 'Work loss' means loss of income from work that the injured person
15 would have performed if he had not been injured and expenses
16 reasonably incurred by him to obtain services in lieu of those he would
17 have performed for income, reduced by any income from substitute
18 work actually performed by him, or by income he would have earned in
19 available appropriate substitute work that he was capable of performing
20 but unreasonably failed to undertake.

21 Compensation for work loss will be limited to 26 weeks commencing
22 from the date of the injury, and compensation ~~may shall~~ not exceed ~~two~~
23 ~~hundred dollars (\$200.00)~~ three hundred dollars (\$300.00) per week. A
24 claim for work loss will be paid only upon proof that the injured person
25 was gainfully employed at the time of the criminally injurious conduct
26 and, by physician's certificate, that the injured person was unable to
27 work.

28 (15) 'Household support loss' means the loss of support that a victim would
29 have received from the victim's spouse for the purpose of maintaining a
30 home or residence for the victim and the victim's dependents. A victim
31 may be compensated fifty dollars (\$50.00) per week for each dependent
32 child. Compensation for household support loss shall not exceed three
33 hundred dollars (\$300.00) per week and shall be limited to 26 weeks
34 commencing from the date of the injury. A victim may receive only one
35 compensation for household support loss. Household support loss is
36 only available to an unemployed victim whose spouse is the offender
37 who committed the criminally injurious conduct that is the basis of the
38 victim's claim under this act."

39 Section 12.1. G.S. 15B-11 reads as rewritten:

40 "**§ 15B-11. Grounds for denial of claim or reduction of award.**

41 (a) An award of compensation shall be denied if:

- 1 (1) The claimant fails to file an application for an award within ~~one year~~ two
2 years after the date of the criminally injurious conduct that caused the
3 injury or death for which the claimant seeks the award;
- 4 (2) The economic loss is incurred after one year from the date of the
5 criminally injurious conduct that caused the injury or death for which
6 the victim seeks the award, except in the case where the victim for
7 whom compensation is sought was 10 years old or younger at the time
8 the injury occurred. In that case an award of compensation will be
9 denied if the economic loss is incurred after two years from the date of
10 the criminally injurious conduct that caused the injury or death for
11 which the victim seeks the award;
- 12 (3) The criminally injurious conduct was not reported to a law enforcement
13 officer or agency within 72 hours of its occurrence, and there was no
14 good cause for the delay;
- 15 (4) The award would benefit the offender or the offender's accomplice,
16 unless a determination is made that the interests of justice require that
17 an award be approved in a particular case;
- 18 (5) The criminally injurious conduct occurred while the victim was
19 confined in any State, county, or city prison, correctional, youth
20 services, or juvenile facility, or local confinement facility, or half-way
21 house, group home, or similar facility; or
- 22 (6) The victim was participating in a felony or a nontraffic misdemeanor at
23 or about the time that the victim's injury occurred.

24 (b) A claim may be denied and an award of compensation may be reduced upon a
25 finding of contributory misconduct by the claimant or a victim through whom the
26 claimant claims.

27 (c) A claim may be denied, an award of compensation may be reduced, and a
28 claim that has already been decided may be reconsidered upon finding that the claimant
29 or victim has not fully cooperated with appropriate law enforcement agencies with regard
30 to the criminally injurious conduct that is the basis for the award.

31 (c1) A claim may be denied upon a finding that the claimant has been convicted of
32 any felony classified as a Class A, B1, B2, C, D, or E felony under the laws of the State
33 of North Carolina and that such felony was committed within 3 years of the time the
34 victim's injury occurred.

35 (d) After reaching a decision to approve an award of compensation, but before
36 notifying the claimant, the Director shall require the claimant to submit current
37 information as to collateral sources on forms prescribed by the Commission.

38 An award that has been approved shall nevertheless be denied or reduced to the extent
39 that the economic loss upon which the claim is based is or will be recouped from a
40 collateral source. If an award is reduced or a claim is denied because of the expected
41 recoupment of all or part of the economic loss of the claimant from a collateral source,
42 the amount of the award or the denial of the claim shall be conditioned upon the
43 claimant's economic loss being recouped by the collateral source. If it is thereafter

1 determined that the claimant will not receive all or part of the expected recoupment, the
2 claim shall be reopened and an award shall be approved in an amount equal to the amount
3 of expected recoupment that it is determined the claimant will not receive from the
4 collateral source, subject to the limitations set forth in subsections (f) and (g). The
5 existence of a collateral source that would pay expenses directly related to a funeral,
6 cremation, and burial, including transportation of a body, shall not constitute grounds for
7 the denial or reduction of an award of compensation.

8 ~~(e) Compensation may not be awarded if the economic loss is less than one~~
9 ~~hundred dollars (\$100.00).~~

10 Compensation for ~~work loss, replacement services loss, dependent's economic loss,~~
11 ~~and dependent's replacement services loss~~ may not exceed two hundred dollars (\$200.00)
12 per week. Compensation for work loss and household support loss may not exceed three
13 hundred dollars (\$300.00) per week.

14 (g) Compensation payable to a victim and to all other claimants sustaining
15 economic loss because of injury to, or the death of, that victim may not exceed ~~twenty~~
16 thirty thousand dollars (\$20,000) (\$30,000) in the aggregate in addition to allowable
17 funeral, cremation, and burial expenses.

18 (h) The right to reconsider or reopen a claim does not affect the finality of its
19 decision for the purpose of judicial review."

20 Section 12.2. G.S. 143B-480.2(a) reads as rewritten:

21 "(a) Only victims who have reported the following crimes are eligible for assistance
22 under this Program: first-degree rape as defined in G.S. 14-27.2, second-degree rape as
23 defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-
24 degree sexual offense as defined in G.S. 14-27.5, or attempted first-degree or second-
25 degree rape or attempted first-degree or second-degree sexual offense as defined in G.S.
26 14-27.6. Assistance is limited to immediate and short-term medical expenses, ambulance
27 services, and mental health services provided by a professional licensed or certified by
28 the State to provide such services, not to exceed ~~five hundred dollars (\$500.00) one~~
29 thousand dollars (\$1,000) incurred by the victim for the medical examination, medical
30 procedures to collect evidence, or counseling treatment which follow the attack, or
31 ambulance services from the place of the attack to a place where medical treatment is
32 provided. Assistance not to exceed fifty dollars (\$50.00) shall be provided to victims to
33 replace clothing that was held for evidence tests."

34 Section 13. The North Carolina Conference of District Attorneys, with
35 assistance from the Administrative Office of the Court and the Governor's Crime
36 Commission, shall present to the General Assembly on or before March 1, 1999, a
37 projection of the costs for full implementation of the provisions of this act with regard to
38 victims of domestic violence. In preparing the report, the Conference of District
39 Attorneys shall use data collected in Prosecutorial Districts 3A, 13, 20, 21, and 26 by
40 domestic violence prosecution programs receiving grant funds from the Governor's
41 Crime Commission. Nothing herein shall prohibit the Conference of District Attorneys
42 from using data from other such grant programs in this State. Failure or delay in

1 presentation of the report shall not result in a delay in the implementation of the
2 provisions of this act relating to victims of domestic violence.

3 Section 14. To the extent practicable and within available resources, agencies
4 are encouraged to begin as soon as possible the implementation of applicable victim
5 notification procedures of this act prior to the effective date of July 1, 1999.

6 Section 15. G.S. 15A-830, 15A-833 and 15A-834 as enacted by Section 3 of
7 this act become effective December 1, 1998, and apply to offenses committed on or after
8 that date. Sections 4, 5, 6, 7, 8, and 9 of this act become effective December 1, 1998, and
9 apply to offenses committed on or after that date. Sections 12, 12.1, and 12.2 of this act
10 become effective October 1, 1998, and apply to injuries occurring on or after that date.
11 Sections 13 and 14 of this act are effective when the act becomes law. The remainder of
12 this act becomes effective July 1, 1999, and applies to offenses committed on or after that
13 date.