

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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1

HOUSE BILL 217

Short Title: Restitution/Civil Judgment.

(Public)

Sponsors: Representatives McCrary, Culpepper, Hensley, R. Hunter, and Neely.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO ALLOW THE ENFORCEMENT OF AN ORDER FOR RESTITUTION
3 IN A CRIMINAL CASE IN THE SAME MANNER AS A CIVIL JUDGMENT, TO
4 CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR
5 EXECUTION OF SUCH A JUDGMENT, AND TO CHANGE THE ORDER OF
6 PRIORITY FOR DISBURSEMENT OF FUNDS IN A CRIMINAL CASE.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 15A-1343(d) reads as rewritten:

9 "(d) Restitution as a Condition of Probation. – As a condition of probation, a
10 defendant may be required to make restitution or reparation to an aggrieved party or
11 parties who shall be named by the court for the damage or loss caused by the defendant
12 arising out of the offense or offenses committed by the defendant. When restitution or
13 reparation is a condition imposed, the court shall hold a hearing to determine the amount
14 of restitution or reparation due the aggrieved party or parties. 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 such property, his ability to earn,
17 his obligation to support dependents, and such other matters as shall pertain to his ability
18 to make restitution or reparation, but the court is not required to make findings of fact or
19 conclusions of law on these matters when the sentence is imposed. The amount must be
20 limited to that supported by the record, and the court may order partial restitution or

1 reparation when it appears that the damage or loss caused by the offense or offenses is
2 greater than that which the defendant is able to pay. An order providing for restitution or
3 reparation, as a condition of supervised or unsupervised probation, except an order
4 resulting from a worthless check, may be enforced in the same manner as a civil
5 judgment as provided in this subsection. Upon a finding that restitution in a sum certain
6 remains due and payable, and that the defendant's probation should be terminated or
7 revoked, the judge presiding at the probation termination or revocation hearing shall
8 order that a judgment be docketed pursuant to G.S. 1-233, et seq., in the county of the
9 original conviction as of the date of notification to the clerk in that county. The clerk
10 shall add to the amount of the judgment to be docketed amounts equal to the standard
11 fees for docketing, copying, certification, and mailing, as appropriate, and shall collect
12 any other fees or charges incurred as in the enforcement of other civil judgments. The
13 clerk shall notify the victim by first-class mail at the victim's last known address of the
14 docketing of the judgment and provide the victim with a certified copy of the order
15 directing entry of the civil judgment. A civil judgment under this section shall be reduced
16 by any payments made by the defendant pursuant to the criminal case, including
17 payments made pursuant to work release privileges. An order providing for restitution or
18 reparation shall in no way abridge the right of any aggrieved party to bring a civil action
19 against the defendant for money damages arising out of the offense or offenses
20 committed by the defendant, but any amount paid by the defendant under the terms of an
21 order or judgment as provided herein shall be credited against any judgment rendered
22 against the defendant in such civil action. As used herein, 'restitution' shall mean (i)
23 compensation for damage or loss as could ordinarily be recovered by an aggrieved party
24 in a civil action, and (ii) reimbursement to the State for the total amount of a judgment
25 authorized by G.S. 7A-455(b). As used herein, 'reparation' shall include but not be
26 limited to the performing of community services, volunteer work, or doing such other
27 acts or things as shall aid the defendant in his rehabilitation. As used herein 'aggrieved
28 party' includes individuals, firms, corporations, associations, other organizations, and
29 government agencies, whether federal, State or local, including the Crime Victims
30 Compensation Fund established by G.S. 15B-23. Provided, that no government agency
31 shall benefit by way of restitution except for particular damage or loss to it over and
32 above its normal operating costs and except that the State may receive restitution for the
33 total amount of a judgment authorized by G.S. 7A-455(b). A government agency may
34 benefit by way of reparation even though the agency was not a party to the crime
35 provided that when reparation is ordered, community service work shall be rendered only
36 after approval has been granted by the owner or person in charge of the property or
37 premises where the work will be done. Provided further, that no third party shall benefit
38 by way of restitution or reparation as a result of the liability of that third party to pay
39 indemnity to an aggrieved party for the damage or loss caused by the defendant, but the
40 liability of a third party to pay indemnity to an aggrieved party or any payment of
41 indemnity actually made by a third party to an aggrieved party does not prohibit or limit
42 in any way the power of the court to require the defendant to make complete and full
43 restitution or reparation to the aggrieved party for the total amount of the damage or loss

1 caused by the defendant. Restitution or reparation measures are ancillary remedies to
2 promote rehabilitation of criminal offenders, to provide for compensation to victims of
3 crime, and to reimburse the Crime Victims Compensation Fund established by G.S. 15B-
4 23, and shall not be construed to be a fine or other punishment as provided for in the
5 Constitution and laws of this State."

6 Section 2. G.S. 148-57.1 is amended by adding a new subsection (b1) to read:

7 "(b1) If the Post-Release Supervision and Parole Commission imposes restitution as
8 a condition of parole or post-release supervision, the Commission shall notify the
9 sentencing court of the restitution including the amount of restitution. The sentencing
10 court shall order the clerk of court in the county of conviction to docket a civil judgment
11 pursuant to G.S. 1-233, et seq., in the amount of restitution. The clerk shall add to the
12 amount of the judgment to be docketed amounts equal to the standard fees for docketing,
13 copying, certification, and mailing, as appropriate, and shall collect any other fees or
14 charges incurred as in the enforcement of other civil judgments. The clerk shall notify the
15 victim by first-class mail at the victim's last known address of the docketing of the
16 judgment and provide the victim with a certified copy of the order directing entry of the
17 civil judgment. An order providing for a civil judgment under this subsection shall in no
18 way abridge the right of any aggrieved party to bring a civil action against the defendant
19 for money damages arising out of the offense or offenses committed by the defendant,
20 but any amount paid by the defendant under the terms of a civil judgment as provided
21 herein shall be credited against any judgment rendered against the defendant in such civil
22 action."

23 Section 3. G.S. 1C-1601(e) reads as rewritten:

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

- 26 (1) Of the United States or its agencies as provided by federal law;
- 27 (2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary
28 bonds;
- 29 (3) Of lien by a laborer for work done and performed for the person
30 claiming the exemption, but only as to the specific property affected;
- 31 (4) Of lien by a mechanic for work done on the premises, but only as to the
32 specific property affected;
- 33 (5) For payment of obligations contracted for the purchase of the specific
34 real property affected;
- 35 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6;
- 36 (7) For contractual security interests in the specific property affected;
37 provided, that the exemptions shall apply to the debtor's household
38 goods notwithstanding any contract for a nonpossessory, nonpurchase
39 money security interest in any such goods;
- 40 (8) For statutory liens, on the specific property affected, other than judicial
41 liens;
- 42 (9) For child support, alimony or distributive award order pursuant to
43 Chapter 50 of the General Statutes-~~Statutes~~;

1 (10) For criminal restitution orders docketed as civil judgments pursuant to
2 G.S. 15A-1343(d)."

3 Section 4. G.S. 7A-304(d) reads as rewritten:

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

8 (1) Sums in restitution prorated among the persons entitled thereto;

9 ~~(2)~~ Costs due the county;

10 ~~(3)~~ Costs due the city;

11 ~~(4)~~ Fines to the county school fund;

12 ~~(4)~~ Sums in restitution prorated among the persons entitled thereto;

13 (5) Costs due the State;

14 (6) Attorney's fees.

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

16 (1) Complete restitution has been received; or

17 (2) When, in the opinion of the clerk, additional payments in restitution will
18 not be collected; or

19 (3) Upon the request of the person or persons entitled thereto; and

20 (4) In any event, at least once each calendar year."

21 Section 5. This act becomes effective December 1, 1997, and applies to
22 offenses committed on or after that date.