

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 614
HOUSE BILL 426

AN ACT TO PROVIDE THAT RESTITUTION AND REPARATION BE INCORPORATED
AS AN INTEGRAL PART OF THE CRIMINAL JUSTICE SYSTEM.

Whereas, there is a desire on the part of the public for the offender to bear some of the responsibility for the damage or loss suffered by the victims of crimes; and

Whereas, the laws of this State do not speak directly and clearly to the question of making restitution or reparation an integral part of the criminal justice system at the points of plea negotiation, parole and work release; and

Whereas, a willingness on the part of the criminal to make restitution or reparation evidences his awareness that he is responsible for his actions; and

Whereas, the General Assembly recognizes that an awareness on the part of a criminal that he is responsible for his actions is an indication of his rehabilitation, and that, therefore, an agreement to make restitution and reparation should rightfully and appropriately be considered in plea negotiations and in determining parole and work release; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 15-199(10) is hereby rewritten to read as follows:

"(10) 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 for which the defendant has been convicted. When restitution or reparation is a condition imposed, the court shall take into consideration the resources of the defendant, his ability to earn, his obligation to support dependents, and such other matters as shall pertain to his ability to make restitution or reparation. 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. The court shall fix the manner of performing the restitution or reparation, and in doing so, the court may take into consideration the recommendation of the probation officer. An order providing for restitution or reparation shall in no way abridge the right of any aggrieved party to bring a civil action against the defendant for money damages arising out of the offense or offenses committed by the defendant, but any amount paid by the defendant under the terms of an order as provided herein shall be credited against any judgment rendered against the defendant in such civil action. As used herein, 'restitution' shall mean compensation for damage or loss as could ordinarily be recovered by an aggrieved party in a civil action. As used herein, 'reparation' shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein, 'aggrieved party' shall include individuals, firms, corporations, associations or other organizations, and government agencies, whether federal, State or local. Provided, that no

government agency shall benefit by way of restitution or reparation except for particular damage or loss to it over and above its normal operating costs. Provided further, that no third party shall benefit by way of restitution or reparation as a result of the liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused by the defendant. Restitution or reparation measures are ancillary remedies to promote rehabilitation of criminal offenders and to provide for compensation to victims of crime, and shall not be construed to be a fine or other punishment as provided for in the Constitution and laws of this State."

Sec. 2. G.S. 15-197.1 is hereby amended by adding a new subsection (c) to read as follows:

"(c) As a term and condition of special probation as provided in subsection (b), the court may order that the defendant make restitution or reparation to an aggrieved party or parties for the damage or loss caused by the defendant arising out of the offense or offenses for which the defendant has been convicted. The order providing for restitution or reparation shall be in accordance with the applicable provisions of G.S. 15-199(10)."

Sec. 3. G.S. 15A-1021(c) is hereby rewritten to read as follows:

"(c) If the parties have reached a proposed plea arrangement in which the prosecutor has agreed to recommend a particular sentence, they may, with the permission of the trial judge, advise the judge of the terms of the arrangement and the reasons therefor in advance of the time for tender of the plea. The proposed plea arrangement may include a provision for the defendant to make restitution or reparation to an aggrieved party or parties for the damage or loss caused by the offense or offenses committed by the defendant. The judge may indicate to the parties whether he will concur in the proposed disposition. The judge may withdraw his concurrence if he learns of information not consistent with the representations made to him."

Sec. 4. G.S. 15A-1021 is hereby amended by adding a new subsection (d) to read as follows:

"(d) When restitution or reparation by the defendant is a part of the plea arrangement agreement, if the judge concurs in the proposed disposition he may order that restitution or reparation be made pursuant to the provisions of G.S. 15-199(10), or pursuant to the provisions of G.S. 15-197.1. If an active sentence is imposed other than by the provisions of G.S. 15-197.1, the court may order that the defendant make restitution or reparation out of any earnings gained by the defendant if he attains work release privileges under the provisions of G.S. 148-33.1, or that restitution or reparation be imposed as a condition of parole in accordance with the provisions of G.S. 148-57.1. The order providing for restitution or reparation shall be in accordance with the applicable provisions of G.S. 15-199(10). When restitution or reparation is ordered as a part of a plea arrangement or a condition of parole or work release privileges, the sentencing court shall enter as a part of the commitment that restitution or reparation is ordered as a part of a plea arrangement. The Administrative Office of the Courts shall prepare and distribute forms which provide for ample space to make restitution or reparation orders incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order."

Sec. 5. G.S. 143B-266 is hereby amended by adding a new subsection (d) to read as follows:

"(d) The commission is authorized and empowered to impose as a condition of parole that restitution or reparation be made by the prisoner in accordance with the provisions of G.S. 148-57.1. The commission is further authorized and empowered to make restitution or reparation a condition of work release in accordance with the provisions of G.S. 148-33.2."

Sec. 6. G.S. 148-33.1(f), as it appears in 1974 Replacement Volume 3C of the General Statutes, is amended by redesignating subdivision (4) as subdivision (5), and by inserting a new subdivision (4) to read as follows:

"(4) To make restitution or reparation to an aggrieved party or parties for the damage or loss occasioned by the offense or offenses committed by the prisoner when such restitution or reparation is imposed as a condition of work release privileges pursuant to the provisions of G.S. 148-33.2."

Sec. 7. Article 3 of Chapter 148 of the General Statutes is amended by adding a new G.S. 148-33.2 to read as follows:

§ 148-33.2. Restitution by prisoners with work release privileges. — (a) As a rehabilitative measure, the Secretary of the Department of Correction and the Parole Commission are authorized and empowered to impose as a condition of attaining work release privileges that the prisoner make restitution or reparation to an aggrieved party or parties for the damage or loss occasioned by the offense or offenses committed by the prisoner when such restitution or reparation is ordered as a condition of attaining work release privileges pursuant to a plea arrangement made under provisions of G.S. 15A-1021. The secretary and the Parole Commission shall implement the order of the sentencing court, but, if due to the disability of the prisoner, or for other causes, such order cannot be reasonably implemented, the secretary and the Parole Commission shall state in writing why they cannot reasonably implement the order, and forward the written statement to the sentencing court. The sentencing court shall consider the written statement, and shall issue such further orders as it may deem necessary.

(b) As a rehabilitative measure, the Secretary of the Department of Correction and the Parole Commission are further authorized and empowered to impose as a condition of attaining work release privileges that the prisoner make restitution or reparation to an aggrieved party when such restitution or reparation is recommended by the sentencing court as a condition of attaining work release privileges. The secretary and the Parole Commission shall not be bound by such recommendation, but if they elect not to implement the recommendation, they shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a further rehabilitative measure, restitution or reparation should be ordered or recommended to the Parole Commission and the Secretary of Correction to be imposed as a condition of attaining work release privileges. If the court determines that restitution or reparation should not be ordered or recommended as a condition of attaining work release privileges, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of attaining work release privileges, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15-199(10). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation.

(d) The Secretary of the Department of Correction and the Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that restitution or reparation is being considered as a condition of work release, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the order or recommendation of the sentencing court."

Sec. 8. Article 4 of Chapter 148 of the General Statutes is amended by adding a new G.S. 148-57.1 to read as follows:

§ 148-57.1. Restitution as a condition of parole. — (a) As a rehabilitative measure, the Parole Commission is authorized and empowered to impose as a condition of attaining parole that the prisoner make restitution or reparation to an aggrieved party or parties for the damage or loss caused by the offense or offenses committed by the prisoner when such restitution or reparation is ordered as a condition of parole pursuant to a plea arrangement made under the

provisions of G.S. 15A-1021. The Parole Commission shall implement the order of the sentencing court, but, if due to the disability of the prisoner, or for other causes, such order cannot reasonably be implemented, the Parole Commission shall state in writing why it cannot reasonably implement the order, and forward the written statement to the sentencing court. The sentencing court shall consider the written statement, and shall issue such further orders as it may deem necessary.

(b) As a rehabilitative measure, the Parole Commission is further authorized and empowered to impose as a condition of attaining parole that the prisoner make restitution or reparation to an aggrieved party when such restitution or reparation is recommended by the sentencing court as a condition of attaining parole. The Parole Commission shall not be bound by such recommendation, but if it elects not to implement the recommendation, it shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, restitution or reparation should be ordered or recommended to the Parole Commission to be imposed as a condition of parole. If the court determines that restitution or reparation should not be ordered or recommended as a condition of parole, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of parole, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15-199(10). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation.

(d) The Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that restitution or reparation is being considered as a condition of his parole, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the order or recommendation of the sentencing court."

Sec. 9. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this act are severable.

Sec. 10. This act shall become effective on October 1, 1977, and shall apply to offenses committed on and after that date.

In the General Assembly read three times and ratified, this the 20th day of June, 1977.