

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

S

1

SENATE BILL 54

Short Title: Rights of Victims Amendment.

(Public)

Sponsors: Senators Forrester; Hartsell, Blackmon, Carpenter, Shaw, Cochrane, Hoyle, Codington, Warren, and Gunter.

Referred to: Courts.

February 10, 1994

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO ESTABLISH RIGHTS FOR VICTIMS OF CRIME AND TO PROVIDE FOR THE IMPOSITION OF A LIEN ON A DEFENDANT'S PROPERTY TO SECURE PAYMENT OF THE RESTITUTION AWARDED.

The General Assembly of North Carolina enacts:

Section 1. Article I of the Constitution of North Carolina is amended by adding a new section to read:

"Sec. 37. Rights of victims of crime.

(1) Crime victims or their lawful representatives, including the next of kin in the case of homicide, shall have the following rights:

(a) The right to be treated with fairness, respect, and dignity throughout the criminal justice process.

(b) The right to be reasonably protected from the accused or any persons acting on the accused's behalf throughout the criminal justice process.

(c) The right to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.

(d) The right to reasonable notification of court proceedings and notice of pretrial release of the accused.

(e) The right to attend trial and all other court proceedings that the accused has a right to attend, unless there is a judicial determination to restrict crime victims' attendance.

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

1 construed to be a fine or other punishment as provided for in the Constitution and laws
2 of this State."

3 Sec. 5. G.S. 15A-1021(d) reads as rewritten:

4 "(d) When restitution or reparation by the defendant is a part of the plea
5 arrangement agreement, if the judge concurs in the proposed disposition he ~~may~~shall
6 order that restitution or reparation be made as a condition of special probation pursuant
7 to the provisions of G.S. 15A-1351, or probation pursuant to the provisions of G.S.
8 15A-1343(d). If an active sentence is imposed the court ~~may~~shall recommend that the
9 defendant make restitution or reparation out of any earnings gained by the defendant if
10 he is granted work release privileges under the provisions of G.S. 148-33.1, or that
11 restitution or reparation be imposed as a condition of parole in accordance with the
12 provisions of G.S. 148-57.1. The order or recommendation providing for restitution or
13 reparation shall be in accordance with the applicable provisions of G.S. 15A-1343(d).
14 An order providing for restitution becomes a lien on the real estate of the defendant in
15 the same manner as do judgments in civil actions.

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

20 ~~When restitution or reparation is recommended as part of a plea arrangement that~~
21 ~~results in an active sentence, the~~ The sentencing court shall enter as a part of the
22 commitment that restitution or reparation ~~is recommended as is to be~~ part of the plea
23 arrangement. The Administrative Office of the Courts shall prepare and distribute forms
24 which provide for ample space to make restitution or reparation recommendations
25 incident to commitments."

26 Sec. 6. G.S. 148-57.1 reads as rewritten:

27 "**§ 148-57.1. Restitution as a condition of parole.**

28 (a) Repealed by Session Laws 1985, c. 474, s. 5.

29 (b) As a rehabilitative measure, the Parole Commission ~~is authorized to~~shall
30 require a prisoner to whom parole is granted to make restitution or reparation to an
31 aggrieved party as a condition of parole when the sentencing court recommends that
32 restitution or reparation to an aggrieved party be made a condition of any parole granted
33 the defendant. ~~When imposing restitution as a condition and setting up a payment schedule~~
34 for the restitution, the Parole Commission shall take into consideration the resources of
35 the defendant, including all real and personal property owned by the defendant and the
36 income derived from such property, his ability to earn, and his obligation to support
37 dependents. ~~The Parole Commission shall not be bound by such recommendation, but if it~~
38 ~~elects not to implement the recommendation, it shall state in writing the reasons therefor, and~~
39 ~~shall forward the same to the sentencing court.~~

40 (c) When an active sentence is imposed, the court ~~shall consider whether,~~shall, as
41 a rehabilitative measure, ~~it should~~ recommend to the Parole Commission that restitution
42 or reparation by the defendant be made a condition of any parole granted the defendant.
43 ~~If the court determines that restitution or reparation should not be recommended, it shall so~~
44 ~~indicate on the commitment. If, however, the court determines that restitution or reparation~~

1 ~~should be recommended, the~~ The court shall make its recommendation a part of the order
2 committing the defendant to custody. The recommendation shall be in accordance with
3 the applicable provisions of G.S. 15A-1343(d). An order providing for restitution
4 becomes a lien on the real estate of the defendant in the same manner as do judgments
5 in civil actions. The Administrative Office of the Courts shall prepare and distribute
6 forms which provide ample space to make restitution or reparation recommendations
7 incident to commitments, which forms shall be conveniently structured to enable the
8 sentencing court to make its recommendation.

9 If the offense is one in which there is evidence of physical, mental or sexual abuse of
10 a minor, the court ~~may~~ shall order, as a condition of parole, that the defendant pay the
11 cost of any rehabilitative treatment for the minor.

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

18 Sec. 7. G.S. 148-57.1, as amended by Chapter 538 of the 1993 Session Laws,
19 reads as rewritten:

20 "**§ 148-57.1. (Effective January 1, 1995) Restitution as a condition of parole or**
21 **post-release supervision.**

22 (a) Repealed by Session Laws 1985, c. 474, s. 5.

23 (b) As a rehabilitative measure, the Post-Release Supervision and Parole
24 Commission ~~is authorized to~~ shall require a prisoner to whom parole or post-release
25 supervision is granted to make restitution or reparation to an aggrieved party as a
26 condition of parole or post-release supervision when the sentencing court recommends
27 that restitution or reparation to an aggrieved party be made a condition of any parole or
28 post-release supervision granted the defendant. When ~~imposing restitution as a condition~~
29 ~~and setting up a payment schedule for the restitution,~~ the Post-Release Supervision and
30 Parole Commission shall take into consideration the resources of the defendant,
31 including all real and personal property owned by the defendant and the income derived
32 from such property, his ability to earn, and his obligation to support dependents. ~~The~~
33 ~~Post-Release Supervision and Parole Commission shall not be bound by such recommendation,~~
34 ~~but if it elects not to implement the recommendation, it shall state in writing the reasons~~
35 ~~therefor, and shall forward the same to the sentencing court.~~

36 (c) When an active sentence is imposed, the court ~~shall consider whether,~~ shall, as
37 a rehabilitative measure, ~~it should~~ recommend to the Post-Release Supervision and
38 Parole Commission that restitution or reparation by the defendant be made a condition
39 of any parole or post-release supervision granted the defendant. ~~If the court determines~~
40 ~~that restitution or reparation should not be recommended, it shall so indicate on the~~
41 ~~commitment. If, however, the court determines that restitution or reparation should be~~
42 ~~recommended, the~~ The court shall make its recommendation a part of the order
43 committing the defendant to custody. The recommendation shall be in accordance with
44 the applicable provisions of G.S. 15A-1343(d). An order providing for restitution

1 becomes a lien on the real estate of the defendant in the same manner as do judgments
2 in civil actions. The Administrative Office of the Courts shall prepare and distribute
3 forms which provide ample space to make restitution or reparation recommendations
4 incident to commitments, which forms shall be conveniently structured to enable the
5 sentencing court to make its recommendation.

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

9 (d) The Post-Release Supervision and Parole Commission shall establish rules
10 and regulations to implement this section, which shall include adequate notice to the
11 prisoner that the payment of restitution or reparation by the prisoner is ~~being considered~~
12 ~~as~~—a condition of any parole or post-release supervision granted the prisoner, and
13 opportunity for the prisoner to be heard. Such rules and regulations shall also provide
14 additional methods whereby facts may be obtained to supplement the recommendation
15 of the sentencing court."

16 Sec. 8. G.S. 148-33.2 reads as rewritten:

17 "**§ 148-33.2. Restitution by prisoners with work-release privileges.**

18 (a) Repealed by Session Laws 1985, c. 474, s. 4.

19 (b) As a rehabilitative measure, the Secretary of the Department of Correction is
20 ~~authorized to~~ shall require any prisoner granted work-release privileges to make
21 restitution or reparation to an aggrieved party from any earnings gained by the
22 defendant while on work release when the sentencing court recommends that restitution
23 or reparation be paid by the defendant out of any earnings gained by the defendant if he
24 is granted work-release privileges and out of other resources of the defendant, including
25 all real and personal property owned by the defendant and the income derived from such
26 property. ~~The Secretary shall not be bound by such recommendation, but if they elect not to~~
27 ~~implement the recommendation, they shall state in writing the reasons therefor, and shall~~
28 ~~forward the same to the sentencing court.~~

29 (c) When an active sentence is imposed, the court ~~shall consider whether,~~ shall, as
30 a rehabilitative measure, ~~it should~~—recommend to the Secretary of Correction that
31 restitution or reparation be made by the defendant out of any earnings gained by the
32 defendant if he is granted work-release privileges and out of other resources of the
33 defendant, including all real and personal property owned by the defendant, and income
34 derived from such property. ~~If the court determines that restitution or reparation should not~~
35 ~~be recommended, it shall so indicate on the commitment. If, however, the court determines that~~
36 ~~restitution or reparation should be recommended, the~~ The court shall make its
37 recommendation a part of the order committing the defendant to custody. The
38 recommendation shall be in accordance with the applicable provisions of G.S. 15A-
39 1343(d). An order providing for restitution becomes a lien on the real estate of the
40 defendant in the same manner as do judgments in civil actions. If the offense is one in
41 which there is evidence of physical, mental or sexual abuse of a minor, the court ~~may~~
42 shall order the defendant to pay from work release earnings the cost of rehabilitative
43 treatment for the minor. The Administrative Office of the Courts shall prepare and
44 distribute forms which provide ample space to make restitution or reparation

1 recommendations incident to commitments, which forms shall be conveniently
2 structured to enable the sentencing court to make its recommendation.

3 (d) The Secretary of the Department of Correction shall establish rules and
4 regulations to implement this section, which shall include adequate notice to the
5 prisoner that the payment of restitution or reparation from any earnings gained by the
6 prisoner while on work release is ~~being considered as~~ a condition of any work-release
7 privileges granted the prisoner, and opportunity for the prisoner to be heard. Such rules
8 and regulations shall also provide additional methods whereby facts may be obtained to
9 supplement the recommendation of the sentencing court."

10 Sec. 9. Sections 1 through 3 of this act are effective upon ratification. The
11 remaining sections of this act become effective January 1, 1995, and apply to all
12 offenses committed on or after that date.