



HOUSE BILL 598: Restitution/Sexual Exploitation of Minor.

2021-2022 General Assembly

Committee:	House Judiciary 1. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 27, 2021
Introduced by:	Rep. Davis	Prepared by:	Brad Krehely
Analysis of:	PCS to First Edition H598-CSR-N-13		Committee Co-Counsel

OVERVIEW: *House Bill 598 requires that any defendant who viewed child pornography and has been convicted of first-degree, second-degree, or third-degree sexual exploitation of a minor must be ordered to make restitution as required by Article 81C of Chapter 15A of the General Statutes and newly created G.S. 14-190.17B. The Proposed Committee Substitute (PCS) clarifies that the court is not required to order restitution if the victim has not been identified.*

CURRENT LAW: Article 81C of Chapter 15A of the General Statutes governs restitution. When sentencing a defendant convicted of a criminal offense, the court must determine whether the defendant must be ordered to make restitution to any victim (a person directly and proximately harmed as a result of the defendant's commission of the criminal offense). The court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense. G.S. 15A-1340.34.

In determining the amount of restitution, the court must consider the following:

- For an offense resulting in bodily injury to a victim, all of the following must be considered:
 - The cost of necessary medical and related professional services and equipment relating to physical, psychiatric, and psychological care required by the victim.
 - The cost of necessary physical and occupational therapy and rehabilitation for the victim.
 - Income lost by the victim as a result of the offense.
- For an offense resulting in the damage, loss, or destruction of property of a victim:
 - Return of the property to the owner or someone designated by the owner; or
 - If return of the property is impossible or inadequate:
 - The value of the property on the date of the damage, loss, or destruction; or
 - The value of the property on the date of sentencing, less the value of any part of the property that is returned.
- Any measure of restitution specifically provided by law for the offense committed.
- In the case of an offense resulting in bodily injury that results in the death of the victim, the cost of the victim's necessary funeral and related services. G.S. 15A-1340.35(a)(1)-(4).

The court may require the victim to provide admissible evidence that documents the costs claimed. G.S. 15A-1340.35(b). The court also must consider the resources of the defendant and may order partial

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restitution if the loss caused by the offense is greater than what defendant is able to pay. G.S. 15A-1340.36(a).

BILL ANALYSIS: The PCS for House Bill 598 creates a new section, G.S. 14-190.17B, to address restitution for sexual exploitation of a minor. It provides that in addition to any other civil or criminal penalty, the court must order restitution for a violation of first-degree, second-degree, or third-degree sexual exploitation of a minor in accordance with Article 81C of Chapter 15A of the General Statutes and newly created G.S. 14-190.17B. If there is any conflict between Article 81C of the General Statutes and G.S. 14-190.17B, then G.S. 14-190.17B prevails.

Any defendant who viewed child pornography and was convicted of first-degree, second-degree, or third-degree sexual exploitation of a minor must be ordered to make restitution.

The court must determine the "full amount of the victim's losses" for costs incurred as a proximate result of the offense. In addition to the damages described in G.S. 15A-1340.35, "the full amount of the victim's losses" includes all of the following:

- Medical services relating to physical, psychiatric, or psychological care.
- Physical and occupational therapy or rehabilitation.
- Transportation, temporary housing, and childcare expenses.
- Loss of income.
- Reasonable attorneys' fees and litigation costs associated with restitution or its enforcement.
- Any other relevant losses incurred by the victim.

If more than one defendant contributed to the losses of the victim, the court must apportion liability among the defendants according to each defendant's level of contribution to the victim's losses. A victim's total aggregate recovery must not exceed the full amount of the victim's losses. A defendant may petition the court to amend a restitution order upon a showing that the victim has received restitution for the full amount of the victim's losses.

If it is impossible to trace a particular amount of the losses to the defendant, the court must use its discretion to order restitution in an amount that reflects the defendant's relative role in the causal process that underlies the victim's full amount of loss. The victim may be required to show the amount of restitution has been paid in other cases for the same losses.

The PCS clarifies that the court is not required to order restitution if the victim has not been identified.

EFFECTIVE DATE: The act becomes effective December 1, 2021, and applies to orders for restitution entered on or after that date.