

Sentencing Law for Superior Court Judges

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Restitution

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A. Restitution generally

Restitution is court-ordered compensation from a criminal defendant to a crime victim or to a party that provided assistance to the victim. It is a constitutionally authorized punishment in North Carolina. N.C. Const., Article XI, Sec. 1. In every criminal case, the court is required to consider whether the defendant shall be ordered to make restitution to the victim of the offense. G.S. 15A-1340.34. In some circumstances, discussed below, restitution is mandatory.

B. Who may receive restitution

Victims. A “victim” is a person directly and proximately harmed as a result of a defendant’s commission of a criminal offense. G.S. 15A-1340.34(b). The court *may*, in addition to any other penalty authorized by law, require the defendant to make restitution to a victim or the victim’s estate. G.S. 15A-1340.34(c).

Crime Victims’ Rights Act victims. Special restitution rules apply to those who fall under the definition of victim in the Crime Victims’ Rights Act (CVRA). G.S. 15A-830(a)(7). The court *shall*, in addition to any penalty authorized by law—including active punishment, *State v. Salmon*, 140 N.C. App. 567 (2000)—require defendants to make restitution to CVRA victims or their estate. The crimes covered under the CVRA are listed in Appendix A.

Non-victims. Certain parties other than the victim may receive restitution. The court may order restitution to a person, organization, corporation, or association that provided assistance to the victim and is subrogated to the rights of the victim. G.S. 15A-1340.37(b).

C. Damages for which restitution may be ordered

Bodily injury. For offenses resulting in bodily injury to a victim, the court must consider:

- The cost of necessary medical and related professional services;
- The cost of devices or equipment relating to physical, psychiatric, and psychological care;
- The cost of necessary physical and occupational therapy and rehabilitation;

- Lost income;
- When injury results in a victim's death, the cost of the victim's funeral and related services. G.S. 15A-1340.35(a).

Injury to property. For offenses resulting in the damage, loss, or destruction of property, the court must consider requiring the defendant to return the property to its owner or the owner's designee. If returning the property is impossible, impracticable, or inadequate, the court should determine the value of the property (a) on the date of its damage, loss, or destruction *or* (b) its value as of the date of sentencing (less any part of the property that is returned). G.S. 15A-1340.35(a).

Pain and suffering. Restitution may *not* be ordered for a victim's pain and suffering. *State v. Wilson*, 158 N.C. App. 235 (2003).

Punitive damages. Restitution may *not* be ordered for punitive damages. *State v. Burkhead*, 85 N.C. App. 535 (1987).

Future damages. The court did not err by ordering the defendant to pay restitution of "up to \$2000 for future treatment" when there was testimony to show that the victims had already accumulated \$680 in medical bills and were still undergoing treatment as a result of the defendant's actions. *State v. Canady*, 153 N.C. App. 455 (2002).

D. Procedural considerations

Determination of the restitution amount. The court should determine a discrete restitution amount. It was improper, for example, to order a defendant to pay a percentage of his salary as restitution. *State v. Simpson*, 61 N.C. App. 151 (1983). There is no precise formula for determining the amount of restitution owed.

- The trial court did not err when it ordered restitution in an amount that was an average of two values proposed as the proper measure of damage to a victim's property—one value stemming from a comparison to a similar plot of land, another stemming from a forestry agent's report. Both values were supported by evidence. *State v. Freeman*, 164 N.C. App. 673 (2004).
- A restitution award of \$180 was not disturbed when the victim testified that the money stolen from her pocketbook was between \$120 and \$150 in cash, and another witness involved in the robbery testified that the pocketbook contained \$240. *State v. Davis*, 167 N.C. App. 770 (2005).

Special restitution calculation provisions. The statute governing a particular offense may contain specific restitution requirements. Examples include:

- Worthless checks under G.S. 14-107 (the amount of the check, bank service charges, and processing fees imposed by the payee);

- Identity fraud under G.S. 14-113.22 (attorneys' fees and costs incurred in correcting credit history);
- Assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal under G.S. 14-163.1 (veterinary care and boarding expenses for the animal, replacement of the animal, training of any replacement animal, and salary of the law enforcement agency animal handler, among other expenses).

Other offense-specific rules are included in Appendix B.

Delegation to probation officer—collection schedule only. Except as part of a pre-sentence investigation, the court should not order a probation officer to determine the amount of restitution owed. The court may, however, delegate to a probation officer the responsibility to determine a collection *schedule*. G.S. 15A-1343(g).

Proof of the restitution amount. A prosecutor's statement, standing alone, is insufficient to support an award of restitution. *State v. Wilson*, 340 N.C. 720 (1995). Likewise, a restitution worksheet, unsupported by testimony or documentation, is insufficient to support a restitution amount. *State v. Mauer*, __ N.C. App. __, 688 S.E.2d 774 (2010). There must either be a stipulation to the amount or evidence adduced at trial or at the sentencing hearing to support the restitution amount. *State v. Dallas*, __ N.C. App. __, 695 S.E.2d 474 (2010). The restitution amount may not be based on mere “guess or conjecture.” *State v. Daye*, 78 N.C. App. 753 (1986). A defendant should not be required to make restitution for losses that are neither related to the criminal act for which the defendant was convicted nor supported by the evidence in the record.

- It was improper to order a defendant, convicted of possession of stolen goods, to pay restitution in amount based on all of the tools missing from a victim's truck when only some of the items were found in the defendant's possession and no other evidence was presented regarding the other tools. *State v. Southards*, 189 N.C. App. 152 (2008).

Burden of proof. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the state. The burden of demonstrating the defendant's inability to pay restitution is on the defendant. The standard of proof is a preponderance of the evidence. *State v. Tate*, 187 N.C. App. 593 (2007).

Stipulation. There is a check-box on the transcript of plea form (AOC-CR-300, page two), where the court can note that as part of a plea arrangement the defendant stipulates to restitution in the amounts set out on the restitution worksheet.

Consideration of the defendant's ability to pay. In determining the restitution amount, the court must consider the resources of the defendant and his or her ability to pay restitution, although the court is not required to make findings of fact

or conclusions of law on those matters. The court may order partial restitution if it appears the damage caused is more than the defendant will be able to pay. If the court orders partial restitution, it must state on the record its reasons for doing so. G.S. 15A-1340.36(a).

- In cases involving very large restitution orders—where “common sense dictates that only a person of substantial means could comply”—the trial court should be especially careful to document its consideration of the defendant’s ability to pay. *State v. Smith*, 90 N.C. App. 161 (1988) (\$500,000); *State v. Hayes*, 113 N.C. App. 172 (1993) (\$208,000); *State v. Person*, 187 N.C. App. 512 (2007).
- The requirement to consider the defendant’s ability to pay does not necessarily require the court to order partial restitution. The court did not err, for example, by ordering an indigent defendant to pay \$40,588 in restitution when there was substantial information in the record that the court reviewed the defendant’s employment status, expenses, liabilities, and living situation. *State v. Tate*, 187 N.C. App. 593 (2007); *see also State v. Riley*, 167 N.C. App. 346 (2004).

E. Limits on restitution

Victims of dismissed, acquitted, or uncharged conduct. Generally, restitution should only be ordered to victims directly and proximately harmed by the crimes for which the defendant is convicted. The extent to which the court may order restitution to victims of charges that were, for example, dismissed pursuant to a plea is unclear.

- When a defendant was convicted by a jury of obtaining property by false pretenses only from Johnny Andrews, it was improper to order him to pay restitution to Don Thomas, even though Don Thomas was a victim of the same general scheme. *State v. Wilburn*, 57 N.C. App. 40 (1982).
- When a defendant was convicted of welfare fraud but acquitted of food stamp fraud, it was improper to order her to pay restitution for the food stamps. *State v. Bass*, 53 N.C. App. 40 (1981).

In some cases the appellate courts have taken a broad view of direct and proximate harm.

- It was proper to order a defendant, convicted of felonious larceny for stealing silver, to repay the loans he obtained from pawnbrokers using the stolen silver as collateral. *State v. Froneberger*, 81 N.C. App. 398 (1986).
- It was proper to order a defendant, convicted of breaking or entering but acquitted of larceny, to pay restitution for stereo equipment stolen during the breaking or entering. 67 N.C. App. 748 (1984).

- It was proper to order a defendant, convicted of obtaining property by false pretenses, to pay restitution to the owner of a house that the defendant fraudulently rented to a tenant by representing himself as the owner. Only the tenant, to whom the false representation was made, was named in the indictment, but it was still proper to require the defendant to pay the homeowner for damage done to the house by the tenant. Restitution is not limited to the particular victim named in the indictment. *State v. Moore*, __ N.C. App. __ (Feb. 15, 2011).

See also Restitution to Victims of Unconvicted Conduct, N.C. Criminal Law Blog (April 7, 2010), available at <http://sogweb.sog.unc.edu/blogs/ncclaw/?p=1187>.

Restitution and plea bargains. Under G.S. 15A-1021(c), a “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.” That provision neither clearly authorizes nor clearly prohibits arrangements in which defendants agree to pay restitution for unconvicted acts. (Restitution laws in some states expressly allow this. *See, e.g.*, Idaho Code § 19-5304(9) (providing that the court “may, with the consent of the parties, order restitution to victims and/or any other person or entity, for economic loss or injury for crimes which are not adjudicated or are not before the court.”))

There is some question as to the validity and enforceability of a voluntary agreement to pay restitution to a person other than a victim or aggrieved party of the conviction offense. *See State v. Caudle*, 276 N.C. 550 (1970) (holding that a condition of probation requiring the defendant to pay \$7,326 to a bank for indebtedness unrelated to his guilty plea for defrauding the bank of \$631 was an invalid use of the criminal process “to enforce the payment of a civil obligation”); *see also State v. Billinger*, __ N.C. App. __ (July 5, 2011) (“It is well established that for an order of restitution to be valid, it must be related to the criminal act for which defendant was convicted, else the provision may run afoul of the constitutional provision prohibiting imprisonment for debt.”) (internal citations omitted); *State v. Valladares*, 182 N.C. App. 525, 526, 642 (2007) (same).

When restitution is entered as part of plea arrangement that results in an active sentence, the sentencing court shall enter as part of the commitment that restitution is recommended. G.S. 15A-1021(d).

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

Restitution to government agencies. Government agencies may only receive restitution for particular damage to them over and above “normal operating costs.” G.S. 15A-1340.37.

- It was improper for the court to order a defendant, who pled guilty to possession and sale of non-tax-paid liquor, to pay restitution to the High Point Police Department for “continued enforcement.” *Shore v. Edmisten*, 290 N.C. 628 (1976).
- The court of appeals distinguished *Shore* and upheld the now-repealed provision in G.S. 90-95.3 allowing judges to order restitution in the amount of \$100 to the state for the expense of analyzing any controlled substance possessed by a defendant as part of an investigation leading to a conviction. *State v. Johnson*, 124 N.C. App. 462 (1996). A similar provision, now styled as a cost instead of restitution, allows for a \$600 payment by a convicted defendant for the services of the SBI laboratory or a local government crime laboratory, G.S. 7A-304(a)(7)–(8).

Restitution for costs of investigation and prosecution. In general, a court may not order restitution “to the state for its general overhead attributable to prosecution,” as this “violates the principle of separation of powers in that the judge is assuming the legislative function of allocating the resources of the state.” *Shore v. Edmisten*, 290 N.C. 628 (1976).

- A court may not order a defendant to pay restitution for a prosecuting witness’s mileage, long distance calls, parking fees, and meals during a trial. These are costs and may only be paid as provided in G.S. 7A-314. *State v. Tedder*, 62 N.C. App. 12 (1983).
- It was improper for a court to order convicted defendants, as a condition of parole eligibility, to pay \$2,500 to the N.C. Bureau of Investigations as restitution for “estimated investigative expenses.” The Bureau was not a “victim of crime,” and the investigation expenses were among its “normal operating costs.” *Evans v. Garrison*, 657 F.2d 64 (4th Cir. 1981). [Note: the Bureau’s investigation in that case did not include drug-buy money, discussed below.]

Drug-buy money. G.S. 90-95.3 provides that the court may order a convicted defendant to “make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.”

- It was acceptable for the court to order a defendant to pay \$30 restitution to the Reidsville Police Department Drug Fund for an undercover drug sale that took place in September, even though the defendant was ultimately convicted based on a sale that took place in November. The September sale was part of an “ongoing investigation” that led to the defendant’s conviction,

and was thus a loss arising out of the defendant's offense. *State v. Reynolds*, 161 N.C. App. 144 (2003).

- It was permissible for the court to order a convicted defendant to pay \$600 in restitution to the SBI for money paid by an agent to the defendant to buy cocaine. *State v. Stallings*, 316 N.C. 535 (1986).

Insurance and insurance companies. A court may order restitution to a victim even though a third party (typically, an insurance company) has paid or will pay the victim for the damage or loss caused by the defendant. G.S. 15A-1340.37(d). The court is not required to limit restitution to a victim's insurance deductible—although that is a common practice and a decision within the court's discretion.

A court may not, however, order restitution directly to an insurer. G.S. 15A-1340.37(d); *State v. Maynard*, 79 N.C. App. 451 (1986); *State v. Stanley*, 79 N.C. App. 379 (1986). *But see State v. Ray*, 125 N.C. App. 721 (1997) (holding it permissible for a trial court to recommend as a condition of the defendant's post-release supervision that the he pay \$82,000 to Medicaid, which had paid for the victim's medical bills). An insurance company is free to pursue civil remedies against the criminal defendant, or against the insured victim, depending on the terms of the victim's insurance policy and whether or not the defendant has already paid the victim. *N.C. Farm Bureau Mut. Ins. Co. Inc. v. Greer*, 54 N.C. App. 170 (1981).

Accomplice liability for restitution. For restitution to be appropriate there must be a direct and proximate link between a defendant's actions and the damage caused to a victim. It was improper to order a defendant, convicted of accessory-after-the-fact to first-degree murder, to pay restitution to the victims' families when his involvement was limited to obstructing the investigation of the crimes. *State v. Best*, 196 N.C. App. 220 (2009).

Restitution in active punishment cases. Subsequent to amendments made to the law in 1998, restitution may be ordered in cases where a defendant is sentenced to active punishment. *State v. Hughes*, 136 N.C. App. 92 (1999) (discussing the fact that in earlier cases, a judge lacked authority to require restitution from a defendant who received active punishment). In CVRA cases, the restitution order may be docketed as a civil judgment, as discussed below. In non-CVRA cases, restitution may be ordered as part of a sentence to active punishment, but the order may be difficult to enforce and unlikely to have effect as a practical matter. In all cases when a defendant is sentenced to active punishment, the court must consider whether to recommend to the Department of Correction or the Post-Release Supervision and Parole Commission, as appropriate, that the defendant pay restitution out of work release earnings or as a condition of post-release supervision or parole. G.S. 15A-1340.36(c); 148-33.2; 148-57.1.

Restitution and civil judgments. Restitution is not a legal obligation equivalent to a civil judgment. Imposition of restitution does not affect, and is not affected by, the

victim's right to institute a civil action against the defendant based on the same conduct. *Shew v. Southern Fire & Casualty Co.*, 307 N.C. 438 (1983); G.S. 15A-1340.37.

- Amounts paid by the defendant as restitution must be credited against any judgment rendered in a civil action arising out of the criminal offense. G.S. 15A-1340.37; G.S. 1-15.1(b).
- When a defendant is ordered to pay restitution, all applicable statutes of limitation and statutes of repose are tolled for purposes of any civil action brought by the victim against the defendant for damages arising out of the offense for which the defendant was convicted. G.S. 1-15.1(a); *Whitley v. Kennerly*, 132 N.C. App. 390 (1999).

In non-CVRA cases, a court may not order the defendant to pay money to the victim as a “civil judgment.”

- It was error for the court to require a defendant convicted of obtaining property by false pretenses to sign a confession of judgment in favor of the victims. *State v. Clemmons*, 111 N.C. App. 569 (1993) (“[N]o criminal court can compel any Defendant to do something which is within the realm of a civil forum, i.e., confess judgment.”).

In CVRA cases, restitution orders exceeding \$250 may be “enforced in the same manner as a civil judgment.” If, however, the restitution is ordered as a condition of probation, the judgment may not be executed upon the defendant’s property until the clerk is notified that probation has been terminated or revoked and the judge has made a finding that restitution in a sum certain remains owed. G.S. 15A-1340.38. The finding that a restitution balance is due should be made on form AOC-CR-612.

A defendant convicted of an offense involving impaired driving must be ordered to pay as restitution the cost owing for the towing, storage, and sale of any motor vehicle forfeited and sold under G.S. 20-28.3, to the extent that those costs are not covered by the proceeds from the sale of the vehicle itself. G.S. 20-28.3(l). A restitution order under that provision must be made a civil judgment in favor of the party to whom the restitution is owed, which must be docketed by the clerk. *Id.*

Failure to pay restitution as a violation of probation. In a probation revocation proceeding based upon a defendant’s failure to pay a fine or restitution, the burden is upon the defendant to offer evidence of his or her inability to pay. *See State v. Jones*, 78 N.C. App. 507 (1985) (holding defendant’s comment “I’ve just been out of work, sir,” was insufficient to meet that burden). When a defendant does put on evidence of his or her inability to pay, the evidence must be considered and evaluated by the court, *State v. Smith*, 43 N.C. App. 727 (1979), and the court should make findings that the evidence was considered, *State v. Williamson*, 61 N.C. App. 531 (1983).

APPENDIX A: Crimes Covered under the Crime Victims' Rights Act

FELONIES

- Any Class A through E felony
- Assault on an executive, legislative, or court official with a deadly weapon or inflicting serious injury (G.S. 14-16.6(b)-(c))
- Involuntary manslaughter (G.S. 14-18)
- Assault on a handicapped person (G.S. 14-32.1(e))
- Patient abuse/neglect causing serious bodily injury (G.S. 14-32.2(b)(3))
- Domestic abuse or neglect of a disabled or elder adult causing injury or serious injury (G.S. 14-32.3(a)-(b))
- Assault inflicting serious bodily injury (G.S. 14-32.4)
- Habitual misdemeanor assault (G.S. 14-33.2)
- Assault with a firearm or deadly weapon on a government officer/employee or campus/company police officer (G.S. 14-34.2)
- Assault with a firearm, deadly weapon, or inflicting serious bodily injury on a firefighter, emergency medical technician, or emergency room nurse or physician (G.S. 14-34.6(b)-(c))
- Abduction of children (G.S. 14-41)
- Felonious restraint (G.S. 14-43.3)
- Human trafficking of adults (G.S. 14-43.11)
- Second degree burglary (G.S. 14-51)
- Second degree arson (G.S. 14-58)
- Common-law robbery (G.S. 14-87.1)
- Third degree sexual exploitation of a minor (G.S. 14-190.17A)
- Participating in the prostitution of a minor (G.S. 14-190.19)
- Taking indecent liberties with children (G.S. 14-202.1)
- Stalking, second or subsequent offense or when a court order is in effect (G.S. 14-277.3A)
- Assault on emergency personnel with a dangerous weapon or substance (G.S. 14-288.9)
- Habitual impaired driving (G.S. 20-138.5)
- Felony death by vehicle (G.S. 20-141.4)
- Any attempt of the felonies listed above if the attempt is punishable as a felony.

MISDEMEANORS

- The following misdemeanors, only when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b)¹:
 - Simple assault or affray (G.S. 14-33(a))
 - Assault inflicting serious injury or using a deadly weapon (G.S. 14-33(c)(1))
 - Assault on a female (G.S. 14-33(c)(2))
 - Assault by pointing a gun (G.S. 14-34)
 - Domestic criminal trespass (G.S. 14-134.3)
 - Stalking, first offense (G.S. 14-277.3A)
- Any violation of a valid protective order under G.S. 50B-4.1.

¹ Current or former spouses; persons of opposite sex who live together or have lived together; people related as parents and children or grandparents and grandchildren; people with a child in common; current or former household members; people of the opposite sex in a dating relationship or who have been in a dating relationship.

APPENDIX B: Statutes and Regulations Related to Restitution

RESTITUTION GENERALLY (Article 81C of Chapter 15A)

§ 15A-1340.34. Restitution generally.

(a) When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term "victim" means a person directly and proximately harmed as a result of the defendant's commission of the criminal offense.

(b) If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any 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 committed by the defendant. If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.

(c) When subsection (b) of this section does not apply, 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 committed by the defendant.

§ 15A-1340.35. Basis for restitution.

(a) In determining the amount of restitution, the court shall consider the following:

- (1) In the case of an offense resulting in bodily injury to a victim:
 - a. The cost of necessary medical and related professional services and devices or equipment relating to physical, psychiatric, and psychological care required by the victim;
 - b. The cost of necessary physical and occupational therapy and rehabilitation required by the victim; and
 - c. Income lost by the victim as a result of the offense.
- (2) In the case of an offense resulting in the damage, loss, or destruction of property of a victim of the offense:
 - a. Return of the property to the owner of the property or someone designated by the owner; or
 - b. If return of the property under sub-subdivision (2)a. of this subsection is impossible, impracticable, or inadequate:
 1. The value of the property on the date of the damage, loss, or destruction; or
 2. The value of the property on the date of sentencing, less the value of any part of the property that is returned.
- (3) Any measure of restitution specifically provided by law for the offense committed by the defendant.
- (4) 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, in addition to the items set out in subdivisions (1), (2), and (3) of this subsection.

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

§ 15A-1340.36. Determination of restitution.

(a) In determining the amount of restitution to be made, the court shall take into consideration the resources of the defendant including all real and personal property owned by

the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay. If the court orders partial restitution, the court shall state on the record the reasons for such an order.

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

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

§ 15A-1340.37. Effect of restitution order; beneficiaries.

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

(b) The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims Compensation Fund, that provided assistance to the victim following the commission of the offense by the defendant and is subrogated to the rights of the victim. Restitution shall be made to the victim or the victim's estate before it is made to any other person, organization, corporation, or association under this subsection.

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

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

§ 15A-1340.38. Enforcement of certain orders for restitution.

(a) In addition to the provisions of G.S. 15A-1340.36, when an order for restitution under G.S. 15A-1340.34(b) requires the defendant to pay restitution in an amount in excess of two hundred fifty dollars (\$250.00) to a victim, the order may be enforced in the same manner as a civil judgment, subject to the provisions of this section.

(b) The order for restitution under G.S. 15A-1340.34(b) shall be docketed and indexed in the county of the original conviction in the same manner as a civil judgment pursuant to G.S. 1-233, et seq., and may be docketed in any other county pursuant to G.S. 1-234. The judgment may be collected in the same manner as a civil judgment unless the order to pay restitution is a condition of probation. If the order to pay restitution is a condition of probation, the judgment may only be executed upon in accordance with subsection (c) of this section.

(c) If the defendant is ordered to pay restitution under G.S. 15A-1340.34(b) as a condition of probation, a judgment docketed under this section may be collected in the same manner as a civil judgment. However, the docketed judgment for restitution may not be executed upon the property of the defendant until the date of notification to the clerk of superior court in the county of the original conviction that the judge presiding at the probation termination or revocation hearing has made a finding that restitution in a sum certain remains due and payable, that the defendant's probation has been terminated or revoked, and that the remaining balance of restitution owing may be collected by execution on the judgment. The clerk shall then enter upon the judgment docket the amount that remains due and payable on the judgment, together with amounts equal to the standard fees for docketing, copying, certifying, and mailing, as appropriate, and shall collect any other fees or charges incurred as in the enforcement of other civil judgments, including accrued interest. However, no interest shall accrue on the judgment until the entry of an order terminating or revoking probation and finding the amount remaining due and payable, at which time interest shall begin to accrue at the legal rate pursuant to G.S. 24-5. The interest shall be applicable to the amount determined at the termination or revocation hearing to be then due and payable. The clerk shall notify the victim by first-class mail at the victim's last known address that the judgment may be executed upon, together with the amount of the judgment. Until the clerk receives notification of termination or revocation of probation and the amount that remains due and payable on the order of restitution, the clerk shall not be required to update the judgment docket to reflect partial payments on the order of restitution as a condition of probation. The stay of execution under this subsection shall not apply to property of the defendant after the transfer or conveyance of the property to another person. When the criminal order of restitution has been paid in full, the civil judgment indexed under this section shall be deemed satisfied and the judgment shall be cancelled. Payment satisfying the civil judgment shall also be credited against the order of restitution.

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

CRIME VICTIMS' RIGHTS ACT

§ 15A-833. Evidence of victim impact.

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

- (1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.
- (2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.
- (3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims Compensation Act.

(b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime. At the victim's request and with the consent of the defendant, a representative of the district attorney's office or a law enforcement officer may proffer evidence of the impact of the crime to the court.

§ 15A-834. Restitution.

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

§ 15A-835. Posttrial responsibilities.

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

- ...
- (4) The telephone number of offices to contact in the event of nonpayment of restitution by the defendant.

PROVISIONS RELATED TO PARTICULAR CRIMES

§ 14-69.1. Making a false report concerning destructive device.

...

(d) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the false report, pursuant to Article 81C of Chapter 15A of the General Statutes.

§ 14-69.2. Perpetrating hoax by use of false bomb or other device.

...

(d) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the hoax, pursuant to Article 81C of Chapter 15A of the General Statutes.

§ 14-81. Larceny of horses, mules, swine, cattle, or dogs.

...

(b) In sentencing a person convicted of violating this section, the judge shall, as a minimum punishment, place a person on probation subject to the following conditions:

- (1) A person must make restitution for the damage or loss caused by the larceny of the livestock or dogs, and
- (2) A person must pay a fine of not less than the amount of the damages or loss caused by the larceny of the livestock or dogs.

§ 14-107. Worthless checks.

...

(e) In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with the provisions of G.S. 15A-1343, restitution to the victim for (i) the amount of the check or draft, (ii) any service charges imposed on the payee by a bank or depository for processing the dishonored check, and (iii) any processing fees imposed by the payee pursuant to G.S. 25-3-506, and each prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the defendant.

§ 14-107.2. Program for collection in worthless check cases.

...

(c) If a check passer participates in the program by paying the fee under G.S.7A-308(c) and providing restitution to the check taker for (i) the amount of the check or draft, (ii) any service charges imposed on the check taker by a bank or depository for processing the dishonored check, and (iii) any processing fees imposed by the check taker pursuant to G.S. 25-3-506, then the district attorney shall not prosecute the worthless check case under G.S. 14-107.

(d) The Administrative Office of the Courts shall establish procedures for remitting the fee and providing restitution to the check taker.

§ 14-113.22. Punishment and liability [for Identity Fraud].

...

(a2) The court may order a person convicted under G.S. 14-113.20 or G.S. 14-113.20A to pay restitution pursuant to Article 81C of Chapter 15A of the General Statutes for financial loss caused by the violation to any person. Financial loss included under this subsection may include, in addition to actual losses, lost wages, attorneys' fees, and other costs incurred by the victim in correcting his or her credit history or credit rating, or in connection with any criminal, civil, or administrative proceeding brought against the victim resulting from the misappropriation of the victim's identifying information.

§ 14-148. Defacing or desecrating grave sites.

...

(c) Violation of this section is a Class I felony if the damage caused by the violation is one thousand dollars (\$1,000) or more. Any other violation of this section is a Class 1 misdemeanor. In passing sentence, the court shall consider the appropriateness of restitution or reparation as a condition of probation under G.S. 15A-1343(b)(9) as an alternative to actual imposition of a fine, jail term, or both.

§ 14-159.2. Interference with animal research.

...

(d) As a condition of probation, the court may order a person convicted under this section to make restitution to the owner of the animal for damages, including the cost of restoring the animal to confinement and of restoring the animal to its health condition prior to any release, and for damages to personal property, including materials, equipment, data, and records, and real property caused by the interference. If the interference causes the failure of an experiment, the restitution may include all costs of repeating the experiment, including replacement of the animals, labor, and materials.

(e) Nothing in this section shall be construed to affect any rights or causes of action of a person damaged through interference with animal research.

§ 14-163.1. Assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal.

...

(d1) A defendant convicted of a violation of this section shall be ordered to make restitution to the person with a disability, or to a person, group, or law enforcement agency who owns or is responsible for the care of the law enforcement agency animal or search and rescue animal for any of the following as appropriate:

- (1) Veterinary, medical care, and boarding expenses for the law enforcement agency animal, the assistance animal, or the search and rescue animal.
- (2) Medical expenses for the person with the disability relating to the harm inflicted upon the assistance animal.
- (3) Replacement and training or retraining expenses for the law enforcement agency animal, the assistance animal, or the search and rescue animal.
- (4) Expenses incurred to provide temporary mobility services to the person with a disability.
- (5) Wages or income lost while the person with a disability is with the assistance animal receiving training or retraining.
- (6) The salary of the law enforcement agency animal handler as a result of the lost services to the agency during the time the handler is with the law enforcement agency animal receiving training or retraining.
- (6a) The salary of the search and rescue animal handler as a result of the search and rescue services lost during the time the handler is with the search and rescue animal receiving training or retraining.
- (7) Any other expense reasonably incurred as a result of the offense.

§ 14-277.5. Making a false report concerning mass violence on educational property.

...

(c) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from the disruption of the normal activity that would have otherwise occurred on the premises but for the false report, pursuant to Article 81C of Chapter 15A of the General Statutes.

§ 14-288.23. Making a false report concerning a nuclear, biological, or chemical weapon of mass destruction; punishment; restitution.

(a) Any person who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that causes any person to reasonably believe that there is located at any place or structure whatsoever any nuclear, biological, or chemical weapon of mass destruction is guilty of a Class D felony.

(b) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from disruption of the normal activity that would have otherwise occurred but for the false report, pursuant to Article 81C of Chapter 15A of the General Statutes.

(c) For purposes of this section, the term "report" shall include making accessible to another person by computer.

§ 14-288.24. Perpetrating hoax by use of false nuclear, biological, or chemical weapon of mass destruction; punishment; restitution.

(a) Any person who, with intent to perpetrate a hoax, conceals, places, or displays any device, object, machine, instrument, or artifact, so as to cause any person reasonably to believe the same to be a nuclear, biological, or chemical weapon of mass destruction is guilty of a Class D felony.

(b) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from disruption of the normal activity that would have otherwise occurred but for the hoax, pursuant to Article 81C of Chapter 15A of the General Statutes.

§ 15-8. Stolen property returned to owner.

Upon the conviction of any person for robbing or stealing any money, goods, chattels, or other estate of any description whatever, the person from whom such goods, money, chattels or other estate were robbed or stolen shall be entitled to restitution thereof; and the court may award restitution of the articles so robbed or stolen, and make all such orders and issue such writs of restitution or otherwise as may be necessary for that purpose.

§ 18B-505. Restitution [for alcoholic beverage crimes].

When a person is convicted of a violation of the ABC laws, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing alcoholic beverages from him or his agent as part of an investigation leading to his conviction.

§ 90-95.3. Restitution to law-enforcement agencies for undercover purchases; restitution for drug analyses; restitution for seizure and cleanup of clandestine laboratories.

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

...

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies.

§ 113-269. Robbing or injuring hatcheries and other aquaculture operations.

...
(g) In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with G.S. 15A-1343, restitution to the victim for the amount of damage to the aquaculture facility or aquatic species or for the value of the stolen fish or aquatic species.

§ 113-290.1. Penalties [for Criminally Negligent Hunting].

(a) A person who violates the provisions of this Article is guilty of a misdemeanor punishable as follows:

- (1) If property damage only results from the unlawful activity, a Class 2 misdemeanor, and the court shall order the payment of restitution to the property owner;
- (2) If bodily injury not leading to the disfigurement or total or partial permanent disability of another person results from the unlawful activity, a Class 1 misdemeanor; if property damage also results from the unlawful activity, the court shall order the payment of restitution to the property owner;
- (3) If bodily injury leading to the disfigurement or total or partial permanent disability of another person results from the unlawful activity, a Class 1 misdemeanor; if property damage also results from the unlawful activity, the court shall order the payment of restitution to the property owner;
- (4) If death results from the unlawful activity, a Class 1 misdemeanor; if property damage also results from the unlawful activity, the court shall order the payment of restitution to the property owner.

PROVISIONS RELATED TO PROBATION, PAROLE, POST-RELEASE SUPERVISION, AND WORK RELEASE

§ 15A-1343. Conditions of probation.

...
(b) Regular Conditions. – As regular conditions of probation, a defendant must:

- ...
(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

...
(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with

- (5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(d) Restitution as a Condition of Probation. – As a condition of probation, a defendant may be required to 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 committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the factors set out in G.S. 15A-1340.35 and G.S.

15A-1340.36. 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" includes individuals, firms, corporations, associations, other organizations, and government agencies, whether federal, State or local, including the Crime Victims Compensation Fund established by G.S. 15B-23. A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done.

(g) Probation Officer May Determine Payment Schedules and May Transfer Low-Risk Misdemeanants to Unsupervised Probation. – If a person placed on supervised probation is required as a condition of that probation to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action. In addition, a probation officer may transfer a misdemeanor from supervised to unsupervised probation if the misdemeanor is not subject to any special conditions and was placed on probation solely for the collection of court-ordered payments, and the risk assessment shows the misdemeanor to be a low-risk offender; however, such a transfer to unsupervised probation does not relieve the misdemeanor of the obligation to continue making court-ordered payments under the terms of the misdemeanor's probation.

15A NCAC 10B .0117 REPLACEMENT COSTS OF WILDLIFE RESOURCES

(c) Costs of Replacement. Based on the factors listed in Paragraph (b) of this Rule, including a June, 2001 update of the original figures using consumer price index from the June, 1980 base, the following wild animals and wild birds are listed with the estimated replacement cost of each individual specimen:

Species	Replacement Cost
Any endangered species	\$4,960.00
Any threatened species	4313.00
Any other species with no open season	54.00
Beaver	104.00
Black Bear	2232.00
Crow	4.00
Deer	602.00
Dove	13.00
Duck	41.00
Elk	2500.00
Fox	88.00
Goose	125.00
Grouse	37.00
Mink	75.00
Muskrat	19.00
Nutria	15.00
Opossum	6.00
Otter	647.00
Pheasant	37.00
Quail	30.00
Rabbit	13.00

Raccoon	58.00
Rail	37.00
Skunk	19.00
Snipe	26.00
Squirrel, fox	54.00
Squirrel, gray and red	17.00
Tundra swan	1078.00
Weasel	11.00
Wild boar	755.00
Wildcat	647.00
Wild turkey	1617.00
Woodcock	26.00

§ 15A-1368.4. Conditions of post-release supervision.

...
 (11) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

§ 15A-1374. Conditions of parole.

...
 (11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

§ 148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges.

...
 (f) . . . The Department or sentencing court shall also determine the amount to be disbursed by the Department or clerk of court, as appropriate, for each of the following:

...
 (3a) To make restitution or reparation as provided in G.S. 148-33.2.

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

...
 (b) As a rehabilitative measure, the Secretary of the Department of Correction is authorized to require any prisoner granted work-release privileges to make restitution or reparation to an aggrieved party from any earnings gained by the defendant while on work release when the sentencing court recommends that restitution or reparation be paid by the defendant out of any earnings gained by the defendant if he is granted work-release privileges and out of other resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property. The Secretary 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 rehabilitative measure, it should recommend to the Secretary of Correction that restitution or reparation be made by the defendant out of any earnings gained by the defendant if he is granted work-release privileges and out of other resources of the defendant, including all real and personal property owned by the defendant, and income derived from such property. If the court determines that restitution or reparation should not be recommended, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be recommended, the court shall make its recommendation a part of the order committing the defendant to custody. The recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d) and Article 81C of Chapter 15A of the General Statutes. If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court may order the defendant to pay from work release earnings the cost of rehabilitative treatment for the minor. The Administrative Office of the Courts shall prepare and distribute

forms which provide ample space to make restitution or reparation recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its recommendation.

§ 148-57.1. Restitution as a condition of parole or post-release supervision.

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

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

OTHER PROVISIONS

§ 1-15.1. Statutes of limitation and repose for civil actions seeking to recover damages arising out of a criminal act.

(a) Notwithstanding any other provision of law, if a defendant is convicted of a criminal offense and is ordered by the court to pay restitution or restitution is imposed as a condition of probation, special probation, work release, or parole, then all applicable statutes of limitation and statutes of repose, except as established herein, are tolled for the period set forth in this subsection for purposes of any civil action brought by an aggrieved party against that defendant for damages arising out of the offense for which the defendant was convicted. Any statute of limitation or repose applicable in the civil action shall be tolled from the time of entry of the court order

- (1) Requiring that restitution be made,
- (2) Making restitution a condition of probation or special probation, or
- (3) Recommending that restitution be made a condition of work release or parole,

and until the defendant has paid in full the amount of restitution ordered or imposed. Except as provided in G.S. 15B-34, an action to recover damages arising out of the criminal offense shall not be commenced more than 10 years from the last act of the defendant giving rise to the cause of action.

(b) In any civil action brought by an aggrieved party against the defendant for damages arising out of the offense for which the defendant was convicted:

- (1) The defendant has the right to contest the amount of damages;
- (2) The amount of any restitution ordered or imposed shall not be admissible into evidence; and
- (3) All restitution paid by the defendant to the aggrieved party shall be credited against any judgment rendered in the action against that defendant.

(c) This section shall not apply if the offense of which the defendant was convicted was an offense established in Chapter 20 of the General Statutes.

(d) A plea of no contest shall be considered the same as a conviction for purposes of this section.

§ 7A-304. Costs in criminal actions.

- ...
- (d) (1) In any criminal case in which the liability for costs, fines, restitution, attorneys' fees, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:
- a. Sums in restitution to the victim entitled thereto;
 - b. Costs due the county;
 - c. Costs due the city;
 - d. Fines to the county school fund;
 - e. Sums in restitution prorated among the persons other than the victim entitled thereto;
 - f. Costs due the State;
 - g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1.

§ 15A-1021. Plea conference; improper pressure prohibited; submission of arrangement to judge; restitution and reparation as part of plea arrangement agreement, etc.

...

(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.

(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 as a condition of special probation pursuant to the provisions of G.S. 15A-1351, or probation pursuant to the provisions of G.S. 15A-1343(d). If an active sentence is imposed the court may recommend that the defendant make restitution or reparation out of any earnings gained by the defendant if he is granted 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 or recommendation providing for restitution or reparation shall be in accordance with the applicable provisions of G.S. 15A-1343(d) and Article 81C of this Chapter.

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

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