


Restitution and Expunction

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Restitution

- You must consider restitution in every case
- You can order it in active cases



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Restitution: Data

- 12% of misdemeanors (FY07/08)
- 15.6% of Community cases
- 22.1% of Intermediate cases
- 0.4% of Active cases



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### Restitution: CVRA

- In Crime Victims' Rights Act cases, restitution is mandatory




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### Restitution: CVRA

- Assault with a deadly weapon
- Assault inflicting serious injury
- Assault on a female
- Simple assault
- Assault by pointing gun
- Domestic criminal trespass
- Stalking

***If...***




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### Restitution: CVRA

- Defendant and victim have personal relationship under G.S. 50B-1(b):
  - Current former spouse
  - Persons of opposite sex who live(d) together
  - Parents-children
  - Grandparents-grandchildren
  - Persons with a child in common
  - Current/former household members
  - Persons who date(d)




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### Restitution: How much?

STATE OF NORTH CAROLINA

County: \_\_\_\_\_ In The General Court Of Justice  
 District  Superior Court Division

STATE VERSUS \_\_\_\_\_

name and address of Defendant: \_\_\_\_\_

Social Security No. Of Defendant: \_\_\_\_\_  Has No Social Security No.

**RESTITUTION WORKSHEET, NOTICE AND ORDER (INITIAL SENTENCING)**  
G.S. 15A-1343.34 through 1343.38, 15A-1343.61

**NOTE:** District Attorney's office should enter total restitution sought in Part I of this form, enter available information for each aggrieved party and victim, including amount of restitution sought for that person, in Parts II and III, and provide this information to the Court at the sentencing hearing. Use this form to compute and order restitution when the defendant is initially sentenced. Use the Restitution Update Worksheet And Hearing - Revocation Or Termination Of Probation, ACC-08-412, to compute balance of restitution due on revocation or termination of probation. Use Side Two of this form only when there are Victims Rights Act victims for whom restitution is sought or ordered.

**I. TOTAL RESTITUTION TO BE PAID BY DEFENDANT**

**NOTE:** Enter sum of all restitution ordered in Parts II and III. Also enter this amount on criminal judgment.

Requested: \$ \_\_\_\_\_  
 Granted, if Different: \$ \_\_\_\_\_

**II. NON-VICTIMS RIGHTS ACT AGGRIEVED PARTIES TO RECEIVE RESTITUTION**

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### Restitution: How much?

- Must be set in open court
- Must be supported by evidence at trial or sentencing
- Cannot be based solely on prosecutor's statement
- Must be based on crimes of conviction

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### Restitution: How much?

- Bodily injury
  - Cost of medical care and related professional services
  - OK to include future costs
  - Lost income
  - **NOT pain and suffering**
- If victim dies, funeral expenses

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Restitution: How much?

- Property damage or loss
  - Require return of property, or
  - Value of property on date of crime or on date of sentencing



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Restitution: How much?

- You must consider defendant's ability to pay
  - Look at real and personal property
  - Ability to earn
  - Child support obligations
- No written findings required



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Restitution: Payment schedule

- You may allow probation officer to set payment schedule
- You may authorize PPO to transfer probationer to unsupervised probation when moneys paid



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Restitution & Civil Judgments

- Restitution does not affect the victim's right to sue defendant
- Any later civil judgment will be offset by restitution paid



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Restitution & Civil Judgments

- Except in CVRA cases, you cannot "convert" restitution into a civil judgment
- If over \$250, CVRA restitution order may be docketed civilly



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Questions on Restitution?



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## Expunction

- Two types:
  - Expunction of convictions
  - Expunction of charges and arrest

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## Expunction of Convictions

Please reference the chart in your handout (p.4)

	G.S. 15A-146 Expunction of records of first offender conviction of defendant	G.S. 15A-147 Expunction of certain convictions	G.S. 15A-148 Expunction of certain convictions under the gang law
Offense	Nonviolent under the public utilities, underage alcohol possession, based on voluntary language, transporter no longer more than one conviction under 21 law of those convictions had been considered for sentence	Nonviolent conviction of a crime, is of corrected character, there is a conviction under 21 law of that specific offense	Street Gang Expunction Act convicted, misdemeanor for criminal gang activity
Age	Under 21 at time of conviction or under 21 and subject to judicial expunction	Under 21 at time of offense	Under 18 at time of conviction
Prior Record	No prior convictions, other than specific conviction	No prior convictions, other than traffic violations, no prior expunction under G.S. 15A-146	No prior convictions, other than traffic convictions
Evidence of Rehabilitation	Two year waiting period, no intervening convictions, no outstanding warrants, Two affidavits of good character from unrelated persons	Two year waiting period, no intervening convictions, no outstanding warrants, Two affidavits of good character from unrelated persons	Two year waiting period, no intervening convictions, no outstanding warrants, Two affidavits of good character from unrelated persons
Process	Prosecutor files a petition in the court of conviction, Division 10 of G.S. 15A-146, Precedent page 1225, if court able to make all necessary findings, it shall issue the order	Prosecutor files a petition ("Application") in the court of conviction, Precedent page 145 line 4, if court able to make all necessary findings, it shall issue the order	Prosecutor files a petition in the court of conviction, Precedent page 145, line 4, if court able to make all necessary findings, and/or establish in open or closed court the order

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## Expunction of Charges

- Felony or Mdm when not guilty or charge dismissed (G.S. 15A-146)
  - If never received expunction before
  - And never convicted of a felony
  - You “shall” order expunction

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### Expunction of Multiple Charges

- G.S. 15A-146(a1)
  - No prior expunctions [but notice...]
  - All charges dismissed or found not guilty
  - Offenses occurred in 12-month period, or
  - Charges dismissed at same term of court
  - Need not have arisen out of same transaction or occurrence; need not have been consolidated for judgment




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### Expunction under G.S. 90-96

- Record of charges and arrest “shall” be expunged if defendant is successful and:
  - Under age 22 at time of offense
  - Never convicted of any crime (except traffic violation) before or since
  - Files necessary affidavits




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### Lots of Bills Pending...

Bill	Description
1. H1064, Filed	EXPUNGE NONVIOLENT CRIMES.
2. S788, Edition 1	EXPUNGE NONVIOLENT FELONIES/YOUNG OFFENDERS.
3. S491, Edition 1	EXPUNGE NONVIOLENT CRIMES.
4. H726, Edition 1	CLARIFY EXPUNCTIONS.
5. S262, Edition 2	EXPUNCTIONS/PURGE ONLINE DATABASES.
6. S1048, Edition 1	JUVENILE JURISDICTION TO AGE 18 YEARS.




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