

Article 81C.

Restitution

§ 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. (1998-212, s. 19.4(d).)

§ 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. (1998-212, s. 19.4(d).)

§ 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 Public Safety 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. (1998-212, s. 19.4(d); 2011-145, s. 19.1(i).)

§ 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) Repealed by Session Laws 2016-78, s. 6.4, effective December 1, 2016. (1998-212, s. 19.4(d); 2016-78, s. 6.4.)

§ 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. (1998-212, s. 19.4(d).)

§ 15A-1340.39. Remission of restitution, notice, and hearing required.

(a) Notice and Hearing Required. – No court may remit all or part of an order of restitution entered pursuant to G.S. 15A-1340.34 without providing notice and an opportunity to be heard to the district attorney and the victim, victim's estate, or any other entity to which the order directs restitution to be paid. The court shall provide notice to the district attorney and the victim, the victim's estate, or other entity of (i) the date and time of the hearing and (ii) the right to be heard and make an objection to the remission of all or part of the order of restitution, at least 15 days prior to hearing. Notice shall be made to the victim, victim's estate, or other entity by first-class mail to the address provided for receipt of funds paid pursuant to the order of restitution.

(b) Ruling; Criteria. – If the court finds that the remission of the order is warranted and serves the interests of justice, the court may remit the order of restitution.

(c) Civil Action Not Abridged. – The remission of an order of restitution, pursuant to this section, 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. (2017-16, s. 1.)

§ 15A-1340.40: Reserved for future codification purposes.

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§ 15A-1340.42: Reserved for future codification purposes.

§ 15A-1340.43: Reserved for future codification purposes.

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§ 15A-1340.46: Reserved for future codification purposes.

§ 15A-1340.47: Reserved for future codification purposes.

§ 15A-1340.48: Reserved for future codification purposes.

§ 15A-1340.49: Reserved for future codification purposes.