

March 17, 2005

H 788. CRIME VICTIMS RESTITUTION IMPROVEMENT ACT. TO IMPROVE THE COLLECTION AND DISTRIBUTION OF RESTITUTION FOR CRIME VICTIMS IN NORTH CAROLINA AND TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY THIRD-PARTY COLLECTION FOR THE COLLECTION OF RESTITUTION AND OTHER COURT COSTS. Makes a number of changes to the current system for collection of restitution from defendant convicted of a criminal offense. Amends GS 15A-1340.36(b) to require that court order defendant whose actions resulted in victim's death to pay necessary funeral and burial expenses. Formerly, court was given discretion to order payment of burial expenses. Amends new GS 15A-1340.34(b) to require that if criminal defendant is sentenced to active punishment, court must recommend that defendant be required to pay restitution out of work release earnings and as a condition to post-release supervision. Amends GS 15A-1340.36 to delete requirement that court consider defendant's ability to pay in determining amount of restitution, and requires instead that court consider only injury and property damage endured by victim.

Enacts new GS 15A-1340.36.1 establishing a restitution payment schedule for defendants and setting forth factors for determining defendant's ability to pay and payment schedule. Amends GS 15A-1342(b) to prohibit court from terminating defendant's period of probation early unless defendant has paid all restitution to victim. Enacts new GS 28A-21-3.2 creating a procedure for making restitution payments to victim's family and new GS 15A-832(h) requiring that prosecuting attorney make reasonable efforts to identify defendant's sources of disposable income and provide court with name and address of defendant's employers at sentencing hearing.

Enacts new GS 15A-1340.39 to establish procedures for income withholding to enforce restitution as a condition of probation and to impose sanctions and civil and criminal penalties for employer's failure to comply with requirements. Authorizes the Administrative Office of the Courts (AOC) to collect the amount of each restitution judgment ordered under GS 15A-1340.38 and requires that AOC initiate setoff debt collection upon later of defendant's sentencing to an active sentence, or, if defendant is placed on probation, the revocation, expiration, or termination of the probation term. Appropriates to the Judicial Dep't in fiscal biennium operating budget an amount sufficient to cover all costs to be incurred in implementing setoff debt collection and to the Office of Indigent Defense an amount sufficient to compensate it for the amount currently collected through setoff debt collection on attorneys' fees judgments and that will be transferred to restitution judgments under act.

Makes conforming changes and technical corrections. Requires that AOC study use of third-party collection to improve collection of restitution and other court fines, fees, and costs and report findings to the 2006 General Assembly. Except for setoff debt collection amendments to Chapter 15A and study requirement, act effective December 1, 2005.

Intro. by Eddins, Holliman.

Ref. to Judiciary I

GS 15A, 28A, 105A, 148, APPROP, STUDY

July 27, 2005

H 788. CRIME VICTIMS RESTITUTION IMPROVEMENT ACT. Intro. 3/17/05. House committee substitute makes the following changes to 1st edition. Deletes amendment to GS 15A-1342(b) that provided that any order remitting an unpaid portion of defendant's restitution is null and void. Also modifies proposed GS 28A-21-3.2 to define "next of kin" as any residuary beneficiary listed in victim's will, and if no will exists, as defined in GS 15A-830(a)(6) (Crime Victims' Rights Act). Requires that clerk of superior court review list of next of kin and shares of potential restitution payments to determine if list is consistent with provisions of the victim's will, and if no will exists, in accordance with the Intestate Succession Act. Makes technical changes.