

1 H.795

2 Introduced by Representatives Grad of Moretown and Fay of St. Johnsbury

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedures; crime victims; restitution; victim's
6 compensation

7 Statement of purpose of bill as introduced: This bill proposes to enhance the
8 procedures for compensating crime victims and collection restitution as
9 recommended by the Study Committee on Future Funding for the Vermont
10 Center for Crime Victims Services.

11 An act relating to victim's compensation and restitution procedures

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 13 V.S.A. § 5362 is amended to read:

14 § 5362. RESTITUTION UNIT

15 (a) A Restitution Unit is created within the Center for Crime Victim
16 Services for purposes of ~~assuring~~ ensuring that crime victims receive
17 restitution when it is ordered by the Court.

18 (b) The Restitution Unit shall administer the Restitution Fund established
19 under section 5363 of this title.

1 (c) The Restitution Unit shall have the authority to:

2 (1) Collect restitution from the offender when it is ordered by the ~~court~~
3 Court under section 7043 of this title.

4 (2) ~~Bring an action to enforce~~ Enforce a restitution obligation as a civil
5 judgment under section 7043 of this title. The Restitution Unit shall enforce
6 restitution orders issued prior to July 1, 2004 pursuant to the law in effect on
7 the date the order is issued.

8 (3)(A) Share and access information, including information maintained
9 by the National Criminal Information Center, consistent with Vermont and
10 federal law, from the Court, the Department of Corrections, the Department of
11 Motor Vehicles, the Department of Taxes, ~~and~~ the Department of Labor, and
12 law enforcement agencies in order to carry out its collection and enforcement
13 functions. The Restitution Unit, for purposes establishing and enforcing
14 restitution payment obligations, is designated as a law enforcement agency for
15 the sole purpose of requesting and obtaining access to information needed to
16 identify or locate a person, including access to information maintained by the
17 National Criminal Information Center.

18 (B) Provide information to the Department of Corrections concerning
19 supervised offenders, including an offender's restitution payment history and
20 balance, address and contact information, employment information, and
21 information concerning the Restitution Unit's collection efforts.

1 (C) The Restitution Unit is specifically authorized to collect, record,
2 use, and disseminate Social Security numbers as needed for the purpose of
3 collecting restitution and enforcing restitution judgment orders issued by the
4 Court.

5 (4) Investigate and verify losses, including losses that may be eligible
6 for advance payment from the Restitution Special Fund, and verify the amount
7 of insurance or other payments paid to or for the benefit of a victim, and
8 reduce the amount collected or to be collected from the offender or disbursed
9 to the victim from the Crime Victims' Restitution Special Fund accordingly.
10 The Restitution Unit, when appropriate, shall submit to the ~~court~~ Court a
11 proposed revised restitution order stipulated to by the victim and the unit, with
12 copies provided to the victim and the offender. No hearing shall be required,
13 ~~and the Court shall amend the judgment order to reflect the amount stipulated~~
14 ~~to by the victim and the Restitution Unit.~~

15 (5) Adopt such administrative rules as are reasonably necessary to carry
16 out the purposes set forth in this section.

17 (6) Report offenders' payment histories to credit reporting agencies,
18 provided that the Unit shall not report information regarding offenders who are
19 incarcerated. The Unit shall not make a report under this subdivision until
20 after it has notified the offender of the proposed report by first class mail or
21 other like means to give actual notice, and provided the offender a period not

1 to exceed 20 days to contest the accuracy of the information with the Unit.

2 The Unit shall immediately notify each credit bureau organization to which
3 information has been furnished of any increases or decreases in the amount of
4 restitution owed by the offender.

5 (7) Enter into a repayment contract with a juvenile or adult accepted into
6 a diversion program and to bring a civil action to enforce the contract when a
7 diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

8 (8) Contract with a sheriff's department for the purposes of serving
9 process, warrants, demand letters, and mittimus in restitution cases, and
10 contract with a law enforcement agency or other investigator for the purpose of
11 investigating and locating offenders and enforcing restitution judgment orders.

12 (9) Collect from an offender subject to a restitution judgment order all
13 fees and costs incurred by the Restitution Unit as a result of enforcing the order
14 and investigating and locating the offender.

15 Sec. 2. 13 V.S.A. § 5363 is amended to read:

16 § 5363. CRIME VICTIM'S RESTITUTION SPECIAL FUND

17 * * *

18 (d)(1) The Restitution Unit is authorized to advance up to \$10,000.00 to a
19 victim or to a deceased victim's heir or legal representative if the victim:

20 (A) was first ordered by the Court to receive restitution on or after
21 July 1, 2004;

1 (B) is a natural person or the natural person's legal representative;

2 (C) has not been reimbursed under subdivision (2) of this

3 subsection; and

4 (D) is a natural person and has been referred to the Restitution Unit

5 by a diversion program pursuant to 3 V.S.A. § 164a.

6 (2) The Restitution Unit may make advances of up to \$10,000.00 under
7 this subsection to the following persons or entities:

8 (A) A victim service agency approved by the Restitution Unit if the
9 agency has advanced monies which would have been payable to a victim under
10 subdivision (1) of this subsection.

11 (B) A victim who is a natural person or the natural person's legal
12 representative in a case where the defendant, before or after an adjudication of
13 guilt, enters into a drug court contract requiring payment of restitution.

14 (3) An advance under this subsection shall not be made to the
15 government or to any governmental subdivision or agency.

16 (4) An advance under this subsection shall not be made to a victim who:

17 (A) fails to provide the Restitution Unit with the documentation
18 necessary to support the victim's claim for restitution; ~~or~~

19 (B) violated a criminal law of this State which caused or contributed
20 to the victim's material loss; or

1 (ii) include the name, address, and telephone number of the
2 offender's employer; and

3 (iii) require the offender, until his or her restitution obligation is
4 satisfied, to notify the Restitution Unit within 30 days if the offender's address,
5 telephone number, or employment changes, including providing the name,
6 address, and telephone number of each new employer.

7 (B) [Repealed.]

8 (3) An order of restitution may require the offender to pay restitution for
9 an offense for which the offender was not convicted if the offender knowingly
10 and voluntarily executes a plea agreement which provides that the offender pay
11 restitution for that offense. A copy of the plea agreement shall be attached to
12 the restitution order.

13 (f)(1) If not paid at the time of sentencing, restitution may be ordered as a
14 condition of probation, supervised community sentence, furlough, preapproved
15 furlough, or parole if the convicted person is sentenced to preapproved
16 furlough, probation, or supervised community sentence, or is sentenced to
17 imprisonment and later placed on parole. A person shall not be placed on
18 probation solely for purposes of paying restitution. An offender may not be
19 charged with a violation of probation, furlough, or parole for nonpayment of a
20 restitution obligation incurred after July 1, 2004.

1 (2) The Department of Corrections shall work collaboratively with the
2 Restitution Unit to assist with the collection of restitution. The Department
3 shall provide the Restitution Unit with information about the location and
4 employment status of the offender.

5 (g)(1) When restitution is requested but not ordered, the Court shall set
6 forth on the record its reasons for not ordering restitution.

7 (2)(A) If restitution was not requested at the time of sentencing, or if
8 expenses arose after the entry of a restitution order, the State may file a motion
9 with the sentencing court to reopen the restitution case in order to consider a
10 request for restitution payable from the Restitution Fund. Restitution ordered
11 under this subdivision shall be payable from the Restitution Fund and capped
12 at \$1,000.00, and shall not be payable by the offender.

13 (B) A motion under this subdivision shall be filed within one year
14 after the imposition of sentence or the entry of the restitution order.

15 (h) Restitution ordered under this section shall not preclude a person from
16 pursuing an independent civil action for all claims not covered by the
17 restitution order.

18 (i)(1) The ~~court~~ Court shall transmit a copy of a restitution order and the
19 plea agreement, if any, to the Restitution Unit, which shall make payment to
20 the victim in accordance with section 5363 of this title.

1 ~~the Restitution Unit, the victim, and the offender.~~ the Restitution Unit may file
2 a show cause motion with the Civil Division of the Superior Court. The Court
3 shall set the matter for hearing and provide notice to the Restitution Unit, the
4 victim, and the offender. The Court may order the defendant to appear at the
5 show cause hearing and disclose assets and liabilities and produce any
6 documents the Court deems relevant. If the ~~court~~ Court determines the
7 offender has failed to comply with the restitution order, the ~~court~~ Court may
8 take any action the Court deems necessary to ensure the offender will make the
9 required restitution payment, including:

10 ~~(1)(A)~~ (A) amending the payment schedule of the restitution order;

11 ~~(2)(B)~~ (B) ordering, in compliance with the procedures required in Rule 4.1
12 of the Vermont Rules of Civil Procedure, the disclosure, attachment, and sale
13 of assets and accounts owned by the offender;

14 ~~(3)(C)~~ (C) ordering the offender's wages withheld pursuant to subsection (n)
15 of this section; or

16 ~~(4)(D)~~ (D) ordering the suspension of any recreational licenses owned by the
17 offender.

18 (2) If the Court finds that the offender has an ability to pay and willfully
19 refuses to do so, the offender may be subject to civil contempt proceedings
20 under 12 V.S.A. chapter 5.

21 * * *

1 (p) An obligation to pay restitution is part of a criminal sentence and is:

2 (1) nondischargeable in the United States Bankruptcy Court to the

3 maximum extent provided under 11 U.S.C. § § 523 and 1328; ~~and~~

4 (2) not subject to any statute of limitations; and

5 (3) not subject to the renewal of judgment requirements of

6 12 V.S.A. § 506.

7 * * *

8 Sec. 4. EFFECTIVE DATE

9 This act shall take effect on July 1, 2014.