

SENATE PROPOSAL OF AMENDMENT

H. 795

An act relating to victim's compensation and restitution procedures

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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

§ 5362. RESTITUTION UNIT

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

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

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

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

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

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

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

(C) The Restitution Unit is specifically authorized to collect, record, use, and disseminate Social Security numbers as needed for the purpose of collecting restitution and enforcing restitution judgment orders issued by the Court, provided that the Social Security number is maintained on a separate

form that is confidential and exempt from public inspection and copying under the Public Records Act.

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

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

(6)(A) Report offenders' payment histories to credit reporting agencies, ~~provided that the Unit shall not report information regarding offenders who are incarcerated.~~ The Unit shall not make a report under this subdivision (6) until after it has notified the offender of the proposed report by first class mail or other like means to give actual notice, and provided the offender a period not to exceed 20 days to contest the accuracy of the information with the Unit. The Unit shall immediately notify each credit bureau organization to which information has been furnished of any increases or decreases in the amount of restitution owed by the offender.

(B) Obtain offenders' credit reports from credit reporting agencies. The Unit shall not obtain a report under this subdivision (6) until after it has notified the offender by first class mail or other means likely to give actual notice of its intent to obtain the report.

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

(8) Contract with one or more sheriff's departments for the purposes of serving process, warrants, demand letters, and mittimus in restitution cases, and contract with one or more law enforcement agencies or other investigators for the purpose of investigating and locating offenders and enforcing restitution judgment orders.

(9) Collect from an offender subject to a restitution judgment order all fees and direct costs, including reasonable attorney's fees, incurred by the Restitution Unit as a result of enforcing the order and investigating and locating the offender.

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

§ 5363. CRIME VICTIM'S RESTITUTION SPECIAL FUND

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(d)(1) The Restitution Unit is authorized to advance up to ~~\$10,000.00~~ \$5,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

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

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

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

(D) is a natural person and has been referred to the Restitution Unit by a diversion program pursuant to 3 V.S.A. § 164a.

(2) The Restitution Unit may make advances of up to ~~\$10,000.00~~ \$5,000.00 under this subsection to the following persons or entities:

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

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

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

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

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

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

(C) has crime-related losses that are eligible for payment from the Victim Compensation Special Fund.

(5) An advance under this subsection shall not be made for the amount of cash loss included in a restitution judgment order.

(6) An advance under this subsection shall not be made for:

(A) jewelry or precious metals; or

(B) luxury items or collectibles identified in rules adopted by the Unit pursuant to subdivision 5362(c)(5) of this title.

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Sec. 3. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

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(e)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the Court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection ~~(4)~~(1) of this section. Notwithstanding 12 V.S.A. chapter 113 or any other provision of law, interest shall not accrue on a restitution judgment.

(2)(A) Every order of restitution shall:

(i) include the offender's name, address, telephone number, and Social Security number, provided that the Social Security number is redacted pursuant to the Vermont Rules for Public Access to Court Records;

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

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

(B) [Repealed.]

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

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

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

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

(2)(A) If restitution was not requested at the time of sentencing as the result of an error by the State, or if expenses arose after the entry of a restitution order, ~~the State may file a motion with the sentencing court to reopen the restitution case in order to consider a~~ the victim may request for restitution payable from the Restitution Fund. Restitution ~~ordered~~ paid under this subdivision shall be payable from the Restitution Fund and shall not be payable by the offender. If the restitution is for expenses that arose after the entry of a restitution order, the restitution shall be capped at \$1,000.00.

(B) A ~~motion~~ request under this subdivision shall be filed with the Restitution Unit within one year after the imposition of sentence or the entry of the restitution order.

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

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

(2) To the extent that the Victims Compensation Board has made payment to or on behalf of the victim in accordance with chapter 167 of this title, restitution, if imposed, shall be paid to the Restitution Unit, which shall make payment to the Victims Compensation Fund.

(j) The Restitution Unit may bring an action, including a small claims procedure, on a form approved by the Court Administrator, to enforce a restitution judgment order entered by the Criminal Division of the Superior Court. The action shall be brought against an the offender in the Civil Division of the Superior Court of the unit where the offender resides or in the unit where the order was issued. In an action under this subsection, a restitution order issued by the Criminal Division of the Superior Court shall be enforceable in the Civil Division of the Superior Court or in a small claims procedure in the same manner as a civil judgment. Superior and Small Claims Court filing fees shall be waived for an action brought under this subsection, ~~and for an action to renew a restitution judgment.~~

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(m)(1) ~~If the offender fails to pay restitution as ordered by the court, the Restitution Unit may file an action to enforce the restitution order in Superior or Small Claims Court.~~ After an enforcement action is filed pursuant to subsection (j) of this section, any further proceedings related to the action shall be heard in the ~~court~~ Court where it was filed. The ~~court~~ Court shall set the

matter for hearing and shall provide notice to the Restitution Unit, the victim, and the offender. Upon filing of a motion for financial disclosure, the Court may order the offender to appear at the hearing and disclose assets and liabilities and produce any documents the Court deems relevant.

(2) If the ~~court~~ Court determines the offender has failed to comply with the restitution order, the ~~court~~ Court may take any action the Court deems necessary to ensure the offender will make the required restitution payment, including:

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

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

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

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

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

* * *

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

(1) nondischargeable in the United States Bankruptcy Court to the maximum extent provided under 11 U.S.C. §§ 523 and 1328; ~~and~~

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

(3) not subject to the renewal of judgment requirements of 12 V.S.A. § 506.

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Sec. 4. 13 V.S.A. § 5573 is amended to read:

§ 5573. COMPLAINT

(a) A complaint filed under this subchapter shall be supported by facts and shall allege that:

(1) the complainant has been convicted of a felony crime, been sentenced to a term of imprisonment, and served ~~all or any part~~ at least six months of the sentence in a correctional facility; and

(2) the complainant was exonerated ~~pursuant to subchapter 1 of this chapter~~ through the complainant's conviction being reversed or vacated, the

information or indictment being dismissed, the complainant being acquitted after a second or subsequent trial, or the granting of a pardon.

(b) The court may dismiss the complaint, upon its own motion or upon motion of the ~~state~~ State, if it determines that the complaint does not state a claim for which relief may be granted.

Sec. 5. 13 V.S.A. § 5574 is amended to read:

§ 5574. BURDEN OF PROOF; JUDGMENT; DAMAGES

(a) A claimant shall be entitled to judgment in an action under this subchapter if the claimant establishes each of the following by ~~a preponderance of the~~ clear and convincing evidence:

(1) The complainant was convicted of a felony crime, was sentenced to a term of imprisonment, and served ~~all or any part~~ at least six months of the sentence in a correctional facility.

(2) ~~As a result of DNA evidence:~~

(A) The complainant's conviction was reversed or vacated, the complainant's information or indictment was dismissed, or the complainant was acquitted after a second or subsequent trial; ~~or~~

(B) The complainant was pardoned for the crime for which he or she was sentenced.

(3) ~~DNA evidence establishes that the complainant did not commit the crime for which he or she was sentenced~~ The complainant is actually innocent of the felony or felonies that are the basis for the claim. As used in this chapter, a person is "actually innocent" of a felony or felonies if he or she did not engage in any illegal conduct alleged in the charging documents for which he or she was charged, convicted, and imprisoned.

(4) The complainant did not fabricate evidence or commit or suborn perjury during any proceedings related to the crime with which he or she was charged.

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Sec. 6. VICTIM'S COMPENSATION FUND; BILLING OF HEALTH CARE FACILITIES IN FY 2015; SUNSET

(a) Notwithstanding 13 V.S.A. § 5356(c) and 32 V.S.A. § 1407, during fiscal year 2015, the Victim's Compensation Fund shall reimburse health care facilities and health care providers at 50 percent of the billed charges for compensation. The health care facility or health care provider shall not bill any balance to the crime victim.

(b) This section shall be repealed on July 1, 2015.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2014 and shall apply to restitution orders issued after that date.