

SENATE CHANGES TO HOUSE BILL

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 795 entitled

3 “An act relating to victim’s compensation and restitution procedures”

4 respectfully reports that it has considered the same and recommends that the

5 Senate propose to the House that the bill be amended by striking out all after

6 the enacting clause and inserting in lieu thereof the following:

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

8 § 5362. RESTITUTION UNIT

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

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

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

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

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

SENATE CHANGES TO HOUSE BILL

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

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

15 (C) The Restitution Unit is specifically authorized to collect, record,
16 use, and disseminate Social Security numbers as needed for the purpose of
17 collecting restitution and enforcing restitution judgment orders issued by the
18 Court, provided that the Social Security number is maintained on a separate
19 form that is confidential and exempt from public inspection and copying under
20 the Public Records Act.

SENATE CHANGES TO HOUSE BILL

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

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

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

SENATE CHANGES TO HOUSE BILL

1 (B) Obtain offenders' credit reports from credit reporting agencies.

2 The Unit shall not obtain a report under this subdivision until after it has
3 notified the offender by first class mail or other means likely to give actual
4 notice of its intent to obtain the report.

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

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

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

18 § 5363. CRIME VICTIM'S RESTITUTION SPECIAL FUND

19 * * *

SENATE CHANGES TO HOUSE BILL

1 (d)(1) The Restitution Unit is authorized to advance up to ~~\$10,000.00~~
2 \$5,000.00 to a victim or to a deceased victim's heir or legal representative if
3 the victim:

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

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

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

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

11 (2) The Restitution Unit may make advances of up to ~~\$10,000.00~~
12 \$5,000.00 under this subsection to the following persons or entities:

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

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

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

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

SENATE CHANGES TO HOUSE BILL

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

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

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

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

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

10 (A) jewelry or precious metals; or luxury items; and

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

13 * * *

14
15 Sec. 3. 13 V.S.A. § 7043 is amended to read:

16 § 7043. RESTITUTION

17 * * *

18 (e)(1) An order of restitution shall establish the amount of the material loss
19 incurred by the victim, which shall be the restitution judgment order. In the
20 event the offender is unable to pay the restitution judgment order at the time of
21 sentencing, the Court shall establish a restitution payment schedule for the

SENATE CHANGES TO HOUSE BILL

1 offender based upon the offender's current and reasonably foreseeable ability
2 to pay, subject to modification under subsection (k) of this section.
3 Notwithstanding 12 V.S.A. chapter 113 or any other provision of law, interest
4 shall not accrue on a restitution judgment.

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

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

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

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

15 (B) [Repealed.]

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

SENATE CHANGES TO HOUSE BILL

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

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

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

15 (2)(A) If restitution was not requested at the time of sentencing **as the**
16 **result of an error by the State**, or if expenses arose after the entry of a
17 restitution order, ~~the State may file a motion with the sentencing court to~~
18 ~~reopen the restitution case in order to consider a~~ the victim may request for
19 restitution payable from the Restitution Fund. Restitution ~~ordered paid~~ under
20 this subdivision shall be payable from the Restitution Fund and capped at
21 \$1,000.00, and shall not be payable by the offender. **If the restitution is for**

SENATE CHANGES TO HOUSE BILL

1 expenses that arose after the entry of a restitution order, the restitution shall be
2 capped at \$1,000.00.

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

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

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

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

15 (j) The Restitution Unit may bring an action, including a small claims
16 procedure, on a form approved by the Court Administrator, to enforce a
17 restitution judgment order entered by the Criminal Division of the Superior
18 Court. The action shall be brought against ~~an~~ the offender in the Civil Division
19 of the Superior Court of the unit where the offender resides or in the unit where
20 the order was issued. In an action under this subsection, a restitution order
21 issued by the Criminal Division of the Superior Court shall be enforceable in

SENATE CHANGES TO HOUSE BILL

1 the Civil Division of the Superior Court or in a small claims procedure in the
2 same manner as a civil judgment. Superior and Small Claims Court filing fees
3 shall be waived for an action brought under this subsection, ~~and for an action~~
4 ~~to renew a restitution judgment.~~

* * *

6 (m)(1) ~~If the offender fails to pay restitution as ordered by the court, the~~
7 ~~Restitution Unit may file an action to enforce the restitution order in Superior~~
8 ~~or Small Claims Court.~~ After an enforcement action is filed pursuant to
9 subsection (j) of this section, any further proceedings related to the action shall
10 be heard in the court where it was filed. The court shall set the matter for
11 hearing and shall provide notice to the Restitution Unit, the victim, and the
12 offender. Upon filing of a motion for financial disclosure, the Court may order
13 the offender to appear at the hearing and disclose assets and liabilities and
14 produce any documents the Court deems relevant.

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

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

SENATE CHANGES TO HOUSE BILL

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

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

6 (2) the complainant was exonerated ~~pursuant to subchapter 1 of this~~
7 ~~chapter~~ through the complainant's conviction being reversed or vacated, the
8 information or indictment being dismissed, the complainant being acquitted
9 after a second or subsequent trial, or the granting of a pardon.

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

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

14 § 5574. BURDEN OF PROOF; JUDGMENT; DAMAGES

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

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

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

SENATE CHANGES TO HOUSE BILL

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

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

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

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

15 * * *

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

18 (a) Notwithstanding 13 V.S.A. § 5356(c) and 32 V.S.A. § 1407, during
19 Fiscal Year 2015 the Victim's Compensation Fund shall reimburse health care
20 facilities and health care providers at 50 percent of the billed charges for

SENATE CHANGES TO HOUSE BILL

1 compensation. The health care facility or health care provider shall not bill
2 any balance to the crime victim.

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

4 Sec. 7. EFFECTIVE DATE

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

7

8

9

10 (Committee vote: _____)

11

12

Senator _____

13

FOR THE COMMITTEE