



SENATE BILL 579: Prevent Harm to Children.

2023-2024 General Assembly

Committee:		Date:	December 14, 2023
Introduced by:		Prepared by:	Susan Sitze Staff Attorney
Analysis of:	S.L. 2023-127		

OVERVIEW: *Session Law 2023-127, as amended by Section 7 of S.L. 2023-151, does the following:*

- *Increases the felony classification of intentionally disseminating obscenity when it is knowingly done in the presence of a person under 18 years of age.*
- *Requires that any defendant who viewed child pornography and has been convicted of first-degree, second-degree, or third-degree sexual exploitation of a minor must be ordered to make restitution as required by Article 81C of Chapter 15A of the General Statutes and newly created G.S. 14-190.17B. The court is not required to order restitution if the victim has not been identified.*
- *Increases the felony classification for employing a minor in obscenity offenses and disseminating obscene material to a minor.*
- *Modifies certain indecent exposure offenses to apply to indecent exposure to any minor, rather than a person under 16 years old.*

This act became effective December 1, 2023. The increased penalties and modification of offenses apply to offenses committed on or after that date. The restitution requirements apply to restitution orders entered on or after that date.

CURRENT LAW AND BILL ANALYSIS:

Section 1

G.S. 14-190.1 makes it unlawful for any person, firm, or corporation to intentionally disseminate obscenity. Material is considered obscene if all the following apply:

- The material depicts or describes in a patently offensive way sexual conduct.
- The material is that which the average person applying contemporary community standards relating to the depiction or description of sexual matters would find that taken as a whole appeals to the prurient interest in sex.
- The material lacks serious literary, artistic, political, or scientific value.
- The material is not considered protected or privileged under the U.S. Constitution or the NC Constitution.

Section 1 of this act increases the penalty from a Class I felony to a Class H felony for any person, firm, or corporation who intentionally disseminates obscenity knowingly in the presence of an individual under 18 years of age. [Note that Section 3 this act made a similar, but conflicting amendment to G.S. 14-190.1(g) and was corrected by Section 7 of S.L. 2023-151.]

Jeffrey Hudson
Director



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This section became effective December 1, 2023, and applies to offenses committed on or after that date.

Section 2

Article 81C of Chapter 15A of the General Statutes governs restitution. When sentencing a defendant convicted of a criminal offense, the court must determine whether the defendant must be ordered to make restitution to any victim (a person directly and proximately harmed as a result of the defendant's commission of the criminal offense). 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. G.S. 15A-1340.34.

In determining the amount of restitution, the court must consider the following:

- For an offense resulting in bodily injury to a victim, all of the following must be considered:
 - The cost of necessary medical and related professional services and equipment relating to physical, psychiatric, and psychological care required by the victim.
 - The cost of necessary physical and occupational therapy and rehabilitation for the victim.
 - Income lost by the victim as a result of the offense.
- For an offense resulting in the damage, loss, or destruction of property of a victim:
 - Return of the property to the owner or someone designated by the owner; or
 - If return of the property is impossible or inadequate:
 - The value of the property on the date of the damage, loss, or destruction; or
 - The value of the property on the date of sentencing, less the value of any part of the property that is returned.
- Any measure of restitution specifically provided by law for the offense committed.
- 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. G.S. 15A-1340.35(a)(1)-(4).

The court may require the victim to provide admissible evidence that documents the costs claimed. G.S. 15A-1340.35(b). The court also must consider the resources of the defendant and may order partial restitution if the loss caused by the offense is greater than what defendant is able to pay. G.S. 15A-1340.36(a).

Section 2 of this act creates a new G.S. 14-190.17B, to address restitution for sexual exploitation of a minor. It provides that in addition to any other civil or criminal penalty, the court must order restitution for a violation of first-degree, second-degree, or third-degree sexual exploitation of a minor in accordance with Article 81C of Chapter 15A of the General Statutes and newly created G.S. 14-190.17B. If there is any conflict between Article 81C of the General Statutes and G.S. 14-190.17B, then G.S. 14-190.17B prevails.

The court must determine the "full amount of the victim's losses" for costs incurred as a proximate result of the offense. In addition to the damages described in G.S. 15A-1340.35, "the full amount of the victim's losses" includes all of the following:

- Medical services relating to physical, psychiatric, or psychological care.
- Physical and occupational therapy or rehabilitation.

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- Transportation, temporary housing, and childcare expenses.
- Loss of income.
- Reasonable attorneys' fees and litigation costs associated with restitution or its enforcement.

If more than one defendant contributed to the losses of the victim, the court must apportion liability among the defendants according to each defendant's level of contribution to the victim's losses. A victim's total aggregate recovery must not exceed the full amount of the victim's losses. A defendant may petition the court to amend a restitution order upon a showing that the victim has received restitution for the full amount of the victim's losses.

If it is impossible to trace a particular amount of the losses to the defendant, the court must use its discretion to order restitution in an amount that reflects the defendant's relative role in the causal process that underlies the victim's full amount of loss. The victim may be required to show the amount of restitution has been paid in other cases for the same losses.

The act clarifies that the court is not required to order restitution if the victim has not been identified. This section became effective December 1, 2023, and applies to orders for restitution entered on or after that date.

Section 3

Section 3 of this act makes the following modifications to existing statutes:

- Amends G.S. 14-190.1 to apply to any person 18 years of age or older. [Note that this portion of this act also made an amendment to G.S. 14-190.1(g) which was similar to but conflicted with Section 1 of this act and was corrected by Section 7 of S.L. 2023-151.]
- Increases the felony classification from a Class I felony to a Class H felony for the following offenses:
 - G.S. 14-190.6 (Employing or permitting minor to assist in offense under Article)
 - G.S. 14-190.7 (Dissemination to minors under the age of 16 years)
 - G.S. 14-190.8 (Dissemination to minors under the age of 13 years)
- Amends two provisions of G.S. 14-190.9 (Indecent Exposure) that currently apply to exposure of private parts to a person less than 16 years of age, to apply those offense to exposure of private parts to any minor who is not emancipated or married.

This section became effective December 1, 2023, and applies to offenses committed on or after that date.

EFFECTIVE DATE: This act became effective December 1, 2023, and applies as noted above.

**Robert Ryan and Brad Krehely, Staff Attorneys, substantially contributed to this summary.*