

House Bill 172 (AS PASSED HOUSE AND SENATE)

By: Representatives Golick of the 34th, Roberts of the 154th, Ralston of the 7th, Mumford of the 95th, Miller of the 106th, and others

A BILL TO BE ENTITLED
AN ACT

1 To enact the "Crime Victims Restitution Act of 2005" so as to substantially revise the laws
2 of this state relating to the conduct of criminal trials and the impact of the criminal justice
3 system on victims of crime; to amend Article 5 of Chapter 3 of Title 9 of the Official Code
4 of Georgia Annotated, relating to tolling of limitations in civil cases, so as to provide for a
5 statute of repose in certain tort actions brought by victims of crimes against the persons
6 accused of such crimes; to amend Title 17 of the Official Code of Georgia Annotated,
7 relating to criminal procedure, so as to change the provisions relating to victim impact
8 statements; to codify certain common law procedures relating to the collection of fines and
9 restitution in criminal cases which authorize a fine to be reduced to a judgment and recorded
10 on the general execution docket; to provide that actions to collect fines and restitution may
11 be instituted; to substantially revise the procedures for the award of restitution to victims of
12 crime; to provide for definitions; to provide for a hearing and burden of proof; to provide
13 procedures for certain transfers of property to be set aside; to provide for a statute of
14 limitations on a cause of action based upon a fraudulent transfer; to amend Code Section
15 48-7-161 of the Official Code of Georgia Annotated, relating to definitions relating to setoff
16 debt collection, so as to change the provisions relating to collection of restitution for victims
17 of crime; to provide for other matters relative to the foregoing; to provide for an effective
18 date; to repeal conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 **SECTION 1.**

21 This Act shall be known and may be cited as the "Crime Victims Restitution Act of 2005."

22 **SECTION 2.**

23 Article 5 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to tolling
24 of limitations of actions, is amended by inserting a new Code Section 9-3-99 to read as
25 follows:

1 "9-3-99.
 2 The running of the period of limitations with respect to any cause of action in tort that may
 3 be brought by the victim of an alleged crime which arises out of the facts and
 4 circumstances relating to the commission of such alleged crime committed in this state
 5 shall be tolled from the date of the commission of the alleged crime or the act giving rise
 6 to such action in tort until the prosecution of such crime or act has become final or
 7 otherwise terminated, provided that such time does not exceed six years."

8 SECTION 3.

9 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 10 amended by striking in its entirety Code Section 17-10-1.1, relating to judicial consideration
 11 of victim impact statements, and inserting in lieu thereof the following:

12 "17-10-1.1.

13 (a)(+) A prosecuting attorney bringing charges against a defendant shall notify, where
 14 practical, the alleged victim or, when the victim is no longer living, a member of the
 15 victim's family of his or her right ~~under certain circumstances~~ to submit a victim impact
 16 statement form:

17 (A) ~~Where the charge is a felony, if the defendant allegedly caused physical,~~
 18 ~~psychological, or, if restitution is sought, economic injury to the victim; or~~

19 (B) ~~Where the charge is a misdemeanor, if the defendant allegedly caused serious~~
 20 ~~physical injury or death to the victim.~~

21 (2) ~~A victim impact statement submitted by a victim shall be attached to the case file and~~
 22 ~~may be used by the prosecuting attorney or the judge during any stage of the proceedings~~
 23 ~~against the defendant involving predisposition, plea bargaining, sentencing, or~~
 24 ~~determination of restitution.~~

25 (b)(1) A victim impact statement form shall:

26 (1) ~~Identify~~ identify the victim of the offense and the perpetrator; ;

27 (2) A victim impact form may itemize ~~Itemize~~ any economic loss suffered by the victim
 28 as a result of the offense; and may:

29 (3)(A) Identify any physical injury suffered by the victim as a result of the offense
 30 along with its seriousness and permanence;

31 (4)(B) Describe any change in the victim's personal welfare or familial relationships
 32 as a result of the offense; and

33 (5) ~~Identify any request for psychological services initiated by the victim or the victim's~~
 34 ~~family as a result of the offense; and~~

35 (6)(C) Contain any other information related to the impact of the offense upon the
 36 victim that the court requires or the victim's family that the victim wishes to include.

1 (c) ~~The State Board of Pardons and Paroles~~ Prosecuting Attorneys' Council of Georgia
 2 shall establish a form document which shall include the elements set forth in forms which
 3 are designed to obtain the information specified by subsection (b) of this Code section. The
 4 Prosecuting Attorneys' Council of Georgia and shall make copies of such form available
 5 to prosecuting attorneys in the state. ~~When requested by the victim, the victim impact~~
 6 ~~statement form document shall be provided to the victim by the prosecuting attorney. The~~
 7 ~~form shall include the address of the State Board of Pardons and Paroles and contain a~~
 8 ~~statement that the victim must maintain a copy of his address with the State Board of~~
 9 ~~Pardons and Paroles and must notify the board of any change of address~~ It shall be the duty
 10 of the prosecuting attorney or his or her designee to make such forms available to crime
 11 victims.

12 (d) The victim may complete ~~the~~ a victim impact ~~statement~~ form and submit such form to
 13 the appropriate prosecuting attorney charged with the prosecution of the case. If the victim
 14 is unable to do so because of such victim's mental, emotional, or physical incapacity, or
 15 because of such victim's age, the victim's attorney or a family member may complete the
 16 victim impact ~~statement~~ form on behalf of the victim. ~~The prosecuting attorney shall file~~
 17 ~~any such written victim impact statement, if in existence at that time, with the court.~~

18 (e)(1) If, prior to trial, the defendant engages in discussion with the prosecuting attorney
 19 for the purpose of reaching a plea agreement or other pretrial disposition of his or her
 20 case, the prosecuting attorney shall, upon the request of the defendant, The court shall,
 21 in the manner prescribed by rule of court, provide the defendant with a copy of the victim
 22 impact statement form relating to the defendant's case within a reasonable time prior to
 23 ~~any hearing at which it is to be considered and allow the defendant to have the~~
 24 ~~opportunity to rebut the victim's written statements~~ such discussions.

25 (2) If the prosecuting attorney intends to present information from a victim impact form
 26 to the court at any hearing at which sentencing or a determination of restitution will be
 27 considered by the court, the prosecuting attorney shall furnish a copy of the victim impact
 28 form to the defendant not less than five days prior to any such hearing. The defendant
 29 shall have the right to rebut the information contained in the victim impact form.

30 (3) The court shall consider the victim impact form that is presented to the court prior
 31 to imposing a sentence or making a determination as to the amount of restitution.

32 (f) If for any reason a victim was not allowed an opportunity to make a written victim
 33 impact statement, the victim may submit a victim impact statement to the State Board of
 34 Pardons and Paroles in any case prior to consideration of parole.

35 (g) No sentence shall be invalidated because of failure to comply with the provisions of
 36 this Code section. This Code section shall not be construed to create any cause of action
 37 or any right of appeal on behalf of any person."

SECTION 4.

Said title is further amended by adding a new Code Section 17-10-20 at the end of Article 1, to read as follows:

"17-10-20.

(a) In any case in which a fine or restitution is imposed as part of the sentence, such fine and restitution shall constitute a judgment against the defendant. Upon the request of the prosecuting attorney, it shall be the duty of the clerk of the sentencing court to issue a writ of fieri facias thereon and enter it on the general execution docket of the superior court of the county in which such sentence was imposed. Such fieri facias may also be entered on the general execution docket in any county in which the defendant owns real property.

(b) If, in imposing sentence, the court sets a time certain for such fine or restitution to be paid in full, no execution shall issue upon the writ of fieri facias against the property of the defendant until such time as the time set by the court for payment of the fine or restitution shall have expired.

(c) If the fine or restitution is not paid in full, such judgment may be enforced by instituting any procedure for execution upon the writ of fieri facias through levy, foreclosure, garnishment, and all other actions provided for the enforcement of judgments in the State of Georgia and in other states and foreign nations where such judgment is afforded full faith and credit under the Uniform Foreign Money Judgments Act or domestication thereof.

(d) If the fine is not paid in full by the expiration of the time set by the court for payment of the fine, the governing authority of the county or municipality entitled to such fine may institute procedures to enforce such judgment as provided by subsection (c) of this Code section.

(e) If the restitution is not paid in full by the expiration of the time set by the court for payment of the restitution, the prosecuting attorney or the victim entitled to receive such restitution may institute procedures to enforce such judgment as provided by subsection (c) of this Code section.

(f) Notwithstanding the provisions of Code Section 9-12-60, a judgment entered on the general execution docket pursuant to this Code section shall not become dormant during any period when the defendant is incarcerated and for seven years thereafter. Such judgment shall be subject to revival in the same manner as provided for dormant judgments under Code Section 9-12-60.

(g) No fees, costs, or other charges authorized by law in civil cases shall be charged by a clerk of superior court for entering a judgment arising out of a criminal case on the general execution docket or for any action brought by the state to enforce such judgment.

1 (h) The provisions of this Code section shall be supplemental to any other provision of law
2 applicable to the collection of fines or restitution in criminal cases."

3 **SECTION 5.**

4 Said title is further amended by striking Article 1 of Chapter 14, relating to restitution, in its
5 entirety and inserting in lieu thereof a new Article 1 to read as follows:

6 "ARTICLE 1

7 17-14-1.

8 It is declared to be the policy of this state that restitution to their victims by those found
9 guilty of crimes or adjudicated as having committed delinquent acts is a primary concern
10 of the criminal justice system and the juvenile justice system.

11 17-14-2.

12 As used in this article, the term:

13 (1) ~~'Board' means the State Board of Pardons and Paroles.~~ 'Conviction' means an
14 adjudication of guilt of or a plea of guilty or nolo contendere to the commission of an
15 offense against the laws of this state. Such term includes any such conviction or plea,
16 notwithstanding the fact that sentence was imposed pursuant to Article 3 of Chapter 8 of
17 Title 42. Such term also includes the adjudication or plea of a juvenile to the commission
18 of an act which, if committed by an adult, would constitute a crime under the laws of this
19 state.

20 (2) 'Damages' means all special damages which a victim could recover against an
21 offender in a civil action, including a wrongful death action, based on the same act or acts
22 for which the offender is sentenced, except punitive damages and damages for pain and
23 suffering, mental anguish, or loss of consortium. Such special damages shall not be
24 limited by any law which may cap economic damages. Special damages may include the
25 reasonably determined costs of transportation to and from court proceedings related to
26 the prosecution of the crime.

27 (3) 'Department' means the Department of Corrections.

28 ~~(4)~~(3) 'Offender' means any natural person, firm, partnership, association, public or
29 private corporation, or other legal entity who that has been ~~placed on probation under~~
30 ~~Article 3 of Chapter 8 of Title 42 or sentenced for any crime or any juvenile who has~~
31 ~~been adjudged delinquent or unruly.~~

32 ~~(5)~~(4) 'Ordering authority' means the

33 (A) A court of competent jurisdiction;

1 (B) The the State Board of Pardons and Paroles;

2 (C) The the Department of Corrections; or;

3 (D) The Department of Juvenile Justice; or

4 (E) Any any combination thereof, as is required by the context.

5 (5) 'Parent' means a person who is the legal mother as defined in paragraph (10.2) of
 6 Code Section 15-11-2, the legal father as defined in paragraph (10.1) of Code Section
 7 15-11-2, or the legal guardian. Such term shall not include a foster parent.

8 (6) 'Relief' means any suspended or probated sentence, including probation imposed
 9 under Article 3 of Chapter 8 of Title 42; any parole or other conditional release from
 10 incarceration; the awarding of earned time allowances; reduction in security status; or
 11 placement in prison rehabilitation programs, including, but not limited to, those in which
 12 the offender receives monetary compensation.

13 (7) 'Restitution' means any property, lump sum, or periodic payment ordered to be made
 14 by any offender or other person to any victim by any ordering authority. Where the victim
 15 is a public corporation or governmental entity or where the offender is a juvenile,
 16 restitution may also be in the form of services ordered to be performed by the offender.

17 (8) 'Restitution order' means any order, decree, or judgment of an ordering authority
 18 which requires an offender to make restitution as a condition or term of any relief granted
 19 to an offender.

20 (9) 'Victim' means any;

21 (A) Natural natural person or his or her personal representative or, if the victim is
 22 deceased, his or her estate; or

23 (B) Any any firm, partnership, association, public or private corporation, or
 24 governmental entity

25 suffering damages caused by an offender's unlawful act; provided, however, that the term
 26 'victim' shall not include any person who is concerned in the commission of such
 27 unlawful act as defined in Code Section 16-2-20.

28 17-14-3.

29 (a) Subject to the provisions of Code Section 17-14-10, notwithstanding the provisions
 30 contained in Chapter 11 of Title 15, and in addition to any other penalty imposed by law,
 31 a The judge of any court of competent jurisdiction may shall order that an adult offender
 32 to make full restitution as a condition of any relief ordered by the court. The board may
 33 order that an adult offender make restitution as a condition of any relief ordered by the
 34 board. The department may order that an adult offender make restitution as a condition of
 35 any relief ordered by the department to any victim.

1 (b) If the offender is placed on probation, including probation imposed pursuant to Chapter
 2 11 of Title 15 or Article 3 of Chapter 8 of Title 42, or sentence is suspended, deferred, or
 3 withheld, restitution ordered under this Code section shall be a condition of that probation,
 4 sentence, or order.

5 (c) If the offender is granted relief by the Department of Juvenile Justice, Department of
 6 Corrections, or the State Board of Pardons and Paroles, the terms of any court order
 7 requiring the offender to make restitution to a victim shall be a condition of such relief in
 8 addition to any other terms or conditions which may apply to such relief.

9 17-14-4.

10 Notwithstanding any provision of Code Section 42-9-45 to the contrary, the ~~board~~ State
 11 Board of Pardons and Paroles may grant parole prior to the completion of one-third of the
 12 sentence if restitution is ordered as a condition of the parole.

13 17-14-5.

14 ~~(a) The juvenile courts are expressly directed to consider the strong policy of this state in~~
 15 ~~favor of restitution but are not required to place the goal of restitution by juveniles above~~
 16 ~~the goal of rehabilitation or treatment of delinquent or unruly juveniles. It is, however,~~
 17 ~~declared to be the policy of this state to recognize that the goal of restitution is consistent~~
 18 ~~with the goal of rehabilitation of delinquent or unruly juveniles and to seek to provide~~
 19 ~~restitution in such cases.~~

20 ~~(b) Notwithstanding any provision of Chapter 11 of Title 15, the~~ The juvenile courts are
 21 ~~expressly authorized to order restitution as a condition or limitation of the probation of~~
 22 shall order restitution in any case involving delinquent or unruly juveniles in the same
 23 manner as is authorized by this article for adult offenders.

24 (c) For purposes of ensuring compliance with the restitution order, the juvenile courts are
 25 authorized to retain jurisdiction over a juvenile subject to a to such restitution order for a
 26 ~~reasonable period after the juvenile reaches the age of majority~~ until the juvenile reaches
 27 21 years of age. If the juvenile court retains jurisdiction of such offender as provided in this
 28 Code section and the terms of the restitution order are not completed before the offender's
 29 twenty-first birthday, the juvenile court shall transfer the restitution order to the superior
 30 court.

31 (d) As an alternative to subsection (c) of this Code section, the juvenile courts are
 32 authorized to transfer to the superior courts, and the superior courts are authorized to
 33 accept, jurisdiction over enforcement of restitution orders against juveniles who, since
 34 entry of the order, have attained ~~the age of majority~~ 18 years of age.

1 (e) If the court determines that a juvenile is or will be unable to pay all of the restitution
2 ordered, after notice to the juvenile's parent or parents and an opportunity for the parent
3 or parents to be heard, the court may order the parent or parents to pay any portion of the
4 restitution ordered that is outstanding where the court or a jury finds by clear and
5 convincing evidence that the parent or parents knew or should have known of the juvenile's
6 propensity to commit such acts and the acts are due to the parent's or parents' negligence
7 or reckless disregard for the juvenile's propensity to commit such acts. Upon the eighteenth
8 birthday of the juvenile, the parental obligation to pay restitution shall be terminated.

9 (f) If the court orders a parent to pay restitution under subsection (e) of this Code section,
10 the court shall take into account the considerations identified in Code Section 17-14-10. If
11 the parent or parents are required to pay restitution under subsection (e) of this Code
12 section, the court shall provide for payment to be made in specified installments and within
13 a specified period of time.

14 17-14-6.

15 (a) Where an offender has made total or partial restitution to a victim, the ordering
16 authority shall consider the fact of such restitution in considering any case within its power
17 set off any such amounts and reduce the amount payable to the victim.

18 (b) The ordering authority shall not order restitution to be paid to a victim or victim's
19 estate if the victim or victim's estate has received or is to receive full compensation for that
20 loss from the offender as a result of a civil proceeding.

21 (c) Any amount paid to a victim or victim's estate under a restitution order shall reduce
22 the amount payable to a victim or a victim's estate by an award from the Georgia Crime
23 Victims Compensation Board made prior to or after a restitution order under this article.

24 (d) The ordering authority shall order restitution be paid to the Georgia Crime Victims
25 Compensation Board, other governmental entities, or to any individuals, partnerships,
26 corporations, associations, or other legal entities acting on behalf of a governmental entity
27 that have compensated the victim or the victim's estate for a loss incurred by the victim to
28 the extent of the compensation paid for that loss. The ordering authority shall also order
29 restitution for the costs of services provided to persons or entities that have provided
30 services to the victim as a result of the crime. Services that are subject to restitution under
31 this subsection include, but are not limited to, shelter, food, clothing, and transportation.
32 However, a restitution order shall require that all restitution to a victim or victim's estate
33 under the restitution order be made before any restitution to any other person or entity
34 under that restitution order is made.

1 (e) In the event the ordering authority provides for a setoff or priority in terms of payment
2 of restitution, the ordering authority shall state on the record with specificity the reasons
3 for its action.

4 17-14-7.

5 (a) Any offender may offer a restitution plan to the ordering authority. If a plan is offered,
6 it shall be the duty of the ordering authority to consider the factors stated in Code Section
7 17-14-10 and to make the plan part of a restitution order if acceptable to the ordering
8 authority.

9 (b) If the parties have not agreed on the amount of restitution prior to sentencing, the
10 ordering authority shall set a date for a hearing to determine restitution. Any dispute as to
11 the proper amount or type of restitution shall be resolved by the ordering authority by the
12 preponderance of the evidence. The burden of demonstrating the amount of the loss
13 sustained by a victim as a result of the offense shall be on the state. The burden of
14 demonstrating the financial resources of the offender or person being ordered to pay
15 restitution and the financial needs of his or her dependents shall be on the offender or
16 person being ordered to pay restitution. The burden of demonstrating such other matters
17 as the ordering authority deems appropriate shall be upon the party designated by the
18 ordering authority as justice requires.

19 (c) If the ordering authority finds that more than one offender has contributed to the loss
20 of a victim, the court may make each offender liable for payment of the full amount of
21 restitution or may apportion liability among the offenders to reflect the level of contribution
22 to the victim's loss and economic circumstances of each offender.

23 (d) If the ordering authority finds that more than one victim has sustained a loss requiring
24 restitution by an offender, the court may provide for a different payment schedule for each
25 victim based on the type and amount of each victim's loss and accounting for the economic
26 circumstances of each victim. In any case in which the state or any of its political
27 subdivisions is a victim and thus is due restitution, the ordering authority shall ensure that
28 any other victim receives full restitution before the state or a political subdivision receives
29 restitution.

30 (e) A victim may waive his or her right to obtain restitution pursuant to this chapter. Any
31 such waiver shall be made in writing and filed with the court or ordering authority having
32 jurisdiction over the criminal case. Such waiver shall not affect any other rights or remedies
33 that the victim may have against the offender under the laws of this state or the United
34 States or any of the several states.

1 17-14-8.

2 ~~(a) In deciding any case subject to this article, before granting any relief the ordering~~
 3 ~~authority shall make a written finding either:~~

4 ~~(1) That there are no victims to whom restitution should be made under the policy of this~~
 5 ~~state;~~

6 ~~(2) That the circumstances of the case are such that no restitution order or plan is~~
 7 ~~reasonably possible;~~

8 ~~(3) That the offender, in cooperation with the ordering authority, has developed and~~
 9 ~~consented to a plan of restitution, which plan shall be made a part of a restitution order;~~

10 or

11 ~~(4) That restitution will be ordered as a condition of the relief.~~

12 ~~(b) The failure to make a finding as required by this Code section, however, shall not~~
 13 ~~invalidate any order or other action of the ordering authority.~~

14 (a) In any case in which a court sentences an offender to pay restitution and a fine, if the
 15 court permits the offender to pay such restitution and fine in other than a lump sum, the
 16 clerk of any superior court of this state, probation officer or parole officer, or other official
 17 who receives such partial payments shall apply not less than one-half of each payment to
 18 the restitution before paying any portion of such fine or any forfeitures, costs, fees, or
 19 surcharges provided for by law to any agency, department, commission, committee,
 20 authority, board, or bureau of state or local government.

21 (b) The clerk of any court of this state, probation officer or parole officer, or other official
 22 who receives partial payments for restitution shall pay the restitution amount to the victim
 23 as provided in the restitution order not later than the last day of each month, provided that
 24 the amount exceeds \$100.00. If the amount does not exceed \$100.00, the clerk of any court
 25 of this state, probation officer or parole officer, or other official may allow the amount of
 26 restitution to accumulate until such time as it exceeds \$100.00 or until the end of the next
 27 calendar quarter, whichever occurs first.

28 17-14-9.

29 The amount of restitution ordered ~~may be equal to or less than, but not more than,~~ shall not
 30 exceed the victim's damages.

31 17-14-10.

32 (a) In determining the nature and amount of restitution, the ordering authority shall
 33 consider:

1 (1) The ~~present financial condition~~ resources and other assets of the offender ~~and his~~
 2 ~~dependents~~ or person ordered to pay restitution including whether any of the assets are
 3 jointly controlled;

4 (2) The ~~probable future earning capacity of the offender and his dependents~~ earnings and
 5 other income of the offender or person ordered to pay restitution;

6 (3) Any financial obligations of the offender or person ordered to pay restitution,
 7 including obligations to dependents;

8 ~~(3)~~(4) The amount of damages;

9 ~~(4)~~(5) The goal of restitution to the victim and the goal of rehabilitation of the offender;

10 ~~(5)~~(6) Any restitution previously made;

11 ~~(6)~~(7) The period of time during which the restitution order will be in effect; and

12 ~~(7)~~(8) Other ~~appropriate~~ factors which the ordering authority deems to be appropriate.

13 (b) If, subsequent to restitution being ordered pursuant to this article, a victim is convicted
 14 of a crime for which restitution is ordered, the ordering authority shall consider the
 15 previously ordered restitution as part of the financial resources of such victim.

16 17-14-11.

17 An order for restitution shall not bar any civil action against the offender. However, any
 18 payments made by an offender to a victim under an order for restitution may be a setoff
 19 against any judgment awarded to the victim in a civil action based on the same facts for
 20 which restitution was ordered. The fact of restitution or a restitution order under this article
 21 shall not be placed before the jury on the issue of liability. If the amount of restitution made
 22 is in dispute and liability is established, the court shall order further appropriate
 23 proceedings to determine the amount of setoff.

24 17-14-12.

25 The ordering authority shall retain jurisdiction to modify a restitution order at any time
 26 before the expiration of the relief ordered.

27 17-14-13.

28 (a) A restitution order shall be enforceable as is a civil judgment by execution as provided
 29 in Code Section 17-10-20.

30 (b) If an offender or other person ordered to pay restitution willfully refuses to comply
 31 with a restitution order, the order, in the discretion of the court, may be enforced by
 32 attachment for contempt, upon the application of the prosecuting attorney or the victim.

33 (c) Failure to comply with a restitution order may, in the discretion of the ordering
 34 authority, be grounds to revoke or cancel the relief at any time the restitution order is in

1 effect. Where the relief is earned time allowances, the ~~department~~ Department of
 2 Corrections may suspend the offender from earning earned time allowances for a specified
 3 period of time.

4 ~~(d) When an inmate offender has been ordered to make restitution for any damage to state~~
 5 ~~property caused by such offender, the department may order the seizure of all moneys in~~
 6 ~~or coming into the monetary account of the inmate offender.~~

7 17-14-14.

8 (a) Payments pursuant to an order for restitution shall be made to the clerk of the court or
 9 to any other person, for the benefit of the victim or victims, as the ordering authority shall
 10 order.

11 (b) In each case in which payment of restitution is ordered as a condition of probation or
 12 parole, the ordering authority may require any employed offender to execute a wage
 13 assignment to pay the restitution.

14 (c) Until such time as the restitution has been paid or the sentence has been completed, the
 15 clerk of court or the probation or parole officer assigned to the case, whoever is responsible
 16 for collecting restitution, shall review the case not less frequently than twice yearly to
 17 ensure that restitution is being paid as ordered. If the restitution was ordered to be made
 18 within a specific period of time, the case shall be reviewed at the end of the specific period
 19 of time to determine if the restitution has been paid in full. The final review shall be
 20 conducted before the sentence or probationary or parole period expires. If it is determined
 21 at any review that restitution is not being paid as ordered, a written report of the violation
 22 shall be filed with the court on a form prescribed by the Council of Superior Court Clerks
 23 of Georgia.

24 (d) If the ordering authority permits the offender to pay restitution in other than a lump
 25 sum, the ordering authority may require the offender to pay interest on the amount of
 26 restitution due the victim or the victim's estate. Such interest shall be set at the same rate
 27 as is provided by Code Section 7-4-12 for judgments.

28 17-14-15.

29 (a) Nothing in this article shall authorize peonage; and this article shall be construed and
 30 diligently administered to prevent peonage.

31 (b) No offender shall be denied any benefit, relief, or privilege to which he or she might
 32 otherwise be entitled or eligible solely because he or she is financially unable and cannot
 33 become financially able to make restitution.

1 17-14-16.

2 ~~This article shall not be construed to limit or abrogate any power of any court, agency, or~~
 3 ~~board to place other conditions, limits, terms, rules, or regulations on any relief in the~~
 4 ~~nature of suspension of sentence, probation, parole, pardon, or restoration of rights. If an~~
 5 ~~offender who is ordered to pay restitution under this article is remanded to the jurisdiction~~
 6 ~~of the Department of Corrections or the Department of Juvenile Justice, the court shall~~
 7 ~~provide a copy of the restitution order to such department when the offender is remanded~~
 8 ~~to such department's jurisdiction.~~

9 17-14-17.

10 (a) ~~For purposes of this Code section only, the term:~~

11 (1) ~~'Conviction' means a finding or verdict of guilty or a plea of guilty, regardless of~~
 12 ~~whether an appeal of the conviction has been sought.~~

13 (2) ~~'Victim' means any natural person against whom a crime specified in Chapter 7 or 8~~
 14 ~~of Title 16 has been committed.~~

15 (b) ~~Notwithstanding the provisions of Code Section 17-14-3, the judge of any court of~~
 16 ~~competent jurisdiction shall order that an adult offender, upon a conviction of any crime~~
 17 ~~specified in Chapter 7 or 8 of Title 16, make restitution to any victim as a condition of any~~
 18 ~~relief ordered by the court.~~

19 (c) ~~The amount of restitution ordered shall be equal to the unreimbursed or uncompensated~~
 20 ~~portion of the victim's damages.~~

21 (d) ~~For purposes of this Code section only, the court is not required to make any written~~
 22 ~~findings in accordance with Code Section 17-14-8 when ordering restitution; provided,~~
 23 ~~however, that a court may order a restitution plan in accordance with the provisions of~~
 24 ~~Code Sections 17-14-7 and 17-14-10.~~

25 (e) ~~The provisions of Code Sections 17-14-11 through 17-14-16 shall apply to any~~
 26 ~~restitution orders issued in accordance with this Code section.~~

27 (a) The state or the victim of a crime may institute an action against an offender pursuant
 28 to Article 4 of Chapter 2 of Title 18, the 'Uniform Fraudulent Transfers Act,' to set aside
 29 a transfer of real, personal, or other property made voluntarily by the offender on or after
 30 the date of the crime committed by the offender against the victim with the intent to:

31 (1) Conceal the crime or the fruits of the crime;

32 (2) Hinder, delay, or defraud any victim; or

33 (3) Avoid the payment of restitution.

34 (b) Any such action shall be filed within four years of the date the crime was committed.

1 17-14-18.

2 If a person or entity entitled to restitution cannot be located or refuses to claim such
 3 restitution within two years after the date on which he or she could have claimed such
 4 restitution, the restitution paid to such person or entity shall be deposited in the Crime
 5 Victims Emergency Fund created pursuant to Chapter 15 of Title 17 or its successor fund.
 6 However, a person or entity entitled to such restitution may claim such restitution any time
 7 within five years of the date on which he or she could have claimed such restitution by
 8 applying in writing to Georgia Crime Victims Compensation Board. Upon receipt of such
 9 application and verification that the person making the claim is in fact entitled to such
 10 restitution, the Georgia Crime Victims Compensation Board shall pay such restitution to
 11 the person or entity.

12 17-14-19.

13 This article shall not be construed to limit or abrogate any power of any court, agency, or
 14 board to place other conditions, limits, terms, rules, or regulations on any relief in the
 15 nature of suspension of sentence, probation, parole, pardon, or restoration of rights."

16 **SECTION 6.**

17 Said title is further amended by striking subsection (b) of Code Section 17-15-5, relating to
 18 the filing of victim compensation claims, and inserting in lieu thereof a new subsection (b)
 19 to read as follows:

20 "(b) A claim must be filed by the claimant not later than one year after the occurrence of
 21 the crime upon which such claim is based or not later than one year after the death of the
 22 victim; provided, however, that, upon good cause shown, the board may extend that time
 23 for filing for a period not exceeding ~~two~~ three years after such occurrence. Claims shall be
 24 filed in the office of the board in person or by mail."

25 **SECTION 7.**

26 Code Section 48-7-161 of the Official Code of Georgia Annotated, relating to definitions
 27 regarding setoff debt collection, is amended by striking subparagraphs (E) and (F) of
 28 paragraph (1) and inserting in lieu thereof new subparagraphs (E), (F), (G), and (H) to read
 29 as follows:

30 "(E) The Department of Labor with respect to the collection of debts arising under
 31 Code Sections 34-8-254 and 34-8-255 and Article 5 of Chapter 8 of Title 34, with the
 32 exception of Code Sections 34-8-158 through 34-8-161; provided, however, that the
 33 Department of Labor establishes that the debtor has been afforded required due process

1 rights by such Department of Labor with respect to the debt and all reasonable
2 collection efforts have been exhausted; ~~and~~
3 (F) The Department of Corrections with respect to probation fees arising under Code
4 Section 42-8-34 and restitution or reparation ordered by a court as a part of the sentence
5 imposed on a person convicted of a crime ~~and placed on probation by the court if such~~
6 ~~person has absconded or ended probation in warrant status.~~ who is in the legal custody
7 of the department;
8 (G) The State Board of Pardons and Paroles with respect to restitution imposed on a
9 person convicted of a crime and subject to the jurisdiction of the board; and
10 (H) The Department of Juvenile Justice with respect to restitution imposed on a
11 juvenile for a delinquent act which would constitute a crime if committed by an adult."

12 **SECTION 8.**

13 This Act shall become effective on July 1, 2005.

14 **SECTION 9.**

15 All laws and parts of laws in conflict with this Act are repealed.