

1 S.102

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedures; restitution

6 Statement of purpose: This bill proposes a number of changes related to  
7 restitution procedures. The bill proposes to permit the restitution unit to  
8 require a crime victim who may be eligible for an advance payment from the  
9 restitution fund to submit a request for restitution to the restitution unit prior to  
10 sentencing; designate the restitution unit as a law enforcement agency for the  
11 sole purpose of requesting and obtaining certain victim or offender  
12 information; permit the restitution unit to request information needed to  
13 enforce a restitution order or to locate an offender identified in a restitution  
14 order from government records without a subpoena; prohibit advance  
15 payments from the restitution fund for cash losses, to a victim who fails to  
16 provide the restitution unit with sufficient documentation, or to a victim whose  
17 own criminal conduct contributed to his or her loss; require the offender to  
18 provide the court with a financial disclosure statement prior to sentencing; and  
19 repeal the July 1, 2012 sunset of the 15 percent assessment on criminal  
20 penalties for the crime victims' restitution special fund. The bill also proposes

1 to repeal the July 1, 2011 sunset of the limitations established by Act 1 of 2009  
2 for taking pretrial depositions of child victims in sexual abuse cases.

3 An act relating to restitution

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

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

6 § 5362. RESTITUTION UNIT

7 \* \* \*

8 (c) The restitution unit shall have the authority to:

9 \* \* \*

10 (4) Require a crime victim who may be eligible for an advance payment  
11 of restitution from the crime victims' restitution special fund pursuant to  
12 section 5363(d) of this title to submit a request for restitution to the restitution  
13 unit prior to sentencing. The unit shall investigate the victim's request and  
14 may require that the victim submit supporting documentation in order to verify  
15 the claimed material loss. If the unit determines that the victim appears to be  
16 eligible for an advance payment, the unit shall notify the victim and the court  
17 of the amount that appears eligible to be advanced to the victim from the fund.

18 (5) Investigate and verify the amount of insurance or other payments  
19 paid to or for the benefit of a victim, and reduce the amount collected or to be  
20 collected from the offender or disbursed to the victim from the crime victims'

1 restitution special fund accordingly. The restitution unit shall submit to the  
2 court a proposed revised restitution order stipulated to by the victim and the  
3 unit, with copies provided to the victim and the offender. No hearing shall be  
4 required, and the court shall amend the judgment order to reflect the amount  
5 stipulated to by the victim and the restitution unit.

6 ~~(5)~~(6) Adopt such administrative rules as are reasonably necessary to  
7 carry out the purposes set forth in this section.

8 ~~(6)~~(7) Report offenders' payment histories to credit reporting agencies,  
9 provided that the unit shall not report information regarding offenders who are  
10 incarcerated. The unit shall not make a report under this subdivision until after  
11 it has notified the offender of the proposed report by first class mail or other  
12 like means to give actual notice, and provided the offender a period not to  
13 exceed 20 days to contest the accuracy of the information with the unit. The  
14 unit shall immediately notify each credit bureau organization to which  
15 information has been furnished of any increases or decreases in the amount of  
16 restitution owed by the offender.

17 (d) The restitution unit, for purposes of enforcing restitution judgment  
18 orders, is designated as a law enforcement agency for the sole purpose of  
19 requesting and obtaining access to motor vehicle information and other  
20 information needed to identify or locate a person, including access to  
21 information maintained by the National Criminal Information Center.

1 Information obtained pursuant to this subsection shall be used only for the  
2 collection of restitution and shall not be used for any other purpose.

3 (e) The restitution unit may request any information needed to enforce a  
4 restitution judgment order or to locate an offender identified in a restitution  
5 judgment order from the records of all government officials, departments, and  
6 other governmental agencies of this state without a subpoena. The officials  
7 and employees of the departments and agencies shall provide all such  
8 information requested. Information obtained pursuant to this subsection shall  
9 not be disclosed by the restitution unit for any purpose except in an  
10 enforcement action filed in superior or small claims court.

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

12 § 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND

13 \* \* \*

14 (d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a  
15 victim or to a deceased victim's heir or legal representative if the victim:

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

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

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



1 ~~finds good cause not to order wage withholding or the parties have entered into~~  
2 ~~an alternative arrangement by written agreement which is affirmatively stated~~  
3 ~~in the order. The wage withholding order shall direct current and subsequent~~  
4 ~~employers of the offender to pay a portion of the offender's wages directly to~~  
5 ~~the restitution unit until the offender's restitution obligation is satisfied. The~~  
6 ~~wages of the offender shall be exempt as follows:~~

7 ~~(A) to the extent provided under Section 303(b) of the Consumer~~  
8 ~~Credit Protection Act (15 U.S.C. § 1673(b)); or~~

9 ~~(B) if the court finds the weekly expenses reasonably incurred by the~~  
10 ~~debtor for his or her maintenance and that of dependents exceed the amounts~~  
11 ~~exempted by subdivision (1)(A) of this subsection, such greater amount of~~  
12 ~~earnings as the court shall order.~~

13 ~~(2) The court shall transmit all wage withholding orders issued under this~~  
14 ~~section to the restitution unit, which shall forward the orders to the offender's~~  
15 ~~employers. Upon receipt of a wage withholding order from the restitution unit,~~  
16 ~~an employer shall:~~

17 ~~(A) withhold from the wages paid to the offender the amount~~  
18 ~~specified in the order for each wage period;~~

19 ~~(B) forward the withheld wages to the restitution unit within seven~~  
20 ~~working days after wages are withheld, specifying the date the wages were~~  
21 ~~withheld;~~

1           ~~(C) retain a record of all withheld wages;~~

2           ~~(D) cease withholding wages upon notice from the restitution unit;~~

3           and

4           ~~(E) notify the restitution unit within 10 days of the date the offender's~~  
5           ~~employment is terminated.~~

6           ~~(3) In addition to the amounts withheld pursuant to this section, the~~  
7           ~~employer may retain not more than \$5.00 per month from the offender's wages~~  
8           ~~as compensation for administrative costs incurred.~~

9           ~~(4) Any employer who fails to withhold wages pursuant to a wage~~  
10          ~~withholding order within 10 working days of receiving actual notice or upon~~  
11          ~~the next payment of wages to the employee, whichever is later, shall be liable~~  
12          ~~to the restitution unit in the amount of the wages required to be withheld.~~

13          ~~(5) An employer who makes an error in the amount of wages withheld~~  
14          ~~shall not be held liable if the error was made in good faith.~~

15          ~~(6) For purposes of this subsection, "wages" means any compensation~~  
16          ~~paid or payable for personal services, whether designated as wages, salary,~~  
17          ~~commission, bonuses, or otherwise, and shall include periodic payments under~~  
18          ~~pension or retirement programs and workers' compensation or insurance~~  
19          ~~policies of any type.~~

20          After restitution is ordered and prior to sentencing, the court shall order the  
21          offender to provide the court with full financial disclosure on a form approved

1 by the court administrator. The disclosure shall include copies of the  
2 offender's most recent state and federal tax returns. The court shall provide  
3 copies of the form and the tax returns to the restitution unit.

4 Sec. 4. REPEALS

5 (a) Sec. 9 (repeal of 13 V.S.A. § 7282(a)(9), 15 percent assessment on  
6 criminal penalties for the crime victims' restitution special fund) and Sec. 3  
7 (July 1, 2012 effective date of repeal of 13 V.S.A. § 7289(a)(9)) of No. 40 of  
8 the Acts of 2007 are repealed.

9 (b) Sec. 27a of No. 1 of the Acts of 2009 (July 1, 2011 sunset of  
10 amendment to Rule 15 of Vermont Rules of Criminal Procedure related to  
11 depositions of minors in sexual assault cases) is repealed.

12 (c) Sec. 1 (amendment to Rule 15 of Vermont Rules of Criminal  
13 Procedure) and Sec. 5(a) (July 1, 2011 effective date of amendment to Rule 15  
14 of Vermont Rules of Criminal Procedure) of No. 66 of the Acts of the 2009  
15 Adj. Sess. (2010) are repealed.

16 Sec. 5. EFFECTIVE DATE

17 This act shall take effect on passage.