

Ordering Restitution In A Juvenile Delinquency Case

A district court judge may require a juvenile to pay restitution to a victim as part of the juvenile's disposition. The court's authority to order restitution depends on the juvenile's disposition level and whether the amount of restitution is supported by evidence in the record. The restitution order also must be supported by sufficient findings of fact. This post outlines the required findings and other rules that apply to juvenile restitution orders.

As part of a Level 1 disposition, the court may order a juvenile to pay "full or partial" restitution to a victim, up to \$500.00. See [G.S. 7B-2506\(4\)](#) and [G.S. 7B-2508\(c\)](#). If a Level 2 disposition is authorized, the court may order a juvenile to pay more than \$500.00 in restitution. See [G.S. 7B-2506\(22\)](#) and [G.S. 7B-2508\(d\)](#). Regardless of the amount, the restitution must be:

payable within a 12-month period to any person who has suffered loss or damage as a result of the offense committed by the juvenile. . . . [and] [i]f the juvenile participated with another person or persons, **all participants should be jointly and severally responsible** for the payment of restitution; however, the court shall not require the juvenile to make restitution if the juvenile satisfies the court that the juvenile does not have, and could not reasonably acquire, the means to make restitution. G.S. 7B-2506(4) and (22).

Thus, a juvenile must have the ability to pay the restitution within twelve months and may be subject to joint and several liability, if multiple participants were involved in the offense.

Juvenile restitution orders also "must be supported by the record and appropriate findings of fact which demonstrate that the best interest of the juvenile will be promoted by the enforcement of the condition." [In re D.A.Q.](#), 214 N.C. App. 535, 537-38 (2011); [In re McKoy](#), 138 N.C. App. 143, 145 (2000). Similarly, the amount of restitution must be "fair and reasonable" to the juvenile. [D.A.Q.](#), 214 N.C. App. at 540.

Based upon these requirements, a juvenile disposition order requiring the payment of restitution must contain written findings that: (1) the juvenile has the ability to pay within a 12-month period; (2) the amount is fair and reasonable; and (3) restitution is within the juvenile's best interests. Restitution orders that lack these findings are frequently reversed and remanded for additional findings.

(1) The Juvenile's Ability to Pay

The juvenile has the burden of proof to show that he or she does not have, and cannot reasonably acquire, the means to pay restitution. [In re Schrimpsheer](#), 143 N.C. App. 461, 465 (2001). The court must find that the *juvenile* has the means to pay the required restitution within 12 months, and whether the juvenile's parent(s) can pay is irrelevant. [McKoy](#), 138 N.C. App. at 148.

In many counties, juveniles can participate in a restitution program, funded by the county Juvenile Crime Prevention Council (or JCPC), through which they earn restitution by completing community service. When such programs are unavailable, a juvenile may be able to show an inability to pay. See, e.g., [McKoy](#), 138 N.C. App. at 148 (finding that a 7 and 8-year-old lacked the ability to pay \$539.50 in restitution where they were both indigent and ineligible for a restitution program due to their young ages). However, if the juvenile is old enough to work, the court may find that the juvenile can pay restitution by getting a job. See, e.g., [Schrimpsheer](#), 143 N.C. App. at 464-65 (upholding the court's order requiring a 16-year-old to obtain a full-time job in order to pay restitution).

The twelve month limitation on the payment of restitution also must be considered in determining a juvenile's ability to pay, particularly for Level 2 restitution orders. Although [G.S. 7B-2506\(22\)](#) does not establish a statutory maximum amount of restitution, the court must find that the juvenile can pay the restitution within twelve months. See [McKoy](#), 138 N.C. App. at 148. For example, it would be unreasonable for a court to find that a juvenile has the ability to pay \$5,000.00 in restitution, if the juvenile must rely on a restitution program and is too young to get a job.

(2) Whether Restitution is Fair and Reasonable

There must be evidence in the record as to the amount of the actual damage caused by the juvenile in order for the court to determine that the restitution is "fair and reasonable." [Schrimpsheer](#), 143 N.C. App. at 465-66. See also, *In re Davis*, 126 N.C. App. 64 (1997) (reversing disposition orders requiring four juveniles to pay \$1,000.00 each to a victim for damaging his vehicles where the state presented insufficient evidence to support \$4,000.00 in damages).

Also, when multiple juveniles are involved in the offense, the court must determine whether the juveniles acted jointly in causing the harm. If the juveniles acted jointly, the court must require that "joint and several liability" be imposed on all the juveniles who contributed to the damage. G.S. 7B-2506(4) and (22). Requiring only one juvenile to pay restitution to a victim when multiple juveniles caused the damage is not fair and reasonable to the juvenile. See, e.g., [Schrimpsheer](#), 143 N.C. App. at 465-66; *In re Hull*, 89 N.C. App. 138 (1988).

Joint and several liability is a concept that some juvenile court judges appear to misunderstand. See, e.g., *In re T.H. and A.M.*, ___ N.C. App. ___ (July 21, 2015) (unpublished) (where the judge ordered two juveniles to pay restitution in amount of \$70.00, jointly and severally, and stated, "That'll be \$35 a piece"); [D.A.Q.](#), 214 N.C. App. at 539 (where the judge mistakenly believed that joint and several liability required that restitution "be split evenly" between the juveniles). "When joint and several liability is imposed, each liable party is individually responsible for the entire obligation." [D.A.Q.](#), 214 N.C. App. at 539. In other words, if the court finds that multiple juveniles are jointly and severally liable for restitution in the amount of \$500.00, each juvenile would be individually responsible for paying the entire \$500.00, if the others fail to pay.

(3) The Juvenile's Best Interests

An order of restitution, like every juvenile disposition, must “meet the needs of the juvenile” and “achieve the objectives of the State in exercising jurisdiction[.]” [G.S. 7B-2500](#). Therefore, the court must find that ordering restitution relates to the needs of the juvenile and serves the juvenile's best interests. [In re Heil](#), 145 N.C. App. 24, 31 (2001). In juvenile cases, reimbursing a victim for financial loss should not be the court's primary concern. See [D.A.Q.](#), 214 N.C. App. at 538 (reversed restitution order where court failed to consider whether restitution was in the juvenile's best interests and was primarily concerned with fairness to the victim).

Hopefully, this post clarifies the primary issues that arise when judges order restitution in delinquency cases. If there are other questions or concerns, please let me know.