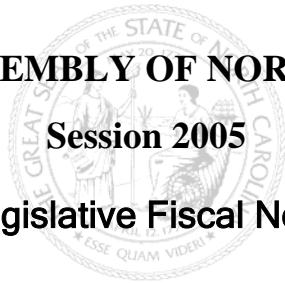


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 788 (Second Edition)

SHORT TITLE: Crime Victims Restitution Improvement Act.

SPONSOR(S): Representatives Eddins and Holliman

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
EXPENDITURES:					
Judicial Branch	\$59,606	\$103,158	\$108,316	\$113,732	\$119,419
Dept. of Correction	Exact amount cannot be determined; no substantial impact anticipated.				
POSITIONS (cumulative):	1	1	1	1	1
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Correction					
EFFECTIVE DATE: Section 7: upon ratification; Section 6: as necessary AOC technology is implemented; the remainder of the bill: December 1, 2005					
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY: This bill makes a number of changes to the current system for the determination, collection, and distribution of restitution.

Section 1 amends G.S. 15A-1340.36(b) to require that when a defendant is convicted of an offense which proximately results in the victim’s death, the amount of restitution include all necessary funeral expenses incurred by the victim’s estate.

Section 2 requires that the court (1) enter a judgment against any defendant for the full amount of restitution if convicted of any offense under the Crime Victims’ Rights Act for which the victim is entitled to restitution; (2) recommend that the defendant pay restitution out of work-release

earnings if given an active sentence; (3) require restitution as a condition of probation; (4) no longer consider the defendant's ability to pay, but only the injury to the victim, when determining the amount of restitution; and, (5) determine a payment schedule according to specified factors for any defendant unable to pay the amount of restitution in full at the time of sentencing.

Section 3 prohibits the court from terminating probation early if the offender has an outstanding restitution obligation.

Section 4 specifies procedures for making restitution payments to the victim's next of kin if the victim is deceased and the estate is ready to be closed.

Section 5 requires that (1) the prosecuting attorney make reasonable efforts to identify all of the defendant's sources of disposable income and provide to the court, at the time of sentencing, the name and address of each employer and amount of income paid to the defendant and (2) the court order that income be withheld from any defendant sentenced to a term of probation exceeding six months, where restitution is ordered as a condition of probation, and payments are to be made on a periodic schedule.

Section 6 requires AOC to initiate setoff debt collection on any unsatisfied restitution judgment at the later of the time of conviction if the defendant receives an active sentence, or upon revocation, termination, or expiration of a term of probation.

Section 7 requires AOC to study the use of third-party collection to improve the collection of restitution and other court fines, fees, and costs and report the findings to the 2006 General Assembly.

Source: Adapted from Bill Digest H.B. 788 (03/17/2005)

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Judicial Branch

Section 1: Restitution for Funeral Expenses Mandatory

This section amends G.S. 15A-1340.36(b) to require that when a defendant is convicted of an offense which proximately results in the victim's death, the amount of restitution include all necessary funeral expenses incurred by the victim's estate. To the extent that such expenses are not being considered and ordered by the court presently, some additional court time would result to determine the amount of these expenses and include them in the restitution order. There would be no additional time needed for those cases in which these expenses are currently included in the restitution order.

Section 2: Restitution Generally

This section modifies several obligations of the court when determining the restitution amount and method of payment. The court would be required to (1) enter a judgment against any defendant for the full amount of restitution if convicted of an offense under the Crime Victims' Rights Act for which the victim is entitled to restitution; (2) determine the restitution amount by considering only the injury to the victim and not the defendant's ability to pay; (3) order payment of restitution as a condition of probation, determine the portion of restitution that the defendant will be able to pay during the term of probation, and establish a schedule of payments through which the defendant will meet that obligation; and, (4) recommend that restitution be paid out of work-release earnings and as a condition of post-release supervision for any defendant given an active sentence.

Current law authorizes greater discretion to the courts with respect to the foregoing determinations but requires at minimum that the court take each factor into consideration when determining the amount of restitution and manner of payment. For example, current law already obliges the court to require that restitution be paid to any victim so entitled under the Crime Victims' Rights Act, to require restitution as a condition of probation, and to consider whether to recommend that restitution be paid from work-release earnings. Likewise, under this bill, the court would no longer consider the defendant's ability to pay when determining the restitution amount, but would consider the defendant's ability to pay when determining whether the defendant must pay restitution in full at the time of sentencing or periodically according to a payment schedule specified by the court.

AOC expects that these provisions would increase court workload to the extent that the court gives greater scrutiny to the defendant's ability to pay, more vigilantly enforces restitution payment schedules, and does not currently docket restitution as judgments. However, as these changes predominantly refine current responsibilities of the court, Fiscal Research does not expect a substantial shift in workload as a result of this section.

Section 3: No Early Termination of Probation Until Completion of Restitution Obligation

In order to terminate probation early, the probation officer must bring the offender back into court for a hearing. As offenders with outstanding restitution obligations would not be eligible for early termination of probation, this provision would be expected to decrease the number of such hearings. However, the Division of Community Corrections in the Department of Correction indicates that only a small number of probation cases, if any, are currently terminated early while restitution is owed and, therefore, little to no impact on the Courts is expected due to this provision.

Section 4: Distribution of Restitution Payments to Victim's Next of Kin After Closing of Estate

This section enacts new G.S. 28A-21-3.2 to provide that a victim's personal representative or collector of the estate may file a list of the victim's next of kin who may exercise the victim's right under the Victim's Rights Act, which includes the receipt of restitution. The clerk of court would maintain this list and handle payments to more recipients and therefore would be expected have some additional work. However, the specific increase in clerk workload cannot be estimated, as no data is available regarding the frequency with which estates of next of kin may utilize these provisions.

Section 5: Income Withholding

Sections 5.1 and 5.2

Section 5.1 amends G.S. 15A-832 of the Victim's Rights Act (VRA) to add new subsection (h) requiring that the prosecuting attorney make reasonable efforts to identify all of the defendant's sources of disposable income and provide to the court, at the time of sentencing, the name and address of each employer and amount of income paid to the defendant. Section 5.2 enacts new G.S. 15A-1340.39 requiring the court to order that income be withheld from any defendant sentenced to a term of probation exceeding six months and where restitution is ordered as a condition of probation and payments are to be made on a periodic schedule.

AOC data for CY 2004 indicate that 2,722 defendants were convicted of an offense subject to the VRA, where both restitution and probation were ordered. Of these defendants, AOC data does not identify the number that were employed or the number where restitution was scheduled for periodic payments and, as such, the specific number that would be subject to income withholding under this bill cannot be determined. However, AOC expects that, of the defendants ordered to probation and to pay restitution, a significant proportion would be employed and need to make payments according to a periodic schedule.

According to a 2002 Sentencing Commission report on offender recidivism, of the 39,547 offenders placed on supervised probation in FY 1998-99, 67 percent were employed for all or part of the year following their placement on probation. The average annual wage for those offenders that held employment was \$8,718, an indication that any restitution payments would likely be made according to a payment schedule. The sampled offenders did not include unsupervised probationers, who would also be subject to income withholding under this bill. However, Fiscal Research expects that offenders placed on unsupervised probation would maintain a higher rate of employment as compared to those that are supervised. As such, the following estimate of additional court time and cost resulting from this section of the bill assumes that the court would order that income be withheld from 75 percent of the 2,722 defendants.

Were income withholding ordered for 2,079 of the defendants, and an additional 15 minutes of judge and district attorney time and one half-hour of clerk time were required, on average, for these cases, the resource cost would total an estimated \$101,079 in the first full year. The associated clerk time is equivalent to one full-time position. Therefore, the box on the front page reflects one additional position required for the Courts in FY 2005-06. AOC estimates that additional operating costs in the form of postage, copying, and other processing costs would total \$2,079. This cost is added to the workload cost and is shown in the front-page box, inflated at a rate of five percent annually and adjusted in FY 2005-06 to reflect only the seven months for which this section of the bill would be effective.

15A-1340.39(o): Class 1 Misdemeanor for Failure to Remit Income by Employer

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

As no historical data is available regarding the number of instances in which employers might fail to remit any portion of income withheld from a defendant for the purposes of paying restitution, the number of new Class 1 misdemeanor charges that would result from this legislation cannot be determined. Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 1 misdemeanor via trial is \$3,213. This cost includes an estimated \$1,880 in costs of time in court and attorney costs and an additional \$1,333 in indigent defense. However, based on prior-year data, the majority of any new Class 1 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$284 per plea.

Section 6: Setoff Debt Collection of Restitution Judgments

As this section would not be effective until AOC has implemented the technology adjustments necessary to accommodate the collection of restitution through setoff debt, the costs outlined below for Section 6 are not included in the total cost estimates for this fiscal note as shown in the front-page-box.

Section 6.1 – 6.5

This section requires AOC to initiate setoff debt collection on any unsatisfied restitution judgment at the later of the time of conviction if the defendant receives an active sentence, or upon revocation, termination, or expiration of a term of probation.

The Department of Correction identified 5,281 offenders against whom restitution was ordered and either received an active sentence or whose probation was revoked. Implementing setoff debt collection in these cases would increase clerk workload, as clerks would, among other responsibilities, be required to obtain the defendant's social security or other taxpayer identification number, report judgments to the Department of Revenue, collect amounts received through setoff debt, credit those amounts against restitution owed, and disburse the amount collected to the victim. AOC estimates that, if these cases were to require an additional 15 minutes of clerk time, on average, the total cost for additional clerk workload would be \$26,052 in the first full year.

In addition to increased clerk workload, implementation of setoff debt collection would require additional programming and enhancement of AOC's automated systems. The Technology Services Division of AOC estimates that programming would require approximately 928 hours which, at a rate of \$70 per hour, would cost \$64,960. AOC additionally expects that, if setoff debt collection for restitution were to require equivalent personnel time to administer as currently required by setoff debt collection for attorneys' fees, a full-time setoff debt collection officer position would be needed at a cost of \$65,856 in the first full year and a recurring cost of \$59,409 thereafter. Lastly, AOC estimates that operating costs for correspondence and other inquiries would total approximately \$5,281.

Section 6.8 – Compensation of Loss in Attorneys' Fee Judgments

The provisions of Section 6 require that the amount collected from setoff debt be credited to attorneys' fees and restitution in the order in which the respective judgments were docketed. Section 6.8 would appropriate to the Office of Indigent Defense Services an unspecified amount sufficient to compensate it for any loss in the amount of attorneys' fees collected throughout setoff debt due to collections for restitution.

From 2001 to 2004, an average of \$2.14 million per year (12%) of the \$17.92 million in attorney fee judgments docketed was collected through setoff debt. To the extent that restitution judgments would be docketed first and the amount recovered through setoff debt is not sufficient to recover both the attorneys' fees and restitution ordered, the amount collected through setoff debt for attorneys' fees would be reduced due to this bill.

AOC has only limited data identifying defendants against whom both restitution and attorney fees have been docketed. Of the \$2.14 million average docketed yearly in attorneys' fees, \$290,000 (1.6%) of those judgments arose from cases that also had a restitution judgment. At a recovery rate of 12 percent (the average for attorneys' fees since 2001), AOC estimates that up to \$34,800 collected from setoff debt per year could be diverted from attorneys' fees to restitution in these cases.

AOC expects that there would be additional defendants against whom restitution and attorney fees had been ordered in two or more separate cases. However, no data is available with respect to the specific number of such defendants. To estimate the total amount of setoff debt collection that would be diverted from attorneys' fees to restitution, AOC assumed that an amount roughly equivalent to the loss projected to result from cases in which both attorneys' fees and restitution were docketed (i.e. \$34,800) would also be diverted from those defendants against whom restitution and attorneys' fees were docketed in separate cases. As such, AOC's total estimate of the amount needed to compensate the Office of Indigent Defense Services for the loss in attorneys' fees collected through setoff debt is \$69,600.

AOC notes that this estimate would overstate the amount diverted from attorneys' fees to the extent that (1) attorney fee judgments are docketed first, and (2) the tax refund for any given defendant is sufficient to recover both attorneys' fees and restitution. Likewise, this estimate may understate the amount diverted from attorneys' fees to the extent that, as a result of this bill, the number and amount of restitution judgments increases.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Section 3: No Early Termination of Probation Until Completion of Restitution Obligation

Prohibiting the early termination of probation where there is an outstanding restitution obligation could lengthen the period of probation for some offenders, increasing costs to the Division of Community Corrections—which administers supervised probation at a cost of \$1.87 per day per offender—and the likelihood of a technical revocation, which could result in an impact on prison population.

The Division of Community Corrections in the Department of Correction identified a small number of cases in which probation was terminated early while restitution was owed. However, current policy and practice is to not terminate probation early if the offender has an outstanding restitution obligation, and DOC considers it likely that many of the early termination cases identified could be attributed to coding errors. As such, this provision is expected to have little to no impact on DOC resources.

Section 5: Income Withholding

New G.S. 15A-1340.39(o) creates a Class 1 misdemeanor for failing to remit any portion of income withheld from a defendant by an employer for the purposes of paying restitution. As this offense would be new, the Sentencing Commission has no historical data from which to estimate the impact on prison population.

- In FY 2003-04, 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.
- The remaining 19 percent of Class 1 misdemeanors resulted in active sentences and the average estimated time served was 31 days.
- Offenders with active sentences of less than ninety days are housed in county jails and DOC reimburses counties for housing offenders between thirty and ninety days at a rate of \$18 per day per offender.

Because most Class 1 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation is not expected to significantly impact prison population.

SOURCES OF DATA: Judicial Branch, Department of Correction, North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

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