

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 403

SHORT TITLE: REQUIRE RESTITUTION IF POSSIBLE

SPONSOR(S): SENATOR ODOM

FISCAL IMPACT: Expenditures: Increase (X) Decrease ( )  
 Revenues: Increase ( ) Decrease (X)

FUNDS AFFECTED: General Fund (X) Highway Fund ( )  
 Other Fund (X)-Indigent Persons Attorney Fee Fund

**BILL SUMMARY:** "TO REQUIRE VICTIM IMPACT STATEMENTS, TO PROVIDE THAT A VICTIM MAY EXPECT RESTITUTION BE ORDERED AS A CONDITION OF PROBATION WHEN APPROPRIATE, TO MAKE RESTITUTION A TOP PRIORITY WHEN DISBURSING COURT COLLECTED FUNDS, AND TO EXTEND THE MAXIMUM AMOUNT OF TIME A PERSON CAN BE PLACED ON PROBATION TO PAY RESTITUTION." Adds G.S. 15A-825.1 to require district attorneys to seek and obtain victim impact statements and present them to the court; amends G.S. 15A-826 to make victim and witness assistants responsible for assisting victims in completing impact statements. Amends G.S. 15A-1343(d) to require the court to take victim impact statement into consideration when determining the amount of restitution, and amends G.S. 15A-825 to provide that a victim can expect that a judge will order restitution in all cases where it is appropriate. Amends G.S. 7A-304(d) to make restitution payments first in priority for disbursement of funds in the hands of the court (now, fourth priority after costs and fines). Amends G.S. 15A-1342 and -1343 to increase from three years to five years the maximum amount of time a person can be placed on probation to pay restitution.

**EFFECTIVE DATE:** December 1, 1995; applies to offenses committed on or after that date.

**PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED:** Judicial Branch; Department of Correction

FISCAL IMPACT: EXPENDITURES

	Indigent Defense	Other State Funds	Total
FY 95/96	\$26,044	\$544,522	
	\$570,566		
FY 96/97	\$60,801	\$757,598	
	\$818,399		

FY 97/98	\$65,057	\$779,224
	\$844,281	
FY 98/99	\$69,611	\$801,498
	\$871,109	
FY 99/00	\$74,484	\$824,441
	\$898,925	

**FISCAL IMPACT: REVENUES**

Reduction in Receipts to county school fund	(\$600,000)
Reduction in Receipts to Cities	(\$ 40,000)
Reduction in Receipts to Counties	(\$300,000)
Reduction in Receipts to the Judicial Branch	(\$ 30,000)
Reduction in Receipts to the General Fund	(\$ 20,000)

**POSITIONS:** This fiscal note itemizes the need for nineteen new Victim and Witness Assistants (VWAs), or the equivalent of about one half-time position for each prosecutorial district, and two Assistant District Attorneys. However, resource needs are estimated on an aggregate, statewide basis, as though the work were performed at a central location. In practice, the increased workload would be spread throughout the state. Therefore, allocation of these numbers of positions across the state may not actually meet the demands of the proposed legislation.

**ASSUMPTIONS AND METHODOLOGY:** Judicial Branch

**Victim Impact Statements:** Proposed SB 403 requires that district attorneys seek to obtain a victim impact statement from each victim of a crime, as defined in the Fair Treatment for Victims and Witnesses Act, and that district attorneys present the statement to the court. "Crime" is defined by the Act, in G.S. 15A-824, as "a serious misdemeanor as determined in the sole discretion of the district attorney, any felony, or any act committed by a juvenile that if committed by a competent adult, would constitute a felony." The proposed bill does not remove the district attorney's discretion in defining what a "serious misdemeanor" is for purposes of providing victim and witness services. However, the proposed legislation does require district attorneys to seek to obtain victim impact statements "[n]otwithstanding the provisions of G.S. 15a-825," which provides that certain services and information be made available to victims and witnesses "to the extent reasonably possible and subject to available resources."

In practice, due to limited resources, most district attorneys have placed certain limitations on the scope of crime victims who are served by VWAs in their districts. For example, VWAs in some districts serve only victims in "serious felonies," as defined by the district attorney. However, the "notwithstanding" language in the proposed legislation suggests that district attorneys must

seek and present victim impact statements for crime victims who may fall outside the usual scope established within a district for provisions of victim services. Thus, it appears that the intent of SB 403 is for district attorneys' offices to more vigorously seek victim impact statements on behalf of all "victims of crime" as defined by the Fair Treatment for Victims and Witnesses Act.

**Preparation of Victim Impact Statements:** The proposed legislation specifies that Victim and Witness Assistants are responsible for providing assistance to victims completing victim impact statements. Based on data provided in the February 1995 report entitled, "The Implementation and Effectiveness of the Fair Treatment for Victims and Witnesses Act," prepared by the Conference of District Attorneys and the AOC for the Joint Legislative Commission on Governmental Operations, VWAs distributed an estimated 38,425 victim impact statements during 1994.

The following analysis assumes that implementation of SB 403 would involve VWAs: (1) putting forth greater effort to assist with preparation of victim impact statements for victims who under current practices would be sent victim impact statements, and (2) distributing victim impact statements and assisting with preparation of these forms for victims who would not be sent victim impact statements under current practices, with VWA involvement in these new cases limited to providing only assistance relevant to obtaining victim impact statements. In addition, the proposed bill would increase the likelihood that the court will order restitution. VWAs would spend more time helping victims identify and gather relevant evidence documenting appropriate restitution amounts, including receipts, estimates, and insurance deductible information.

For the estimated 38,425 victims currently receiving impact statements, the Administrative Office of the Courts assumes that, on average, additional assistance by VWAs would require about 10 additional minutes per case. This would result in an additional 6,404 hours of work by VWAs.

To estimate the remaining number of victims for whom VWAs would attempt to complete victim impact statements, the Administrative Office of the Courts relies on FY 93-94 caseload data. The Administrative Office of the Courts projects that such assistance would be required for approximately 114,804 (153,229 - 38,425) additional victims. This is based on an assumption of one victim per case, often a conservative assumption, but one that offsets the possible inclusion of "victimless" crimes. This estimate includes the following types of cases: felonies in superior court, excluding controlled substance cases; 15% of misdemeanors originating in superior court; district court criminal motor vehicle cases that involve the offenses of death by vehicle and hit/run; 15% of district court criminal non-motor juvenile offenses, excluding controlled substance cases. District attorneys estimated that they would consider 15% of misdemeanors "serious." The Administrative Office of the Courts assumes that, on average, 15 minutes of VWA time will be expended for each of these 114,804 victims for the distribution of and provision of

assistance in completing victim impact statements (28,701 VWA hours).

Summing the two estimates above yields a total estimate of 35,105 hours (6,404 plus 28,701) of VWA time, or, assuming a 1,880-hour work year, approximately 19 new VWA positions to seek victim impact information and assist victims with preparation of victim impact statements. At an estimated position cost of \$24,154 for the last seven months of FY 95/96, the personnel costs would total \$458,926. At an estimated position cost of \$31,200 for FY 96-97, personnel costs would total \$592,795 during FY 96-97.

**POSTAGE COSTS:** In addition, there would be an estimated \$21,430 in FY 95-96 and \$36,737 in FY 96-97 for postage expenses, conservatively assuming one mailing per victim for those crime victims who would not be sent victim impact statements under current practice.

**Presenting Victim Impact Statements to the Court:** Prosecutors would need to review the documentation provided by victims before presenting it to the court. Assuming that prosecutors would spend an average of five minutes reviewing this information prior to the sentencing hearing, the Administrative Office of the Courts estimates that the total additional time required by assistant district attorneys would be approximately 2,916 hours, or about two assistant district attorney positions.

The foregoing estimate is based on the estimated number of convictions during FY 93/94 in the following case types:

1. felony cases in superior court, excluding controlled substance cases;
2. 15% of misdemeanors originating in superior court;
3. district court criminal motor vehicle cases that involve the offenses of death by vehicle and hit/run; and
4. 15% of district court criminal non-motor vehicle cases.

In addition, the Administrative Office of the Courts conservatively assumes no additional time involvement for the estimated 38,425 cases in which victim impact statements are currently distributed.

The two assistant district attorney positions would cost approximately \$64,166 (at a position cost of \$32,083) during FY 95/96 and \$128,066 (at a positions cost of \$64,033) during FY 96/97.

Finally, court time would be required for the presentation of this evidence and other relevant testimony, especially when the defendant disagrees with the amount requested by the victim. This note will not attempt to itemize the costs due to increased court

time involved with presentation and evaluation of this information during the sentencing hearing, but even an additional average increase of only five minutes would represent a cumulative increase in court time over a one-year period of between 400 and 500 court days.

Another costs consideration involves potential increases in indigent defense costs. Based on the conviction data described in the previous paragraph, the Administrative Office of the Courts estimates that an average increase in sentencing hearing length of five minutes for presentation and consideration of the victim impact information would result in additional indigent defense costs totaling \$26,044 for FY 95/96 and \$56,823 during FY 96/97.

In sum, the analyses above suggest that implementing Sections 1 and 2 of the proposed legislation would involve, at a minimum, the following incremental costs:

	FY 95/96	FY 96/97
19 VWA Positions	\$458,926	\$592,795
Postage Expenses	\$ 21,430	\$ 36,737
2 ADA positions	\$ 64,166	\$128,066
Indigent Defense	\$ 26,044	\$ 60,801

Restitution: The proposed legislation also addresses issues of restitution. First, the bill requires that when making restitution a condition of probation, the court will take into consideration any victim impact statement presented. Further, it adds under G.S. 15A-825 that a victim should expect that, upon court review of a victim impact statement, a judge would order restitution in all cases where it is appropriate. Finally, the proposed bill makes the payment of restitution to persons entitled to it the first priority for disbursement of funds pursuant to G.S. 7A-304(d), ahead of costs due the county or city, and fines due the county school fund. Finally, the proposed bill allows a longer extension of probation periods, with the consent of the defendant, for purposes of completing a program of restitution or continuing medical or psychiatric treatment ordered as a condition of probation.

Under proposed SB 403, judges would retain their discretion to order restitution in only those cases in which there are identifiable victims and where there is reasonable basis to believe that the defendant can comply with the court's order. Nonetheless, the Administrative Office of the Courts expects that one impact from the proposed legislation would be that judges would order restitution in more cases. Any increase in the number of defendants ordered to make restitution would lead to additional costs due to an increase in hearings on revocations or probation for failure to pay the restitution. However, the Administrative Office of the Courts cannot estimate the precise extent of this

increase or the fiscal impacts that would result from these additional hearings.

**Changes in Revenues:** The bill's proposed hierarchy for disbursing funds under G.S. 7A-304(d) places restitution as the first priority, ahead of costs due the county or city, or fines to the county school fund. This modification would simultaneously increase restitution payments to victims and decrease funds distributed to counties, cities, and county schools. The following analysis, while tentative, attempts to estimate the amounts likely to be affected.

The Administrative Office of the Courts analyzed data from the first 17 counties placed on the AOC's automated Financial Management System to estimate the minimum reduction in revenues that would be distributed to counties, municipalities, and the State pursuant to Section 5 of SB 403. This analysis included all criminal cases disposed in these 17 counties during a one-month period (January 1994) if restitution were ordered and a partial payment plan was established. Payment plans are established by the court to allow offenders to make periodic payments toward amounts ordered by the court, including restitution, in criminal cases. For those cases in which defendants pay all costs, fines, and fees on the day of judgment, no partial payment plan is needed and no change in the distribution of funds would result from SB 403's proposed re-prioritization of fund disbursement since all obligations are paid immediately.

**Revenue Analysis:** The revenue analysis is based on limited data (data from one month's billing for 17 counties), and the extent to which projections to a full year for the entire state are valid is unknown. Second, the analysis assumes no increase in the frequency with which restitution is ordered, while the Administrative Office of the Courts would expect the proposed legislation to result in judges ordering restitution in more cases. Under the proposed disbursement hierarchy, to the extent that restitution is ordered more often (i.e., in a greater proportion of criminal convictions), the number of cases in which some funds are "shifted" from county, city, or state costs will be greater and the cumulative effect may be a significant reduction in funds distributed for purposes other than restitution. Third, the analysis assumes no change in the total funds collected from defendants for all court-imposed costs combined. The data suggest relatively low rates of collection for restitution; if measures are implemented that result in greater restitution collections (such as by wage garnishment or tax offset), increases in restitution would be expected to occur, at least in part, at the expense of collections for other court-imposed costs, while in fact defendants may pay toward these obligations over several years.



The analysis indicated that \$2,154,245 had been ordered in restitution, and \$448,938 (20.8%) had actually been collected and distributed for restitution during a one-year follow-up period. Assuming that the same total amount of funds would be collected from defendants for all cost categories combined, the projection analysis suggested that under the hierarchy outlined in the proposed bill, an additional \$33,283 (\$482,221 minus \$448,938) would have been collected and distributed for restitution. This represents 22.4% of the amount ordered, or an increase of 7.4% over what was distributed for restitution under the current disbursement hierarchy.

Since the analysis relied on one month's bill of costs for only 17 counties, the Administrative Office of the Courts projected the statewide effect for a full-year's complement of restitution cases by multiplying by twelve (twelve months) and by dividing by a factor of 0.40 (these 17 counties account for an estimated 40% for the statewide total of fees, fines and forfeiture amounts distributed to counties and municipalities for all cases. Thus, assuming no change in the frequency or amounts of restitution ordered and no change in the total amounts collected from defendants, the Administrative Office of the Courts estimates that for cases disposed during a full year, with a follow-up collection period of twelve-months, additional restitution amounts collected and distributed to aggrieved parties would total \$998,490 (\$38,283 X 12 months/0.40). In addition, the Administrative Office of the Courts estimates that the increased restitution funds would represent a "shifting" of funds from other categories of receipts. The "shifting" of funds is summarized as follows:

1. Fines available to counties' school funds would decrease. Fines to the county school fund would be reduced by over \$600,000.
2. Counties would experience decreases in revenues from facility fees, officer fees, and jail fees. The costs due the county would be reduced by over \$300,000.
3. Cities would experience decreases in revenues from facility fees, officer fees, and jail fees. The costs due the city would be reduced by over \$40,000.
4. Collections on attorney fee judgments are retained by the Judicial Branch for payment of counsel. Thus, funds available for the indigent fund would be decreased by over \$30,000.
5. Court costs, including the General Court of Justice Fee, are paid into the General Fund. Thus, there would be a decrease of over \$20,000 in General Fund revenues.

**SOURCES OF DATA:** Administrative Office of the Courts (Data from the Conference of District Attorneys; AOC data from the Financial Management System and the Court Information System; North Carolina General Statutes); North Carolina Sentencing and Policy Advisory Commission

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** May 10, 1995

**[FRD#003]**



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