

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 267 - Second Edition Engrossed, 5/9/95

SHORT TITLE: Restitution/Civil Judgment

SPONSOR(S): Representative Michaux

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

FUNDS AFFECTED: **General Fund (X)**

BILL SUMMARY: "TO ALLOW THE ENFORCEMENT OF AN ORDER FOR RESTITUTION IN A CRIMINAL CASE IN THE SAME MANNER AS A CIVIL JUDGMENT." Amends G.S. 15A-1343(d) to provide that when imposing restitution or reparation as a condition in a criminal case, the court must hold a hearing to determine the amount due the aggrieved party, and may provide that the order may be docketed, indexed, and enforced in the same manner as a civil judgment in the amount then owing upon the later of (1) the date upon which conviction becomes final if the defendant is not ordered as a condition of probation to pay restitution, or (2) the date that the defendant's probation is terminated or revoked if restitution is a condition of probation.

AMENDMENTS/COMMITTEE SUBSTITUTES - MAY 9, 1995-DAILY BULLETIN #60 Intro. 2/23/95. House action amends 1st edition. Provides that order for reparation resulting from worthless check charge may not be enforced in same manner as civil judgment.

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

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Branch

FISCAL IMPACT: Judicial Branch

	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98	<u>FY</u> 98-99	
EXPENDITURES	\$80,090	\$150,268	\$154,776	\$159,419	
	\$164,202				
POSITIONS (*):	6	6	6	6	6

(*) The additional work hours generated by carrying out the requirements of this bill are equivalent to the annual work hours of six deputy clerk positions (Full-Time Equivalent positions (FTE)).

ASSUMPTIONS AND METHODOLOGY:

This fiscal note includes a discussion of those sections of HB 267 which do not have a fiscal impact on the Judicial Branch, and those sections of HB 267 which do have a fiscal impact, including a descriptive cost analysis.

NO FISCAL IMPACT

COURT TIME - Based on the following assumptions, the Administrative Office of the Courts would not expect an increase in court time due to the proposed legislation.

- A) HB 267 does not require that restitution be ordered, nor does it specify the information to be gathered, presented to the court, and used by the sentencing judge when making a determination regarding the appropriate amount of restitution. Thus, the Administrative Office of the Courts assumes no change in either the frequency with which restitution is ordered or in the current practices relating to the gathering, presentation to the court, and consideration by the court of victim impact information.
- B) HB 267 mandates that whenever restitution or reparation is imposed as a condition of probation, the court shall hold a hearing to determine the amount of restitution or reparation due the aggrieved party or parties. The Administrative Office of the Courts assumes that the determination of appropriate restitution amounts would be made in the context of the sentencing hearing, thus not requiring a separate hearing.

FISCAL IMPACT

Positions: This fiscal note itemizes the need for the full-time equivalent of six new Deputy Clerk positions for the processing of civil restitution judgments. The increased workload would be spread throughout North Carolina's 100 counties.

The analysis for HB 267 is based on the best data available regarding the current frequency with which defendants' sentences include restitution, excluding restitution which results from worthless check charges.

CLERKS OF COURT WORKLOAD

According to HB 267, an order for restitution or reparation, except "resulting from a worthless check" may be enforced in the same manner as a civil judgment. This provision would have an impact on the courts since Clerks of Superior Court would be responsible for ensuring that civil judgments for restitution are properly entered. The indexing and docketing activity would increase paperwork, record-keeping, and bookkeeping duties and would require substantial time to answer questions and assist victims and defendants concerning the meaning of the civil judgment, and the procedures that may be followed after the judgment is entered.

The estimated average time required for a case in which restitution is ordered and becomes a civil judgment is 17 minutes (0.283 hours) including: additional copy of judgment to civil division, abstracting/docketing, indexing, microfilming, updating system with book/page number and microfilm number, filing, posting partial payments, additional court time, calculating interest, processing executions, and dealing with the public.

COST ANALYSIS - DEPUTY CLERK POSITIONS

The Administrative Office of the Courts prepared two estimates and then calculated the average of the two estimates to provide the number of new deputy clerk positions required by the proposed legislation. The Administrative Office of the Courts assumes that the average of the two estimates is a more accurate indicator of the additional workload than either estimate alone.

A) ESTIMATE 1

The Sentencing and Policy Advisory Commission and the Administrative Office of the Courts estimates that 46,322 sentencing episodes included restitution as a sanction (excluding worthless check cases). In the absence of data on the average number of victims to whom restitution may be ordered per sentencing episode, the Administrative Office of the Courts analysis conservatively assumes one victim, and therefore one restitution judgment, per sentencing episode that includes restitution as a sanction. Assuming that a civil judgment would be required for each of the estimated 46,322 sentences, additional clerk time, at 17 minutes (0.283 hours) per judgment, would total 13,109 hours, or about 7 additional deputy clerks.

B) ESTIMATE 2

HB 267 provides that for defendants placed on probation, judgments would be docketed at the time of and in the amount owed upon their termination from or revocation of probation. Therefore, judgments would not be docketed for defendants who satisfactorily complete their probation after having fully paid their restitution.

A study conducted by the Sentencing Commission analyzed the restitution ordered for a sample of offenders sentenced during the first quarter of 1990, and found that 64% of defendants on supervised probation, and 46% of defendants on unsupervised probation, paid all of the restitution they owed within the three and one-half year follow-up period of the study.

Assuming that these percentages are valid indicators of the frequency with which defendants sentenced during 1994 would pay all of their restitution during the period of probation suggests that up to 15,200 sentences (an estimated 7,425 involving defendants placed on supervised probation and an estimated 7,775 involving defendants placed on unsupervised probation) would not require civil judgments. Subtracting these 15,200 sentences from the estimated 46,322 sentences yields an estimated 31,122 sentences in which restitution orders would be docketed as civil judgments.

Assuming that these 15,200 sentences would involve no additional time investment by clerks, and following the same methodology as shown above, the Administrative Office of the Courts estimates a need for five deputy clerk positions ($0.283 \text{ hours} \times 31,122 \text{ cases} / 1,880 \text{ hours}$). However, the Administrative Office of the Courts believes that it is unrealistic to assume that the 15,200 sentences would not require any additional clerk time; at a minimum, these sentences would require that the clerk make a notation in the file that all restitution has been paid, and that no civil judgment is required.

C) FISCAL IMPACT - AVERAGE OF ESTIMATE 1 AND ESTIMATE 2

The Administrative Office of the Courts estimates that position costs for the equivalent of six additional deputy clerk positions would be \$76,218 (\$12,703 per position) in FY 95/96 and \$142,524 (\$23,754 per position) in FY 96/97. It is assumed for FY 95/96, that there would be some lag before defendants who committed offenses on or after December 1, 1995 would be convicted. Thus, the numbers shown for FY 95/96 assume that these positions would begin January 1, 1996. Estimates for

years following FY 95/96 assume a 3% increase in position costs.

D) FISCAL IMPACT - SUPPLIES AND MATERIALS

The Administrative Office of the Courts estimates a minimum of \$0.20 per case for the forms and other documentation materials that would be involved, including photocopies, docket pages, and microfilm. The materials costs would be \$3,872 during FY 95/96 and would be \$7,744 during FY 96/97.

SOURCES OF DATA: Administrative Office of the Courts (Including data from the Administrative Office of the Courts' Court Information System and the Sentencing and Policy Advisory Commission, Interviews with clerks)

TECHNICAL CONSIDERATIONS: None

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