

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 449

SHORT TITLE: Improve Restitution Collection/AB

SPONSOR(S): Representative Rayfield

FISCAL IMPACT: **Expenditures:** **Increase (x)** **Decrease ()**
 Revenues: **Increase (x)***

(*) The Administrative Office of the Courts and the Fiscal Research Division are unable to provide a reliable estimate.

FUND AFFECTED: General Fund (x) Highway Fund () Local Govt. ()
 Other Funds ()

BILL SUMMARY: Requires that the sentencing judge in every court judgment determine if injury, property damage, or other loss was incurred as a result of the defendant's crime and, if so, to fix an amount of restitution based on available information. Unless defendant pays on the day that judgment is entered, court is to add 20% to restitution amount as an administration fee for cost of collecting restitution. Court then determines defendant's ability to pay and establishes a payment schedule for any defendant placed on probation. Amount of restitution is to be docketed as civil judgment, but does not preclude civil action. Provides several remedies for collecting restitution, including income tax refund setoff; garnishment; requirement that restitution be a condition of probation and parole or post-release supervision; assignment of wages; voluntary assignment of unemployment compensation benefits; and required restitution by prisoners with work-release privileges and by incarcerated prisoners. Specifies that length of term of parole may be extended to more than twice the lengths specified in law in order to require the person to pay restitution to an aggrieved party. Adds rules concerning disbursement of sums in restitution by clerk.

EFFECTIVE DATE: December 1, 1995: provisions requiring restitution and relating to entering and docketing of judgments of restitution, and rules for setoff of restitution against income tax refunds, apply to any defendant sentenced or judgment entered on or after that date; other provisions apply to any defendant owing restitution on or after that date.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: District Attorneys, Victim and Witness Assistants, Clerks

FISCAL IMPACT: EXPENDITURES(*)

	<u>INDIGENT DEFENSE</u>	<u>OTHER STATE FUNDS</u>	<u>TOTAL</u>
FY 95-96	\$114,012	\$2,566,816	\$2,680,828
FY 96-97	\$209,130	\$3,728,839	\$3,937,969
FY 97-98	\$223,769	\$3,834,736	\$4,058,505
FY 98-99	\$239,433	\$3,943,810	\$4,183,243
FY 99-00	\$256,193	\$4,056,156	\$4,312,349

*These estimates relate only to specific identifiable costs, estimated on an aggregate, statewide basis, and do not include fiscal impacts relating to potential increases in court time for sentencing hearings or for additional probation revocation or garnishment hearings. In addition, no estimates are provided for potential revenues generated from the administration fee, or for potential losses in revenues to counties and municipalities that may ensue.

POSITIONS: This note itemizes the need for 63 new Victim and Witness Assistants (VWAs) to prepare victim impact statements, 43 new Deputy Clerks for the processing of civil restitution judgments, and 8 Assistant District Attorneys to review victim impact information. The increased workload would be spread throughout North Carolina's 100 counties. Therefore, allocation of these numbers of positions across the state may not actually meet the demands of the proposed bill.

ANALYSIS

Mandatory Restitution

Judges currently use their discretion to order restitution only in those cases in which there are identifiable victims and where there is a reasonable basis to believe that the defendant can comply with the court's order. Under HB 449, the court is to "obtain all available information concerning the extent of such loss and shall fix an amount of restitution based upon available information," to which is added a 20% administration fee unless the defendant pays on the day that judgment is entered.

Several areas of HB 449 that will not have a significant or measurable fiscal impact:

1) Under the proposed bill judges would order restitution in more cases. This would result in additional costs due to an increase in hearings on revocations of 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.

2) For defendants placed on probation, the court is required to make restitution or reparation a condition of probation, and shall fix a restitution amount "which will adequately compensate each aggrieved party." The court then considers the resources of the defendant, and may order partial payment of restitution as a condition of probation if the damage or loss exceeds the defendant's ability to pay. Thus, it appears that the civil judgment for restitution to be entered pursuant to new G.S. 15A-1334.1 (i.e., the "amount of restitution contained in the criminal judgment shall be entered on the civil judgment docket by the clerk and shall be considered for all purposes a civil judgment against the defendant") would reflect the total amount established by the court, even if the court finds that the defendant's ability to pay this amount is insufficient. Because partial payment may be ordered, the Administrative Office of the Courts would expect the amounts ordered as a condition of probation pursuant to HB 449 to be similar to the amounts ordered under current law.

In addition, there is no fiscal impact associated with collecting restitution. The discussion covering the collection of restitution can be found on page 8 of this note.

The major fiscal impact of HB 449 is due to the requirement that the court "obtain all available information" concerning the extent of loss suffered by the victim and to fix an amount based on this information. Revised G.S. 15A-1343(d) specifies that this amount should be sufficient to adequately compensate each aggrieved party, and must be limited to that supported by the record. **With the requirement that the court order restitution in every case in which there is a victim who experienced injury, property damage, or other loss, judges will consistently need accurate information about the extent of loss. Thus, victims will need to be advised to gather relevant evidence documenting appropriate restitution amounts, including receipts, estimates, and insurance deductible information.**

It is most likely that the responsibility to ensure that such information is available would fall to the district attorney. For purposes of this note, we assume that Victim and Witness Assistants (VWAs) would collect this information by means of distributing and assisting in the completion of victim impact statements or a comparable form that identifies and quantifies the extent of loss suffered by the victim.

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. No data are collected on the frequency with which VWAs assist victims in completing these forms, or, until 1995, on the number completed and returned by victims. The Administrative Office of the Courts assumes that additional assistance by VWAs to

gather information pertaining to restitution for these estimated 38,425 victims would require an average of about 10 additional minutes (0.17 hours) per case. The proposed legislation's additional requirements would involve increased efforts by VWAs to ensure that victims have the opportunity and assistance they may need to complete and return these forms. This would result in an additional 6,532 hours of work by VWAs.

Estimating the remaining number of victims to whom VWAs would distribute and assist with preparation of victim impact statements is difficult. First, such information would be needed by judges only when defendants are convicted of an offense. However, VWAs typically distribute victim impact statements early in a case to allow time for the victim to gather and compile the needed information. Therefore, this note assumes that information relating to victims' losses should be gathered whenever a case is filed that has an identifiable victim who may have experienced such injury, damage, or loss. No data are available that address the issue of the proportion of victims in various types of criminal cases who in fact experience such losses. The Administrative Office of the Courts assumes that such loss is likely for the vast majority of criminal cases.

The Administrative Office of the Courts uses the number of filings in the following types of criminal cases to estimate the number of cases in which VWAs should attempt to prepare victim impact statements:

- 1) Felonies in superior court, excluding controlled substance cases;
- 2) misdemeanors originating in superior court;
- 3) District court criminal motor vehicle cases that involve the offenses of death by vehicle, hit/run, leaving the scene of an accident, failing to report an accident, possessing a stolen vehicle, and tampering with a vehicle;
- 4) 75% of district court criminal non-motor vehicle cases, except probable cause matters that transfer to superior court and controlled substance cases.

VWA POSITIONS: The Administrative Office of the Courts projects that such assistance would be required for approximately 445,359 victims (483,784 estimated cases minus 38,425 cases in which victim impact statements are already being sent). This estimate is based on an assumption of one victim per case, a conservative assumption, but one that offsets the possible inclusion of "victimless" crimes (although we have attempted to remove case types that appear "victimless"). The Administrative Office of the Courts assumes that, on average, 15 minutes of VWA time will be expended for each of the estimated remaining 445,359 victims for the distribution of and provision of assistance in completing victim impact statements, or 111,340 VWA hours.

Summing the two estimates above yields a total estimate of 117,872 VWA hours (6,532 plus 111,340) of VWA time to effectively provide judges with information needed to establish restitution amounts. Assuming a 1,880-hour work year results in an estimated 63 new VWAs, or nearly a doubling of the VWA program. At an estimated position cost of \$24,154 for the last seven months of FY 95-96 (taking into account a 3% annual increase in salary and fringe benefits), the personnel costs would total \$1,521,702 during FY 95-96. At an estimated position cost of \$31,200 for FY 96-97, personnel costs would total \$1,965,600 during FY 96-97.

VWA Position Costs:

FY 95-96:	63	*	\$24,154	=	\$1,521,702
FY 96-97:	63	*	\$31,200	=	\$1,965,600
FY 97-98:	63	*	\$32,136	=	\$2,024,568
FY 98-99:	63	*	\$33,100	=	\$2,085,300
FY 99-00:	63	*	\$34,093	=	\$2,147,859

POSTAGE EXPENSES: In addition, there would be an estimated \$83,134 in FY 95-96 and \$142,515 ($\$0.32 * 445,359$) in FY 96-97 for postage expenses, conservatively assuming one victims impact statement mailing per victim for those crime victims who would not be sent victim impact statements under current practices.

[**Note:** If the need for victim loss information could be restricted to only those cases in which defendants are convicted, the Administrative Office of the Courts estimates that an additional 26 VWAs would be required, involving victims in approximately 207,672 cases with convictions, at an estimated cost for FY 95-96 of \$628,004, and for FY 96-97 of \$787,566. However, it is not clear how this process could effectively be restricted to only those cases in which defendants are found guilty, while still allowing the victim sufficient time to gather and compile this information without delaying sentencing.]

ASSISTANT DISTRICT ATTORNEY POSITIONS: 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 14,456 hours, or approximately 8 assistant district attorney positions. This estimate is based on new cases only. In an attempt to take into account current practices of considering victim impact information at sentencing hearings, it conservatively assumes no additional time involvement for the estimated 38,425 cases in which victim impact statements are currently distributed, although the frequency with which such statements are actually completed by the victim and presented to the court is unknown.

At an estimated position cost of \$37,256 for the last seven months of FY 95-96 and of \$64,033 for the second year (taking into account a 3% annual increase in salary and fringe benefits), 8 assistant district attorney positions would cost approximately \$298,048 during FY 95-96 and \$512,264 during FY 96-97.

Assistant District Attorney Position Costs:

FY 95-96:	8	*	\$37,256	=	\$298,048
FY 96-97:	8	*	\$64,033	=	\$512,264
FY 97-98:	8	*	\$65,954	=	\$527,632
FY 98-99:	8	*	\$67,933	=	\$543,464
FY 99-00:	8	*	\$69,971	=	\$559,768

COURT TIME: Finally, court time would be required for the presentation of this evidence and the relevant testimony, especially when the defendant disagrees with the amount advocated by the victim. This note does 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 two thousand and three thousand court days.

INDIGENT DEFENSE: Another cost 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 assuming 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 \$114,012 for the last seven months of FY 95-96 (approximately \$23,714 for representation by public defenders and \$90,298 for representation by private assigned counsel), and \$209,130 during FY 96-97 (approximately \$43,499 for representation by public defenders and \$165,632 for representation by private assigned counsel).

Civil Judgments

Sections 2 and 5 of HB 449 require that clerks enter the amount of restitution contained in criminal judgments on the civil judgment docket to "be considered for all purposes a civil judgment against the defendant." This provision would have a substantial impact on the courts. Under current law, victims may file a civil action for remedy, but this is rarely done.

New G.S. 1-233.1 suggests that restitution judgments should be docketed during the same session of court or upon expiration of the appeal period (e.g., "All judgments rendered in any county by the superior or district court, during a session of court, and docketed during the same session, or with 10 days thereafter, are held and deemed to have been rendered and docketed on the first day of said session for the purpose only of establishing equity of priority as among judgments"). Thus,

the Administrative Office of the Courts assumes that the restitution judgment would be docketed and indexed immediately following sentencing. In addition, for cases such as worthless check waivers, in which restitution is ordered and paid immediately, it is unclear whether this proposed bill would require the judgment to be docketed, and then posted as satisfied, a procedure which would create substantial additional work. Another significant issue concerns partial payments on restitution that may be made over a period of several years. If a defendant on probation makes weekly payments, we assume that the clerk will need to post each payment on the civil judgment docket. There will also be a need to calculate accrual of interest on such judgments.

CLERKS OF COURT: The estimates that follow are based on interviews with clerks and AOC personnel familiar with clerk operations. The individuals interviewed noted that in addition to the increase in paperwork, record-keeping, and bookkeeping duties that would be involved, substantial time would be devoted to answering questions from and assisting both victims and defendants concerning the meaning of the civil judgment, and the procedures that may be followed after the judgment is entered. Clerks anticipate that the majority of victims will not be familiar with these procedures, and will often seek clarification and explanation from clerks.

Our minimum estimate of the average time required per case in which restitution is ordered and becomes a civil judgment is 17 minutes (0.283 hours), comprising the following: additional copy of judgment to civil division, 1 minute; abstracting/docketing, 5 minutes; indexing, 1 minute; auditing, 1 minute; microfilming, 1 minute; updating system with book/page number and microfilm number, 1 minute; filing, 1 minute; and a miscellaneous category of duties, including posting partial payments, additional court time, calculating interest, processing executions, and dealing with the public, 6 minutes (this estimate of 6 minutes, which includes posting partial payments, seems especially conservative). It is assumed that the time involved will be for a deputy clerk. In addition, 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. Another implication, not itemized here, is that all of the criminal judgment forms distributed by the AOC to clerk's offices would need to be modified to accommodate the removal of the judge's discretion in ordering restitution.

Based on data for FY 93-94, the Administrative Office of the Courts estimates that there would be 282,058 criminal judgments that would result in civil restitution judgments. At 17 minutes (.283 hours) per case, the Administrative Office of the Courts would estimate additional clerk time totaling 79,822 hours, or about 43 additional deputy clerks. At a position cost of \$14,675 for the last seven months of FY 95-96 (taking into account a 3% annual increase in salary and fringe benefits), total estimated personnel costs would be \$631,025 during FY

95-96. At an estimate second-year position cost of \$24,467, the estimated total during FY 96-97 would be \$1,052,081 for these 43 positions. In addition, the Administrative Office of the Courts estimates costs for materials of \$32,907 during FY 95-96 and \$56,412 during FY 96-97 (at \$.20 per case).

Deputy Clerk Position Costs:

FY 95-96:	43	*	\$14,675	=	\$ 631,025
FY 96-97:	43	*	\$24,467	=	\$1,052,081
FY 97-98:	43	*	\$25,201	=	\$1,083,643
FY 98-99:	43	*	\$25,957	=	\$1,116,151
FY 99-00:	43	*	\$26,736	=	\$1,149,648

Collecting Restitution

Among other methods of attempting to increase restitution collections, HB 449 authorizes garnishment of wages, upon motion for an order of garnishment by the representative of a child-victim, the victim, the probation officer, district attorney, or Attorney General, and a hearing on the matter. The Administrative Office of the Courts cannot estimate the number of such requests and hearings, nor, therefore, the costs to the court system that would ensue. In addition, new G.S. 15A-1344.2 requires that the motion be served on both the defendant and alleged employer. It is not clear, however, who would bear the costs of such service. Similarly, the proposed bill specifies that any order of garnishment that results from the hearing is to be served, either personally or by certified or registered mail, on the defendant and the garnishee; again, it is unclear who would bear these costs. Another issue relates to implementation of the tax setoff procedure. Clerks will need to provide defendants' social security numbers to the Department of Revenue. Thus, this information will need to be collected prior to or at sentencing, requiring additional VWA and/or court time, and possibly creating problems when this information is not readily available.

Revenues

While HB 449 does not modify the priority of fund disbursement that is established in G.S. 7A-304(d), the actual funds available for disbursement to counties and municipalities would likely change as a result of this bill. The methods proposed in the bill for improving restitution collection, including the requirement that restitution be a condition of probation, parole, or post-release supervision, the requirement that restitution be paid by prisoners with work-release privileges and other incarcerated prisoners, and authorization for tax refund setoff and wage garnishment, would be expected to result in less money being available from the affected defendants for payment of other costs and fines. That is, it is reasonable to assume that the vast majority of criminal defendants have limited financial resources. To the extent that restitution collection is increased, the Administrative

Office of the Courts would expect some decline in payment of other costs and fines. However, it is not possible to estimate what the likely impact would be.

Further, HB 449, imposes an "administration fee" of 20% of the restitution amount, which is to be deducted by the clerk, for the cost of collecting restitution (except that for tax setoff cases, only 5% is to be deducted, with the remaining 15% presumably being retained by the Department of Revenue for the cost of the setoff procedure). The Administrative Office of the Courts assumes that collections on this fee would go to the General Fund. The Administrative Office of the Courts has no basis for estimating the increased revenues from this administration fee, collection of which will depend on the method of collection (e.g., some will be collected from defendants whose wages are garnished, while none may be collected from other defendants, especially those with virtually no financial resources), other financial obligations of defendants, such as child support, and other factors.

TECHNICAL CONSIDERATIONS: Two issues regarding the tax setoff procedure may warrant further review. First, it is not clear that the tax setoff procedures as currently outlined in Chapter 105A can be used to collect on restitution judgments. That is, Chapter 105A is intended to assist with recovery of debts owed to the State, by "identifying debtors who owe money to the State through its various claimant agencies and who qualify for refunds from the Department of Revenue" and "setting off against any such refund the sum of any debt owed to the State" [G.S. 105A-1]. Application of the setoff debt collection procedures to restitution obligations between individuals does not seem to be authorized by statute.

The second issue is that it is likely that at times the Department of Revenue will receive from the court two claims for setoff from one person's tax refund at the same time. For example, the clerk may notify the Department that the defendant's refund is to be used to pay indigent defense costs pursuant to G.S. 7A-455 as well as restitution pursuant to the provisions of HB 449. In the absence of a legislated policy on which obligation should be disbursed amounts paid for indigent defense judgments are retained by the Judicial Department; any decrease in the amount recovered would require an additional appropriation for payment of indigent persons' attorneys fees.

SOURCES OF DATA: Data from the Conference of District Attorneys; data from the Administrative Office of the Courts' Court Information System; interviews with clerks; N.C. General Statutes

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