

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 217

SHORT TITLE: Restitution/Civil Judgment

SPONSOR(S): Rep. McCrary, Culpepper, Hensley, Hunter of McDowell, and Neely

FISCAL IMPACT

Yes (X)

No ()

No Estimate Available ()

	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES*	(\$565,471)	(\$969,933)	(\$969,933)	(\$969,933)	(\$969,933)
EXPENDITURES	\$51,412	\$82,502	\$82,502	\$82,502	\$82,502
	(December 1)				
POSITIONS:	3	3	3	3	3

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Judicial Department

EFFECTIVE DATE: December 1, 1997; applies to offenses committed on or after that date.

* No net loss; revenue will be shifted from state and local funds to victims for restitution.

BILL SUMMARY: Amends GS 15A-1343(d) to require the sentencing court to hold a hearing to determine the amount of restitution or reparation due to the aggrieved parties to a crime. Provides that an order for restitution is a condition of supervised or unsupervised probation, except an order resulting from a worthless check, may be enforced in the same manner as a civil judgment. In a probation termination of revocation hearing in which the judge finds that restitution is due and payable and that the probation should be terminated or revoked, the judge must order that a judgment for the amount of restitution due be docketed pursuant to GS 1-233, et seq., in the county of the original conviction. The clerk must notify the victim by first-class mail and provide him or her with a certified copy of the order directing entry of the civil judgment. This civil judgment is reduced by any payments made by the offender pursuant to the criminal case, including any payments made in connection with work release while in prison. Makes similar changes to GS 148-576.1 regarding restitution ordered by the Post-Release Supervision and Parole Commission as a condition of parole or supervised release. Upon

notification by the Commission, the sentencing court orders the clerk to enter a civil judgment as in the probation situation. Provides that exemptions from execution of civil judgments under GS 1C-1601(e) are inapplicable to claims for criminal restitution orders docketed as civil judgments upon probation termination or revocation. Amends GS 7A-304(d) to make the payment of restitution funds the first priority for disbursement by the clerk, placing it ahead of costs due the county or city, and fines due the county school fund.

ASSUMPTIONS AND METHODOLOGY - OVERALL

HB 217 does not require the restitution be ordered, nor does it prescribe the specific 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, it is assumed that no change will occur 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. This assumption may underestimate the true impact of this bill because there may be an increase in the frequency with which sentencing judges order restitution, especially in light of both the passage of the constitutional victims' rights amendment and the pending victims' rights legislation.

SECTION I - CIVIL JUDGMENTS

Assumptions - Civil Judgments

(1) HB 217 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. This note assumes that the determination of appropriate restitution amounts will be made in the context of the sentencing hearing, thus not requiring a separate hearing. Further, because no substantial increase in restitution orders or the time required by the court to determine appropriate restitution amounts is predicted, we estimate no increase in court time due to this provision.

(2) HB 217 also provides that an order providing for restitution or reparation as a condition of probation, except one "resulting from a worthless check," may be enforced in the same manner as a civil judgment as provided in the bill. It is assumed that, based on other provisions of the bill, that this requirement will apply to only a subset of probation-based restitution orders. Specifically, HB 217 requires that orders for restitution be docketed and indexed as civil judgments when a judge presiding at a probation termination or revocation hearing has determined that the defendant's probation should be terminated or revoked and finds that restitution in a sum certain remains due and payable. Similarly, the bill requires that a civil judgment for restitution be docketed when the Post-Release Supervision and Parole Commission imposes restitution as a condition of parole or post-release supervision. These provisions would have an impact on the courts since Clerks of Superior Court would be responsible for ensuring that civil judgments for restitution are appropriately docketed and processed.

(3) The potential fiscal impact of HB 217 on the courts is greatly limited by the requirement that civil judgments for restitution be docketed only in situations where a defendant's probation has been revoked or terminated and there is still restitution owing, or in situations where restitution is imposed as a condition of parole or post-release supervision. The estimates below do not include any restitution orders resulting from "probation termination hearings" as defendants generally are not terminated from probation without having paid all restitution.

(4) The estimates that follow are based on interviews with clerks and AOC personnel familiar with clerk operations. Everyone contacted felt the restitution provisions would have an impact on the workload of clerks. One issue stressed by each was that, in addition to the increase in paperwork, record-keeping, and bookkeeping duties that would be involved, 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. It is assumed that enforcement of the judgment by means of executions would be at the initiative of the aggrieved parties, and further assume that this would occur infrequently. However, clerks anticipate that the majority of victims will not be familiar with these procedures, and will often seek clarification and explanation from clerks. To the extent that entering civil judgments against defendants creates a greater expectation of recovery on the part of victims, victims may find this process frustrating and cause increased victim contact. These concerns are offset somewhat by the fact that HB 217 retains judicial 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.

Methodology - Civil Judgment

The minimum estimate of the average additional time that would be required for each restitution order that becomes a civil judgment for a deputy clerk is 21 minutes (.35 hours). (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, 10 minutes. It is assumed that no time is required to determine remaining amounts of restitution owed at the time of probation revocation or release from incarceration because the information will be made available to the court by probation officers and by the Post-Release Supervision and Parole Commission, as appropriate.

The Department of Correction, in its Annual Statistical Report, reports that 10,307 defendants on supervised probation had their probation revoked during FY 95-96. The Department does not keep automated centralized statistics on restitution owed. However, the Sentencing Commission found that 40% of defendants placed on supervised probation (among defendants convicted of felonies or misdemeanors except convictions by magistrates, DWI cases, or Class 2 and 3 misdemeanor traffic offenses) are ordered to pay restitution. Information from the AOC's Financial Management System (FMS), indicates that revoked defendants who have partial payment accounts set up owe restitution about 12% more frequently than do the supervised probation group as a whole. By increasing the above 40% figure by 12%, it is estimated that 45% (40% x 112%) of defendants who are revoked while on supervised probation owe

restitution. This analysis yields an estimate of 4,639 such defendants (45% x 10,307) for a one-year period.

Using projections provided by the Sentencing Commission and the Department of Correction, we estimate that there will be a total of 9,044 entries into both the post-release supervision and the parole systems during the year. (This number, however, will decline in future years because parole for non-DWI defendants has been eliminated under structured Sentencing, and post-release supervision applies only to felony Class B1 to E offenders.) The data from FMS suggests that 14% of all offenders on parole who have partial payment accounts set up owe restitution. Using this 14% figure, it is estimated that 1,267 defendants (14% of 9,044) released on post-release supervision or parole during FY 96-97 would owe restitution, requiring that a civil judgment be docketed.

The two offender groups total 5,906 defendants who would have civil judgments entered against them for restitution owing in criminal cases. Based on data from the FMS, estimated that there would be an average of 1.5 victims per defendant. Thus, it is estimated that 8,859 (5,906 x 1.5) civil judgments for restitution would have to be docketed during a one-year period pursuant to HB 217 on behalf of victims by clerks of superior court.

At 21 minutes (.35 hours per judgment, it is estimated that it would require 3,101 clerk hours to implement this provision of HB 217, or assuming 1,800 work-hours per year, 2 deputy clerks (3,101 hours/1,800 hours = 1.7). In addition, we estimate that the time required for a deputy clerk to prepare and send to each victim a notice that the judgment has been docketed and a certified copy of the order directing entry of the civil judgment will be at least 8 minutes (.133 hours). For 8,859 judgments, we estimate that this will involve 1,179 hours, or about 1 deputy clerk position (1,179 hours/1,800 hours = .7). Thus, we estimate that implementing HB 217 will require the time equivalent of a minimum of 3 deputy clerk positions.

At an estimated position cost of \$15,932 for the last seven months of FY 97-98 (not taking into account any salary increase or modification of fringe benefits that may be enacted by the General Assembly), the personnel costs would total \$47,796 during FY 97-98. At an estimated position cost of \$25,432 for FY 98-99, personnel costs would total \$76,296 during FY 98-99. In addition, we estimate a minimum cost of \$.70 per judgment, or a total of \$3,616 during FY 97-98 and \$6,202 during FY 98-99, for first-class postage, the forms and other documentation materials that would be involved, including photocopies, docket pages, and microfilm.

SECTION II - RESTITUTION AS FIRST PRIORITY

Assumptions and Methodology --Restitution as First Priority

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 estimates the fiscal impact of reallocation of funds.

As a first step, data was analyzed from the 59 counties that are now on the AOC automated Financial Management System to estimate the annual reduction in revenues that would be distributed to counties, municipalities, and the State pursuant to Section 4 of HB 217. This analysis included criminal cases in which partial payment plans were established (payment plans are established by the court to allow offenders to make periodic payments toward court-imposed fees, fines, and other costs, including restitution, in criminal cases). The analysis considered accounts for such cases where bills of cost were entered into FMS during FY 95-96 or where there was a remaining balance due at the beginning of the fiscal year. The analysis examined the actual receipt and distribution of funds paid by criminal defendants against these accounts, based on the current hierarchy of fund disbursement. Then, a "what-if" analysis projected what the amount of funds allocated to each cost category would have been under HB 217's proposed hierarchy of fund disbursement by "re-distributing" the amounts collected according to the bill's prioritization. It is important to note, however, that both the actual and projected analyses gave first priority to funds collected from defendants for probation or parole supervision fees and for community service fees (unless the sentencing judge specified another disbursement order); disbursement of these funds is authorized outside of Chapter 7A, and is therefore deemed to supersede the disbursement hierarchy in G.S. 7A-304(d). (This is current practice).

The table below summarizes the significant results of this analysis. The order in which the types of receipts are presented below follows the current priority of disbursement (each item's priority pursuant to HB 217's proposed hierarchy is shown in brackets).

SHIFT RESTITUTION PRIORITIES (HB 217)

Type of Receipt (Proposed Order Of Disbursement)	Estimated Actual Collected	Estimated “What If” Collected	Estimated Monetary Change	Estimated Percent Change
Probation/Parole Supervisions and Community Service Fees	\$16,086,551	\$16,078,469	-\$8,082	-.05%
Costs due the County	\$15,219,384	\$14,903,925	-\$315,459	-2.07%
Costs due the City	\$2,073,416	\$2,032,835	-\$40,581	-1.96^
Fines to the County School Fund	\$35,040,560	\$34,502,283	-\$538,277	-1.54%
Restitution	\$26,371,428	\$27,341,361	\$969,933	+3.68%
Costs due to State (General Fund)	\$74,719,668	\$74,699,494	-\$20,174	-0.03%
Attorney’s Fees	\$5,260,862	\$5,213,342	-\$47,520	-0.90%

Assuming no change in the frequency or amounts of restitution ordered and no change in the total amounts collected from defendants, it is estimated that additional restitution amounts collected and distributed to aggrieved parties during a one-year period would total \$969,933 (number is rounded off). Further, it is estimated that the increased restitution funds would represent a “shifting” of funds from other categories of receipts, as shown in the above table, and summarized as follows: fines to the county school fund, reduced by over \$500,000; costs due the county, reduced by over \$300,000; attorney fees, reduced by nearly \$50,000; costs due the city, reduced by over \$40,000; and costs due the State, reduced by over \$20,000.

There are two caveats regarding the above analysis and estimates. First, it assumes no increase in the frequency with which restitution is ordered. If restitution were to be ordered in a greater proportion of criminal convictions, the number of cases in which some funds are “shifted” from county, city, or state costs would be greater, and the cumulative effect may be a significantly greater reduction in funds distributed for purposes other than restitution. A similar result would be expected if restitution amounts ordered increase due to this bill, as a greater proportion of the total amounts paid by defendants would go toward meeting their restitution obligations. Second, 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 (some 20%); if measures were implemented to increase 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 (on the assumption that most criminal defendants have limited financial resources).

Effects of “shifting” of revenues would include the following:

- Court costs, including the General Court of Justice Fee, are paid into the General Fund. Thus, there would be a decrease in General Fund revenues.
- 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.
- Counties and cities would experience decreases in revenues from facility fees, officer fees, and jail fees.
- Funds available to the counties’ school funds would decrease.

TECHNICAL CONSIDERATIONS: None

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733-4910

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Signed Copy Located in the NCGA Principal Clerk's Offices