

DEPARTMENT OF TAXATION

2006 Fiscal Impact Statement

1. **Patron** R. Creigh Deeds

2. **Bill Number** SB 619

3. **Committee** Senate Courts of Justice

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Collection of Court-Ordered Restitution

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would strengthen the procedures for ordering, tracking and collecting restitution for the victims of crimes. The Court would be required to inquire whether any financial loss subject to restitution arose from the crime. If so, the court must order restitution and approve a plan for its payment. If the plan includes installment payments, the court order shall specify that if delinquent more than 90 days the plan is void, the balance is immediately due, and allow the Tax Commissioner to collect it. Collection fees charged by the Department of Taxation or private collectors shall be added to the amount owed by the defendant. The clerk of the court may delegate responsibility for receiving restitution payments to certain bonded agencies but is required to record restitution receipts in the Supreme Court's automated system or another approved system.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

6a. **Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2005-06	\$45,000	7	NGF
2006-07	\$455,600	7	NGF
2007-08	\$277,600	7	NGF
2008-09	\$283,600	7	NGF
2009-10	\$301,500	7	NGF
2010-11	\$295,600	7	NGF
2011-12	\$301,600	7	NGF

7. **Budget amendment necessary:** Yes.

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8. **Fiscal implications:**

The Court Debt Collection Office ("CDCO") currently represents 258 courts in the collection of delinquent fines and fees. It is assumed that most of the courts that currently use TAX for collection would also forward restitution cases for collections as well.

Currently, the Supreme Court is tracking 45,513 restitution cases totaling \$126 million dollars, but are unable to determine what percentage of total cases these figures represent. TAX estimates that administrative costs will be \$45,000 in FY 06, \$455,600 in FY 07, \$277,600 in FY 08, \$283,600 in FY 09, \$301,500 in FY 10, \$295,600 in FY 11, and \$301,600 in FY 12. The costs include hiring seven employees. These costs will be paid with non-general funds deducted from amounts collected in accordance with existing language in the Executive Budget and have no impact on General Fund revenues or appropriations.

9. Specific agency or political subdivisions affected:

Department of Taxation
Clerks of Court
State Compensation Board
Commonwealth Attorneys

10. Technical amendment necessary: Yes.

The Department and private collectors should not be required to advance collection costs and wait until after the victim has received full restitution before receiving any fee. To ensure that collection fees are paid as and when amounts are collected, while making the defendant responsible for the fee, the following amendments are suggested.

Page 3, Line 123, at the beginning of the line

Unstrike: The

Strike: Except in cases involving the collection of court-ordered restitution, the

Page 3, Line 129, after restitution

Insert: in accordance with procedures established by the Department of Taxation and the Compensation Board

11. Other comments:

Proposal

This bill provides for the Commonwealth to be responsible for seeking restitution for the victim. This bill makes a number of technical amendments to the restitution sections of the Code including:

- Requires that the Commonwealth Attorney present a plan for restitution at sentencing.
- Clarifies that restitution could be made for any past or future medical bills, or any other expenses directly related to vocational or rehabilitative physical therapy, as a result of the crime.
- Requires the court, at sentencing, to inquire of the Commonwealth Attorney whether any financial loss subject to restitution arose from the offense and present evidence of such.

- Requires defendants to begin making payments within 30 days of sentencing while he is free on probation, or with 30 days of his release from confinement.
- Permits the clerk of the court to delegate to another bonded agency the responsibility of receiving restitution payments that are properly payable to the order of the clerk.
- Requires the order of restitution to be docketed and include interest.
- Require the clerk of court receive restitution payments and record such payments in an approved automated system.
- Permits the clerk of the court, if he receives a restitution payment made payable to the order of the victim, to endorse the payment on behalf of the victim and process payment in the same manner as if payable to the clerk of the court, as required.

In addition, this bill would require the order directing restitution to specify that any installment plan entered into by the defendant that becomes delinquent by more than 90 days to be void, and the outstanding balance immediately would become due, and would allow the Tax Commissioner to collect any such outstanding balance. Further, whenever the attorney for the Commonwealth uses the Department of Taxation or contracts with any private attorney or collection agency to collect delinquent court-ordered restitution, in addition to the court-ordered restitution, the fees of such entity or individual would be paid by the defendant.

Suggested Amendment

An amendment is suggested to ensure that it is financially feasible for the Department or private collectors to handle restitution cases. It is customary for fees, usually a percentage, to be deducted from amounts collected. The bill requires the fees to be paid by the defendant, but is unclear as whether the collector may be paid as partial payments are collected or must wait until after the victim has received the full amount of restitution. The amendment requires the fees to be paid by the defendant in accordance with procedures established by the Department and the Compensation Board. One example of how such procedures might work would be to add an amount to the balance owed by the defendant such that when the collector's usual fee is deducted the victim will receive the full amount of restitution ordered. The procedures must also take into consideration the ability of the Supreme Court's automated information system to track the progress as partial payments are made toward restitution.

cc : Secretary of Finance

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