

Department of Planning and Budget 2017 Fiscal Impact Statement

1. Bill Number: SB 1285

| | | | |
|------------------------|--|-------------------------------------|---|
| House of Origin | <input type="checkbox"/> Introduced | <input type="checkbox"/> Substitute | <input checked="" type="checkbox"/> Engrossed |
| Second House | <input checked="" type="checkbox"/> In Committee | <input type="checkbox"/> Substitute | <input type="checkbox"/> Enrolled |

2. Patron: Obenshain

3. Committee: House Courts of Justice

4. Title: Restitution

5. Summary:

Currently, after conviction for a criminal offense, the court may suspend the sentence, in whole or in part, and may place the offender on probation under such conditions the court determines. One of the conditions that may be imposed is the payment of restitution by the offender to any aggrieved parties for damage or loss caused by the offense committed.

The proposed legislation would require that, in convictions for offenses committed on or after July 1, 2017, in which payment of restitution is ordered, the court place the offender on an indefinite term of supervised probation. The legislation includes the following provisions related to the indefinite term of supervised probation:

- The term of indefinite supervised probation cannot exceed the period of sentence suspension imposed by the court;
- If the court did not fix the term of suspension, the term of indefinite supervised probation shall not exceed the maximum period set by statute for which the offender could have been sentenced to incarceration;
- Within the time limits described above, a court may not release an offender from indefinite supervised probation until the clerk of court has verified that all ordered restitution and interest has been paid in full;
- The probation agency assigned to the case shall review the case to ensure that restitution is being paid as ordered;
- If the probation agency finds that the offender has not complied with the restitution order, it or the attorney for the Commonwealth may request that the offender appear in court and, after a hearing, the court shall take any action it warrants necessary to compel compliance;
- The court may increase or decrease the probation period or revoke or modify any condition of probation, after a hearing, within the probation period or within the period of sentence suspension; and
- The offender may file a motion with the court to be removed from a period of indefinite supervised probation.

6. Budget Amendment Necessary: No. See Item 8.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

Expenditure Impact:

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Positions</i> | <i>Fund</i> |
|--------------------|----------------|------------------|-------------|
| | | | |
| 2018 | 0 | 0.0 | General |
| 2019 | 0 | 0.0 | General |
| 2020 | \$116,556 | 2.0 | General |
| 2021 | \$116,556 | 2.0 | General |
| 2022 | \$116,556 | 2.0 | General |
| 2023 | \$116,556 | 2.0 | General |

8. Fiscal Implications:

Department of Corrections

The Department of Corrections (DOC) opens approximately 20,000 new state-responsible probation cases per year. The agency estimates that 15 percent of these cases, or approximately 3,000 offenders, would owe restitution as one of the conditions of their probation.

Because many offenders make their restitution payments on an installment basis, it may take several years for them to fully satisfy their restitution obligations. For many, this will mean they will stay on supervised probation longer than they would have otherwise. Therefore, the number of offenders on supervised probation will likely increase, resulting in the need for additional probation officers, if the current level of supervision is to be maintained.

Currently, using a screening instrument, DOC classifies probationers into three risk groups: High, Medium, and Low. Probationers classified as high and medium risk to public safety are required to have regular face-to-face meetings with their supervising probation officers, as well as participate in various treatment programs. Low risk probationers do not have to meet personally with probation officers; instead, they are required to call in monthly to an automated system or to be available to answer a phone call from the system, which can authenticate their voices and verify their locations. In addition, those calling in are required to answer a series of questions regarding their status. To provide probation officers more time to supervise the high and medium risk probationers, DOC has transferred the supervision responsibility for the low-risk probationers to a unit located in the central office, the Voice Verification Biometrics Unit (VVBV), staffed by probation officers. The agency has contracted with a private company, Shadowtrack, to monitor these probationers and report any violations to DOC.

Those probationers on Shadowtrack monitoring are still subject to the conditions of parole. For example, they are not allowed to leave the state, or, in some cases, the immediate jurisdiction, without permission from their probation officers. Also, they are required to report any change of address and change of job. Also, they may be required to report for random drug tests. The probation officers assigned to the VVBU handle these types of requests and assignments, rather than the probation officers in the “home” district of the probationer. The VVBU probation officers also follow up on any Shadowtrack violations or concerns, such as missed required call-ins.

The average caseload of a probation officer assigned to Shadowtrack cases in the VVBU is 1,500. With an additional 3,000 restitution cases added per year, it is projected that the VVBU will need two additional probation officers, beginning in FY 2020.

The proposed legislation would require the supervising probation agency to review probation cases to ensure that restitution is being paid as ordered. The frequency of review would be up to the court. Currently, that frequency varies greatly. For example, one court requires quarterly reviews, while others require such review only at the end of the ordered supervisory period. It is not possible to project whether the provisions of the proposed legislation would result in courts ordering more frequent review of compliance with restitution orders. If there were a significant increase in the orders for more frequent review, there could be an impact on time that probation officers had to supervise active, more serious cases.

Local Community-based Probation

Offenders convicted of misdemeanors or felonies with a sentence of less than one year and placed on probation are supervised by local community corrections agencies and are considered local-responsible offenders. These agencies serve single or multiple localities and are supported by local appropriations and state grants. The Department of Criminal Justice Services (DCJS) administers the grants and provides technical assistance to the local community corrections offices.

Unlike DOC probation offices, local probation offices do not have different levels of supervision. Each offender on supervision is required to meet once per month with his/her local probation officer. Therefore, keeping offenders on supervised supervision until restitution is paid or the period of sentence suspension is complete could result in an increase in the caseload of local probation officers. DCJS reported that, in FY 2016, approximately 1,000 local probationers were released from supervision while still owing restitution. Because the proposed legislation provides that indefinite supervised probation cannot exceed the period of sentence suspension imposed by the court or the maximum period of imprisonment set by statute for the offense, which for misdemeanors is 12 months in jail, it is assumed that many of those who would be placed on indefinite supervised probation would not spend more than a few additional months on probation than they would have otherwise. Based upon these assumptions, the impact on local corrections cannot be determined at this time.

9. Specific Agency or Political Subdivisions Affected:

Department of Corrections
Department of Criminal Justice Services
Supreme Court
Circuit and general district courts
Circuit and general district court clerks

10. Technical Amendment Necessary: None.

11. Other Comments: The provisions of the proposed legislation would not become effective unless an appropriation effectuating the purposes of the act is included in the 2017 appropriation act.

Date: 2/13/2017