

Department of Planning and Budget 2017 Fiscal Impact Statement

1. Bill Number: SB 1285

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

2. Patron: Obenshain

3. Committee: Passed both houses

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 probation. Under the terms of the legislation, no offender, ordered to pay restitution, may be released from probation until all restitution and interest had been paid in full, unless agreed to by the court, following a hearing. At that hearing, the moving party must establish that it would be “manifest injustice” not to remove the offender from probation.

For an offender whom the court has placed on supervised probation and ordered the probation agency to monitor the offender’s payment of restitution, the legislation would require the probation agency to notify the court and the attorney for the Commonwealth of any restitution that remained unsatisfied, along with the offender’s payment history, 30 days prior to the offender’s release from supervision. Furthermore, if the probation agency requests the court to remove an offender from supervision prior to the completion of the term ordered by the court, it must include the amount of any unpaid restitution and the offender’s payment history in its request.

Finally, for those cases in which restitution had been ordered and the court did not order the probation agency to monitor the offender’s payments, the legislation would require the court, if any restitution remains unsatisfied on the date in which it was scheduled to be paid in full, to schedule a hearing within 90 days for the purpose of reviewing the offender’s noncompliance with the restitution order.

6. Budget Amendment Necessary: None.

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

8. Fiscal Implications:

Department of Corrections

The proposed legislation could have the long-term effect of increasing the caseloads of probation and parole officers of the Department of Correction (DOC), who supervise felony offenders placed on probation. 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. If a substantial portion of these restitution cases are required to stay on probation longer than they would have otherwise, the caseloads could begin to increase.

DOC's system of classifying probationers on the basis of their risk level would enable it to move offenders, on probation solely due to their failure to satisfy restitution, to a status that is not as intensely supervised. However, if courts are more reluctant to release offenders from supervision because of unsatisfied restitution or an offender's failure to comply with his or her payment schedule, caseloads could increase.

The fiscal impact of the proposed legislation would be due to the need to increase the number of probation and parole officers in order to keep the caseloads at a level deemed adequate for public safety. However, because there will be a delay of several months before the first offenders affected by the legislation would be committed to probation and there is uncertainty concerning how the courts will implement its provisions, it cannot be projected to what extent, if any, or when, caseloads will be increased to the point that additional probation and parole officers are needed.

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 probation is required to meet once per month with his/her local probation officer. Therefore, keeping offenders on probation until restitution is paid could result in an increase in the caseloads of local probation officers. DCJS reported that, in FY 2016, approximately 1,000 local probationers were released from supervision while still owing restitution. Depending on the amount of restitution owed and the individual installment payments, some of these offenders could remain on probation for several years under the proposed legislation. As more offenders remained on probation each year due to

failure to satisfy restitution, there could be a cumulative effect and caseloads could become too large to supervise properly. However, there are too many uncertainties involved to be able to project to what extent caseloads might increase, if at all, as a result of the legislation.

The local probation offices are funded from a block grant of state funds administered by DCJS and by local funds. If additional probation officers are needed and the state's appropriation is not increased, the local governments served by the probation offices will need to decide whether to increase their support.

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
Local community corrections district offices

10. Technical Amendment Necessary: None.

11. Other Comments: Identical to HB 1856.

Date: 3/9/2017