

Fiscal Impact Review 2017 General Assembly Session

Date: January 27, 2017

Bill number: SB 1285: Restitution; supervised probation

Review requested by: Chairman Obenshain, Senate Courts of Justice

JLARC Staff Fiscal Estimates

JLARC staff concur with the fiscal impact statement for SB 1285 that the fiscal impact would be relatively modest in FY18 and FY19, but believe that the fiscal impact in later years could be larger than estimated in the fiscal impact statement. SB 1285 would mandate indefinite supervised probation for all defendants with a restitution order, and keep a defendant on supervised probation until restitution is paid in full. The bill would substantially increase the length of time defendants with restitution orders are on probation, and would require probation agencies to monitor restitution for every case at least twice annually. A proposed substitute for an identical bill in the House (HB 1856) would reduce the fiscal impact substantially by eliminating the twice-annual monitoring requirement and the requirement that probation be supervised.

An explanation of the JLARC staff review is included on the pages that follow.

Authorized for release:



Hal E. Greer, Director

Bill summary: SB 1285 would require that, if restitution is ordered at the time of sentencing, the court place defendants on an indefinite term of supervised probation until all restitution is paid in full. The bill also requires probation agencies to monitor cases at least twice a year to ensure that restitution is being paid. A court can grant a defendant's request to be removed from supervision for good cause, after providing notice to the victim. The term of supervised probation would not exceed the period of a suspended sentence fixed by the court, or if no period of suspension was fixed, the maximum period for which the defendant might originally have been sentenced. This bill would apply to offenses occurring on or after July 1, 2017.

A proposed substitute for an identical bill in the House removes the twice-annual monitoring requirement and the requirement that probation be supervised. The substitute also removes the provision that probation not exceed the period of the suspended sentence or the maximum sentence. The substitute sets a higher standard for courts to release defendants from indefinite probation.

Discussion of fiscal implications:

The Code of Virginia currently authorizes courts to require a defendant "to make at least partial restitution ... for damages or loss caused by the offense for which convicted" (§ 19.2-303 A). Most non-incarcerated defendants with restitution orders are on supervised probation but may be released from probation without making full restitution. Current law does not specifically require probation agencies to monitor restitution. In most cases, defendants are on probation for reasons other than required restitution.

SB 1285 would mandate indefinite supervised probation for every defendant with a restitution order, and require defendants to remain on probation until they pay the full amount of restitution. Because many defendants do not pay full restitution and pay restitution over a number of years, the bill would lengthen supervised probation for some defendants.

State offenders with restitution orders

The fiscal impact of SB 1285 depends mainly on the increase in workload for probation agencies from: (1) the monitoring requirement and (2) the additional length of time under supervision. Department of Corrections staff estimate that about 3,000 state-responsible offenders enter probation with a restitution order each year. If, for example, those individuals spend an average of 36 months on probation under current law (as indicated by the Department of Corrections), and 48 months under the proposed

legislation, then the average monthly number of offenders on probation with a restitution order would increase from 9,000 to 12,000 approximately four years after the bill is implemented.

The cost of twice-yearly monitoring. If a probation agency requires two hours to monitor restitution for a case annually, at least six additional FTEs would be needed to fulfill the monitoring requirements by FY21. Assuming an average cost for a new probation officer of \$50,000, the additional annual cost due to the monitoring requirement would be about \$300,000 by FY21. The estimated cost in earlier years would be lower, because the bill applies to offenses occurring on or after July 1, 2017, and it will take several years for cases to make their way through the court system.

The cost of increased caseload. Because the increased time under supervision would increase the monthly average number of cases under supervision, probation workloads would increase even without the monitoring requirement. Department of Corrections proposes supervising restitution orders using a low-cost, largely automated system. Based on an enrollment cost of \$3 per offender and a monthly cost of \$1 per offender, the estimated cost of an additional 3,000 cases under supervision would be \$45,000 annually. If the first offenders affected by the bill enter supervision in FY19, the additional automated supervision costs would not begin to accrue until FY22, when offenders enter their fourth year of supervision, which would be the added length of supervision under the bill.

As indicated in the fiscal impact statement from Department of Planning and Budget, there would be some implementation costs to adapting the automated system for offenders with restitution requirements. Department of Corrections has estimated this cost as \$110,000, to be incurred in FY18.

Local offenders with restitution orders

For local offenders, the per person impact would potentially be larger, because local probation offices do not have an automated system for supervision. Local probation officers are required to contact offenders on probation at least once per month. Although the average length of supervision is shorter for local offenders than for state offenders, the relative increase in caseloads could be larger. According to the Department of Criminal Justice Services, local offenders released from supervision in FY16 with unpaid restitution had been on probation for approximately 12 months. If the average time increased to 18 months, the caseload would increase by 50 percent. Assuming the average number of local offenders on probation with restitution orders increased from 1,000 to 1,500, approximately five additional FTEs would be needed, or

roughly \$250,000 per year. (According to the Department of Criminal Justice Services, approximately 1,000 local offenders were released from supervision in FY16 and still owed restitution.)

The additional costs would begin to accrue more quickly for local offenders because the average length of time on probation is shorter.

State grants are the main source of funds for local probation and parole. Although the grant amount would not automatically increase, a greater workload would create pressure to increase state funding for local probation and parole offices.

Fiscal impact for SB 1285 as introduced

The full fiscal impact of SB 1285 would not occur until FY22.

EXAMPLE: Fiscal impact of SB 1285 as introduced, assuming a 33 percent increase in state probation caseloads and a 50 percent increase in local probation caseloads

Fiscal year	Cost for state offenders	Cost for local offenders	Total cost
2018	\$110,000	\$0	\$110,000
2019	\$50,000	\$50,000	\$100,000
2020	\$150,000	\$100,000	\$250,000
2021	\$250,000	\$175,000	\$425,000
2022	\$350,000	\$250,000	\$600,000
2023	\$350,000	\$250,000	\$600,000

These estimates are based on assumptions whose accuracy is unknown. In particular, there is no reliable way to estimate the additional average number of months of supervision that the bill would cause. Data from the Department of Criminal Justice Services indicate that local offenders with restitution orders paid an average of 15 percent of their full restitution amount after a year on probation, which suggests that a substantial extension of probation might be needed for full restitution. Comparable data from the Department of Corrections were not available.

The substitute bill

An identical version of SB 1285 was introduced in the House (HB 1856). A proposed substitute version of HB 1856 significantly streamlines the introduced bill. The substitute would

- remove the requirement that probation agencies monitor restitution at least twice per year;
- remove the requirement that probation be supervised;
- remove limits on the length of probation; and
- increase the standard for courts to grant a release from probation from “good cause” to “manifest injustice.”

Eliminating the twice-annual monitoring requirement removes most of the fiscal impact. Allowing unsupervised probation, instead of requiring supervised probation, further reduces the fiscal impact. Courts would still have the option to impose supervised probation until restitution is fully paid.

By establishing a higher standard for release from indefinite probation, the substitute bill would reduce the number of offenders released from probation, which would increase fiscal impact, other things being equal.

Overall, the substitute bill would substantially reduce the fiscal impact of the introduced bill.

Budget amendment necessary? For SB 1285 as introduced, a budget amendment may be needed to enable the Department of Corrections to adapt their automated system to track restitution in FY18. A larger fiscal impact is expected beginning in FY20. The proposed substitute bill would not require a budget amendment.

Agencies affected: Department of Corrections, Department of Criminal Justice Services

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