

## **Department of Planning and Budget**

### **2018 Fiscal Impact Statement**

**1. Bill Number: SB 994**

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input 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. Circuit and district court clerks are required to submit quarterly to the attorney for the Commonwealth and any probation agency that serves the courts for the county and city a list of offenders with an outstanding balance of restitution, showing the total amount of restitution ordered, amount remaining due, and the last date of payment.

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 proposed legislation would require the probation agency to notify the court and the attorney for the Commonwealth of any restitution that remained unsatisfied 60 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 in its request. If any such offender has not fully satisfied his/her restitution requirements, the court would be required to hold a hearing prior to the offender's release from supervision. If the court finds the offender is not in compliance with the restitution order, it would have the discretion it now has: (i) release the defendant from supervision, (ii) modify the period or terms of supervision, or (iii) revoke some of all of the suspended sentence or probation period. However, the proposed legislation would require the court to docket the restitution order as a civil judgment.

In a situation in which a court has ordered the payment of restitution and no probation agency has been ordered to monitor the offender's payment, the court would be required to set a hearing within two years to review compliance with the restitution order. If the court finds the offender not in compliance with the restitution order it would have the discretion it now has: (i) modify the period or terms of probation, or (ii) revoke some of all of the suspended sentence or probation period. However, the proposed legislation would require the court to docket the restitution order as a civil judgment.

If any amount of restitution remains unsatisfied at the time of the initial hearings, the court shall continue to schedule hearings to review compliance with the restitution order until the amount of restitution has been satisfied, ten years have elapsed from the date of the initial hearing, or the period of probation ordered by the court has expired, whichever is longer. However, the court, on its own motion, may cancel any such hearing if the offender is in compliance with the restitution order on the date of the hearing. At the conclusion of any hearing in which the court found the offender not in compliance with the restitution order, it could (i) modify the period or terms of probation, or (ii) revoke some or all of the suspended sentence or probation period.

The legislation also would provide an additional option for courts to use its restitution status hearings. If a court found that an offender was not in compliance with a restitution order, it could order him/her confined for contempt for up to 60 days unless the defendant was able to show that:

- The default was not attributable to an intentional refusal to obey the order;
- The default was not attributable to a failure to make a good faith effort to obtain the necessary funds; or
- Any failure to appear was not attributable to an intentional refusal to obey the order of the court.

Finally, the proposed legislation would require local and state probation officers to monitor the collection and payment of restitution by offenders placed on probation supervision.

**6. Budget Amendment Necessary:** None.

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

**8. Fiscal Implications:**

Because the court clerks are currently required to keep probation agencies apprised of the status of a probationer's restitution status, it is not expected that this legislation would have a material fiscal impact on state or local probation agencies.

Due to the legislation's requirement that courts hold hearings during the term of an offender's probation to review compliance with restitution orders, there may be an impact on the courts. However, it is not possible to project the size of that impact.

**9. Specific Agency or Political Subdivisions Affected:**

Department of Corrections  
Local probation offices  
Circuit and district courts

**10. Technical Amendment Necessary:** Identical to HB 484.

**11. Other Comments:** None.