

Department of Planning and Budget 2017 Fiscal Impact Statement

1. Bill Number: SB 1285

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Obenshain

3. Committee: Senate 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 at least twice annually 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: Yes.

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	\$110,000	0.0	General
2019	\$28,500	0.0	General
2020	\$181,056	2.0	General
2021	\$207,306	2.0	General
2022	\$215,556	2.0	General
2023	\$215,556	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. To monitor the compliance with restitution orders of this group as efficiently as possible, the agency has indicated that it would automate the process.

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 VVBV 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.

To monitor compliance with restitution orders as required by the legislation, DOC would assign ShadowTrack and VVBU the responsibility for doing that for all offenders with restitution requirements, including those classified as high and medium security. For offenders on high and medium security, the probation officers in VVBU would be responsible for monitoring only compliance with restitution orders; other supervision responsibilities would remain with the probation officers in the “home” probation district office. ShadowTrack and VVBU could produce monthly reports of offenders who were not in compliance with restitution orders and forward those to the district probation offices, which would notify the attorney for the Commonwealth.

For this automated monitoring system to be successful, two components need to be in place. First, the restitution orders must be available in an electronic format and clerks would need to report restitution payments in a consistent manner. Otherwise, the probation officers assigned to supervise offenders with restitution orders will need to spend time checking with clerks regarding compliance with those orders. Secondly, ShadowTrack must be allowed to access the Court Automated Information System (CAIS) Financial Management System, maintained by the Supreme Court. The fiscal impact projections set out in this statement are based on the assumption that these conditions will exist.

The start-up costs of programming ShadowTrack and establishing the interface/integration with CORIS (DOC’s offender information system) and CAIS would be approximately \$110,000. That would be accomplished in the first year (FY 2018), if this legislation were adopted.

For operating the system, ShadowTrack charges a one-time enrollment fee of \$3.00 per offender and then a \$1.00 per month fee per offender for monitoring and reporting. Because the proposed legislation would be applicable only for offenders convicted for offenses committed after July 1, 2017, and considerable time elapses between the commission of an offense, the apprehension of the offender, the offender’s trial, and the offender’s sentencing, it is assumed that probation cases under the proposed legislation would not be opened until after July 2018 (FY 2019). Based on DOC’s projection of 3,000 restitution cases per year, opened at a rate of 250 per month, the one-time start-up fee would be \$9,000 and the total monitoring and reporting fee costs would be \$19,500, for a total annual cost of \$28,500. Using the same assumptions for the following year, the total cost would be \$64,500. Assuming that, beginning with the next year, one-half of the cases opened two years previously would have fully paid their restitution, the cost that year would be \$90,750, and would stabilize at \$99,000 per year after that.

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, there will be a need for additional probation officers for the VVBU. However, it is assumed that only a third of those new cases would be low security, needing the full attention of the VVBU probation officers. The remaining two-thirds would be high or medium security probationers for which

ShadowTrack would monitor only restitution compliance. Other supervision responsibilities would remain with the probation officers in the “home” probation district office. Although the VVBU would not need additional probation officers upon the immediate implementation of the proposed legislation, it is projected that the additional low security level caseload assigned to the VVBU would increase to the point that the unit would need two additional probation officers, beginning in FY 2020.

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: Identical to HB 1856.

Date: 1/23/2017