

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** House Bill 240

**SHORT TITLE:** Victim's Rights Amendment

**SPONSOR(S):** Representative Edd Nye

**FISCAL IMPACT:**    **Expenditures:**    **Increase (x)**        **Decrease ( )**  
                  **Revenues:**        **Increase ( )**        **Decrease ( )**  
                  **No Impact ( )**  
                  **No Estimate Available ( )**

**FUND AFFECTED:**    **General Fund (x)**    **Highway Fund ( )**    **Local Fund (x)**  
                          **Other Fund ( )**

**BILL SUMMARY:** Adds new Section 37, Article 1 to Constitution to list certain rights held by crime victims or their lawful representative (including the next of kin in the case of homicide). Section 37(1) includes the right (a) to be treated with fairness and respect during criminal justice process; (b) to be protected from accused or those acting on accused's behalf during the process; (c) to be informed about how the criminal justice system works, the rights of victims, and the availability of services; (d) to be notified of court proceedings and the pretrial release of the accused; (e) to attend trial and other court proceedings, unless there is a judicial determination to restrict victim's attendance; (f) to make a sworn statement to the court, either orally or in writing, in person or through counsel, at time of sentencing prior to the adjudication of the sentence; (g) to receive restitution as condition of accused's sentence; (h) to be informed about the conviction or final disposition and accused's sentence; (i) to be informed of the accused's escape, release, proposed parole or pardon, or reprieve or commutation of sentence; (j) to present views to the Governor or agency considering action that could result in release of the accused; and (k) to confer with a representative of the prosecution. Section 37(2) authorizes the General Assembly to provide by law for the enforcement of these rights and to provide that portion of the court costs assessed against convicted defendants to be used to provide compensation to victims. Also disclaims any further cause of action against state and local governments or their agents or employees, any right to contest disposition of any charge, or a right to court-appointed counsel to enforce these rights. Section 37(3) prohibits defendant or inmate from using failure of government to protect victim or provide victim a service as a ground for legal relief. Directs that constitutional amendment be submitted to voters at election to be held on November 8, 1994, and if approved, to become effective upon certification by State Board of Elections.

**EFFECTIVE DATE:** Upon certification of Board of Elections following the election held on November 8, 1994.

**PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED:** Administrative Office of the Courts; Department of Correction/Parole Commission; and Governor's Office.

**FISCAL IMPACT**

	<u>Alternative 1</u> (with controlled substance cases)	<u>Alternative 2</u> (without controlled substance cases)
--	--	---

Expenditures are expressed on a range depending upon postal rates for notices.

**EXPENDITURES**

<b>TOTAL EXPENDITURES</b>	\$11,703,539 <u>\$17,788,719</u>	\$10,626,071 <u>\$16,307,492</u>
<b>STATE FUNDS</b>	\$11,703,539 <u>\$17,788,719</u>	\$10,626,071 <u>\$16,307,492</u>
<b>FEDERAL FUNDS</b>	-0-	-0-
<b>LOCAL FUNDS</b>	-0-	-0-
<b>OTHER FUNDS</b>	-0-	-0-
<b>RECEIPTS/FEES</b>	-0-	-0-
<b>POSITIONS:</b>	252	231

The estimate of expenditures affects the following provisions: (c) development and distribution of an information booklet for victims, additional Victim Witness Assistant positions, and notification costs; (d) personnel and notification costs related to court proceedings and pre-trial release; (f) the opportunity for victims to provide a sworn statement at the time of sentencing; (h) notification costs related to informing victims about conviction or final disposition and sentencing; and (i) notification costs related to an escape, release, proposed parole, pardon of the accused, or reprieve/commutation of sentence. Estimated expenditure for provision (h) reflects cost of notification only, as personnel projected for provision (d) may be able to handle notification requirements of (h). If additional positions are necessary to meet the requirements of provision (h) the estimated increase for Alternative 1 is \$610,624 and 28 positions, and for Alternative 2 \$567,008 and 26 positions.

**ASSUMPTIONS AND METHODOLOGY:** The Fair Treatment for Victims and Witnesses Act, Article 45 of Chapter 15A, provides that to the extent reasonably possible and subject to available resources, employees of law enforcement agencies, the prosecutorial system, the judicial system, and the correctional system should make a reasonable effort to ensure that each victim and witness within their jurisdiction is fairly treated. The statute lists 16 specific obligations to victims and witnesses. Pursuant to G.S. 15A-826, victim and witness assistants (VWAs) are responsible for coordinating efforts within the law enforcement and judicial systems to ensure treatment in accordance with the Article.

The extent to which the provisions of House Bill 240 would impact the court system will depend a great deal on the definition of "crime" and the designation of crime victims to which it will apply. According to

the to the legislation, rights would be established for "crime victims or lawful representatives, including next of kin in the case of homicide." An expansive definition of crime victims would include persons (and their families) against whom there is probable cause to believe a crime has been committed, with "crime" being defined as any criminal violation of law. Alternatively, crime might be construed in other ways, such as offenses involving the element of violence, or, as defined in the current Fair Treatment to Victims and Witnesses Act, as "a serious misdemeanor as determined in the sole discretion of the district attorney, and felony, or any act committed by a juvenile that, if committed by a competent adult, would constitute a felony" [G.S. 15A-824(1)].

The customary approach to fiscal analysis of legislation that proposes a referendum is to determine the cost, if any, associated with holding the election. Because the legislation designates consideration of the referendum in November, 1994 when statewide elections are scheduled, the cost related to placing this item on the ballot is negligible. The fiscal analysis presents an estimate of the provisions that are specific to amending the State Constitution to include rights of victims of crime.

In the absence of enabling legislation, references such as victim, crime, lawful representative, and witness have not been defined. If the legislation is ratified and the referendum is approved by the citizens of North Carolina in November, 1994, the General Assembly would consider passage of enabling legislation at the next scheduled Session in 1995. It is unclear from the amendment which crimes would be considered victimless. For felony controlled substance cases, for example, it could be said that there are no direct, identifiable victims in such cases. However, a more expansive definition might identify the person to whom drugs were sold or the drug user's family members as victims.

This fiscal note presents estimates for alternatives based on two possible interpretations of what crimes the legislation is intended to cover. Each alternative excludes most criminal motor vehicle cases, except for those likely to involve a victim. DWIs are excluded throughout. Even though some DWI cases involve a victim, these incidents are included in the category of other offenses charged at the same time. The first alternative includes controlled substance cases that generally do not have identifiable victims. Cases included in each alternative are as follows:

Alternative 1 (Includes controlled substance cases):

- (a) all felonies in superior court
- (b) all misdemeanors in superior court, except DWI appeals and other motor vehicle appeals
- (c) district court criminal motor vehicle cases that involve the offenses of death by vehicle, hit/run, leaving the scene of an accident, failing to report an accident, possessing a stolen vehicle, and tampering with a vehicle
- (d) all district court criminal non-motor vehicle cases, except probable cause matters that transfer to superior court (as they are already included in the superior court figures)

Alternative 2 (Does not include controlled substance cases):

- (a) all felonies in superior court except controlled substance cases
- (b) all misdemeanors in superior court, except DWI appeals, other motor vehicle appeals, and controlled substance appeals
- (c) district court criminal motor vehicle case that involve the offenses of death by vehicle, hit/run, leaving the scene of an accident, failing to report an accident, possessing a stolen vehicle, and tampering with a vehicle
- (d) all district court criminal non-motor vehicle case, except probable cause matters that transfer to superior court and controlled substance cases

An estimate for each provision has been addressed in the accompanying chart (Attachment 1) a detailed analysis of each provision is provided in Attachment 2 which is available with the original fiscal note on file in the Fiscal Research Division.

For both alternatives formulas were employed to calculate estimates for personnel and notification costs:

- 1. Personnel - (# cases x # minutes per case/60 min.)/2,000 hours of work per year.
- 2. Forms - # cases x \$.43 per form
- 3. Postage - # cases x \$.22 presorted rate  
# cases x \$2.22 certified return receipt rate
- 4. Letters - # cases x \$.05 per envelope

**SOURCES OF DATA:** Administrative Office of the Courts; Department of Correction/Parole Commission; and Governor's Office

**TECHNICAL CONSIDERATIONS:**

**FISCAL RESEARCH DIVISION**

733-4910

**PREPARED BY:** Michele T. Nelson

**APPROVED BY:** Tom Covington TomC

**DATE:**

Attachment 1  
Fiscal Note  
House Bill 240

Provision

Alternative 1  
(with controlled  
substance cases)

Alternative 2  
(without controlled  
substance cases)

(c)(1)  
Booklet  
Development

\$2,500

\$2,500

**(c)(2)**

Booklet

Distribution:

Superior Court	\$22,726	\$16,880
District Court	\$113,198	\$109,169

**(c)(3)**

Superior Court Positions	\$397,012 (14)	\$311,938 (11)
-----------------------------	-------------------	-------------------

Notification	\$13,636	\$10,128
--------------	----------	----------

District Court Positions	\$2,013,418 (71)	\$1,928,344 (68)
-----------------------------	---------------------	---------------------

Notification	\$67,919	\$65,501
--------------	----------	----------

**(d)(1)**

Superior Court Positions	\$741,472 (34)	\$545,200 (25)
-----------------------------	-------------------	-------------------

Notification and Postage: Presorted Rate	\$477,255	\$354,493
--	-----------	-----------

Certified Return Receipt Rate	\$1,840,839	\$1,367,329
----------------------------------	-------------	-------------

District Court Positions	\$2,268,034 (104)	\$2,180,800 (100)
-----------------------------	----------------------	----------------------

Notification and Postage: Presorted Rate	\$1,449,914	\$1,393,503
--	-------------	-------------

Certified Return Receipt Rate	\$5,592,526	\$5,374,939
----------------------------------	-------------	-------------

**Attachment 1  
Fiscal Note  
House Bill 240**

**Provision**

**Alternative 1  
(with controlled  
substance cases)**

**Alternative 2  
(without controlled  
substance cases)**

**(d)(2)(a)**

Superior Court Positions	\$89,580 (4)	\$67,185 (3)
-----------------------------	-----------------	-----------------

Notification and Postage: Presorted Rate	\$29,719	\$23,082
--	----------	----------

Certified Return	\$114,629	\$89,030
------------------	-----------	----------

Receipt Rate		
District Court Positions	\$559,875 (25)	\$537,480 (24)
Notification and Postage: Presorted Rate	\$212,431	\$203,968
Certified Return Receipt Rate	\$819,373	\$786,734
<b>(h)*</b>		
Superior Court Notification and Postage: Presorted Rate	\$162,237	\$123,140
Certified Return Receipt Rate	\$589,177	\$447,192
District Court Notification and Postage: Presorted Rate	\$854,385	\$832,546
Certified Return Receipt Rate	\$3,102,765	\$3,023,458

\*Cost of notification only for provision (h), as personnel for (d)(1) may be able to handle notification requirements of provision (h).

**Attachment 1  
Fiscal Note  
House Bill 240**

<u>Provision</u>	<u>Alternative 1</u> (with controlled substance cases)	<u>Alternative 2</u> (without controlled substance cases)
<b>(f)</b>		
Court Days:		
Superior Court	\$141,381	\$106,765
District Court	\$324,556	\$311,409
<b>(i)(3)</b>		
Parole Commission Notification Costs	<u>\$1,953,504</u>	<u>\$1,646,008</u>
<b>Total Expenditures</b>		
Personnel Rate	\$11,894,752	\$10,770,039
Certified Return Receipt Rate	\$20,768,120	\$18,927,989
Total Positions	252	231
Positions, Notification and		

Postage

Presorted Rate	\$11,894,752	\$10,770,039
<b>Certified Return</b>	<u>\$20,768,120</u>	<u>\$18,927,989</u>
<b>Receipt Rate</b>		
<b>Total Positions</b>	<b>252</b>	<b>231</b>

If additional positions are necessary in the Clerks of Court Offices to comply with provision (h), an estimate of position costs for both alternatives is offered below:

(h)

Positions:

Superior Court	\$87,232 (4)	\$65,424 (3)
District Court	\$523,392 (24)	\$501,584 (23)

Revised

Total Expenditures  
and Positions,  
Notification,  
and Postage

Presorted Rate	\$12,505,376	\$11,336,947
Certified Return		
Receipt Rate	\$21,378,744	\$19,494,997
	280	257



**Signed Copy Located in the NCGA Principal Clerk's Offices**