



BILL NUMBER: Bill Draft 2017-MS-28 [v.4]
SHORT TITLE: Change to Victim Rights Act
SPONSOR(S):
FISCAL IMPACT: Yes; partial costs estimated

SUMMARY OF COST: Estimated costs to the courts of \$16.4 million in FY 2018-19 and \$30.5 million annually in subsequent years for additional district attorney staff; other costs of implementation to the courts are unable to be estimated.

BILL SUMMARY: Section 1 of this bill amends Section 37 of Article I of the North Carolina Constitution by expanding the current Victim Rights Act-applicable cases to cases involving juvenile offenders, as well as all other criminal offenders, both felony and misdemeanor, in which there is a victim. Currently, the Victim Rights Act applies to certain classes of felony offenses or specific crimes, and certain domestic violence misdemeanor offenses.

In addition to increasing the number of potential cases in which the Victim Rights Act is applicable, several existing victim rights are expanded. The existing phrase "as prescribed by law" is stricken in all instances throughout the section.

The bill draft creates four new rights (subsections (1)(i), (j), (k), and (l)). In addition, it creates new (1a) which allows victims to assert and seek enforcement of their rights in any trial or appellate court, or before any other authority with jurisdiction over the case. New (1b) defines the term "victim" for the section.

Sections 2 and 3 of the bill provide the language and lays out the process for the amendment to be proposed to the voters during the general election of November 2018.

ANALYSIS: Currently, the Victim Rights Act applies to certain classes of felony offenses or specific crimes, and certain domestic violence misdemeanor offenses. District Attorney staff provides notice to these victims of certain court proceedings of the accused and informs victims of their right to be heard at sentencing. Under this bill, amended subsections (1)(a) and (b) would expand this pool of victims to cases involving juvenile offenders, as well as all other criminal cases, both felony and misdemeanor, during the trial and appeal process, in which there is a victim.

Amended subsection (1)(b) also expands the court events at which a victim may be heard from only sentencing, to include disposition and "any proceeding involving release, plea, parole, and during which a right of the victim is implicated." A broad reading of this amended victim right could include: hearings on motions to modify fines/fees/court costs/restitution, continuances and calendaring, probation violations, and other motions for appropriate relief, for example.

The current rules and procedures of the appellate courts do not allow for victim statements during oral arguments, nor cross-examination by the defendant because the submission of new evidence is precluded at the appellate level. In addition to creating new rules and procedures for sending notices of court events, allowing victim statements, and other rights, the submission of new evidence not previously included in the trial transcript may cause the appellate courts to become courts of record, a fundamental shift in their role within the current judicial structure.

By inserting “fully and timely” into the right to receive restitution in subsection (c), there will need to be a conforming change to N.C.G.S. 15A-1340.36(a) which provides a process for the court to order partial restitution. It is not clear if the change proposed in this bill would now allow for the docketing of civil judgements for criminal restitution for all cases (currently, this is only allowed for the narrow band of cases that apply to the existing Victim Rights Act).

The operational meaning of new subsections (1)(i) and (k), which provide the right “to reasonable protection” and “to be treated with fairness and respect for the victim’s dignity and privacy,” respectively, are not clear.

New subsection (1)(j), which provides the right to “proceedings free from unreasonable delay and a prompt conclusion of the case” is similarly vague. A narrow interpretation of this wording may run afoul of the fifth and sixth amendments of the United States Constitution. In the absence of further direction, the enforcement of this right, if challenged, may fall to the discretion of a superior court judge, or other authority with jurisdiction over the case. Likewise with new subsection (1)(l), which provides a victim the right to “refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused” – the exercise of this victim right on a discovery request by the accused could be challenged under the United States Constitution.

New (1a) allows victims to assert and seek enforcement of their rights in any trial or appellate court, or before any other authority with jurisdiction over the case. This may result in an increase in petitions for injunctive relief filed in superior court. The new section provides for “the victim, the victim’s attorney or other lawful representative, or the attorney for the government” may seek to have the right in question enforced. It is not clear what is meant by “the attorney for the government” – it may be the district attorney, or it may refer to state-appointed counsel for indigent individuals, which is likely to have an impact on the Office of Indigent Defense Services.

Since these cases will be heard in superior court there will be workload impact for deputy clerk, superior court judge, and court reporter positions, for an estimated cost of \$1,042. If, for instance, ten of these cases were filed in the average year the cost to the court system would be \$10,420 annually.

Each petition for relief would be accompanied with a \$200 civil superior court filing fee. From this fee, the General Fund receives \$179.40 per case. The table below contains detail on this fee.

New Superior Court Civil Filings		
Fee:	Revenue to:	Amount per case:
General Court of Justice	General Fund	177.55
	State Bar*	2.45
Telecommunications and Data Connectivity Fee	Court System	4.00
Facilities	Local Government*	16.00
Collection Assistance Fee	General Fund*	*
TOTAL		\$200.00

*Ten percent (10%) of the State Bar and Facilities fee is remitted to the General Fund as a collection assistance fee.

In addition, there is a \$30.00 service fee for each item of civil process served by the sheriff. Ten percent (\$3.00) of this fee is remitted to the General Fund as part of the collection assistance fee.

Because of indigency cases, it is reasonable to assume that less than 100% of the applicable fees will be collected. There is no available data to estimate the percentage of cases that will be considered indigent for purposes of fee collection.

Because the direction "as prescribed by law" is stricken in all instances throughout the amended Section 37 of Article I, it is not clear which entity would be required to handle and coordinate access to the enumerated rights (including the initial and continued notification of an expanded list of court events to this expanded pool of victims). By disallowing statutes to set forth requirements and guidelines to govern actions and requirements of government and law enforcement agencies it also fails to provide guidelines and rules regarding the actions and requests of the victim. For instance, in subsection (1)(h) which allows the victim to confer with the prosecution, in the absence of law prescribing this activity, can the victim exercise his right and request to speak with the district attorney in the middle of the state's closing arguments in the case? It is not clear which duties will fall to the court system versus other agencies and thus it is not possible to provide a comprehensive estimate of the full implications of this bill on the Judicial Branch.

When asked to provide an impact estimate to this draft bill, the Conference of District Attorneys reports that increases to a prosecutor's discovery obligations in 2004 detracted greatly from services provided to victims by District Attorneys. AOC workload tables currently indicate District Attorneys are already understaffed by a minimum of 60 prosecutors and 50 district attorney legal assistants. The proposed legislation would significantly expand the amount of cases in which District Attorneys are required to provide victim services. This legislation would result in more crimes, more victims, more time, and require quicker results. District Attorneys conservatively estimate that the proposed constitutional amendment would require a 30% increase in prosecutors and district attorney legal assistant staff, which equates to \$16,430,045 in partial year salaries and non-recurring costs for the first year and \$30,454,673 recurring costs for each subsequent year.

The National Center for State Courts has developed workload standards for North Carolina's court personnel after extensive studies. Based on workload formulas calculated from filings through June 30, 2016, and projected through FY 2017-18, the court system has shortages statewide for the following major groups of court personnel:

	<u>Full Time Equivalent Positions</u>
District Court Judges:	9
Deputy and Assistant Clerks:	147
Assistant District Attorneys:	74
Other District Attorney office staff:	72
Judicial support staff:	24
Magistrates:	60

Therefore, any increase in workload could not be absorbed by existing staff.

Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

TECHNICAL CONSIDERATIONS: Page 2, line 8: it appears that the word "against" is omitted between the words "person" and "whom."

Page 2, lines 26 and 27: the phrasing reads awkwardly and may be missing some commas/other punctuation.

Page 2, lines 8 through 11: the provided definition of "victim" that is to be used in this section uses the word "person" in its definition. G.S. 12-3(6) states that "person" shall extend and be applied to "bodies politic and corporate, as well as to individuals, unless the context clearly shows to the contrary." In the context of this bill draft, a victim may be argued to include companies and corporations which property and other crimes are committed against.

Page 2, line 9: it is not clear the intent of the phrase "directly and proximately harmed" in the context of this bill draft. It may be argued that certain property crimes may have multiple proximate victims. For example, defacing the private property of a subdivision common area may be thought to impact property values of all of the homeowners in the subdivision.

DATA SOURCES & ASSUMPTIONS: Costs to process cases are based on current practices and resource constraints, not on objective best practices for case disposition. The workload averages used to calculate the monetary value of court personnel resources include all modes of disposition (trials, pleas, dismissals, etc.) at their current proportions for each offense, offense class, or case type. For most bills, the analysis assumes that new or elevated cases will be handled by existing personnel. However, based on workload formulas, the courts are currently in need of additional positions to process the existing caseload in a timely manner. Therefore, any additional workload will require new positions or will further delay the disposition of cases.

There are substantial variances in the resources required to process different types of cases within each offense class; therefore offense class time and cost estimates provide only a

general guide to the magnitude of the impact of an increase in the offense class for a particular crime or the creation of a new criminal offense.

Data sources include Administrative Office of the Courts FY 2017-18 position costs, and survey, interview, and workload data, including the results of workload studies by the National Center for State Courts. All cost estimates provided in this analysis are shown without an inflation factor and do not include expenses incurred by the Office of Indigent Defense Services.