

**1997 NORTH CAROLINA GENERAL ASSEMBLY
FISCAL NOTE**

BILL NUMBER: Senate Bill 763 Second Edition
SHORT TITLE: Crime Victims' Rights Act
SPONSOR(S): Senator Roy Cooper

<u>Summary of Fiscal Impact of SB 763 - Crime Victims Rights Act *</u>					
<u>EXPENDITURES</u>	<u>1998-99*</u>	<u>1999-00*</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
1. Judicial Department (Court System) (92 = 51 VWA's, 18 assistant DA's, 11 clerks, 6 superior court judges, and 6 court reporters)	\$1,587,126 (29)	\$5,386,699 (92)	\$5,293,407 (92)	\$5,452,199 (92)	\$5,615,774 (92)
2. Department of Correction (Probation and Parole; Prisons; Parole Commission)	\$0	\$388,806 (5)	\$198,551 (5)	\$206,370 (5)	\$214,385 (5)
3. Department of Justice (Attorney General)	\$0	\$35,133 (1)	\$35,980 (1)	\$37,060 (1)	\$38,173 (1)
4. Office of the Governor			No Fiscal Impact		
5. Local Law Enforcement	\$0	\$962,307 (28)	\$991,177 (28)	\$1,020,911 (28)	\$1,051,545 (28)
6. Dom.. Violence Misdemeanors (all agencies in 1-5 above) (40 = 14 VWA's, 4 ADA's, 2 clerks, 1 judge, 2 DOC personnel, and 17 local law enforcement positions)	\$157,688 (4)	\$1,771,410 (40)	\$1,788,813 (40)	\$1,842,581 (40)	\$1,898,067 (40)
7. Victims Compensation Fund (Increase Limits)			Can Be Absorbed Within Existing Fund		
TOTAL	\$1,744,814 (33)	\$8,544,355 (166)	\$8,307,928 (166)	\$8,559,121 (166)	\$8,817,944 (166)
Revenues**	(\$565,794)	(\$969,933)	(\$969,933)	(\$969,933)	(\$969,933)
*Assumes December 1, 1998 and July 1, 1999 effective dates for substantive portion of bill; 1998-99 costs (12/1/98) are for additional courtroom and administrative time for handling expanded restitution requirements and for new requirement allowing use of victim impact as evidence.					
**No net loss; revenue will be shifted from state and local funds to victims since bill makes restitution first priority in disbursement of funds in criminal cases.					

NOTE: 3% inflation estimates added for fiscal years 1999-2000 and beyond.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Department; Department of Correction (Division of Prisons; Division of Adult Probation and Parole; Parole and Post-Release Supervision Commission); Department of Justice; Office of the Governor; law enforcement agencies; Department of Crime Control and Public Safety

BILL SUMMARY:

Senate Bill 763 would prescribe by law the rights of victims of crimes as provided for under Section 37 of Article I of the North Carolina Constitution as approved by the voters November 5, 1996.

The bill creates two different levels of services for victims by prescribing certain mandatory services for victims of the more serious offenses, and services within the discretion of the district attorney within available resources for victims of less serious offenses. The bill also defines restitution that maybe ordered as a form of punishment in any criminal case, as is now permitted under Section 1 of Article XI of the North Carolina Constitution as amended by the voters also on November 5, 1996.

Section 1 creates a new subchapter in Chapter 15A entitled "Rights of Crime Victims and Witnesses."

Section 2 amends the current Fair Treatment for Victims and Witnesses Act to apply to victims of offenses not otherwise covered by the new Crime Victims' Rights Act codified in the new Article 45A.

Section 3 creates the new Article 45A- Crime Victims' Rights Act. (**All statutory section references are to G.S. 15A**).

Sec. 830 defines the victim, the victim's next of kin, the accused, and the various agencies involved in furnishing victim services. The victim is a person against whom there is probable cause to believe one of the following crimes was committed:

Any Class A, B1,B2,C,D, or E felony, and other felonies including assaults with deadly weapons, voluntary manslaughter, kidnapping, child sex abuse, elderly abuse and neglect, burglary, arson, habitual DWI, robbery, death by vehicle, habitual assault and stalking, and an attempts of any of these crimes. This section also provides that the next of kin of a deceased victim has the rights of other victims, except the right to restitution must be asserted by the personal representative of the estate.

Sec. 831 defines responsibilities of law enforcement officers to notify the victim regarding victim's rights and the services available to victims, including notice about victim's compensation and contact numbers for the investigative agency and the district attorney. The victim will be provided a form upon which to designate what additional services and notices the victim would like to receive. The victim may also request that the victim not be given any additional information in the future.

This section also spells out the responsibilities of the arresting law enforcement agency to furnish information to the investigative agency needed for the victim, and defines the investigative agency's responsibilities concerning giving information to the victim once the defendant is arrested. The victim is to be provided information on the defendant's release from custody, and the time, date and place of the defendant's first court appearance.

Sec. 832 defines the responsibilities of the district attorney including providing the victim with written material on the victim's rights, the court process, and the victim's opportunity to participate in the trial process. This section also defines at which of the court proceedings the victim has a right to be present, including when the victim is called as a witness at trial. The victim has a right to consult with the DA before the DA disposes of the case.

Sec. 833 gives the victim the right to present admissible evidence on the impact of the crime and requires the judge or jury to consider the evidence in sentencing the defendant. Evidence of victim impact includes a description of the nature and extent of the injury, an explanation of economic or property loss, and a request for restitution. While the victim has the right to offer such evidence, no evidence is required to be provided.

Sec. 834 gives the victim the right to receive restitution as ordered by the court pursuant to the criminal sentencing statute set out in Section 4 of the bill.

Sec. 835 sets out the responsibilities of the DA after the trial, including notifying the victim of the final disposition of the case, and the defendant's right to appeal. This section requires the DA to forward victim information to the Attorney General's Office, which will inform the victim of the appellant process and give notice to the victim of any appellant hearings. The investigative agency is also to give the victim notice if the defendant is released on bond pending appeal. If the defendant is awarded a new trial, the victim will have the same rights as were applicable during the original trial.

Sec. 836 sets forth the responsibilities of the agency that has custody or control over the defendant. This will normally be the city, county, or regional jails or the Department of Corrections. The responsibilities under this section include notifying the victim when the victim might be eligible for release, where the defendant is assigned for minimum custody or work release, and the victim's right to be notified of and to participate in reviews prior to the defendant's release. The victim is also to be notified if the defendant escapes, is recaptured, or if the defendant dies.

Sec. 837 sets out the responsibilities of the Division of Adult Probation and Parole, including notifying the victim of any special conditions for probation and any hearings affecting probation.

Sec. 838 requires the Governor's Office to notify the victim if the Governor is considering commuting the defendant's sentence or pardoning the defendant. The victim shall have a right to submit a statement to the Governor for consideration in the Governor's decision and to be informed of the decision.

Sec. 839 makes it clear this act does not create a claim for damages against any governmental body or employee.

Sec. 840 makes it clear that failure to provide the victim with any of the rights or services enumerated in the Victims' Rights Act may not be used as the basis for any relief by the defendant or victim in any criminal or civil action.

Sec. 841 provides that the victim's next of kin or legal guardian may exercise the rights of a minor or incompetent victim, except for the right of restitution.

Section 4 of the bill creates a new Article 81C in Chapter 15A for restitution. **(All references are to sections of G.S. 15A-1340.)**

Sec. .24 requires a judge at sentencing to determine whether, in addition to any other punishment, the defendant should be ordered to pay restitution to a victim. This allows for restitution to be ordered in any criminal case where a victim has suffered injury or damages. **The judge** is required to order restitution if the defendant has committed an offense which triggers the victim's right to restitution under the Victims' Rights Act. The judge may also order restitution in any other criminal case.

Sec. .25 sets out what the court must consider in deciding the amount of loss for which restitution to be ordered. This include the amount of loss suffered by the victim, such as necessary medical expenses, lost income, loss or damage to property, funeral expenses, etc.

Sec. .26 set out factors the court must consider in determining the amount of restitution the defendant will be ordered to pay, including the defendant's resources and ability to pay. The court may order partial restitution if the circumstances warrant it, or the defendant may be allowed to pay the restitution over a period of time. The section references current law on payment of restitution from work-release earnings and restitution as condition of probation or post-release supervision.

Sec. .27 makes it clear that an order of restitution does not prevent a victim from bringing a civil action to recover damages, but the defendant is entitled to a credit against any civil judgment for restitution payments actually made. The section also contains provisions in current law regarding government agencies and third parties as beneficiaries of restitution

Sec. .28 allows certain orders of restitution to be docketed and enforced as a civil judgment. Execution on any judgment would be stayed pending appeal and while the defendant is paying restitution under probation. The clerk is directed to add the normal civil fees and interest to any payoff of the judgment. Interest would accrue only on the amount remaining unpaid upon termination or revocation of defendant's probation.

Sections 5 through 8 make conforming changes to existing laws on restitution to reference the new restitution provisions. The language deleted from G.S. 15A-1343(d) [on pages 11 and 12] are no longer necessary as the provisions are now set out in the new Article on restitution.

Section 9 makes a conforming change regarding the docketing of a judgment affecting real property, to provide that a restitution order subsequently docketed as a judgment will constitute a lien against the defendant's real property.

Section 10 provides that provisions regarding a debtor's property that is exempt from the enforcement of the claims of creditors do not apply to criminal restitution orders that are docketed as civil judgments.

Section 11 gives the victim entitled to restitution priority in receiving funds paid into the office of the clerk of superior court.

Sections 12 - 12.2 make various changes to the Victims Compensation Act.

- Adds "household support loss" to the definition of economic loss recoverable under the act, and defines household support loss as support the victim would have received from his or her spouse. Such loss is limited to \$300/week for 26 weeks, and is available to an unemployed victim whose spouse is the offender who committed the crime that is the basis of the victim's claim.

- Increases from \$200 to \$300 per week the compensation for work loss
- Extends from 1 year to 2 the time in which a victim must file a claim
- Increases limit on compensation to a victim and others from \$20,000 to \$30,000
- Increases limit on short term medical from \$500 to \$1,000
- Permits up to \$50 assistance to replace victim's clothing held for evidence
- Allows the Victims Compensation Board to deny claims filed by person convicted of A-E felonies within 3 years of the injury that is the basis of the claim

Section 13 directs the Conference of District Attorneys to report to the General Assembly on projected costs of providing expanded services to victims of domestic violence.

Section 14 requests agencies to begin early implementation of victim notification provisions which are scheduled to become effective July 1, 1999.

Section 15 *Effective date provisions.*

- **When the act becomes law:** Requirement for Conference of District attorneys to prepare report; Request that agencies begin early implementation of victim notification within available resources

- **October 1, 1998** : Changes to Victims Compensation Fund are effective and apply to injuries occurring on or after that date.
- **December 1, 1998** : Definitions in G.S. 15A-830, rights to offer evidence of victim impact G.S. 15A-833, and right to restitution in G.S. 15A-834 and changes to criminal procedure act and other changes related to restitution in Sections 4-9 are effective and applicable to offenses on or after that date.
- **July 1, 1999**: Remainder of act becomes applicable to offenses committed on or after that date.

Summary of Fiscal Note Format

Section	Description / Department Affected	Include Felony or Misdemeanor Victims	Page #
1	Fiscal Impact on Judicial Department	Felony	7
2	Fiscal Impact on Department of Correction	Felony	16
3	Fiscal Impact on Department of Justice	Felony	19
4	Fiscal Impact on Office of the Governor	Felony	20
5	Fiscal Impact on Local Law Enforcement	Felony	21
6	Include Domestic Violence Victims	Misdemeanor	24
7	Victims Compensation Fund Changes	All	29

Notes:

1. Sections 1 through 5 estimate the fiscal impact of providing services to felony victims covered in Senate Bill 763.
2. Section 6 outlines the fiscal impact of providing services to misdemeanor domestic violence victims covered in Senate Bill 763.
3. Section 7 summarizes the changes and proposed fiscal impact of increasing the limits paid to victims through the Victims Compensation Fund.

Assumptions and Methodology – All State Agencies and Local Law Enforcement

1. **Victims Rights Amendment** -- SB 763 is implementing legislation for the 1996 Constitutional Amendment on Victims Rights, which required certain services as "prescribed by law." This fiscal estimate assumes that services listed in SB 763 must be provided to designated victims because of the Amendment. The current Fair Treatment for Victims and Witnesses Act is discretionary to a certain extent; a lower level of services than required by SB 763 are now provided "to the extent reasonably

possible and subject to available resources.”

2. New/Expanded Services -- SB 763 mandates new services to victims and expansion of, or more precisely defined, current services. These new or expanded services outlined in SB 763 are the major cost drivers of the bill. This fiscal estimate calculates the incremental time and person hours over and above current services. Examples of new or expanded services include providing victims with information on the criminal justice system at various stages of the process; notifications of victims of the arrest of offenders, of all court proceedings, and of changes in probationary status of an offender; and, direct assistance to victims for help in obtaining services and preparing statements for court.

3. Criminal Offenses = Number of Victims - SB 763 mandates services to victims of specific crimes – A to E felonies, selected assaultive F through I felonies, and certain domestic violence misdemeanors. This fiscal memo assumes that only the victims of the crimes outlined in SB 763 will be provided the services outlined in the bill. In calculating the population of victims under SB 763, each department estimated the number of offenders involved in the felonies and misdemeanors defined in the bill (e.g. the Judicial Department estimated that 30,615 offenders were charged (case filings) with the felony offenses listed in SB 763 in 1997 and then estimated 1.6 victims per case or approximately 48,984 victims).

4. # of Victims Who Will Request Services - The cost estimates are also based on the projection of the number of victims likely to request services, as determined in consultation with other states and state and local agencies. Projection of how many victims will want services was the most difficult analysis; if more victims want services, the projected costs will be higher than estimated in this memo. Conversely, costs will decrease if fewer victims request services. The bill requires certain services for all victims while others are upon request -- cost estimates for anticipated service needs are adjusted when SB 763 specifies that a particular service should only be provided “upon request” of the victim.

5. Amount of Time Required to Provide Services -- Position estimates are based on the estimated number of victims who will request services and the time required to provide each service, such as 5 minutes for certain notifications to 60 minutes for consultation with district attorneys. (Example : Assumed 36,671 victims or 75% of total victims of felonies covered under this Bill would request notification of all court proceedings. Assumed approximately 50 minutes per victim for notification of all court proceedings or 30,559 person hours. 30,559/1800 hours per position = 17 Victim Witness Assistant positions.)

6. Other States - The discussions with other states highlighted three major findings. First, implementing legislation in other states, with one or two exceptions is not as specific or comprehensive as proposed in SB 763. The comprehensiveness of SB 763 in ensuring the constitutional mandate is carried out also creates the potential for significant additional manpower and support costs to ensure these new and expanded services are carried out. While other states experience was considered, emphasis was placed on the likely impact in N.C. based on SB 763. Second, many states did little or no preliminary cost analysis prior to ratifying a constitutional amendment, often because court systems are locally managed, making statewide analysis difficult. The scope of services to be provided and funded have been determined primarily through experience - states have set up victims funds as proposed in SB 763 and then reimbursed local law enforcement and prosecutors as services were documented. In several states, state agencies were directed to absorb costs with little consideration of actual costs in time and manpower. Third, most states with long term experience indicated manhours and costs have increased due to “victims” constitutional amendments and implementing legislation, but not to the extent anticipated. This finding was a strong consideration in this note.

Section I -Fiscal Impact of SB 763
Summary by Responsibilities
Judicial Department

1998-99* 1999-00 2000-01 2001-02 2002-03

SB 763 Requirements

1. Notification of Victims -	\$0	\$2,080,135	\$1,887,647	\$1,944,276	\$2,002,604
a. Information Packet; (<u>expanded</u>)		(51)	(51)	(51)	(51)
b. Notification of all proceedings (<u>new</u>)					
c. Increased interpersonal contact (expanded requirements) (<u>Victim Witness Assistants</u>)					
2. Consultation with prosecuting attorneys (<u>new</u> requirement - A.D.A.'s)	\$0	\$868,142	\$881,200	\$907,636	\$934,865
		(12)	(12)	(12)	(12)
3. a. Hearings for Victim Impact (<u>expanded</u>) and for restitution (<u>expanded</u>) <u>Statewide</u> court time and manpower and indigent defense (judges, A.D.A's, clerks and court reporters - 6 each)	\$1,157,562	\$1,729,918	\$1,781,816	\$1,835,270	\$1,890,328
	(24)	(24)	(24)	(24)	(24)
b. Indigent Defense	\$229,709	\$405,560	\$417,727	\$430,259	\$443,166
4. Docketing Judgment for restitution (<u>new</u>) (Statewide - 5 deputy clerks)	\$99,255	\$140,266	\$144,473	\$148,797	\$153,271
	(5)	(5)	(5)	(5)	(5)
5. Administration - Brochures, Letters, Envelopes, etc.	<u>\$100,600</u>	<u>\$162,678</u>	<u>\$167,558</u>	<u>\$172,585</u>	<u>\$177,763</u>
TOTAL JUDICIAL	\$1,587,126	\$5,386,699	\$5,293,407	\$5,452,199	\$5,615,774
	(29)	(92)	(92)	(92)	(92)

*Positions listed are based on increased manhours statewide due to SB 763.

**All positions start December 1, 1998 and July 1, 1999 since the substantive portions of the bill are effective on those dates.

NOTE: 3% inflation estimates are added for fiscal years 1999-2000 and beyond.

ASSUMPTIONS AND METHODOLOGY – Overall Assumptions for Judicial Department

The Judicial Branch fiscal analysis estimates the potential fiscal impact of SB 763 on the court system statewide. Technical questions on the bill are noted if these questions have specific fiscal implications. It is assumed for purposes of this note that current services provided under Article 45, Fair Treatment for Victims and Witnesses, will continue to be provided.

New and Expanded Requirements -- The key to the fiscal analysis is the intent of the constitutional amendment and the requirements of SB 763. The current Act applies to both victims and witnesses of crime, with crime defined as felony-level offenses and “serious misdemeanors as determined in the sole discretion of the district attorney.” Further, services are made available only “to the extent reasonably possible and subject to available resources.” SB 763 **mandates delivery of an enhanced level of services to certain victims**, including more intensive and focused rights and protections that go above and beyond those currently provided. This analysis assumes no reduction in the extent of victim and witness services currently provided by district attorney (DA) offices; thus, **this fiscal note estimates the incremental costs of SB 763 as compared to current practice.**

Judicial cost drivers in this note are:

- (1) Automation of victim information - notification, tracking, and a central victims database**
- (2) Increased work hours by Victim Witness Assistants and Assistant District Attorneys due to new or expanded services**
- (3) Increased court time/work hours due to new and expanded requirements for restitution and victim impact statements/evidence**
- (4) Size of victim population; if fewer victims request services than anticipated, costs will be lower**

Position costs used were:

	FY99-00 <u>Position Cost</u>
Assistant District Attorney	\$69,218
Court Reporter	\$46,579
Deputy Clerk	\$27,236
Superior Court Judge	\$136,889
Victim and Witness Assistant (VWA)	\$34,888

Number of Victims Covered by SB 763 -- The beginning point of the analysis is an estimate of the number of persons who would qualify as “victims” pursuant to SB 763. The AOC estimates that there are some 30,615 court cases filed annually involving victims of crime offenses specified in SB 763. Based on analysis of data from the AOC Financial Management System, it is estimated that there will be an average of 1.6 victims per case (calculated on the average number of payees per case involving restitution being paid on a partial payment plan). **This yields an estimate of 48,984 persons who would qualify annually as “felony victims” under SB 763 or those targeted for services by Victim Witness Assistants.**

The “judicial” portion of the fiscal note is Section I; Section I is organized by eight subsections. The first four sections relate to specific judicial responsibilities outlined in the bill (a) providing notifications of court proceedings and direct interpersonal communications with victims; (b) allowing victims the opportunity to consult with the prosecuting attorney; (c) providing enhanced opportunities for presentation and consideration of victim impact statements and restitution information at sentencing hearings; and (d) docketing judgments for restitution. Sections I (e) and (f) pertain to administrative needs to carry out the requirements of the bill: estimates of miscellaneous costs, such as for postage, development and printing of a victims’ rights brochure, forms, paper, and envelopes. Section I (g) estimates the fiscal impact of establishing a Crime Victims’ Rights Fund. Section I (h) estimates the fiscal impact of establishing restitution as the first priority in the distribution of court fines.

**Section I(a) - NOTIFICATIONS AND DIRECT INTERPERSONAL COMMUNICATIONS
WITH
VICTIM WITNESS ASSISTANTS (VWA’s)**

Court System VWAs in District Attorneys offices will be the primary delivery resource for by the new and enhanced level of victims services mandated by SB 763 and the central resource for other state and local agencies. This fiscal analysis assumes that VWAs will be responsible for providing victims with information and assistance, explanations, and notifications, including notices of court proceedings and final dispositions of cases, as well as coordinating victims' consultations with the prosecuting attorney, assisting victims with restitution documentation, and assisting with victim impact statement information. The following summarizes the nature of the duties, responsibilities, and specific VWA resource needs related to this bill.

(1) VWAs Identify and Locate Victims, Provide Information Packets, and Track Responses. **New G.S. 15A-832** requires that the DA's office provide all victims with clear and concise written material that explains the victim's rights, including the right to consult with the prosecuting attorney about the disposition of a case, as well several other specific pieces of information. To implement these provisions, it is anticipated that AOC would first develop a publication that represents a consolidation and expansion of current materials. Estimates for development and printing of this publication are included in Section I (f), which itemizes postage and related expenses.

The manhours required for identifying all eligible victims, sending each a packet of materials, and following up to ensure each victim is invited to exercise his or her constitutional rights as a victim are included in this section. This stage will be the starting point for a standard system of tracking and documenting VWA activities, rather than a system developed by each district (current system). It is assumed a statewide system must be established and maintained to document the provision of this initial packet of information, record the victim's response about future involvement, and track that subsequent notifications are provided. Based on review of current VWA practices (annual report and follow up survey), it is assumed that these responsibilities will add about ten minutes per case; this is incremental time over and above current services.

For all 48,984 victims, at an estimated additional 10 minutes per victim would require 8,164 VWA hours (5 VWAs) (48,984 x 10 min. = 489,840 min./60 min. = 8,164 hours/1,800 hrs. = 4 VWAs Statewide).

(2) VWAs Provide Victims with Subsequent Notifications. **New G.S. 15A-832** states that victims have the right to attend every future court proceeding although victims must request notices of these proceedings (New service not provided now) and to prepare a victim impact statement. **New G.S. 15A-2013** requires that victims be notified of the right to offer victim impact evidence at sentencing. **New G.S. 15A-2016** requires that the DA's office provide victims a written notification within 30 days after the final proceeding in a case, informing them of the final disposition, the crimes of which the defendant was convicted, and the defendant's right to appeal. (Optional now, depending on resources; if provided now, information may be less specific). If there is an appeal, the DA's office is to forward the victim information to the Attorney General's office.

It is assumed that in the wake of the constitutional amendment, and the increased efforts to reach out to victims, there will be a high level of interest in the trial court proceedings among the victims covered under this bill – victims of the most serious crimes. To estimate the average number of subsequent notifications per interested victim, we considered several factors: (1) there will be a notification regarding disposition in almost every case (this notification is time-consuming because it requires that VWAs summarize the manner of disposition and the specific outcomes of cases); (2) in most cases there will be a notification of the trial or plea hearing; (3) in some cases, there will be a probable cause hearing notice; (4) in some cases, there will be an arraignment hearing notice; (5) data suggest that anywhere from 2 to 6 non-disposition court proceedings are scheduled for most felony cases (e.g., trial continuances, motions); (6) except when postponement of a hearing is for reasons discovered at the time of the scheduled hearing, VWAs will attempt to notify victims in advance when proceedings will not be held as scheduled; (7) in appealed cases, VWAs will send a notice to the Attorney General's office.

Except for the disposition notification, which must be in writing, the subsequent notifications to victims may be either in writing or by phone, as appropriate to the particular situation. The analysis assumes that

either type of notification will require, on average, about 10 minutes per case (longer for phone calls/shorter for mail notification).

It is assumed that 75% of victims who receive the initial packet will request notifications of proceedings. It is assumed most victims will want notifications, but not necessarily services. **(Now 50% of victims who request Victim Impact Statements complete this lengthy form so it is likely many victims of crimes under SB 763 will at least want to be notified. Also, Judicial intends, as outlined in SB 763, to send a form allowing victims a one-time “check off” if they want to receive notices of all, some or no proceedings, so the process will be easy. (NOTE: AOC assumed 85%, but FRD’s review of other states indicate lower percentages of notification requests.)**

Assuming that 75% of the 48,984 victims, or 36,738 victims, will “opt in” for future notifications, at 10 minutes per written notice or phone call and assuming 5 new notices, yields 30,615 VWA hours (17 VWAs Statewide).

(3) Incremental Interpersonal VWA Time. It is assumed that implementing the rights described in SB 763 will require a significant investment of VWA time spent in interpersonal communications with victims, responding to questions, providing follow-up information, and otherwise assisting victims. To estimate the incremental time required by this bill, it is assumed that for a subset of identified victims, there will be an increase in both the average frequency and the average length of interactions with VWAs.

A survey of VWA’s indicates that VWA’s currently have 3.4 interpersonal contacts with victims at 42 minutes on average or 2.4 hours per case. AOC assumed the time per case, on average, would double to 5 hours and that 72% of all victims would require additional services. While FRD agrees that the requirements of SB 763 will require additional time, our discussions with other states indicate that a smaller percentage of victims are likely to opt in for direct VWA services. However, since SB 763 offenses are the most serious, FRD still believes the level of followup and involvement will be high.

When estimating these increases, which are over and above the 10 minutes for notification of court proceedings (several factors were considered, including: (1) additional phone and in-person contacts with VWAs will be prompted by the victim’s receipt of the initial packet of information, with victims desiring further explanation of their rights under SB 763; (2) each notification of court proceedings will trigger some personal contacts because some victims will have additional questions, concerns, or issues to discuss; (3) VWAs need to inform victims about their right to prepare a victim impact statement and offer victim evidence at sentencing, and they will answer questions about and otherwise assist victims who intend to make such statements or provide such evidence ; (4) the frequency with which victims attend court proceedings will increase as a direct result of victim notifications; increase in the attendance of victims will be accompanied by greater VWA time spent assisting such victims; (5) compared to other superior court felonies, those included under SB 763 tend to go to trial three times as often, are twice as likely to be resolved by guilty plea to a lesser charge, and are substantially less likely to be resolved by guilty pleas to the offense charged, all of which suggests that these are the more difficult cases, which are more likely to be disposed in ways that are associated with great opportunity for victim involvement (even greater under SB 763); (6) dispositional proceedings such as plea hearings and trials are expected to take longer due to the restitution issues that need to be addressed at sentencing as well as the victim’s opportunity to present a statement at sentencing; (7) the VWA will often need to explain the right to meet with the prosecuting attorney, and will need to help arrange this meeting if one is desired; (8) VWA’s will need to help victims identify and gather relevant evidence documenting appropriate restitution amounts, including receipts, estimates, and insurance deductible information and so on. (e.g., the bill specifically mentions after-tax income loss suffered by the victim, as well as the non-victim expense of psychological or medical treatment costs for the victim’s next of kin).

Assuming that 80% of all victims who request notifications of court proceedings, or 29,390 victims (60% of all victims covered by SB 763) , require an average of 100 minutes (of 1.7 hours) per case of additional time, results in 48,984 additional VWA hours (about 27 VWAs statewide)

(4) VWA's to Notify Department of Correction (DOC) - No provision was made originally in SB 763 for VWA's to provide conviction and victim information to DOC but it was assumed this action had to occur. At 10 minutes per notification times 25,961 (convictions) = 2 VWA's statewide (4,327 manhours/1800 = 2).

SB 763 requires AOC to maintain a repository of information on victims; it is assumed that the intent of this repository is to file victim information that would be provided to DOC and other agencies if requested. No additional cost is assumed, other than discussed above, since the AOC indicates that initially it will be up to individual districts to maintain a file in the automated case management system (CMS), whose cost is estimated in this fiscal note. Development of an automated centralized data repository would have additional fiscal impact but the AOC does not believe an automated central system is necessary at this time to implement the requirements of SB 763.

SECTION I(b) ALLOWING VICTIMS THE OPPORTUNITY TO CONSULT WITH THE PROSECUTING ATTORNEY - JUDICIAL

New G.S. 15A-832 requires that the DA's office notify victims of their "right to confer with the attorney prosecuting the case about the disposition of the case" (new service). It specifies that prior to case disposition, each victim shall be offered the opportunity to consult with the prosecuting attorney. Victims may share their views about "dismissal, plea or negotiations, sentencing, and any pretrial diversion programs." The following analysis estimates only the additional assistant district attorney (ADA) resources needed to actually conduct these consultations, and makes two conservative assumptions: (a) assume that only 75% of these 29,336 victims, who request notification of court proceedings and follow up with VWA's or 22,043 victims (45% of the 48,984 total victims) will meet with the prosecuting attorney; and (b) assume that the consultations with ADAs will only require, on average, one additional hour (some D.A.s indicated consultations would often last much longer).

Assuming an average of 1 hour per consultation for the estimated 22,043 victims yields an estimate of 22,043 manhours or 12 ADAs statewide.

SECTION I(c) - PROVIDING ENHANCED OPPORTUNITIES FOR PRESENTATION AND CONSIDERATION OF VICTIM IMPACT AND RESTITUTION INFORMATION AT SENTENCING HEARINGS

This section estimates the resources that would be required to implement the provisions of SB 763 relating to the conduct of sentencing hearings and court review of victim impact statements.

(1) Presentation and Consideration of Victim Impact at Sentencing The following analysis estimates resource needs due to the additional **in-court time for review of victim impact statements and court time for review when used as evidence.** The analysis assumes that 75% of all identified victims will desire to prepare and submit a victim impact statement. Current percentage is 50 % of victims who request Victim Impact Statements actually submit statements but it is assumed, as noted earlier, that since this bill covers only serious felonies that more victims will want to submit statements. For example, many of the current "50%" fill out statements for property loss as a result of misdemeanors and little follow-up is made with victims now on missing statements.

Assuming 75% of all 48,984 victims, or 36,738 victims, will desire to submit a victim impact statement either orally or in writing, and using an estimated conviction rate of 70%, yields an estimate of 25,961 victims (53% of victims). It is estimated by the AOC that 75% of 25,961 will have statements reviewed by court at 7 minutes each (2,271 hrs.) and that 25% of 25,961 will have statements used as evidence in court at 13 minutes each (1,406 hours). This includes time for review of statements generally and for consideration of victim impact statements to be used for evidence.

It is estimated that 3,677 additional in-court hours will be devoted to fulfilling the right granted by SB 763 for victims to make victim impact statements and for consideration of those statements as evidence when sentencing defendants. These 3,677 hours represent the equivalent of about 2 positions each for superior court judges (the bulk of these convictions and sentencing hearings will take place in superior court), ADAs, deputy clerks, and court reporters.

(2) Presentation and Consideration of Restitution Information at Sentencing. **New Article 81C addresses issues of restitution, and provides that the court shall require that defendants make restitution to victims for damages they caused.** (Current statutes do not require restitution). The presumption underlying G.S. 15A-2014, that restitution will be ordered, translates into more in-court time for the court to consider restitution issues. The treatment of restitution for victims in SB 763 is more expansive than that addressed in G.S. 15A-1343(d) [“restitution as a condition of probation”]. It specifically describes as eligible expenses medical and other professional services, devices, or equipment for the victim; physical therapy, occupational therapy, and rehabilitation for the victim; after-tax income loss suffered by the victim; costs for the victim’s funeral and related expenses; and psychological or medical treatment for the victim’s next of kin (defined in the bill as the victim’s non-offender spouse, children, parents, or sibling).

New Article 81C also states that the court may require documentation for such costs. G.S. 15A-1340.26 authorizes the court to consider all of the defendant’s real and personal property, when deciding *whether* to require that restitution be made. Finally, the bill requires that the court state reasons on the record if restitution if only partial restitution is ordered. This analysis estimates the additional in-court time that would be required to implement these provisions relating to restitution.

Therefore, it is assumed that 34,289 victims (70% conviction rate applied to all victims -- 48,984 -- not just those making victim impact statements) represent the subset of victims for whom the court will spend significant additional time considering issues of restitution. For the most part, these are the victims for whom the court will have detailed information about economic losses that were suffered. SB 763 specifically lists certain eligible expenses, as outlined above, that represent fairly expansive views of restitution, such as after-tax losses and some items that are unrelated to the victim -- specifically, psychological or medical treatment for the victim’s next of kin. Consideration of restitution issues at sentencing hearings, particularly for these non-victim expenses, may sometimes escalate into civil hearings on the issue of damages, to determine causality or to debate allowable or reasonable costs. Further, requiring that reasons be stated for the record whenever only partial restitution is ordered clearly represents additional in-court time at sentencing hearings. Finally, the bill specifically authorizes the court to require evidence documenting requested restitution amounts, and the scrutiny and evaluation of such documents by the court will certainly require additional time. We estimate an average minimum additional time involvement of 10 to 15 minutes, and therefore use a conservative figure of 12 minutes in the following analysis.

Assuming 12 additional minutes per sentencing hearing for an estimated 34,289 victims yields an estimate of 6,858 additional in-court hours for consideration of restitution issues at sentencing.

Estimated additional personnel and indigent defense costs for the anticipated increased length of sentencing hearings are based on estimated court time state-wide. Adding estimates in (1) and (2) above, yields 10,535 additional court hours for SB 763 during a one-year period (10,535 / 1800 = 6 positions of each type listed below needed in court (court time estimates in this area do not include VWA time) -

Personnel Needs:

	6 Superior Court Judges	6 ADAs	6 Deputy Clerks	6 Court Reporters	Indigent* Defense	Total
FY 98-99 (12/1)	\$586,926	\$248,568	\$119,106	\$203,562	\$229,709	\$1,387,841

***Indigent Defense - - Assuming 75% of the defendants are indigent (current practice) and will be**

represented by court-appointed counsel with an average fee of \$50 per hour, the estimated costs of court-appointed counsel for the additional hours totals \$229,709 (12-1-98).

SECTION I(d.) - - DOCKETING JUDGMENTS FOR RESTITUTION

New G.S. 1340.28 requires that orders of restitution be docketed with the clerk of superior court and may be collected in the same manner as civil judgments (new requirement and clerk duty). This provision would have an impact on the courts since clerks would be responsible for ensuring that civil judgments for restitution are appropriately docketed and processed. It is assumed that SB 763 is intended to apply only to restitution orders for victims of the crimes covered by the bill.

Based on interviews with clerks and AOC personnel familiar with clerk operations, our analyses use a minimum estimate of 21 minutes as the average additional time investment by clerks for each restitution order that becomes a civil judgment. Everyone contacted stressed that, in addition to the increase in paperwork, record-keeping, and bookkeeping duties that would be involved, time would be devoted to answering questions from and assisting both victims and defendants concerning the meaning of the civil judgment, and the procedures that may be followed after the judgment is *entered*. However, the majority of this 21 minutes is for basic administrative duties associated with judgments.

Originally, it was estimated that 34,289 victims (cases with convictions) would have restitution ordered. At 21 minutes per judgment, an additional 12,001 hours would be invested by deputy clerks, or approximately 7 new deputy clerk positions statewide. However, the Committee Substitute adopted on August 25th requires docketing judgments for restitution in cases where the defendant owes in excess of \$250 to the victim. Thus, after reviewing all felony cases over \$250 that may require docketing (without controlling for felony cases only covered by SB 763), yields an estimated 25,915 victims. The estimated fiscal impact would be - 25,915 X 21 / 60 / 1,800, or 5 clerk positions. If we were able to control for the actual crimes outlined in this bill, the estimated fiscal impact for this section would decrease.

Section I(f.) -- POSTAGE AND RELATED EXPENSES

This section provides cost estimates for a variety of non-personnel items, including postage, development and printing of a brochure to be distributed to victims at the time of the initial mailing, letterhead pages and envelopes for mail correspondence, and forms and other documentation materials cost estimates are.

98-99 (12-1-98)

Postage	\$ 52,262 (55¢ initial mailing; 32¢ thereafter)
Envelopes/Letterhead	19,922
Brochure	5,000 (includes 50,000 copies) (\$5,296 - 98-99)
Docket Forms	<u>15,002</u> (.70 per judgment for forms and other documents)
	\$92,186

Section I(g) – REVENUE AS FIRST PRIORITY

Section 11 of the bill changes the disbursement hierarchy for restitution in G.S. 7A-304(d) from fourth to first priority and moves costs due county, costs due county and fines to county school fund from first, second, and third respectively to second, third and fourth. The following table highlights the impact of restitution as first priority.

Receipt Type	AFFECTED AMOUNTS			
	Actual Collected (1995-96)	What-If Collected	Monetary Change	Percent Change
Prob/par supvn & comm svcs fees	\$9,567	\$1,486	(8,081)	-84.47%

Cost due the county	\$362,493	\$47,035	\$315,458)	-87.02%
Costs due the city	\$45,827	\$5,243	\$(40,582)	-88.55%
Fines to county school fund	\$685,470	\$147,193	\$(538,277)	-78.53%
Restitution	\$6,912,969	\$7,882,901	\$969,933*	14.03%
Costs due the State	\$24,178	\$4,004	\$(20,174)	-83.44%
Attorney's fees	<u>\$57,438</u>	<u>\$9,918</u>	<u>\$(47,520)</u>	<u>-82.73%</u>
Total	\$8,097,942	\$8,097,782	(\$160)	0.00%

*** No net loss in revenues - money will shifted to victims since bill makes restitution first priority in disbursement of funds in criminal cases. Amount in FY 1998-99 is \$565,794, effective 12/1/98.**

In order to determine the impact from such a change, analysis was done on historical data. The following items were considered in selecting the data from the AOC Financial Management System:

- use only counties operating on the FMS for an entire fiscal year
 - the most recent fiscal year is 1995-1996
 - 59 counties were operating the entire year, representing 88% of statewide receipt volume
- use all accounts on cases with Bills of Cost entered into FMS during the fiscal year and all accounts on cases with a remaining balance due at the beginning of the fiscal year.
- determine the total amounts due and collected for cases that would not be affected by the proposed legislation
 - accounts on cases paid in full during the fiscal year
 - accounts on cases without Restitution
 - accounts on cases with no payments made during the fiscal year
 - accounts on cases where Restitution priority is already 'one'
 - cases where Restitution was paid in full
- compare 'before' and 'after' versions of cases that would be affected by the proposed legislation
 - cases where Restitution is not first priority
 - and where Restitution has not been paid in full

In sum, these tables suggest the following: assuming no change in the frequency or amounts of restitution ordered and no change in the total amounts collected from defendants, we estimate additional restitution amounts collected and distributed to aggrieved parties during a one-year period would total \$969,933. Further, we estimate that the increased restitution funds would represent a "shifting" of funds from other categories of receipts, as shown in the above table, and summarized as follows: fines to the county school fund, reduced by over \$500,000; costs due the county, reduced by over \$300,000; attorney's fees, reduced by nearly \$50,000; costs due the city, reduced by over \$40,000; and costs due the State, reduced by over \$20,000.

The limitations of this analysis must be stressed, however, in light of the fact that the bill will result in an increase in the frequency with which restitution is ordered, which would likely be accompanied by a greater reduction in funds distributed for purposes other than restitution.

**JUDICIAL DEPARTMENT - SUMMARY OF METHODOLOGY
FOR CALCULATING STAFFING REQUIREMENTS DUE TO SB 763**

This chart summarizes the calculations for estimating the number of victims of felonies that will receive services from the Judicial Branch. It is assumed that all victims must receive the initial information, while smaller percentages, or subsets of the total number of victims, will request additional services from the Judicial Branch.

# Victims*	Service	Result**
1. 48,984 (<u>All</u>)	Expanded Information Packet and followup	5 new VWA's (8,164 manhours)
2. 36,738 (75%)	Victims, if requested, will be notified of <u>all</u> court proceedings	17 new VWA's (30,615 manhours)
3. 29,390 (60%)	Victims will spend average of 100 <u>new</u> minutes with VWA's	27 new VWA's (48,984 manhours)
4. 25,961 (53%) (convictions)	AOC to provide victim information to DOC	2 new VWA's (4,327 manhours)
5. a. 25,961 (53%) (cases with convictions and <u>V.I.S.</u>)	a. Present Victim Impact Statement as Evidence in court or for review by judge	6 of each, or 24, due to increased court time: (10,535 court hours)
b. 34,289 (70%) (Restitution ordered) for convictions	b. Restit. Hearing (impact is longer court time - average is 12 minutes)	1. Superior Ct.Judge 2. Deputy Clerk 3. A.D.A. 4. Court Reporter
c. 34,289 (70%) (Restitution)	c. Docket judgments for restitution	7 deputy clerks (12,001 manhours)
6. 22,042 (45%)	Confer with Attorney (1 hour each)	12 A.D.A.'s (22,042 manhours)

*#1 assumes 30,615 cases involved offenses listed in SB 763 and 1.6 victims per case, or, 48,984 victims of felonies in SB 763. The Judicial Department assumed a higher number of victims would required services in items 2-6; FRD adjusted numbers in 2-6 downward based on experiences in other states.

** (1800 hours per position); total positions = 94 (includes 51 VWA's, 13 deputy clerks, 18 A.D.A.'s, 6 superior court judges, and 6 court reporters).

SECTION II - DEPARTMENT OF CORRECTION
Summary of Fiscal Impact of SB 763
Department of Correction

	<u>1998-99*</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
1. Automation					
a. Personnel (1)	\$0	\$62,322	\$64,192	\$66,118	\$68,102
b. System Software Changes		\$182,000	0	0	0
2. DAPP Personnel (4)*	\$0	\$117,951	\$121,490	\$125,135	\$128,889
3. Postage and Supplies	<u>\$0</u>	<u>10,533</u>	<u>12,869</u>	<u>15,117</u>	<u>17,394</u>
TOTAL	\$0	\$388,806	\$198,551	\$206,370	\$214,385
		(5)	(5)	(5)	(5)

*Effective date is 7/1/99 for all Correction requirements

NOTE: 3% inflation is added for 1999-00 through 2002-03.

ASSUMPTIONS AND METHODOLOGY:

DOC has two major areas of responsibility for victims of offenses covered under SB 763:

- (1) Notification of all prisoner activity – release dates; transfers to minimum security; reduction of minimum sentences (Fair Sentencing Act only); escapes; and releases. (all but escapes and releases are new).
- (2) Notifications of victims of all probationer activity, (new requirement) including:
 - a. Hearings on probation revocations
 - b. Final disposition of probation revocation
 - c. Probation “absconders” (leaving court jurisdiction without permission)
 - d. Captures of absconders
 - e. Probation discharge date
 - f. Supervision requirements and special conditions
 - g. defendant movement in/out of house arrest with EHA and in/out of intensive supervision
 - h. defendant movement in/out of intermediate status

Cost assumptions and methodology are as follows:

1. It is assumed 75% of victims will request notices because of the seriousness of crimes covered under HB 665.
2. The activities required of the Division of Adult Probation and Parole in new G.S. are new activities not currently handled by the Department (exception is pilot program in two Judicial Districts). The notifications required for prisoner activities Division of Prisons are a mix of current and new activities (e.g. victims are notified of releases from custody of most high level felons).
3. Work Volumes (Prison Custody) - - Based on an analysis of likely release or transfer activity of Fair Sentencing and Structured Sentencing inmates, DOC Research and Planning calculated the following number of custody notifications of victims (assumes 75% will require notification and services at 1.6 victims per case).

	<u>1998-99</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
DOC Est. Notice	0	5,984	7,631	8,452	8,523
Assume 75% request					
Assume 1.6 victims	0	7,180	9,157	10,142	10,227

Custody Notifications are:

- (1) Notification of earliest release date and victims “rights”
- (2) Promotion of an inmate from medium to minimum custody
- (3) Date of expected release (other notifications are already being sent or are of negligible volumes).

Also, notices will be sent for the small number of escapes from DOC custody.

4. Work Volumes - Probation notifications. Based on an analysis of felony offenders under SB 763 by DOC Research and Planning, it is estimated that the following number of probation supervision notifications will be required:

	<u>1998-99</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
DOC’s Est. Notice	0	15,910	19,092	22,910	27,492
Assume 75%					
Assume 1.6 Victims	0	19,092	22,910	27,492	32,991

Probation volumes are based on notices of:

- (1) # of revocation hearings
- (2) # of revocation dispositions
- (3) # of absconders
- (4) # of captures
- (5) # discharge from probation
- (6) supervision requirements
- (7) defendants movement in/out of EHA and intensive supervision

5. Cost Analysis

- a. Postage and Materials (Use Volumes from #3 and 4)

	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
Custody	7,180	9,157	10,142	10,227
Probation_	<u>19,092</u>	<u>22,910</u>	<u>27,492</u>	<u>32,991</u>
Total	26,272	32,067	37,634	43,218
Letter, Env., Postage	x <u>.39</u>	x <u>.39</u>	x <u>.39</u>	x <u>.39</u>
Total	\$10,246	\$12,506	\$14,677	\$16,855

- b. Personnel

- (1) Assume 2800 hours to develop new “Victims Module” for DOC automated system (for Prisons, Probation and Parole and Parole Commission) – Involves 7 databases/22 programs (option would be more personnel/no automation change). Cost would be \$182,000 for contractors.
- (2) Assume 1 system analyst position to develop and maintain a victim database and assist the contractor in development.

- (3) Division of Adult Probation and Parole (DAPP) Personnel - SB 763 does not specify responsibility for providing victim information to DAPP. However, this note assumes that AOC and law enforcement will provide victim information to DAPP – otherwise the number of DAPP positions would increase by 2 as DAPP would be required to obtain information from multiple sources – law enforcement, courts, victims - - and develop their own victim impact statements for revocation hearings and “release” decision points. The lower position numbers also assume automation of a new “victims module”.

FRD assumes 3 positions for notification events (Office Assistants) and routine mailing, processing and data entry and 1 Victim Assistance coordinator for DAPP (1942 hours for ongoing responsibilities – data entry, discussions with victims; maintenance and update of database – and 2,634 hours for notifications to victims (adjusted by FRD to 10 minutes per event for notification of all events - hearings, captures, discharges etc.) – for a total of 4,576 hours x 1.6 victims = 7,321 hours/1,800 hours per position = 4 positions).

**SECTION III - DEPARTMENT OF JUSTICE (DOJ)
(ATTORNEY GENERALS OFFICE)**

Summary of Fiscal Impact of SB 763 Department of Justice					
	<u>1998-99 *</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
1. Position	0	\$34,063	\$35,085	\$36,138	\$37,222
2. Pamphlet	0	299	102	105	108
3. Materials and Postage	<u>0</u>	<u>771</u>	<u>793</u>	<u>817</u>	<u>843</u>
TOTAL	\$0	\$35,133	\$35,980	\$37,060	\$38,173

*Effective Date 7/1/99 for all Justice requirements

ASSUMPTIONS AND METHODOLOGY:

G.S. 15A- 835 of SB 763 requires the Attorney Generals Office, if a case covered by SB 763 is appealed to the Court of Appeals or the Supreme Court, to contact the victim and provide:

- (1) An explanation of how the appellate process works, including possible actions that could be taken and,
- (2) Notice of date, time, and place of any appellate proceedings
- (3) Final disposition of appeal

Cost assumptions and methodology are as follows:

1. The victims services required in SB 763 are new services not required by current statutes and not carried out now by DOJ.
2. The number of felony appeals is estimated at 700 annually by DOJ. FRD has assumed 600 offenses will be covered under this bill
3. A pamphlet or form letter will need to be developed for providing information on the appeal process; cost of pamphlet is estimated at \$200 cost
4. It is estimated that there will be an average of 2 hearings requiring a notification for each hearing added to the initial notification about the appeal process (600 x 1.6 victims x 2 notifications = 1,920 notices annually).
5. It is estimated one position - a paralegal position - will be needed to provide these new services and to handle interpersonal contact with victims likely to be generated by these new services.

Cost calculations:

A. Pamphlet - \$200 to develop and print year one; .10 per copy x 960 subsequent years = \$96

B. Mailing and postage for 2 notifications (1,920 Victims) x .39 (letter, envelope and .32 postage) = \$750

SECTION IV - OFFICE OF THE GOVERNOR

Summary of Fiscal Impact of SB 763 Office of the Governor

1997-98 1998-99 1999-2000 2000-01 2001-02

No Fiscal Impact

ASSUMPTIONS AND METHODOLOGY:

G.S. 15A-838 requires the Governor to notify a victim if the Governor is considering commutations or pardons. It also requires the Governor to allow victims to present written statements before a sentence is commuted or a defendant is pardoned.

There is no fiscal impact since the victim services in SB 763 generally reflect current practices by the Office of the Governor and DOC/Parole Commission for victims of the most serious offenses.

SECTION V - LAW ENFORCEMENT

Summary of Fiscal Impact of SB 763 Law Enforcement**					
	<u>1998-99*</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
1. Materials and Postage	\$0	68,267	70,316	72,425	74,604
2. Personnel (28)	\$0	<u>894,040</u>	<u>920,861</u>	<u>948,486</u>	<u>976,941</u>
TOTAL	\$0	\$962,307	\$991,177	\$1,020,911	\$1,051,545

*7-1-99 effective date.

NOTE: Includes 3% inflation factor for each year

ASSUMPTIONS AND METHODOLOGY:

SB 763 requires victim services from law enforcement agencies at several stages. The 5 major required steps are:

- (1) Within 24 hours after identifying a victim, a law enforcement agency must provide a victim with information on:
 - a. Medical services available to victim (current)
 - b. Victims Compensation Fund (current)
 - c. District Attorney's office address and phone number (new)
 - d. Address and phone number of law enforcement employee to contact if not notified of an arrest within six months (new)
 - e. Offenders opportunity for pre-trial release. (new)
 - f. Contact information where victim can get information on offenders release (new)
- (2) Within 24 hours after an arrest, the arresting law enforcement agency must notify the investigating agency of the arrest. (new)
- (3) Within 24 hours after notification by the arresting agency, the investigating agency must provide victim information to the appropriate district attorneys office.
- (4) Notify the victim of the arrest
- (5) Notify the victim of releases and escapes

Number of Victims

- (1) Using data from Division of Criminal Information, State Bureau of Investigation, it is estimated that there were 128,737 victims in 1997 that correlate to felony offenses outlined in SB 763.
- (2) **This 128,737 population applies only to the first stage of the process - providing victims with information 24 hours after an incident. For stages 2-5, which apply only to arrests, we estimate a population of 28,322.** FRD reviewed SBI state wide arrest records (state and local law enforcement) for 1992 - 1997 and found that approximately 22% of Index Crime offenses are cleared, usually by arrest, thus assuming 22% of (128,737) offenses would result in 28,322 arrests for offenses in SB 763.

- (3) Given the difficulty of determining what services 600+ local entities are currently providing, this fiscal note assumes only limited services are provided to victims now by law enforcement, as resources are available, under the current Fair Treatment Act.
- (4) Cost estimates are statewide based on estimated manhours statewide. Costs include state law enforcement, but most of victims/offenses are local law enforcement (sheriffs/police).
- (5) Personnel -- assume \$31,000 per position first year (\$2,000 equipment and \$29,000 subsequent years) total includes salary and benefits.

COST ANALYSIS:

- (1) Stage 1 - Provide information to all victims within 24 hours of incident (128,737 victims):
 - a. **Pamphlet/Brochure** - Assume law enforcement will have to develop material giving victims basic information. FRD priced a two-fold brochure at approximately \$4,000 for 130,000 copies and assumed one general brochure would be used statewide. (1) brochure \$4,000 (one-time) to develop; (2) 128,737 victims annually x .02 per brochure in 99-00 and subsequent years = \$2,594 and (3) 64,368 victims annually x .39 = \$25,103 (assume 50% of victims can be given material at time of crime so only 50% will be mailed; .39 is letter, envelope, and postage (excludes inflation which is added to figures in table).

NOTE #1: Letter/form could be used in place of brochure to reduce cost.

NOTE #2: If all counties, cities and towns developed their own brochures, costs could exceed \$100,000 (or more) statewide for development of individual material for 100 counties and 534 towns and cities.

- b. **Personnel Costs** - Assume average of 15 minutes to explain or collect and mail information and for likely follow-up by victims at initial stage. Fifteen minutes is used since law enforcement is first point of contact for victim (128,737 x 15 minutes = 32,184 manhours/1800 = **18 positions statewide** (assume process not automated in most cases)
- (2) Stage 2 - Arresting agency notifies investigating agency of arrest (28,322 of total population or 22%)
 - a. Mailing /Letter Costs (letter, envelope, postage)
 $28,322 \times .39 \text{ postage} = \$11,045$
 (if done by phone, no mailing cost but may increase personnel costs for phone contact)
 - b. Personnel - 28,322 x 10 minutes = 4,720 hours = **3 positions statewide** (10 minutes is average for mailing or phone call)

Note #1: May be additional cost for new bond form that would allow magistrate and law enforcement officer to each have copy of victims information.

- (3) Stage 3 - Forward victim information to district attorney
 - a. Mailing/Letter Costs (letter, envelope, postage)
 $28,322 \times .39 = \$11,045$
 (if done strictly by phone, no mailing cost but may increase personnel costs)
 - b. Personnel
 $28,322 \text{ victims} \times 10 \text{ min} = 4,720 \text{ or } \mathbf{\underline{3 \text{ positions}}}$

(4) Stage 4 - Forward arrest information to victim if requested by victim at stage 1 (assume 75% of victims will want notification of arrest: $28,322 \times .75 = 21,242$ victims)

a. Mailing/Letter Costs
 $21,242 \times .39 = \$8,284$

b. Personnel - $21,242$ victims $\times 10$ min. = $3,540$ hours/ $1800 = \underline{2 \text{ positions}}$ (Note: this may duplicate notices in stage 2 in some cases; if so, manhour and administrative costs would be reduced).

(5) Stage 5 – Notices to victims of releases or escapes.

a. Mailing/Letter Costs
 $21,242 \times .39 = \$8,284$

b. Personnel - $21,242$ victims $\times 10$ min. = $3,540$ hours/ $1800 = \underline{2 \text{ positions}}$

SECTION VI - DOMESTIC VIOLENCE MISDEMEANORS

Summary of Fiscal Impact of Domestic Violence Definition					
<u>EXPENDITURES</u>	<u>1998-99*</u>	<u>1999-00**</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>
1. Judicial Department	\$157,688 (4)	\$1,115,662 (21)	\$1,159,743 (21)	\$1,194,535 (21)	\$1,230,371 (21)
	(21 = 14 VWA's, 4 ADA's, 2 Clerks, 1 Judge and Indigent Costs)				
2. Department Correction (Probation and Parole: Prisons)	\$0	\$78,607 (2)	\$69,635 (2)	\$71,724 (2)	\$73,876 (2)
3. Department of Justice	No additional fiscal impact				
4. Law Enforcement Subtotal (Primarily local)	\$0	\$577,141	\$559,435	\$576,322	\$593,820
Positions:		(17)	(17)	(17)	(17)
TOTAL	\$157,688 (4)	\$1,771,410 (40)	\$1,788,813 (40)	\$1,842,581 (40)	\$1,898,067 (40)
* Effective July 1, 1999					
** Costs include a 3% inflation rate					

ASSUMPTIONS AND METHODOLOGY: Inclusion of Domestic Violence Misdemeanors in SB 763

The 1997 General Assembly instructed the Governor's Crime Commission to coordinate a study of domestic violence crime categories. Specifically, the committee was required to recommend a statutory definition of domestic violence that would be sufficiently clear for law enforcement officers and prosecutors to determine eligibility for victims assistance services. The committee believed that there were two elements basic to the definition of domestic violence: 1) the nature of the offense, and 2) the nature of the relationship between the parties. The committee adopted the following definition which outlines specific crimes where victims would automatically receive services under law: For purposes of determining eligibility for crimes victims' assistance, misdemeanor offenses included are any violation of *Assault Inflicting Serious Injury or Assault With a Deadly Weapon, Assault on a Female, Simple Assault, Assault by Pointing a Gun, Domestic Criminal Trespass or Stalking* that is committed between persons who are current or former spouses, or who live together in an intimate relationship, or who have or are expecting a child in common.

Using these offenses and relationship definition, the Governors Crime Commission and the AOC estimates that 30, 822 victims statewide would qualify for services. This number was determined by using data from nine prosecutorial districts (16 counties) that operate special domestic violence pilot projects and then extrapolating that data statewide. (Of 43,411 cases, 30,822 were in seven misdemeanor categories and met definition of relationship)

SB 763 Definition of Domestic Violence

Senate 763 also uses the seven misdemeanor offenses recommended by the Crime Commission but expands the relationship definition by using the definition in G.S. 50B-1 (b) – a familial relationship between the parties involved which means ... "current or former spouses; persons of the opposite sex who live together or have lived together; parents grandparents, or others acting in loco parentis to a minor child or children and grandchildren; have a child in common.

Extrapolating from data supplied by the 9 prosecutorial districts (covering 16 counties) who operate domestic violence courts, the Crime Commission and Judicial Department estimate that 37,713 victims statewide would qualify for services under this definition. The following analysis uses this number as a starting point to estimate the fiscal impact on the Judicial Department, while also estimating the number of victims who will request services at each step of the process

Estimated Fiscal Impact of Domestic Violence Cases under SB 763

Judicial Department

I. Notifications and Direct Interpersonal Communications with Victim Witness Assistants

New G.S. 15A-2012 requires District Attorneys to provide all victims with clear and concise written material that explains the victims rights. Thus, for all 37,713 victims at an estimated 10 minutes per victim would require 6,286 more VWA hours or the equivalent of 3 positions. $(37,713 \times 10 \text{ minutes} / 60 \text{ minutes} / 1,800 = 3 \text{ VWA positions})$

II. Notification of Subsequent Court Proceedings (upon request - assume 3 notices per victim)

Based on documented services supplied by the 9 domestic violence misdemeanor court districts, Fiscal Research assumes 50% of victims will request additional information. Thus, for the 18,857 victims who opt in for services at 10 minutes per written notice or phone call yields an estimated 9,428 hours or 5 VWA positions. $(18,857 \times 30 / 60 \text{ minutes} / 1,800 \text{ hours} = 5 \text{ VWA positions})$

III. Additional Time with Victims (victim impact statements, restitution)

Assuming 20% of all victims or 7,542 require an additional **75 minutes** of follow-up yields an estimated 9,428 hours or 5 positions $(7,542 \times 75 / 60 / 1,800 = 5 \text{ VWA positions})$ (revised from 60 minutes)

IV. Information Provided to Department of Correction

Assuming 20% of victims or 7,542 require an additional 10 minutes to pass information to DOC yields 1,257 hours or 1 VWA position. $(7,542 \times 10 / 60 / 1,800 = 1 \text{ VWA position})$

V. Consult with Prosecuting Attorney

Assuming 20% of victims or 7,542 spend 45 minutes with the prosecuting attorney yields an estimated 5,657 hours or 3 ADA positions. $(7,542 \times 45 / 60 / 1,800 = 3 \text{ ADA positions})$

VI. Court Time

Victim Impact Statements in Court

Assuming 15% of victims (5,657) choose to submit a victim impact statement in court either orally or in writing, and it requires an additional 10 minutes in court on average, yields an additional 943 hours in court time (includes clerks, district court judges, and ADA's time).

Consideration of Restitution Information at Sentencing

Assuming 15% (5,657) of victims cases require additional scrutiny of restitution issues at 10 minutes per case yields an estimated 943 hours in court time (includes clerks, district court judges, and ADA's time).

Docketing Judgments for Restitution

Assuming 15% (5,657) of victims cases will have restitution ordered, requiring approximately 20 minutes per case, yields an additional 1,886 hours in court time (includes clerks time only since most of the time is for administrative duties).

Adding the cumulative additional court time involved with providing these services yields approximately **2 additional clerks and 1 district court judge and assistant district attorney.**

* **Indigent Defense:** Assuming 75% of these victims are indigent and will be represented by court appointed counsel at \$50 per hour yields an estimated \$81,793 in additional indigent defense costs (effective 7/1/99).

	Total AOC Costs					
	<u>14 VWA's</u>	<u>4 ADA's</u>	<u>2 Clerks</u>	<u>1 Judge</u>	<u>Indigent Defense</u>	<u>Total</u>
FY 99-00*	\$571,018	\$289,381	\$56,106	\$117,364	\$81,793	\$1,115,662
FY 00-01**	\$503,084	\$293,733	\$57,789	\$120,885	\$84,252	\$1,159,743

* Positions effective 7/1/99

** Costs include a 3% inflation rate

Department of Correction

Probation – DOC estimates that 3,821 probation entries would potentially require notices to victims under the definition proposed by the Governor's Crime Commission. These notices, as currently outlined in the bill for felonies, include sentencing, movement within probation status, revocation hearings, revocation dispositions, absconding, captures, and final discharges. Using the same frequency percentages as outlined for felonies (e.g. people absconding from probation occurs in only 6.6 % of cases) and assuming 50 % of victims will request notices, we assume 8,163 notices will be sent out annually (16,326 if all victims request notices at various stages).

Prison – DOC assumes 898 of the 3,821 probation entries or 23.5% could have their probation revoked and be sentenced to State prison (based on current experience). Notices to victims would be required for original release date, scheduled release date, and promotion from medium to minimum custody. (Escape number would be negligible). Total notices are estimated at 1,347 annually (50 % of victims; 2,694 if 100 % were to receive notices at all three stages)

Summary -

Annual notices: 9,510 X 10 minutes per notice / 60 minutes = 1,585 hours or .77 positions
(Assume one Office Assistant)

Administration: System Maintenance (OPUS data entry); phone calls with victims; general administration = 1 position. (Assume one Victims Coordinator)

Mailing Cost: $9,510 \times .39 = \$3709$

Total Costs 98-99

Positions	\$74,898 (1 office assistant and one victims coordinator)
Mailing	<u>3,709</u>
	\$78,607

*Assumes 3% growth in future costs and 2% growth in workload.

Local Law Enforcement

Based on data from the Division of Criminal Information, it is estimated that there were 33,164 victims in 1997 that correlate to offenses outlined in this domestic violence definition. This 33,164 number only applies to the first stage of the process - providing victims with information 24 hours after the incident. For stages 3-5, which apply only to arrests, we estimate a population of **27,194** (82% of population cleared by arrest).

Stage 1 - Provide Information to all Victims Within 72 Hours of Incident

Pamphlet / Brochure: One-time cost for 40,000 brochures is \$1,200. Assume 50% of victims can be given information at time of incident – $16,582 \times .39 = \$6,467$

Personnel: $33,164 \times 15$ minutes yields an additional 8,291 hours or 5 positions

Stage 2 - Arresting Agency Notifies Investigating Agency of Arrest

Mailing Costs: $27,194 \times .39 = \$10,606$

Personnel: $27,194 \times 10$ minutes yields an additional 4,532 hours or 3 positions

Stage 3 - Forward Victim Information to District Attorney

Mailing Costs: $27,194 \times .39 = \$10,606$

Personnel: $27,194 \times 10$ minutes yields an additional 4,532 hours or 3 positions

Stage 4 - Forward Arrest Information to Victim if Requested (assume 50%)

Mailing Costs: $13,597 \times .39 = \$5,303$

Personnel: $13,597 \times 10$ minutes yields an additional 2,266 hours or 1 position

Stage 5 - Notices to Victims of Releases or Escapes, Projected Release Dates, and Right to Submit Concerns (assume 3 notices per victim)

Mailing Costs: $13,597 \times .39 = \$5,303 \times 3 = \$15,909$

Personnel: $13,597 \times 30$ minutes yields an additional 6,799 hours = 4 positions

NOTE: Custodial responsibility at Stage 5 is expanded for local law enforcement for domestic violence offenses only . These offenses are misdemeanors and offenders are likely to be under custody of local jails not DOC (DOC responsible for custodial notifications for felony offenses). Under SB 763, jails will be required to provide projected release dates not just actual release dates as well as letting victims know of their right to submit concerns. FRD assumes that the notice of projected release date and the right to submit concerns can be handled with one mailing and will take about x minutes. However, in practical considerations in many cases offenders may be released immediately or well before a "projected" date can be determined.,

Total for Stages 1 - 5

	<u>FY 1999-00</u>	<u>FY 2000-01</u>
Brochures / Postage Costs	\$ 50,141	\$ 51,645
Personnel Costs	<u>\$527,000</u>	<u>\$507,790</u>
Total	\$577,141	\$559,435

*Costs include a 3% inflation rate each year

SECTION VII - VICTIMS COMPENSATION

Estimated Impact of Changes to the Crime Victims Compensation and Rape Victims Assistance Programs

Section 12 amends G.S. 15B-2 and GS 143B-480.2(a) to modify the limits on compensation to victims through the Crime Victims Compensation Fund and the Rape Victims Assistance Fund. The changes are as follows: (1) to raise the ceiling on total compensation from \$20,000 to \$30,000; (2) to raise the ceiling on reimbursement from work loss from \$200/wk to \$300/wk; (3) to add a category of household support

loss for victims of domestic violence who by bringing charges against their assaultant (as required to file a claim) lose household support; (4) to lengthen the time period during which victims must submit a claim from 1 year to 2 years; (5) to eliminate the requirement that loss must be at least \$100 for compensation to be provided; (6) raise the ceiling on claims to the Rape Victims Assistance Fund from \$500 to \$1,000; and (7) allow for up to \$50 to sexual assault victims to replace clothing held for evidence tests.

The fiscal impact on these changes depends on the projected increase in claims paid out compared to the projected available balance in the funds. The Crime Victims Compensation Fund is a non-reverting fund; unused balances are carried over to subsequent years. Each year the fund receives \$2 Million in General Fund appropriation, federal funds equal to 40% of claims paid out the prior federal fiscal year, and funds from the Department of Correction Enterprise and Canteen Funds. In 1996-7, the Fund started with a balance of \$2 Million, received \$4 Million in state and federal funds and paid out \$2.9 Million in claims. The average balance remaining in the fund at the end of the fiscal year over the past 3 years has been \$2.4 Million.

The cost of the proposed changes is estimated to be \$600,000-\$700,000 with the largest impact (\$510,000) from increases the overall maximum from \$20,000 to \$30,000. Given the large carry over balances under current law, the impact of these changes should be absorbed by the Crime Victims Compensation Fund without any delays in processing claims nor need for increased General Fund appropriation.

The Rape Victims Assistance Fund receives an annual appropriation of \$158,422. Funds not used in a given year revert to the General Fund. Claims paid have varied considerably from year to year. The fund reverted \$56,507 in 1994-95, \$85,332 in 1995-6, \$67,396 in 1996-97 and \$21,460 in 1997-8. The average balance remaining over 3 years has been \$58,062 but claims paid sharply rose in 1997-8.

Over the past 3 years, there have been an average of 82 claims that exceed the current \$500 ceiling and these claims averaged \$836. The impact on the RVAF of raising the ceiling to \$1,000 would be approximately \$27,552 ($=\$336*82$). If the 1997-8 experience indicates a new trend (perhaps from greater visibility of the program), this would cause a shortfall in the RVAF. Assuming FY 1997-98 was an anomaly and the 3 year average is a better indicator of the future, the changes could be absorbed within existing resources.

TECHNICAL CONSIDERATIONS: None

SOURCES OF DATA: Data from the AOC Financial Management System and Court Information System; data from the Sentencing and Policy Advisory Commission; data from the Conference of District Attorneys' survey information and/or interviews with clerks, victim and witness assistants, district attorneys, and probation officers; N.C. General Statutes. SBI data from the Criminal Information System; Department of Correction, including OPUS automated system. Review of Victims Rights programs in other states with National Conference of State Legislators (NCSL); Michigan, Arizona, Utah, Maryland, Ohio, and federal Department of Justice.

FISCAL RESEARCH DIVISION

(733-4910)

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