

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 388 (First Edition)

SHORT TITLE: Collection of Offender Fines and Fees.

SPONSOR(S): Senator Clodfelter

<b>FISCAL IMPACT</b>					
	<b>Yes ( )</b>	<b>No ( )</b>	<b>No Estimate Available (X)</b>		
	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>	<b><u>FY 2013-14</u></b>
<b>REVENUES:</b>					
<b>EXPENDITURES:</b>					
<b>Indeterminate fiscal impact</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Judicial Branch					
<b>EFFECTIVE DATE:</b> July 1, 2009					

**BILL SUMMARY:**

Current law allows the Judicial Department (Department) in its efforts to collect the fines, fees, and costs owed by offenders who are not sentenced to supervised probation to assess a collection assistance fee if the amount owed by an offender remains unpaid for 30 days after the time allotted by the court for payment to be made. This bill amends GS 7A-321(b) to permit the county in which the collection assistance fee is collected to retain that fee. Also authorizes the following additional methods for the Department to collect fines and fees from offenders: (1) pursue civil liens and judgments against offenders; (2) report delinquencies to credit agencies; and (3) make referrals to credit counseling agencies and debt restructuring services.

Effective July 1, 2009, and applies to cases adjudicated on or after that date

Source: *Bill Digest S.B. 388 (03/03/0200)*.

**ASSUMPTIONS AND METHODOLOGY:**

**Administrative Office of the Courts**

In attempting to collect fines, fees, and costs owed by offenders not sentenced to supervised probation, current G.S. 7A-321(b) allows the courts to assess a collection assistance fee as specified, enter into contracts with collection agencies, and intercept tax refund checks. Current G.S. 15A-1365 also provides for a civil judgment remedy.

This proposed bill would expand the avenues available to the court system to collect fines, fees, and costs from offenders not sentenced to supervised probation. Specifically, the courts would be able to pursue civil liens and judgments, report delinquencies to credit agencies, and make referrals to credit counseling

agencies and debt restructuring services. The bill would also permit the county in which the collection assistance fee is collected to retain the fee. Because this bill would apply to offenders not sentenced to supervised probation, it would cover unsupervised probationers, offenders sanctioned with only a fine or other such punishment, and offenders given active sentences.

The language in proposed 7A-321(b) is permissive – that is, the courts would not be required to engage in any of these activities to collect monies owed. However, if the courts as a whole – or one or more local court officials – were to engage in some of these activities, there would be a cost to the AOC. If these activities were to result in increased collections, there would be an increase in funds for the schools (through collection of fines), counties (through collection of facility fees), the State General Fund, other State funds, and other monies such as attorneys’ fees. *AOC cannot determine whether such an increase would in fact occur, or whether the increase would outweigh the costs of implementing the provisions of this bill.*

Collection assistance fee retained by county:

Although the bill language states that a county may retain the current collection assistance fee of 7A-321(b)(1), AOC is unaware of any instances in which the fee has been charged since its enactment in 2007. Thus, *AOC cannot determine what the precise impact of the proposed change in language would be.* As the statute is currently written, a collection assistance fee could be retained by a third party collection agency that has contracted to collect monies due from offenders. This contractor could be a county government and therefore receive the fee under current law. The proposed language appears to permit the county to retain the fee even if the work was carried out by a third party vendor, which could negatively impact the AOC’s future ability to contract with vendors for collection assistance. In addition, funds retained by the counties would reduce the amount of funds that would normally be remitted to the General Fund, schools, or the county court facilities.

Pursue civil liens and judgments against offenders:

G.S. 15A-1365 already provides for a civil judgment remedy for fines and costs after a failure to pay. Docketing of civil judgments for attorney fees and restitution to Victim’s Rights Act victims are already provided for in other statutes; it is unclear whether the authority granted by SB 388 would be in lieu of or in addition to the docketing permissions of those statutes. Therefore, *AOC cannot determine the impact, if any, from new 7A-321(b)(4).* (See Technical Consideration #3)

Report delinquencies to credit agencies:

This bill allows, but does not require, AOC to report delinquencies to credit agencies. Should AOC decide to do so, the Clerks and AOC could be subject to the Fair Credit Reporting Act (FCRA) and all its requirements. Currently the clerks do not “report” credit information (e.g. judgments); this information is a matter of public record that credit bureaus gather to create credit reports. Therefore, if the courts were to engage in these actions and thus become a “reporting agency”, significant additional resources including a debtor/creditor attorney position would be required to ensure compliance with FRCA and related regulations.

If the act of reporting delinquencies were to increase collections, there would be an increase in fines, fees, and other costs collected. *AOC cannot determine whether such an increase would in fact occur, or whether the increase would outweigh the costs of becoming a reporting agency under the FRCA.*

Make referrals to credit agencies and debt restructuring services:

The courts do not currently maintain lists of such services. There would be costs associated with reviewing the agencies and compiling and maintaining lists. If such referrals result in increased collections, there would be an increase in fines, fees and other costs collected.

**SOURCES OF DATA:** Administrative Office of the Courts

**TECHNICAL CONSIDERATIONS:**

1. Amends G.S. 7A-321(b)(1): The basis on which the county would retain the fee is unclear. It is also unclear what is intended by the use of the term “county” – the county government, the Clerk of Courts, the school system, etc. Also, this proposed change appears to be unnecessary, as a county could enter into a contract with the AOC to provide collection assistance and thus receive the collection assistance free under current law.
2. It is unclear from an operational standpoint how the provisions in this bill would work – is it the AOC that would be expected to take these measures to local court officials?
3. Pursuit of civil judgments by “the Department” is unclear given that the current statutes provide for docketing via the criminal judgment imposing sentence (attorney fees and restitution) or by order of the court pursuant to failure to pay (fines and costs).
4. It is unclear whether the provisions of this bill would apply to restitution.
5. Given that the provisions of the bill would apply to defendants “not sentenced to supervised probation,” it would apply not only to unsupervised probationers, but also to defendants receiving active time.

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**DATE:** May 5, 2009



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