

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: HB 130

SHORT TITLE: Victims' Rights Amendment

SPONSOR(S): Representative Grady

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

FUNDS AFFECTED: **General Fund (X)** **Highway Fund ()** **Local Fund ()**
 Other Fund ()

BILL SUMMARY: Proposes to add a new section to the N.C. Constitution Bill of Rights. Provides that victims of crime or their lawful representatives have rights to be informed of and present at public hearings and heard at sentencing or before the Governor or any agency considering any action that could result in the release of the accused. Also grants victims and their representatives the right to receive restitution as established by law and the right to notification of escape, release, proposed parole, pardon, reprieve or commutation of the accused's sentence. The bill also authorizes the General Assembly to provide that portion of the court costs assessed against convicted defendants may be used for crime victims compensation. Provides that the amendment creates no cause of action against the State, local governments, public officials, or their agents and employees for failure to recognize these rights nor does any such failure constitute grounds for a defendant in a criminal case to obtain relief. These amendments will be submitted to the voters on May 7, 1996.

EFFECTIVE DATE: Upon ratification; referendum would be held May 7, 1996 but enabling legislation would be needed. This note assumes July 1, 1996 for ratification of enabling legislation.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Department, Board of Elections, Department of Correction, Parole Commission

ASSUMPTIONS AND METHODOLOGY: The next section describes key assumptions and methodology pertinent to the entire note.

This is followed by a summary chart of the fiscal impact on four Departments (Page 6).

Then the fiscal impact and a description of assumptions and methodology are discussed for each of the four departments, the Office of the Governor (no impact) as well as the statewide impact in terms of the State's liability in victims rights cases.

Assumptions Pertinent to Entire Fiscal Note

1. This fiscal note is based on the assumption that the proposed Victims Rights constitutional amendment will be approved by the citizens of North Carolina and in turn that the General Assembly will pass enabling legislation that, at a minimum, includes the rights outlined in the amendment.

The only actual cost of the bill, prior to approval of the amendment and resulting legislation, would be \$45,000 to hold the referendum in May, 1996.

2. It is assumed the proposed constitutional amendment envisions a system to provide a higher level of service to victims by guaranteeing them more intensive and focused rights and protections. While several services to victims are currently being provided under the Fair Treatment for Victims and Witnesses Act (Article 45 of Chapter 15A), these rights are provided ... "to the extent reasonably possible and subject to available resources." Also, Article 45 applies to both victims and witnesses of crime, with crime being defined as felony-level offenses and ... "serious misdemeanors as determined in the sole discretion of the district attorney." Thus, the current system of providing victim services defines the scope of crimes that can be included and defines the scope of services that can be provided within available resources. The Act also ensures that certain services are provided to witnesses only.

3. Five fiscal impact options - Alternatives 1 to 5 - are presented in this note. These options are presented since the victims rights outlined in HB 130 do not define the "victim" or scope of crimes that would require the victims rights outlined in the bill. Assuming the constitutional amendment passes, enabling legislation would need to be enacted to define these terms.

The five alternatives are presented as options which reflect an increasingly narrow population of victims. Alternative 1 assumes most criminal offenses would require the victims' rights outlined in HB 130 By contrast, Alternative 5 primarily covers victims of the four

categories of violent crime in the "Violent Crime Index" used by the FBI and N.C. S.B.I. The crimes covered under each option and the number of court filings for these crimes in 1993-94 are described and explained below.

Alternative 1:

- (a) All felonies in Superior Court (83,823)
- (b) All misdemeanors in Superior Court, except DWI appeals and other motor vehicle appeals (26,863)
- (c) District Court criminal motor vehicle cases that involve the offenses of death by vehicle, hit/run, leaving the scene of an accident, failing to report an accident, possessing a stolen vehicle, and tampering with a vehicle (8,098)
- (d) All District Court criminal non-motor vehicle cases, except probable cause matters that transfer to Superior Court (as they are already included in the Superior Court figures) (495,597 cases & 53,616 worthless check waivers)

Note: Only Alternative 1 includes controlled substance cases

Alternative 2:

- (a) All felonies in superior court, except controlled substance cases (57,686)
- (b) All misdemeanors in superior court, except DWI appeals, other motor vehicle appeals, and controlled substance appeals (24,700)
- (c) District Court criminal motor vehicle cases that involve the offenses of death by vehicle, hit/run, leaving the scene of an accident, failing to report an accident, possessing a stolen vehicle, and tampering with a vehicle (8,098)
- (d) All district court criminal non-motor vehicle cases, except probable cause matters that transfer to superior court and controlled substance cases (495,597 cases & 53,616 worthless check waivers)

Alternative 3:

- (a) All felonies in superior court except controlled substance cases (57,686)
- (b) 15% of non-motor vehicle appeals in superior court (2,821)
- (c) District Court criminal motor vehicle cases that involve the offenses of death by vehicle and hit/run (6,403)
- (d) 15% of District Court criminal non-motor vehicle cases, except probable cause matters that transfer to Superior Court (82,382)

Note: Alternative 3 generally conforms to the Fair Treatment for Victims and Witnesses Act - all felonies and serious misdemeanors as defined by each District Attorney -- but HB 130 would provide more services to these victims than currently available.

Alternative 4:

All felonies in superior court except controlled substance cases (57,686)

Alternative 5:

Violent crimes as defined by Uniform Crime Reporting Index

- (a) Murder
- (b) Rape
- (c) Robbery
- (d) Aggravated Assault

Additions to this Index for Alternative 5 include two other categories of sexual assault - first and second class sex offenses. These sex offenses are Class B and C felonies. Also, felony-level kidnapping offenses were included and certain misdemeanor-level assaults. Court filings for 1993-94 were: Violent Felonies -- 11,876; Violent Misdemeanors referred to Superior Court -- 1,881; and, Violent (assaultive) Misdemeanors in District Court -- 54,921.

4. The Note also assumes all victims of crimes, as defined for each alternative, would automatically have the rights and services defined in HB 130. In other words, the rights will not be dependent on the victim making a request as required under current victims' rights legislation.

5. Costs are increased by 3% annually for inflation.

In summary, the estimated fiscal impact of HB 130 is based on two key factors different from current practice (1) more "victims" to be served (particularly Alternatives 1 & 2); and (2) more services to be provided (all 5 alternatives).

The remainder of the note is organized as follows:

Page 6 -- Fiscal Impact of House Bill 130 for all Departments involved

Page 7 and 8 Fiscal Impact Charts for Judicial Branch

Page 9 begins the discussion of the Judicial assumptions and methodology

Page 25 -- Board of Elections

Page 26 -- Parole Commission

Page 27 -- Department of Correction

Page 29 -- Department of Justice

Page 30 -- Office of the Governor

**FISCAL IMPACT OF HB 130 - (Victims' Rights Amendment)
BY DEPARTMENT AND ALTERNATIVE**

	<u>FY</u> <u>1995-96</u>	<u>FY</u> <u>1996-97*</u>	<u>FY</u> <u>1997-98</u>	<u>FY</u> <u>1998-99</u>	<u>FY</u>
<u>1999-2000</u>					
Judicial Department					
Alternative 1	-0-	\$10,008,026	\$9,020,345	\$9,290,955	\$9,569,684
Alternative 2	-0-	9,207,926	8,299,235	8,543,213	8,804,659
Positions		(210)	(210)	(210)	(210)
Alternative 3	-0-	2,722,251	2,440,865	2,514,092	2,589,515
Positions		(63)	(63)	(63)	(63)
Alternative 4	-0-	1,216,640	1,054,542	1,086,178	1,118,763
Positions		(28)	(28)	(28)	(28)
Alternative 5	-0-	1,240,606	1,112,521	1,145,897	1,180,275
Positions		(29)	(29)	(29)	(29)
 Parole Commission					
Alternative 1	-0-	\$82,000	41,000	20,500	10,250
Alternative 2	-0-	72,000	36,000	18,000	9,000
Alternative 3	-0-	70,000	35,000	17,500	8,750
Alternative 4	-0-	68,000	34,000	17,000	8,500
Alternative 5	-0-	37,500	18,750	9,375	4,688
		- No Positions -			
 Department of Correction**					
Alternative 1	-0-	\$56,309	51,612	53,161	54,755
Alternative 2	-0-	56,309	51,612	53,161	54,755
Alternative 3	-0-	56,309	51,612	53,161	54,755
Alternative 4	-0-	56,309	51,612	53,161	54,755
Alternative 5	-0-	-0-	-0-	-0-	-0-
Positions	0	1	1	1	1
 Board of Elections \$45,000					
		-0-	-0-	-0-	-0-
		- No Positions -			
 TOTALS 4 DEPARTMENTS					
Alternative 1	\$45,000	\$10,146,335	\$9,112,957	\$9,364,616	\$9,634,684
Alternative 2	45,000	9,336,235	8,386,847	8,614,374	8,868,414
Alternative 3	45,000	2,848,560	2,527,477	2,584,753	2,653,020
Alternative 4	45,000	1,340,949	1,140,154	1,156,339	1,182,018
Alternative 5	45,000	1,278,106	1,131,271	1,155,272	1,184,963

*NOTE: FY 1996-97 totals for Judicial and DOC include non-recurring items.

**1 position for DOC for Alternatives 1-4; none for Alternative 5.

**SUMMARY OF ESTIMATED COSTS
OF HOUSE BILL 130 (VICTIMS' RIGHTS AMENDMENT)
FOR THE NORTH CAROLINA JUDICIAL BRANCH OF GOVERNMENT***

Cost Item	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5
Personnel	\$8,155,098 (228)**	\$7,509,810 (210)**	\$2,258,508 (63)**	\$1,008,198 (28)**	\$1,036,539 (29)**
Private Indigent Defense	25,920	22,385	9,705	6,900	3,820
Develop & Print Publication	136,399	126,341	32,358	14,037	16,236
Forms, Paper, & Envelopes	496,977	456,365	122,396	53,620	53,746
Postage (First-Class Mail)	1,193,632	1,093,025	299,284	133,885	130,265
TOTAL	\$10,008,026 (228)	\$9,207,926 (210)	\$2,722,251 (63)	\$1,216,640 (28)	\$1,240,606 (29)

*Cost estimates are included in this chart only for Rights (c),(d),(e), (f) and (h) in section 1 of HB 130 since estimated cost projections could be made for these rights. Several of the remaining rights could also have fiscal impact on the Judicial Branch, as discussed in the text, but cannot be quantified. **Also note this chart is an itemization of total annual costs for 1996-97; actual costs by year are shown on the Chart on page 8.**

**Positions

JUDICIAL BRANCH --
FISCAL IMPACT OF HB 130

	<u>FY</u> <u>1995-96*</u>	<u>FY</u> <u>1996-97</u>	<u>FY</u> <u>1997-98</u>	<u>FY</u> <u>1998-99</u>	<u>FY</u> <u>1999-2000</u>
Alternative 1 Positions	-0-	\$10,008,026 (228)	\$9,020,345 (228)	\$9,290,955 (228)	\$9,569,684 (228)
Alternative 2 Positions	-0-	9,207,926 (1,150,416 NR)** (210)	8,299,235 (210)	8,543,213 (210)	8,804,659 (210)
Alternative 3 Positions	-0-	2,272,251 (352,479 NR)** (63)	2,440,865 (63)	2,514,092 (63)	2,589,515 (63)
Alternative 4 Positions	-0-	1,216,640 (162,494 NR)** (28)	1,054,542 (28)	1,086,178 (28)	1,118,763 (28)
Alternative 5 Positions	-0-	1,240,606 (160,488 NR)** (29)	1,112,521 (29)	1,145,897 (29)	1,180,275 (29)

*Assumes enabling legislation would not be ratified until July 1, 1996 since primary would not be held until May 7, 1996.

**Non-recurring costs in 1996-97 are included in the totals, but highlighted in () under each total. Total cost for years 1997-98, 1998-99 and 1999-2000 includes 3% annual inflation increase.

ASSUMPTIONS AND METHODOLOGY - JUDICIAL DEPARTMENT

1. This fiscal note attempts to estimate the incremental costs of providing the enhanced level of services to victims beyond those provided currently under the Victim/Witness Assistant Program. Each alternative discussed in this note includes a subset of victims who are not targeted for services within the current system, but who would receive services pursuant to the constitutional amendment. In addition, the bulk of the costs for each alternative derives from personnel costs associated with preparation of required notices and increased investment of Victim and Witness Assistant (VWA) time for assisting and communicating with victims. VWAs are responsible for implementation of victims' rights programs in the districts and report to the District Attorney. The cost for preparing notices could be underestimated given that some time will be required for VWAs to identify the victim or victims in many instances.

The estimated costs are based on a key assumption -- that an average of an additional 10-15 minutes per case will be required for VWA's to provide additional services to eligible clients. This additional service is clearly more likely when backed by a constitutional guarantee.

These assumptions are conservative for several reasons. These include:

First, making these rights a constitutional guarantee is expected to result in victims desiring and expecting to become more active participants in the criminal justice process. The information and notifications that will be sent will undoubtedly encourage victims to take advantage of the services that are available and to request a greater level of assistance, information, and involvement.

Second, the time estimated for VWA personal contact under **Right (c) (the right to be given information concerning the crime, the criminal justice system, and victims' rights)** represents the cumulative additional time invested at all stages of the criminal justice process. For example, some victims who initially seem not to desire substantial involvement may seek more participation and assistance after receiving a notice of a court proceeding.

Third, analysis is based on a conservative number of notices to be provided to victims. For example, the time that would

be spent by VWAs notifying victims that court proceedings for which they received notices will not occur as scheduled is not estimated. Such notifications, which may often be accomplished through telephone contact, would nonetheless involve time and personnel resources.

Fourth, no estimates have been included for notices to victims that may be required for motions for appropriate relief or other post-conviction court proceedings. Finally, it is conservatively assumed there will only be one victim per case.

The fiscal information for Judicial is organized as follows:

Section 1 -- a summary of the nature of the revisions that have been made to this note as compared to information provided for similar bills in previous sessions;

Section 2 -- the potential impact of each of the proposed rights outlined in HB 130 is discussed in turn, with cost estimates provided when possible, along with a summary of the impact analysis.

SECTION 1 --

COMPARISON OF THE CURRENT FISCAL NOTE WITH INFORMATION SUBMITTED IN PRIOR SESSIONS

HB 130 is very similar to HB 1033, which was originally introduced in the 1991 Session and SB 54 (introduced during the 1994 Special Session), which proposed a nearly-identical constitutional amendment, as well as certain changes to statutes concerning restitution.

For purposes of this fiscal note, the significant differences in language appear to be (1) the change from a right to... "reasonable notification" of court proceedings in Right (d) to a "right to notification" of court proceedings, and (2) a change from the ... "right to confer with a representative of the prosecution"... in Right (k) to the... "right to confer with the prosecution". The exact implication of the former change, deletion of the qualifier "reasonable," is unclear, and this fiscal note assumes no substantive change in the fiscal analysis underlying provision of Right (d). The precise impact of the latter change is also unclear, but could be substantial, and is discussed in more detail Right (k).

The format and methodology of the analyses underlying this fiscal note are substantially the same as that for HB 1033, with four exceptions.

First, three additional alternatives for a total of five are provided to give decision makers a comprehensive review of how the definition of victims and crimes in subsequent conforming legislation will impact costs. As explained on page of this note, Alternative 3 conforms generally to current definition of victims in the Fair Treatment Act while Alternatives 4 and 5 focus more closely on victims of violent crime.

The second major change is to correlate the average amount of VWA time that would be required for personal communications and contact with victims under Right (c) with each Alternative. In previous notes, it was assumed that for each alternative definition of crime, an additional 15 minutes of VWA time would be required, on average, for personal communications relating to the provision of these rights. We have reduced this estimate to 10 minutes for Alternatives 1 and 2 under the assumption that these alternatives contain a greater proportion of "victimless" crimes as well as crimes in which the victims may not desire extensive VWA service participation. For Alternative 3 through 5, the assumption of 15 minutes per case is retained because of the potential for significant increased investment of time engendered by the information and notification requirements.

Third, in previous notes it was assumed that deputy clerks would handle victim proceedings. This note assigns this task to VWA's to more accurately reflect how these rights be implemented. Since these notifications represent new rights conferred upon victims, it is most likely that they would be met within the Victim/Witness Assistant Program, rather than by clerks' offices.

Fourth, first class mail rates are used as the postage cost of notifying victims, not certified mail as presented in the notes on HB 1033 and SB 54. This assumes first class mail is considered evidence of notification.

SECTION 2

ANALYSIS OF IMPACT ON THE JUDICIAL BRANCH OF THE PROPOSED VICTIMS' RIGHTS AMENDMENT (HB 130)

Judicial Branch costs are directly related to the likely operational definitions of "crime" together with the explicit designation of crime victims. HB 130 would establish the proposed rights for "crime victims or their lawful representatives, including the next of kin in the case of homicide." A broad, inclusive definition of crime victims would include persons against whom there is probable cause to believe a crime has been committed, with "crime" being defined as any criminal violation of law. Alternatively, crime might be defined as it is under the current Fair Treatment to Victims and Witnesses Act, as "a serious misdemeanor as determined in the sole discretion of the district attorney and any felony, or any act committed by a juvenile that, if committed by a competent adult, would constitute a felony" [G.S. 15A-824(1)]. Certainly, other potential interpretations of "crime" are possible, such as offenses involving the element of violence.

It is unclear from HB 130 which crimes would be considered victimless. For felony controlled substance cases, for example, it could be said that there are no direct, identifiable victims in such cases. However, a more expansive definition might identify the person to whom drugs were sold or the drug user's family members as victims.

Thus the fiscal note presents alternative cost estimates based on five possible interpretations, of what crimes the proposed amendment would include. These are:

Alternative 1:

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

Alternative 2: (Same as #1 but excludes controlled substances)

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

Alternative 3:*

- (a) all felonies in superior court except controlled substance cases
- (b) 15% of non-motor vehicle appeals in superior court ("serious" misdemeanors)
- (c) district court criminal motor vehicle cases that involve the offenses of death by vehicle and hit/run
- (d) 15% of district court criminal non-motor vehicle cases, except probable cause matters that transfer to superior court

***Conforms generally to crimes covered under Fair Treatment to Victims and Witnesses Act - all felonies and serious misdemeanors.**

Alternative 4: all felonies in superior court except controlled substance cases

Alternative 5:

- (a) superior court felony categories of murder, manslaughter, rape and first-degree sex offenses, robbery, assault, other sex offenses (15% only), and other (15% only)
- (b) 10% of non-motor vehicle appeals in superior court
- (c) 10% of district court criminal non-motor vehicle cases, except probable cause matters that transfer to superior court

Analysis and estimates are presented below (when possible) for each of the proposed rights outlined in Section 1 of HB 130.

(a) The right to be treated with fairness, respect, and dignity throughout the criminal justice process.

Without knowledge of how this right would be construed through implementing legislation, we can identify no specific cost items.

(b) The right to be reasonably protected from the accused or any persons acting on the accused's behalf throughout the criminal justice process.

If implementing legislation were to establish specific requirements for providing victims with secure waiting areas during court proceedings (as is done now whenever practical, under the Fair Treatment to Victims and Witnesses Act), or more extensive courthouse security systems, inadequate space, facilities, and resources for such purposes in some locations may strain counties' ability to provide adequate facilities for the courts. However, there is no way to determine this need or cost at the current time.

(c) The right to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.

The assumption is that victims would be provided the above information by a combination of phone, letters, and in-person contacts. VWAs currently use all three methods to communicate with victims. Additionally, to implement the broad information requirements of this right, it is assumed a new publication would be developed. The publication would be a consolidation and expansion of current materials. This publication could then be sent at the time of the first notice to all victims, with follow-up phone and in-person contacts with many. Costs for development and printing of this publication are included in the section itemizing postage and related expenses, near the end of this fiscal note. (The publication itself would cost \$2,500 to prepare. Recurring costs would be in printing and mailing copies).

It is assumed the additional communications would require more personnel. It is assumed that on average, 10 or 15 minutes (depending on the types of cases included in each Alternative) would be spent with each victim in personal contact. This assumption is an estimate. The average time expenditure cannot be precisely predicted, as certain case may necessitate hours of communication with a victim and others may not.

Alternatives 1 and 2, the more inclusive options, assume an additional 10 minutes (.17 hours) per case on average. This assumes that in many of the cases included in these two alternatives are victims who are not currently served but who would receive the specific notifications under this constitutional amendment. This would require an average of ten minutes per client; a smaller subset will require time of the VWA well in excess of 10 minutes.

Alternatives 3 through 5 assume an additional 15 minutes (.25 hours) per case, because these alternatives exclude "victimless" crimes (thus, a higher proportion of these cases will involve victims who might be interested in receiving VWA services) and because these alternatives focus on more serious cases in which victims are more likely to desire and require a greater investment of time by VWAs.

The overall assumption is that while many of the victims represented in the five options are currently being targeted by VWAs for services, the additional time estimated below includes any incremental time to be spent by VWAs on personal communications with victims throughout the entire criminal justice process, and may include instances in which victims' involvement does not occur until a fairly late stage (e.g., before hearing or trial). Similarly, this incremental time estimate includes any time that is spent by VWAs in fulfilling duties related to the right to confer with the prosecution [Right (k)]. This right will undoubtedly create additional demands on the VWAs in their role as a liaison and a conduit of information between the prosecution and the victim.

Three steps were required to determine staffing needs:

1. Number of Court Filings x minutes per activity with victim (10 minutes for Alternatives 1&2; 15 minutes for Alternatives 3, 4, and 5) = work hours needed

2. $\frac{\# \text{ workhours needed}}{2000 \text{ workhours per year}}$ = Number of VWA positions

3. #VWA positions x salary and benefit costs per position = Total Cost

(Example: Felonies in Superior Court - 83,823 X .17 hours = 14,250 hours / 2000 work hours = 7 Victim Witness Assistant positions X \$36,291 salary and benefits = \$254,037)

The following are estimates of the additional resources required to provide all victims with the identified information

(excluding notification-related postage, paper, and envelope costs, which are presented on page 23). These estimates are based on the first-year position costs for VWA's for fiscal year 1995-96 and 1993-94 Superior and District Court criminal filings.

Alternative 1: 57 VWAs x \$36,291 = \$2,068,587

Alternative 2: 53 VWAs x \$36,291 = \$1,923,423

Alternative 3: 19 VWAs x \$36,291 = \$689,529

Alternative 4: 8 VWAs x \$36,291 = \$290,328

Alternative 5: 9 VWAs x \$36,291 = \$326,619

(d) The right to notification of court proceedings and notice of pre-trial release of the accused.

Court Proceedings

Notifying victims of court proceedings first requires identifying who the victim or victims are, and ascertaining the address of each victim. Then, a computer-generated form can be prepared indicating the nature, date, and time of the specific court proceeding. This form would then be sent to the victim, with copies of required documentation filed as appropriate. We estimate that preparation and distribution of each such notice will require five minutes (.083 hours) of a VWA's time.

The number of notices required in a case will vary a great deal depending on the type of case and how it is disposed. For example, in a superior court felony case, a minimum of four notices would be required: (a) first appearance in district court, (b) probable cause hearing, (c) arraignment in superior court, and (d) plea or trial. It is assumed that, on average, six notices would be required for superior court cases (allowing an additional two notices for proceedings relating to motion hearings, continuances, etc.). For district court cases, we assume one notice would be required for cases disposed by waiver, and four notices for cases disposed otherwise.

Pre-Trial Release

Providing victims with notice of the accused's pre-trial release would likely be the shared responsibility of court officials and sheriff department officials. Interviews with clerks and magistrates indicated that in many locations, there would be substantial delays before clerks' offices would have this

information available, since in rural areas or in locations where the clerk's office is not in close proximity to the magistrates' offices or the detention facility, there is a delay in transferring paperwork to the clerk's office. Providing notice several days after a defendant's pre-trial release seems counter to the probable intention that such notices be provided expeditiously after release.

From the court system's perspective, magistrates (who usually set the initial pre-trial release conditions) would be the official with the greatest possibility of having the necessary information immediately available. However, in a high percentage of cases coming before them, magistrates will be unlikely to have all the information necessary to send such notices. Many times the magistrates will not have the victim's name, address, and telephone number at this initial stage. This lack of information would be a serious problem in the timely implementation of the pre-trial release notice requirement. In addition, for cases in which defendants are unable to post the required bond, and are transferred to the jail, this notice would probably have to originate in the sheriff's department. Certain problems would be likely to arise from having this responsibility shared by more than one office, including an increased need for coordination between the offices to ensure that notice requirements are met.

The following analysis projects Judicial Branch personnel resources that would be needed to provide victims with notice of pre-trial release of the accused. The projections are based on estimates of the percentage of cases in which magistrates would be responsible for sending these notices, with percentages varying by case type. In general, higher percentages are applied to less serious cases, since defendants would be more likely to be released soon after arrest, being able to meet the less stringent pre-trial release conditions (e.g., release on a written promise to appear; lower bond amount imposed). These estimated percentages of notices that the magistrate would send range from 30% to 75%. The sheriff's department could also incur a burden in providing the remainder of such notices but the cost impact is unclear. (For worthless check waiver cases, the following analysis first estimates that in only 5% of these cases would defendants have been arrested, since the great majority of worthless check defendants are charged by criminal summons without arrest.) To estimate Judicial branch personnel time required to send notices, we then apply the estimated percentage for which magistrates would have the necessary information to prepare notices, and assume preparation time of 10 minutes (.17 hours) for each notice to be sent. (Ten minutes, rather than five, is estimated for preparation time, because magistrates would be preparing these notices manually, rather than by computer.)

Analysis of the impact on personnel resources of the requirements for reasonable notification of court proceedings and notice of pre-trial release of the accused follows.

The total personnel salary and operating costs (excluding notification-related postage, paper, and envelope costs, which are presented on page 23 for each alternative are summarized below, using the first-year position costs for a VWA for the notifications of court proceedings, and using the first-year position costs for a magistrate for the notice of pre-trial release (fiscal year 1995-96). The estimates are considered by the AOC to be the minimum additional personnel resources needed to provide notification of court proceedings and notice of pre-trial release in these types of cases.

<u>Alternative 1:</u>	114	VWA	x \$36,291 =	\$4,137,174
	<u>30</u>	magistrates	x \$32,316 =	969,480
	144	employees		\$5,106,654
<u>Alternative 2:</u>	103	VWA	x \$36,291 =	\$3,737,973
	<u>28</u>	magistrates	x \$32,316 =	904,848
	131	employees		\$4,642,821
<u>Alternative 3:</u>	30	VWA	x \$36,291 =	\$1,088,730
	<u>7</u>	magistrates	x \$32,316 =	226,212
	37	employees		\$1,314,942
<u>Alternative 4:</u>	15	VWA	x \$36,291 =	\$544,365
	<u>2</u>	magistrates	x \$32,316 =	64,632
	17	employees		\$608,997
<u>Alternative 5:</u>	13	VWA	x \$36,291 =	\$471,783
	<u>4</u>	magistrates	x \$32,316 =	129,264
	17	employees		\$601,047

Further, the provision for notification of proceedings could imply as well that victims should be notified when proceedings are not going to be held as scheduled. No data is available for making cost estimates but such notifications could number in the millions and the impact on the workload of court staff could be significant.

(e) The right to attend trial and all other court proceedings which the accused has a right to attend, unless there is a judicial determination to restrict crime victims' attendance.

The cost to the court system of notifying victims of court proceedings has been itemized under Right (d). Depending on specific provisions of implementing legislation and the

interpretation of this right, the right to attend trial and all other court proceedings could have either little impact on the court system or a significant impact. If this right is construed to mean that the prosecutor must consider and accommodate victims' schedules when calendaring cases, it would have a negative impact on prosecutors' ability to schedule proceedings in a timely fashion. If this right is construed to mean that cases must be continued if a victim is not present, the combination of the two would result in an increase in the number of continuances. Continuances, as well as other sources of delay that could ensue, such as potential changes of venue, are associated with significant specific costs, in addition to substantial "ripple" effects slowing the pace of the court process. In addition, such effects may decrease the predictability of court calendars. Sufficient information is not available to provide cost estimates for the provisions of this right. It would appear to have the potential to produce delays and incidental costs to the court system and the administration of justice.

(f) The right to make a sworn statement to the court, either orally or in writing, in person or through counsel, at the time of sentencing prior to the adjudication of the sentence.

It is difficult to estimate what percentage of victims would exercise the right to personally make a statement at the time of sentencing. Discussions with VWAs suggest that it would not be a large percentage, for a variety of reasons. Many victims, especially in less serious cases, may not wish to invest their personal time and effort in preparing and making a statement. It is also quite likely that many victims will prefer that the prosecutor represent their interests in this regard. Such reasons were expressed by victims participating in a California research study that examined the frequency of victims making statements at sentencing after their Victims' Bill of Rights are adopted. That study found that victims made statements to the court at sentencing in a very small percentage of instances.

The AOC estimates that victims would exercise the right to make a statement (of five minutes, or .083 hours) before sentencing in 10% of the cases involving convictions as in the California study. Estimates were provided only for the court time that would be required for oral statements by victims, on the assumption that additional statements presented in writing or through counsel would not require significant additional court time.

These "day-in-court costs" were based on salary costs associated with Judicial Branch officials involved in sentencing hearings (superior court or district court judge, assistant district attorney, deputy clerk, official court reporter). The estimated cost of a day in superior court is \$954, and the estimated cost of a day in district court is \$864. Total costs ranged from \$357,566 for Alternative 1 to \$38,000 in Alternative 5.

The AOC analysis also included the increased court time for court-appointed representation of indigent defendants. From data on indigent representation, AOC estimated the proportion of defendants who would be found to need representation. The percentages of indigents needing representation range from a low of 15% for district court motor vehicle offenses to a high of 70% for the category comprising violent felonies.

Further, AOC estimated that for superior court cases, 25% of those found indigent would be represented by public defenders, and the remaining 75% would be represented by private assigned counsel. For district court cases, AOC estimated that 32% of indigent defendants would be represented by public defenders, and 68% would be represented by private assigned counsel.

However, Fiscal Research did not include these costs in this fiscal note. FRD assumes adding 5 minutes to each court day, while potentially affecting the backlog of other cases, does not necessarily create more court days and more costs. Rather, longer court days for officials with fixed salary costs would be required.

Given this FRD assumption on court days, we have also excluded public defender costs. Public defenders are salaried state employees. FRD has included private counsel contractual service costs.

The following costs would occur for private counsel for indigents:

Alternative 1	-	\$25,920	(404.8 court days)
Alternative 2	-	\$22,385	(370.3 court days)
Alternative 3	-	\$9,705	(102.4 court days)
Alternative 4	-	\$6,900	(51 court days)
Alternative 5	-	\$3,820	(42.8 court days)

(g) The right to receive restitution, in such manner as established by law.

The intent of this right is somewhat unclear in that it states that the victim has a right to receive restitution, rather than a right to request it. Under current law, ordering restitution is within the sentencing judge's discretion.

One interpretation of this right could be that the State would be obligated to pay restitution to victims in the event of offenders' failure to do so. If this were the case, an administrative office would be required to handle such payments, and the number and amount of such payments would be substantial. In the absence of information concerning what responsibilities, if any, would fall to the court system, no cost estimates are presented relevant to this provision in HB 130.

Assuming the current system of victim restitution continues, the court system would be affected to the extent that victims increase their requests for judges to order restitution. Victims would need to be advised to gather relevant evidence, such as receipts, estimates, and insurance deductible information, to present to the court. VWAs and prosecutors would need to review the documentation before presenting it, and court time would be required for the presentation of this evidence and to hear relevant testimony, especially when the defendant disagrees with the amount advocated by the victim.

The likely effects on the court system of increased orders for restitution would include some increase in the length of court proceedings, as well as more probation revocation hearings and revocations of probation, leading to increased costs to the indigent defense system, costs which cannot be quantified at this time.

(h) The right to information about the conviction or final disposition and sentence of the accused.

From the court system's perspective this right would likely translate into a separate notice following case disposition. The following analysis assumes that victims would receive such a notice, whether there is a dismissal, conviction, or other disposition. The estimates assume that the preparation and distribution of each notice would take 5 minutes (.083 hours) of a VWA's time. The number of court dispositions for 1993-94 by the type of crimes pertinent to each alternative were used as the basis for calculations.

Alternative 1: 27 VWAs x \$36,291 = \$979,857

Alternative 2: 26 VWAs x \$36,291 = \$943,566

Alternative 3: 7 VWAs x \$36,291 = \$254,037

Alternative 4: 3 VWAs x \$36,291 = \$108,873

Alternative 5: 3 VWAs x \$36,291 = \$108,873

(i) The right to notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.

Some mechanism would need to be established for providing the Department of Correction (DOC) or local sheriff's office with victims' names and addresses. The court system could send the DOC or the sheriff this victim information to use in its preparation of notifications. For the Judicial Department, we estimated that for each case in which a defendant is incarcerated, providing the correctional agency with a letter containing such information would require five minutes of preparation time by the VWA or comparable personnel. Considering the costs of staff time, letterhead paper, an envelope, and first-class postage results in an estimate of \$1.69 for each letter sent.

However, once the victim's name and address are provided to Correction, sheriffs offices, or the Parole Commission it is assumed that these agencies would be responsible for providing victims with information concerning escape, release, parole, pardon, reprieve, or commutation. **(See page 26 of this note for Parole Commission cost and page 27 for DOC)**. HB 32, ratified in the Crime Session, already requires the Judicial Department to provide victim information to DOC for all Class A-G felonies (the bulk of felony offenses), so significant additional cost is not anticipated.

(j) The right to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective, in a manner established by law.

On the assumption that these provisions apply only to release from incarceration, no impact on the Judicial Branch would be expected. (See other sections of this note for the fiscal impact on Correction (page 27), Parole Commission (page 26) and Office of the Governor (page 30)).

(k) The right to confer with the prosecution.

It is expected that making the right to confer with the prosecution explicit, especially in the form of a constitutional amendment, would cause some increase in the frequency with which victims request to confer with the prosecution about their cases. (Previous bills said "representative of prosecution"). Currently, VWAs often serve as a liaison and a conduit of information between the prosecution and the

victim. It is still assumed that in many cases, victims would likely be satisfied with this relationship [and costs for such communications with the liaison have been included under Right (c)]. It is likely, however, that this right will engender more requests to confer with the prosecuting attorney. To the extent that such requests occur, additional time would be required for prosecutors to engage in these conferences, which could lead to a substantial "slowing down" of the court process.

Costs for Postage, Paper, Printing, and Envelopes

Non-personnel costs for providing the required notifications and information to victims are itemized in the table on page 7 of this fiscal note. These estimates assume that such information is provided by means of a standard letter (on letterhead paper) from the VWA, supplemented with case-specific information. Also included are estimates for developing and printing the information publication [Right (c)], and the envelopes that would be required. Estimates for postage are provided assuming that notifications to victims would be sent by first-class mail (\$.32 for each mailing to each victim). (Depending on the formality of record-keeping for proof of notification that might be required in implementing statutes, legislation may be required to create a presumption that first-class mail is adequate. Alternatively, notifications might be sent by certified mail, with return-receipt requested, which is a much more costly procedure. If a more formalized system of notification were required, service by the sheriff may be appropriate, and, assuming that any sheriff's service fee would not be paid by the Judicial Branch, the cost would then be borne by the counties.)

Other Considerations

In addition to the specific issues described previously, there are several other significant considerations concerning the impact that the proposed victims' rights amendment would have on the court system.

First, the analysis has not included the potential impacts on delinquency matters under the juvenile justice system. G.S. 7A-517(12) defines a delinquent juvenile as a juvenile less than 16 years of age "who has committed a crime." Therefore, the proposed amendment could create rights for each victim of a juvenile's criminal act. For example, the amendment may require that victims be notified of and have the right to attend juvenile court proceedings; during 1993-94, 24,712 delinquency adjudicatory hearings were held. It is unclear how the provisions of the proposed constitutional amendment in HB 130 would relate to current statutes allowing the judge to exclude the public from adjudicatory or dispositional hearings unless the juvenile moves that the hearing be open [G.S. 7A-629 and G.S. 7A-6470].

A related issue involves provisions of the Juvenile Code that permit certain charges, even though well-grounded in fact, to be "diverted" by the intake officer so that no petition is filed against the juvenile. The amendment as proposed in HB 130 may create additional rights to protection, information, and restitution for victims in these instances when evidence shows that a crime occurred but the State is choosing not to prosecute.

The proposed amendment enables the General Assembly to provide that "a portion of the court costs assessed against convicted defendants shall be used to provide compensation for the victims of crime." This proposal would require either redistribution of current court costs, or an additional fee to be added to the costs assessed in many cases, thus potentially increasing court costs.

**BOARD OF ELECTIONS -
FISCAL IMPACT OF HB 130**

<u>1995-96</u>	<u>1996-97</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>
\$45,000 NR	0	0	0	0

ASSUMPTIONS AND METHODOLOGY:

HB 130 requires a referendum on the proposed constitutional amendment to be held on May 7, 1996. According to the State Board of Elections, fiscal impact would be minimal since the referendum would be held during primary elections. Cost is estimated at \$45,000 for additional printing and paper costs associated with the referendum's separate ballot.

**PAROLE COMMISSION --
FISCAL IMPACT OF HB 130**

	<u>FY</u> <u>1995-96</u>	<u>FY</u> <u>1996-97</u>	<u>FY</u> <u>1997-98</u>	<u>FY</u> <u>1998-99</u>	<u>FY</u> <u>1999-2000</u>
Alternative 1	-0-	\$82,000	\$41,000	\$20,500	\$10,250
Alternative 2	-0-	72,000	36,000	18,000	9,000
Alternative 3	-0-	70,000	35,000	17,500	8,750
Alternative 4	-0-	68,000	34,000	17,000	8,500
Alternative 5	-0-	37,500	18,750	9,375	4,688

ASSUMPTIONS AND METHODOLOGY:

Section 1 (i) of bill requires notification of the victim for proposed paroles or pardons. Cost assumptions and methodology are as follows:

1. The number of case reviews and paroles for 1993-94 were used as the base year. It is assumed parole reviews will decrease by 50% per year due to the current Structured Sentencing Act which eliminates parole.
2. The base number of case reviews and paroles excluded victims already notified of parole (felony cases of assaultive nature) by the Commission.
3. Assume 1.4 victims per case (based on # victims currently notified per case for assaultive cases).
4. Assume 4 letters per parole decision (1) notice letter to victims (2) notice letter to Victim Witness Assistant (VWA) (3) letter giving results to victims (4) letter giving results to VWA
5. Assume new DOC computer system (OPUS) would be in operation in 1996-97 (System already funded and due to be operational for Commission by the end of 1995) OPUS would automatically generate the 4 letters reducing current manual time and costs by up to 90%. The 90% cost reduction is reflected in the fiscal impact table above.
6. General methodology (1) # of parole reviews X (times) # victims X the # letters X .77¢ per letter (E.G. letter cost currently \$7.72 for 1.4 victims and 4 letters but OPUS computer change will reduce cost to 77¢ per letter).
7. Assumes parole hearings are not public hearings (current practice and law).

**DEPARTMENT OF CORRECTION
FISCAL IMPACT OF HB 130**

	<u>FY</u> <u>1995-96</u>	<u>FY</u> <u>1996-97</u>	<u>FY</u> <u>1997-98</u>	<u>FY</u> <u>1998-99</u>	<u>FY</u> <u>1999-2000</u>
Alternative 1	0	\$56,309	\$51,612	\$53,161	\$54,755
Positions		(6,200 NR)*	1	1	1
Alternative 2	0	56,309	51,612	53,161	54,755
Positions		(6,200 NR)*	1	1	1
Alternative 3	0	56,309	51,612	53,161	54,755
Positions		(6,200 NR)*			
Alternative 4	0	56,309	51,612	53,161	54,755
Positions		(6,200 NR)*			
Alternative 5	0	0	0	0	0

***NOTE:** Non-recurring funds are included in the total amount in 1996-97.

ASSUMPTIONS AND METHODOLOGY:

1. Department of Correction will have increasing responsibilities in victim notification concerning release of inmates from prison due to no parole under Structured Sentencing, thus requiring at least one position and support. **(Section 1 (i) of bill requires notification of escape or release from prison).**
2. Department of Correction will receive information concerning the name, address and other important information about victims from the AOC or other criminal justice agencies and will not have to develop this information (see portion of this note related to Judicial Department -- Victim Witness Assistants will notify DOC in certain cases and clerks will attach victim information to the original prison commitment papers for offenders committing felonies of Class G and above (HB 32 - 1994 Crime Session).

3. Department of Correction will notify the victim in writing upon offender's admission to prison, escape from prison, approval for participation in community leave, home leave, study release or work release, and 30 days prior to release from prison.
4. No cost is assumed for Alternative 5 since victims of violent crimes are already notified.

DEPARTMENT OF JUSTICE
STATEWIDE LIABILITY CLAIMS

FISCAL IMPACT OF HB 130

<u>1995-96</u>	<u>1996-97</u>	FY <u>1997-98</u>	FY <u>1998-99</u>	FY <u>1999-2000</u>	FY	FY
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NO FISCAL IMPACT

ASSUMPTIONS AND METHODOLOGY:

The Attorney General was requested to assess the potential additional liability to the state if HB 130 were ratified. Section 1, paragraph 2 of HB 130 states that "Nothing in this section shall be construed to create a further cause of action against the State of North Carolina, local governments, public officials, or their agents and employees, or a right to contest the disposition of any charge, or a right to court-appointed counsel to enforce any of these rights."

The Attorney General's Office indicated that the language would appear to be sufficient to establish a defense in the event of a lawsuit being filed. However, the Office indicates HB 130 may not provide immunity from suit brought under an existing theory of law, such as the state Tort Claims Act. In other words, if a state employee engaged in negligent conduct resulting in injury to another person, that theory of liability survives whether or not this bill passes. The question of potential liability would more appropriately be answered if this bill passes, the voters in turn pass it, and a subsequent General Assembly provides for enforcement of rights, including money damages.

OFFICE OF GOVERNOR

FISCAL IMPACT OF HB 130

<u>FY</u>	<u>FY</u>	<u>FY</u>	<u>FY</u>	<u>FY</u>
<u>1995-96</u>	<u>1996-97</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>

NO FISCAL IMPACT

ASSUMPTIONS AND METHODOLOGY:

According to staff in the Office of the Governor, the Office currently provides victims the opportunity to present their views and concerns to the Governor prior to release of offenders (Section 1, (i) in HB 130). Further, HB 130 language states "The right to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused." The cost impact thus could be borne by the Department of Correction or the Parole Commission as outlined in other sections of this note.

SOURCES OF DATA: Judicial Department, Board of Elections, Department of Correction, Parole Commission, Office of the Governor, Department of Justice

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION

733-4910

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DATE: May 23, 1995



Signed Copy Located in the NCGA Principal Clerk's Offices