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**SFA****BILL ANALYSIS**

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Senate Bills 780 and 781 (as introduced 10-30-97)  
Sponsor: Senator John D. Cherry, Jr. (Senate Bill 780)  
          Senator William Van Regenmorter (Senate Bill 781)  
Committee: Judiciary

Date Completed: 11-13-97

### **CONTENT**

**Senate Bills 780 and 781 would amend the Code of Criminal Procedure and the Crime Victim's Rights Act, respectively, to allow a court to order the payment of restitution as a condition of sentencing. The court could impose imprisonment if a defendant failed to comply with the restitution order. The bills are tie-barred.**

Currently, under the Code and the Act, if a defendant is placed on probation or paroled, any victim restitution ordered must be a condition of that probation or parole. The court may revoke probation and the parole board may revoke parole if the defendant fails to comply with the order and has not made a good faith effort to comply. The bills also provide that if the court imposed a conditional sentence, any restitution ordered would have to be a condition of that sentence. The court would have to impose imprisonment under the conditional sentence if the defendant failed to comply with the order and had not made a good faith to comply.

Currently, in determining whether to revoke probation or parole, the court or parole board must consider the defendant's employment status, earning ability, and financial resources, the willfulness of his or her failure to pay, and any other special circumstances that have a bearing on the defendant's ability to pay. Under the bills, the court also would have to consider those factors in determining whether to impose imprisonment.

Under the Code of Criminal Procedure, if a person is convicted of an offense punishable by a fine or imprisonment, the court may impose a conditional sentence and order the person to pay a fine, with or without the costs of prosecution, within a limited time stated in the sentence; in default of payment, the court may sentence the person to imprisonment as provided by law. Under Senate Bill 780, the court could condition a sentence upon the payment of a fine, with or without the costs of prosecution, and restitution as provided in the Code or the Crime Victim's Rights Act.

In addition, the Code provides that, except for a person who is convicted of first- or third-degree criminal sexual conduct, the court also may place the offender on probation with the condition that he or she pay a fine, costs, damages, or any combination in installments within a limited time and, upon default of any of those payments, impose sentence as provided by law. Under Senate Bill 780, probation also could be conditioned upon the payment of restitution.

MCL 769.1a & 769.3 (S.B. 780)  
780.766 & 780.826 (S.B. 781)

Legislative Analyst: S. Lowe

### **FISCAL IMPACT**

To the extent that these bills would allow a judge to impose imprisonment for failure to pay restitution, costs for the Department of Corrections or county jails could increase. However, the

amount of that increase is indeterminate.

In order to determine the cost increase, one would have to know the type of crime for which a conditional sentence is most likely imposed, the number of times restitution was not paid, and the likelihood that a judge would impose imprisonment given a failure to comply with an order to pay restitution. This information is not available at this time.

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.