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Introduced and read first time: February 11, 2005
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Restitution**

3 FOR the purpose of expanding the circumstances under which a judge may order a
4 defendant or child respondent to make restitution to include situations in which
5 the victim suffered certain losses or suffered expenses incurred with
6 rehabilitation; providing that a certain restitution amount is the absolute limit
7 for each child's acts arising out of a single incident; adding a person who has
8 paid an expense on behalf of a victim to the list of third-party payors to whom
9 the court may order restitution be paid; providing that payment of restitution to
10 the victim has priority over payments owed to the State for reimbursement of
11 payments made on behalf of a child; requiring the Division of Correction or the
12 Department of Juvenile Services to take certain actions when a restitution
13 obligor's restitution payment is overdue under certain circumstances; repealing
14 a certain qualifier that a judgment of restitution must be recorded and indexed
15 in the civil judgment index before certain actions can be taken and certain rights
16 exercised; providing that certain provisions do not apply in Baltimore City;
17 providing that in Baltimore City, a judgment of restitution shall be entered,
18 indexed, and recorded under a certain Maryland Rule and constitute a lien as
19 provided under a certain Maryland Rule; prohibiting a court from assessing
20 costs against a certain person or governmental unit under certain circumstances
21 for filing a notice of satisfaction; altering the conditions under which a court is
22 to direct the clerk of the court to take certain actions if the court decides to
23 terminate a probation under certain circumstances; altering certain provisions
24 relating to the execution on a judgment of restitution if a certain motion has
25 been filed; providing that a written statement or bill for certain expenses is
26 legally sufficient evidence of the amount, fairness, and reasonableness of the
27 charges and the necessity of the services or materials provided; providing that a
28 certain person who challenges the necessity of the amount on a certain
29 statement or bill has the burden of proving that the amount is not fair and
30 reasonable; providing that a court may make an exception to the prohibition
31 against the Central Collection Unit compromising and settling a judgment of
32 restitution without the consent of the victim; requiring certain persons to notify
33 the Central Collection Unit of certain facts under certain circumstances;
34 authorizing a certain amount withheld in a certain earnings withholding order

1 to be payable to the Central Collection Unit; altering a certain definition; and
2 generally relating to restitution.

3 BY repealing and reenacting, with amendments,
4 Article - Criminal Procedure
5 Section 11-601(j), 11-603(a), 11-604, 11-606, 11-607(c), 11-608, 11-610
6 through 11-613, and 11-615 through 11-617
7 Annotated Code of Maryland
8 (2001 Volume and 2004 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article - Criminal Procedure
11 Section 11-609
12 Annotated Code of Maryland
13 (2001 Volume and 2004 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article - Criminal Procedure**

17 11-601.

18 (j) "Victim" means:

19 (1) a person who suffers DEATH, personal injury, or property damage or
20 loss as a direct result of a crime or delinquent act; or

21 (2) if the person is deceased, the personal representative of the estate of
22 the person.

23 11-603.

24 (a) A court may enter a judgment of restitution that orders a defendant or
25 child respondent to make restitution in addition to any other penalty for the
26 commission of a crime or delinquent act, if:

27 (1) as a direct result of the crime or delinquent act, property of the victim
28 was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value
29 substantially decreased;

30 (2) as a direct result of the crime or delinquent act, the victim suffered:

31 (i) actual medical, dental, hospital, counseling, funeral, or burial
32 expenses OR LOSSES;

33 (ii) [any other] direct out-of-pocket loss; [or]

34 (iii) loss of earnings; OR

1 (IV) EXPENSES INCURRED WITH REHABILITATION;

2 (3) the victim incurred medical expenses that were paid by the
3 Department of Health and Mental Hygiene or any other governmental unit;

4 (4) a governmental unit incurred expenses in removing, towing,
5 transporting, preserving, storing, selling, or destroying an abandoned vehicle as
6 defined in § 25-201 of the Transportation Article;

7 (5) the Criminal Injuries Compensation Board paid benefits to a victim;
8 or

9 (6) the Department of Health and Mental Hygiene or other
10 governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

11 11-604.

12 (a) [Notwithstanding] SUBJECT TO SUBSECTION (B) OF THIS SECTION AND
13 NOTWITHSTANDING any other law, if a child is the defendant or child respondent, the
14 court may order the child, the child's parent, or both to pay restitution [to a victim].

15 (b) A judgment of restitution for \$10,000 issued under Part I of this subtitle is
16 the absolute limit for [all] EACH CHILD'S acts arising out of a single incident [and is
17 the absolute limit against one child, the child's parent, or both].

18 (c) (1) A court may not enter a judgment of restitution against a parent
19 under Part I of this subtitle unless the parent has been afforded a reasonable
20 opportunity to be heard and to present evidence.

21 (2) A hearing under this subsection may be held as part of the sentencing
22 or disposition hearing.

23 11-606.

24 (a) The court may order that restitution be paid to:

25 (1) the victim;

26 (2) the Department of Health and Mental Hygiene, the Criminal Injuries
27 Compensation Board, or any other governmental unit; or

28 (3) a third-party payor, including:

29 (I) an insurer[,]; or

30 (II) any other person that has, UNDER PART I OF THIS SUBTITLE:

31 1. compensated the victim for a property or pecuniary loss
32 [under Part I of this subtitle]; OR

33 2. PAID AN EXPENSE ON BEHALF OF A VICTIM.

1 (b) (1) Payment of restitution to the victim has priority over:

2 (i) payment of restitution to the Department of Health and Mental
3 Hygiene or other governmental unit;

4 (II) PAYMENTS OWED TO THE STATE FOR REIMBURSEMENT OF
5 PAYMENTS MADE ON BEHALF OF A CHILD; and

6 [(ii)] (III) subject to paragraph (2) of this subsection, payment of
7 restitution to a third-party payor.

8 (2) If the victim has been fully compensated for the victim's loss by a
9 third-party payor, the court may issue a judgment of restitution that directs the
10 restitution obligor to pay restitution to the third-party payor.

11 11-607.

12 (c) (1) Whenever [a restitution obligor fails to make] AN OBLIGOR'S
13 restitution [as ordered] PAYMENT, AS ORDERED BY THE COURT OR ESTABLISHED BY
14 THE DIVISION, IS OVERDUE, the Division or the Department of Juvenile Services
15 shall:

16 (I) notify the court; AND

17 (II) IF AN EARNINGS WITHHOLDING ORDER IS NOT IN EFFECT AND
18 THE RESTITUTION OBLIGOR IS EMPLOYED, REQUEST AN EARNINGS WITHHOLDING
19 ORDER.

20 (2) The court may hold a hearing to determine whether the restitution
21 obligor is in contempt of court or has violated the terms of the probation.

22 (3) If the court finds that the restitution obligor intentionally became
23 impoverished to avoid payment of the restitution, the court may find the restitution
24 obligor in contempt of court or in violation of probation.

25 11-608.

26 (A) [If a judgment of restitution that requires the payment of money is
27 recorded and indexed in the civil judgment index:

28 (1) the] A judgment of restitution is a money judgment in favor of the
29 person, governmental unit, or third-party payor to whom the restitution obligor has
30 been ordered to pay restitution[;].

31 [(2)] (B) [the] THE judgment of restitution may be enforced by the
32 person, governmental unit, or third-party payor to whom the restitution obligor has
33 been ordered to pay restitution in the same manner as a money judgment in a civil
34 action[; and].

35 [(3)] (C) [except] EXCEPT as otherwise expressly provided under Part I
36 of this subtitle, a person, governmental unit, or third-party payor to whom a

1 restitution obligor has been ordered to pay restitution has all the rights and
2 obligations of a money judgment creditor under the Maryland Rules, including the
3 obligation under Maryland Rule 2-626 or 3-626 on receiving all amounts due under
4 the judgment to file a statement that the judgment has been satisfied.

5 11-609.

6 (a) A judgment of restitution that a circuit court orders under Part I of this
7 subtitle shall be recorded and indexed in the civil judgment index by the clerk of the
8 circuit court as a money judgment as the Maryland Rules provide.

9 (b) A judgment of restitution that is recorded and indexed in the civil
10 judgment index as a money judgment under subsection (a) of this section:

11 (1) in the county of entry of the judgment, is a lien from the date of entry
12 in the amount of the judgment on the restitution obligor's interest in land located in
13 the county of the entry of the judgment; but

14 (2) in a county other than the county of entry of the judgment, is a lien
15 from the date of recording in the amount of the judgment on the restitution obligor's
16 interest in land located in that county.

17 11-610.

18 (a) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE
19 PROVISIONS OF THIS SECTION DO NOT APPLY IN BALTIMORE CITY.

20 (2) IN BALTIMORE CITY, A JUDGMENT OF RESTITUTION SHALL:

21 (I) BE ENTERED, INDEXED, AND RECORDED UNDER RULE 3-601;
22 AND

23 (II) CONSTITUTE A LIEN AS PROVIDED UNDER RULE 3-621(B).

24 (3) A judgment of restitution that the District Court orders under Part I
25 of this subtitle may not be recorded and indexed BY THE CLERK OF THE DISTRICT
26 COURT as a money judgment in the District Court until the person or governmental
27 unit to whom the restitution obligor has been ordered to pay restitution files with the
28 Clerk of the District Court a written request for the recording and indexing.

29 (b) [If] ONCE a judgment of restitution is recorded and indexed as a money
30 judgment under subsection (a) of this section:

31 (1) the Clerk of the District Court shall immediately forward a notice of
32 lien of judgment to the circuit court for the county of entry of judgment; and

33 (2) on the receipt of the written statement from the person or
34 governmental unit to whom a restitution obligor has been ordered to pay restitution,
35 the Clerk of the District Court shall forward a notice of lien of judgment to the circuit
36 court of any other county as the Maryland Rules provide.

1 (c) Whenever the Clerk of the District Court forwards a notice of lien under
2 subsection (b) of this section to a circuit court, the clerk of the circuit court shall
3 record and index the notice of lien as the Maryland Rules provide.

4 (d) (1) A judgment of restitution that is issued by the District Court and is
5 recorded and indexed as a money judgment [as allowed by] UNDER subsection (a) of
6 this section is a lien in the amount of the judgment on the restitution obligor's
7 interest in land in a county.

8 (2) The lien is in effect from the date that a notice of lien is recorded and
9 indexed in the circuit court of the county.

10 (e) (1) If the District Court enters a judgment of restitution under Part I of
11 this subtitle, the Clerk of the District Court shall send a written notice to the person
12 or governmental unit in whose favor the judgment of restitution is entered.

13 (2) The notice shall say in substance:

14 "The District Court has awarded you a judgment of restitution.

15 "The judgment of restitution is not a money judgment until it is recorded and
16 indexed in the civil judgment records of the District Court.

17 "On your written request and without charge, the Clerk of the District Court
18 will record and index the judgment of restitution as a money judgment. Then, without
19 charge, the Clerk of the District Court will also send a notice of lien to the circuit
20 court for the county, and, without charge, the notice of lien will be recorded and
21 indexed in the circuit court for the county.

22 "On your further written request, the Clerk of the District Court will send a
23 notice of lien to the circuit court for any other county that you specify."

24 11-611.

25 A court may not assess costs on a person or governmental unit to whom a
26 restitution obligor has been ordered to pay restitution:

27 (1) for recording and indexing an order of restitution as a money
28 judgment in the court in which the judgment of restitution was issued; [or]

29 (2) for recording and indexing a notice of lien that the District Court
30 forwards to a circuit court; OR

31 (3) FOR FILING A NOTICE OF SATISFACTION.

32 11-612.

33 (a) (1) If a District Court decides to [terminate a judgment of restitution
34 that has not been recorded and indexed as a money judgment or to] terminate a
35 probation before a judgment of restitution has been recorded and indexed as a money
36 judgment, the court shall direct the clerk of the court:

1 (i) to record and index the judgment of restitution as a money
2 judgment and forward a notice of lien to the circuit court of the county of entry of
3 judgment before terminating the [judgment of restitution and] probation; and

4 (ii) to forward a written notice to the person or governmental unit
5 to whom the restitution obligor was ordered to pay restitution.

6 (2) The written notice shall state that:

7 (i) the judgment of restitution has been recorded and indexed as a
8 money judgment in the District Court; and

9 (ii) a notice of lien has been forwarded to the circuit court of the
10 county of entry of judgment.

11 (b) Subject to the Maryland Rules, unless a restitution obligor pays complete
12 restitution, termination of [a judgment of restitution or] probation by a court does
13 not affect a money judgment that has been recorded and indexed under Part I of this
14 subtitle.

15 11-613.

16 (a) Notwithstanding any other provision of Part I of this subtitle and except as
17 provided in subsection (b) of this section, a victim or other person or governmental
18 unit may not execute on a judgment recorded and indexed under Part I of this subtitle
19 if the restitution obligor:

20 (1) files a motion under the Maryland Rules to stay execution of
21 [sentence or] the judgment of restitution [that] AND THE MOTION has not been
22 [determined] DECIDED by the court; and

23 (2) challenges the conviction, sentence, or judgment of restitution by:

24 (i) filing an appeal in a State court or in federal court;

25 (ii) applying for leave to appeal following a plea of guilty in a circuit
26 court;

27 (iii) filing a motion for exercise of revisory power by the sentencing
28 court under the Maryland Rules;

29 (iv) filing an application for review of criminal sentence under Title
30 8 of this article; or

31 (v) filing a notice for in banc review under the Maryland Rules.

32 (b) If a restitution obligor [files an action described in] HAS COMPLIED WITH
33 THE REQUIREMENTS OF subsection (a) of this section AND THE COURT HAS NOT YET
34 RULED ON THE REQUEST FOR A STAY, a person or governmental unit may not execute
35 on a judgment recorded and indexed under Part I of this subtitle until a court issues
36 a final judgment that upholds the conviction, sentence, or judgment of restitution.

1 (c) A person or governmental unit may not execute on a judgment recorded
2 and indexed under Part I of this subtitle until the time has expired in which a
3 restitution obligor may file any of the actions listed under subsection (a)(2)(i) through
4 (v) of this section.

5 (d) The judgment of restitution may be enforced in the same way that a
6 monetary judgment is enforced.

7 11-615.

8 (a) In a restitution hearing held under § 11-603 of this subtitle, a written
9 statement or bill for medical, dental, hospital, counseling, funeral, or burial expenses
10 is legally sufficient evidence OF THE AMOUNT, FAIRNESS, AND REASONABLENESS OF
11 THE CHARGES AND THE NECESSITY OF [that a charge shown on the written
12 statement or bill is a fair and reasonable charge for] the services or materials
13 provided.

14 (b) A person who challenges the fairness and reasonableness OR THE
15 NECESSITY of the amount on the statement or bill has the burden of proving that the
16 amount is not fair and reasonable.

17 11-616.

18 (a) The Division or the Department of Juvenile Services:

19 (1) in addition to other actions authorized under Part I of this subtitle,
20 may refer an overdue restitution account for collection to the Central Collection Unit;
21 and

22 (2) if probation or other supervision is terminated and restitution is still
23 owed, shall refer the overdue restitution account for collection to the Central
24 Collection Unit.

25 (b) Subject to subsection (c) of this section, the Central Collection Unit may:

26 (1) collect overdue restitution in accordance with Title 3, Subtitle 3 of the
27 State Finance and Procurement Article; and

28 (2) certify a restitution obligor who is in arrears on restitution payments
29 exceeding \$30 under the judgment of restitution to:

30 (i) the Comptroller for income tax refund interception in
31 accordance with Title 13, Subtitle 9, Part III of the Tax - General Article; and

32 (ii) the State Lottery Agency for State lottery prize interception in
33 accordance with § 11-618 of this subtitle.

34 (c) (1) The Central Collection Unit may not compromise and settle a
35 judgment of restitution unless:

1 (I) the Division or the Department of Juvenile Services obtains the
2 consent of the victim; OR

3 (II) THE COURT ORDERS OTHERWISE BECAUSE A VICTIM CANNOT
4 BE LOCATED.

5 (2) The Division or the Department of Juvenile Services shall contact the
6 victim to determine whether the victim consents to compromise and settle a judgment
7 of restitution.

8 (d) If complete restitution and interest have been paid or a judgment of
9 restitution has been compromised and settled as provided in subsection (c) of this
10 section, the Division, the Department of Juvenile Services, or the Central Collection
11 Unit immediately shall notify:

12 (1) the court that issued the judgment by filing the statement as
13 provided under [§ 11-608(3)] § 11-608(C) of this subtitle that the judgment has been
14 satisfied; and

15 (2) the last known employer of a restitution obligor to terminate an
16 earnings withholding order issued under § 11-617 of this subtitle.

17 (e) (1) Restitution is overdue if the restitution or a restitution payment is
18 not paid:

19 (i) by the date that the court orders; or

20 (ii) if no date is ordered, by the later of:

21 1. the date the Division or the Department of Juvenile
22 Services directs the restitution obligor to pay restitution or make a restitution
23 payment; or

24 2. 30 days after the court enters a judgment of restitution.

25 (2) If restitution is overdue, the amount of the arrearage is the amount of
26 restitution ordered and any interest allowed by law, minus any amount previously
27 paid or received under the judgment of restitution.

28 11-617.

29 (a) (1) If a court issues a judgment of restitution under § 11-603 of this
30 subtitle, the court may enter an immediate and continuing earnings withholding
31 order in an amount sufficient to pay the restitution.

32 (2) The court may enter the order:

33 (i) at the sentencing or disposition hearing;

34 (ii) when the defendant or child respondent is placed on work
35 release or probation; or

1 (iii) when the payment of restitution is overdue.

2 (b) Subject to federal law, the order of priority of execution of an earnings
3 withholding order is:

4 (1) first, an earnings withholding order issued under § 10-128 of the
5 Family Law Article;

6 (2) second, an earnings withholding order issued under this section; and

7 (3) lastly, any other lien or legal process.

8 (c) (1) This subsection applies whenever a court orders an earnings
9 withholding order under this section.

10 (2) On entry of the order, the clerk of the court immediately shall:

11 (i) serve a copy on any current or subsequent employer of the
12 restitution obligor, if known; and

13 (ii) mail a copy to the restitution obligor at the last known address
14 or place of incarceration or commitment of the restitution obligor.

15 (3) A restitution obligor immediately shall notify the court [and], THE
16 CENTRAL COLLECTION UNIT, AND the Division or Department of Juvenile Services of:

17 (i) any objection to an earnings withholding order;

18 (ii) the current home address of the restitution obligor;

19 (iii) the name of the employer;

20 (iv) the work address of the restitution obligor; and

21 (v) any change of employer, home address, or work address of the
22 restitution obligor.

23 (4) An employer who is served with an earnings withholding order under
24 this section immediately shall notify the court [and], THE CENTRAL COLLECTION
25 UNIT, AND the Division or Department of Juvenile Services of:

26 (i) any justification for the employer's inability to comply with the
27 earnings withholding order;

28 (ii) the home address of the restitution obligor on the termination of
29 employment;

30 (iii) information regarding the new place of employment of the
31 restitution obligor; or

32 (iv) the employer's reemployment of the restitution obligor.

1 (5) Unless the information has been provided to the court, the Division,
2 Department of Juvenile Services, or the Central Collection Unit shall notify the court
3 of a current or subsequent home address of the restitution obligor and the employer
4 and work address of the restitution obligor.

5 (d) (1) Except as otherwise provided in this section, an earnings withholding
6 order issued under this section shall:

7 (i) comply with the requirements of §§ 10-128(a) and 10-129(a)
8 through (c) of the Family Law Article; and

9 (ii) set forth the obligations and responsibilities of an employer and
10 a restitution obligor under an earnings withholding order and the consequences of
11 violating this section.

12 (2) Each amount withheld in an earnings withholding order under this
13 section is payable to the Division, [or] Department of Juvenile Services, OR CENTRAL
14 COLLECTION UNIT.

15 (3) An earnings withholding order is binding on each present and future
16 employer of the restitution obligor who is served with the order.

17 (e) (1) Subject to paragraphs (2) and (3) of this subsection, the payment
18 amount under an earnings withholding order under this section is 20% of the
19 earnings of a restitution obligor less other deductions required by law to be paid out of
20 any funds earned under a work release plan.

21 (2) If the restitution obligation of the restitution obligor is overdue, the
22 court may impose a payment exceeding the amount allowed in paragraph (1) of this
23 subsection.

24 (3) (i) The amount of an earnings withholding order issued under this
25 section may not exceed the limits of the federal Consumer Credit Protection Act.

26 (ii) The court shall reduce an amount of an earnings withholding
27 order that exceeds the limits of the federal Consumer Credit Protection Act to the
28 maximum allowed under the Act.

29 (f) (1) This subsection applies to a restitution obligor and the employer of a
30 restitution obligor.

31 (2) A person who violates this section is subject to a fine not exceeding
32 \$250.

33 (3) A fine collected under this section shall be distributed in the same
34 way as costs are distributed under § 7-409 of the Courts Article.

35 (4) In addition to a fine imposed under this subsection, an employer is
36 liable for damages for the failure to deduct the earnings of a restitution obligor or
37 failure to make a timely payment as required in the earnings withholding order.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 2005.