
By: **Delegates Petzold, Dumais, Gutierrez, Impallaria, Kelley, Quinter, Rosenberg, Shewell, Simmons, Smigiel, Sophocleus, Stern, and Vallario**
Introduced and read first time: February 11, 2005
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 1, 2005

CHAPTER _____

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~~ Parole
12 and Probation or the Department of Juvenile Services to take certain actions
13 when a restitution obligor's restitution payment is overdue under certain
14 circumstances; repealing a certain qualifier that a judgment of restitution must
15 be recorded and indexed in the civil judgment index before certain actions can be
16 taken and certain rights exercised; providing that certain provisions do not
17 apply in Baltimore City; providing that in Baltimore City, a judgment of
18 restitution shall be entered, indexed, and recorded under a certain Maryland
19 Rule and constitute a lien as provided under a certain Maryland Rule;
20 prohibiting a court from assessing costs against a certain person or
21 governmental unit under certain circumstances for filing a notice of satisfaction;
22 altering the conditions under which a court is to direct the clerk of the court to
23 take certain actions if the court decides to terminate a probation under certain
24 circumstances; altering certain provisions relating to the execution on a
25 judgment of restitution if a certain motion has been filed; providing that a
26 written statement or bill for certain expenses is legally sufficient evidence of the
27 amount, fairness, and reasonableness of the charges and the necessity of the

1 services or materials provided; providing that a certain person who challenges
2 the necessity of the amount on a certain statement or bill has the burden of
3 proving that the amount is not fair and reasonable; providing that a court may
4 make an exception to the prohibition against the Central Collection Unit
5 compromising and settling a judgment of restitution without the consent of the
6 victim; requiring certain persons to notify the Central Collection Unit of certain
7 facts under certain circumstances; authorizing a certain amount withheld in a
8 certain earnings withholding order to be payable to the Central Collection Unit;
9 altering a certain definition; and generally relating to restitution.

10 BY repealing and reenacting, with amendments,

11 Article - Criminal Procedure

12 Section 11-601(j), 11-603(a), 11-604, 11-606, 11-607(c), 11-608, 11-610
13 through 11-613, and 11-615 through 11-617

14 Annotated Code of Maryland

15 (2001 Volume and 2004 Supplement)

16 BY repealing and reenacting, without amendments,

17 Article - Criminal Procedure

18 Section 11-609

19 Annotated Code of Maryland

20 (2001 Volume and 2004 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

22 MARYLAND, That the Laws of Maryland read as follows:

23

Article - Criminal Procedure

24 11-601.

25 (j) "Victim" means:

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

28 (2) if the person is deceased, the personal representative of the estate of
29 the person.

30 11-603.

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

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

- 1 (2) as a direct result of the crime or delinquent act, the victim suffered:
- 2 (i) actual medical, dental, hospital, counseling, funeral, or burial
3 expenses OR LOSSES;
- 4 (ii) [any other] direct out-of-pocket loss; [or]
- 5 (iii) loss of earnings; OR
- 6 (IV) EXPENSES INCURRED WITH REHABILITATION;
- 7 (3) the victim incurred medical expenses that were paid by the
8 Department of Health and Mental Hygiene or any other governmental unit;
- 9 (4) a governmental unit incurred expenses in removing, towing,
10 transporting, preserving, storing, selling, or destroying an abandoned vehicle as
11 defined in § 25-201 of the Transportation Article;
- 12 (5) the Criminal Injuries Compensation Board paid benefits to a victim;
13 or
- 14 (6) the Department of Health and Mental Hygiene or other
15 governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

16 11-604.

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

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

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

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

28 11-606.

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

30 (1) the victim;

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

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

- 1 (I) an insurer[,]; or
- 2 (II) any other person that has, UNDER PART I OF THIS SUBTITLE:
- 3 1. compensated the victim for a property or pecuniary loss
- 4 [under Part I of this subtitle]; OR
- 5 2. PAID AN EXPENSE ON BEHALF OF A VICTIM.

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

7 (i) payment of restitution to the Department of Health and Mental

8 Hygiene or other governmental unit;

9 (II) PAYMENTS OWED TO THE STATE FOR REIMBURSEMENT OF

10 PAYMENTS MADE ON BEHALF OF A CHILD; and

11 [(ii)] (III) subject to paragraph (2) of this subsection, payment of

12 restitution to a third-party payor.

13 (2) If the victim has been fully compensated for the victim's loss by a

14 third-party payor, the court may issue a judgment of restitution that directs the

15 restitution obligor to pay restitution to the third-party payor.

16 11-607.

17 (c) (1) Whenever [a restitution obligor fails to make] AN OBLIGOR'S

18 restitution [as ordered] PAYMENT, AS ORDERED BY THE COURT OR ESTABLISHED BY

19 THE DIVISION, IS OVERDUE, the Division or the Department of Juvenile Services

20 shall:

21 (I) notify the court; AND

22 (II) IF AN EARNINGS WITHHOLDING ORDER IS NOT IN EFFECT AND

23 THE RESTITUTION OBLIGOR IS EMPLOYED, REQUEST AN EARNINGS WITHHOLDING

24 ORDER.

25 (2) The court may hold a hearing to determine whether the restitution

26 obligor is in contempt of court or has violated the terms of the probation.

27 (3) If the court finds that the restitution obligor intentionally became

28 impoverished to avoid payment of the restitution, the court may find the restitution

29 obligor in contempt of court or in violation of probation.

30 11-608.

31 (A) [If a judgment of restitution that requires the payment of money is

32 recorded and indexed in the civil judgment index:

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

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

8 [(3)] (C) [except] EXCEPT as otherwise expressly provided under Part I
9 of this subtitle, a person, governmental unit, or third-party payor to whom a
10 restitution obligor has been ordered to pay restitution has all the rights and
11 obligations of a money judgment creditor under the Maryland Rules, including the
12 obligation under Maryland Rule 2-626 or 3-626 on receiving all amounts due under
13 the judgment to file a statement that the judgment has been satisfied.

14 11-609.

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

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

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

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

26 11-610.

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

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

30 (I) BE ENTERED, INDEXED, AND RECORDED UNDER RULE 3-601;
31 AND

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

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

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

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

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

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

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

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

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

21 (2) The notice shall say in substance:

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

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

25 "On your written request and without charge, the Clerk of the District Court
26 will record and index the judgment of restitution as a money judgment. Then, without
27 charge, the Clerk of the District Court will also send a notice of lien to the circuit
28 court for the county, and, without charge, the notice of lien will be recorded and
29 indexed in the circuit court for the county.

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

32 11-611.

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

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

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

3 (3) FOR FILING A NOTICE OF SATISFACTION.

4 11-612.

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

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

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

14 (2) The written notice shall state that:

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

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

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

23 11-613.

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

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

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

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

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

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

3 (iv) filing an application for review of criminal sentence under Title
4 8 of this article; or

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

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

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

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

17 11-615.

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

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

27 11-616.

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

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

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

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

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

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

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

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

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

11 (I) the Division or the Department of Juvenile Services obtains the
12 consent of the victim; OR

13 (II) THE COURT ORDERS OTHERWISE BECAUSE A VICTIM CANNOT
14 BE LOCATED.

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

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

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

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

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

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

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

31 1. the date the Division or the Department of Juvenile
32 Services directs the restitution obligor to pay restitution or make a restitution
33 payment; or

34 2. 30 days after the court enters a judgment of restitution.

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

4 11-617.

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

8 (2) The court may enter the order:

9 (i) at the sentencing or disposition hearing;

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (iii) the name of the employer;

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

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

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

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

8 (ii) the home address of the restitution obligor on the termination of
9 employment;

10 (iii) information regarding the new place of employment of the
11 restitution obligor; or

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

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

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

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

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

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

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

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

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

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

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

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

8 (2) A person who violates this section is subject to a fine not exceeding
9 \$250.

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

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

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