

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 821 (Delegate Doory)
(Committee to Revise Article 27 – Crimes and Punishments)
Judiciary

Restitution - Judgments and Recipients

This bill makes several revisions to the State's restitution laws.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures by the Department of Public Safety and Correctional Services (DPSCS). The actual effect depends on the number of individuals who are rearrested for failure to pay restitution.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A person convicted of fraudulently obtaining, attempting to obtain, or aiding another in fraudulently obtaining legal assistance must make restitution to the corporation or grantee that provided the legal assistance.

In addition to the criminal penalties provided for the manufacture or possession of a destructive device or possession of explosive, incendiary, or toxic material with the intent to create a destructive device, the court may include a judgment of restitution to a (1) multicounty agency; (2) county board of education; or (3) public authority for actual costs reasonably incurred due to a violation of the prohibition.

In addition to the criminal penalties provided for the manufacture or possession of a device that is constructed to represent a destructive device, the court may include a judgment of restitution to a (1) multicounty agency; (2) county board of education; or (3) public authority for actual costs reasonably incurred due to a violation of the prohibition.

The court may order restitution to:

- the victim or any other person or governmental unit for whom restitution is authorized by statute or at common law;
- the Department of Health and Mental Hygiene, Criminal Injuries Compensation Board or other governmental unit;
- a person who pays, for a victim, an expense for which restitution to the victim is authorized; and
- a person who has provided to or for a victim goods, property, or services for which restitution to the victim is authorized.

Payment of restitution to the victim has priority over any other person or governmental unit.

The court has the authority to direct a juvenile or defendant, under the supervision of the Division of Parole and Probation, the Department of Juvenile Services, or any other unit or person, to make restitution or to perform certain services for the victim (1) as a condition of probation; (2) as a condition of a suspended sentence; or (3) instead of fines or court costs.

Current Law: A person who suffers personal injury or property damage or loss as a direct result of a crime or delinquent act, or, if the person is deceased, the person's personal representative is entitled to restitution to cover the victim's actual expenses, including loss of earnings. The Department of Health and Mental Hygiene or another governmental unit may also receive restitution for expenses paid in connection with the act. "Crime" means an act committed by a person in the State that is a crime under common law or the Maryland Code, except for nonjailable transportation offenses, and also includes certain local violations.

Background: The issue of restitution was most recently decided by the Maryland Court of Appeals in December 2004 in the case, *Pete v. State*, No. 19, Sept. Term 2004. Pete was convicted in the Circuit Court for Dorchester County of second degree assault, among other charges, and received probation in exchange for a suspended sentence. He also was convicted, under the same case number, for reckless driving for an incident occurring approximately two hours after the assault. He was fined \$250 for reckless

driving. During the incident underlying the reckless driving conviction, a police cruiser was damaged as a direct result of Pete stopping his truck abruptly as the police cruiser followed it. One condition of the probation for the second degree assault included restitution to the Local Government Insurance Trust (LGIT) for damages to the police cruiser as a direct result of the reckless driving incident. Because restitution was unavailable for either the second degree assault conviction (the damage incurred by the LGIT was not a direct result of the second degree assault and the LGIT was not a victim of the assault) or the reckless driving conviction, the restitution order as a condition of probation was an illegal sentence.

The Committee to Revise Article 27 was appointed in 1991 by the Speaker and the President and charged with making both substantive and stylistic changes to the State's criminal law. The committee is composed of legislators, judges, lawyers representing both defendants and the State, and a victims' rights representative. In past sessions the committee has successfully sponsored legislation to revise the laws on accessory before and after the fact, arson, assault, benefit of clergy, burglary, destructive devices, disorderly conduct, escape, leased or rented goods, Medicaid fraud, offensive contact, prostitution, robbery, sabotage, trespass, and victims' rights.

Additional Information

Prior Introductions: None.

Cross File: SB 406 (Senators Stone and Giannetti) (Committee to Revise Article 27 – Crimes and Punishments) – Judicial Proceedings.

Information Source(s): Montgomery County, Prince George's County, Harford County, Queen Anne's County, St. Mary's County, Judiciary (Administrative Office of the Courts), Carroll County, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2005
ncs/jr

Analysis by: Kineta A. Rotan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510