

HOUSE BILL 666

E2

2lr2294

By: **Delegates Smigiel, Dwyer, George, McComas, McConkey, McDermott, and Ready**

Introduced and read first time: February 8, 2012

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Victims’ Rights – Remedy and Priority of Restitution**

3 FOR the purpose of expanding the applicability of certain appeal rights from a victim
4 of a violent crime to a victim of a nonviolent crime; authorizing a certain victim
5 to appeal to the Court of Special Appeals from a certain final order; providing
6 that the filing of a certain appeal or application for leave to appeal does not stay
7 certain other proceedings unless the court finds that the accused’s right to a
8 speedy trial or adjudication will not be violated; providing that if the court finds
9 that a victim’s right under a certain provision of law was not considered or was
10 improperly denied, the court may grant the victim relief provided the remedy
11 does not violate a certain constitutional right of a defendant or child respondent;
12 prohibiting a court from providing a remedy that modifies a certain sentence or
13 commitment unless the victim requests relief from a violation of the victim’s
14 right within a certain number of days of the alleged violation; altering a
15 provision of law so as to provide that payment of restitution to a victim has
16 priority over any payments to any other person or governmental unit, subject to
17 certain exceptions; providing for the application of this Act; and generally
18 relating to enforcement of victims’ rights and priority of restitution.

19 BY repealing and reenacting, with amendments,
20 Article – Criminal Procedure
21 Section 11–103 and 11–606
22 Annotated Code of Maryland
23 (2008 Replacement Volume and 2011 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article – Criminal Procedure
26 Section 11–617(b)
27 Annotated Code of Maryland
28 (2008 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Criminal Procedure**

4 11–103.

5 (a) (1) In this section, [“violent crime”] “**CRIME**” means:

6 (i) a crime [of violence];

7 (ii) a delinquent act that would be a crime [of violence] if
8 committed by an adult; or

9 (iii) except as provided in paragraph (2) of this subsection, a
10 crime or delinquent act involving, causing, or resulting in death or serious bodily
11 injury.

12 (2) [“Violent crime”] “**CRIME**” does not include an offense under the
13 Maryland Vehicle Law or under Title 8, Subtitle 7 of the Natural Resources Article
14 unless the offense is punishable by imprisonment.

15 (b) Although not a party to a criminal or juvenile proceeding, a victim of a
16 [violent] crime for which the defendant or child respondent is charged may file an
17 application for leave to appeal to the Court of Special Appeals from an interlocutory
18 **ORDER** or **APPEAL TO THE COURT OF SPECIAL APPEALS FROM A** final order that
19 denies or fails to consider a right secured to the victim by § 4–202 of this article, §
20 11–102, § 11–104, § 11–302, § 11–402, § 11–403, § 11–404, or § 11–603 of this title, §
21 3–8A–06, § 3–8A–13, or § 3–8A–19 of the Courts Article, or § 6–112 of the Correctional
22 Services Article.

23 (c) The filing of an **APPEAL OR** application for leave to appeal under this
24 section does not stay other proceedings in a criminal or juvenile case unless:

25 (1) all parties consent; **OR**

26 (2) **THE COURT FINDS THAT THE ACCUSED’S RIGHTS TO A SPEEDY**
27 **TRIAL OR ADJUDICATION WILL NOT BE VIOLATED.**

28 (d) (1) For purposes of this section, a victim’s representative, including
29 the victim’s spouse or surviving spouse, parent or legal guardian, child, or sibling, may
30 represent a victim of a [violent] crime who dies or is disabled.

31 (2) If there is a dispute over who shall be the victim’s representative,
32 the court shall designate the victim’s representative.

1 (e) (1) In any court proceeding involving a crime against a victim, the
2 court shall ensure that the victim is in fact afforded the rights provided to victims by
3 law.

4 (2) IF A COURT FINDS THAT A VICTIM'S RIGHT WAS NOT
5 CONSIDERED OR WAS DENIED, THE COURT MAY GRANT THE VICTIM RELIEF
6 PROVIDED THE REMEDY DOES NOT VIOLATE THE CONSTITUTIONAL RIGHT OF A
7 DEFENDANT OR CHILD RESPONDENT TO BE FREE FROM DOUBLE JEOPARDY.

8 (3) A COURT MAY NOT PROVIDE A REMEDY THAT MODIFIES A
9 SENTENCE OF INCARCERATION OF A DEFENDANT OR A COMMITMENT OF A
10 CHILD RESPONDENT UNLESS THE VICTIM REQUESTS RELIEF FROM A VIOLATION
11 OF THE VICTIM'S RIGHT WITHIN 30 DAYS OF THE ALLEGED VIOLATION.

12 [(2)] (4) (i) A victim who alleges that the victim's right to
13 restitution under § 11-603 of this title was not considered or was improperly denied
14 may file a motion requesting relief within 30 days of the denial or alleged failure to
15 consider.

16 (ii) If the court finds that the victim's right to restitution under
17 § 11-603 of this title was not considered or was improperly denied, the court may
18 enter a judgment of restitution.

19 11-606.

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

21 (1) the victim;

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

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

25 (i) an insurer; or

26 (ii) any other person that has, under Part I of this subtitle:

27 1. compensated the victim for a property or pecuniary
28 loss; or

29 2. paid an expense on behalf of a victim;

30 (4) any person for whom restitution is authorized by law; or

1 (5) a person who has provided to or for a victim goods, property, or
2 services for which restitution is authorized under § 11–603 of this subtitle.

3 (b) (1) Subject to paragraph (2) of this subsection **AND § 11–617(B) OF**
4 **THIS SUBTITLE**, payment of restitution to the victim has priority over [payment of
5 restitution] **ANY PAYMENTS** to any other person or governmental unit.

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

9 11–617.

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

12 (1) first, an earnings withholding order issued under § 10–128 of the
13 Family Law Article;

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

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

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
18 construed prospectively to apply only to an appeal pending or filed on or after the
19 effective date of this Act.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 June 1, 2012.