

HOUSE BILL 250

E2
HB 666/12 – JUD

3lr0929

By: **Delegates Smigiel, Afzali, Eckardt, Frank, Hershey, Jacobs, Krebs, McComas, McDermott, W. Miller, Oaks, and Parrott**

Introduced and read first time: January 23, 2013

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 5, 2013

CHAPTER _____

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; ~~authorizing~~
6 ~~the court to stay certain other proceedings and actions upon motion of a certain~~
7 ~~victim or victim’s representative if all parties consent or the court finds that the~~
8 ~~accused’s right to a speedy trial or adjudication will not be violated;~~ providing
9 that if the court finds that a victim’s right under a certain provision of law was
10 not considered or was improperly denied, the court may grant the victim relief
11 provided the remedy does not violate a certain constitutional right of a
12 defendant or child respondent; prohibiting a court from providing a remedy that
13 modifies a certain sentence or commitment unless the victim requests relief
14 from a violation of the victim’s right within a certain number of days of the
15 alleged violation; altering a provision of law so as to provide that payment of
16 restitution to a victim has priority over any payments to any other person or
17 governmental unit, subject to certain exceptions; providing for the application of
18 this Act; and generally relating to enforcement of victims’ rights and priority of
19 restitution.

20 BY repealing and reenacting, with amendments,
21 Article – Criminal Procedure
22 Section 11–103 and 11–606
23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2008 Replacement Volume and 2012 Supplement)

2 BY repealing and reenacting, without amendments,
 3 Article – Criminal Procedure
 4 Section 11–617(b)
 5 Annotated Code of Maryland
 6 (2008 Replacement Volume and 2012 Supplement)

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

9 **Article – Criminal Procedure**

10 11–103.

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

12 (i) a crime [of violence];

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

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

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

21 (b) Although not a party to a criminal or juvenile proceeding, a victim of a
 22 [violent] crime for which the defendant or child respondent is charged may file an
 23 application for leave to appeal to the Court of Special Appeals from an interlocutory
 24 **ORDER or APPEAL TO THE COURT OF SPECIAL APPEALS FROM A** final order that
 25 denies or fails to consider a right secured to the victim by § 4–202 of this article, §
 26 11–102, § 11–104, § 11–302, § 11–402, § 11–403, § 11–404, or § 11–603 of this title, §
 27 3–8A–06, § 3–8A–13, or § 3–8A–19 of the Courts Article, or § 6–112 of the Correctional
 28 Services Article.

29 (c) ~~¶~~The filing of an application for leave to appeal under this section does
 30 not stay other proceedings in a criminal or juvenile case unless ~~IN THE INTEREST OF~~
 31 ~~JUSTICE, A TRIAL OR APPELLATE COURT MAY STAY PROCEEDINGS AND ACTIONS~~
 32 ~~IN A CRIMINAL OR JUVENILE CASE ON MOTION OF A VICTIM OR VICTIM’S~~
 33 ~~REPRESENTATIVE IF:~~

34 ~~(1)~~ all parties consent; ~~OR~~

~~(2) THE COURT FINDS THAT THE ACCUSED'S RIGHTS TO A SPEEDY TRIAL OR ADJUDICATION WILL NOT BE VIOLATED.~~

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

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

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

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

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

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

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

11-606.

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

(1) the victim;

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

(3) a third-party payor, including:

(i) an insurer; or

- 1 (ii) any other person that has, under Part I of this subtitle:
- 2 1. compensated the victim for a property or pecuniary
3 loss; or
- 4 2. paid an expense on behalf of a victim;
- 5 (4) any person for whom restitution is authorized by law; or
- 6 (5) a person who has provided to or for a victim goods, property, or
7 services for which restitution is authorized under § 11–603 of this subtitle.

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

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

14 11–617.

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

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

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
23 construed to apply only prospectively and may not be applied or interpreted to have
24 any effect on or application to an appeal pending or filed before the effective date of
25 this Act.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 June 1, 2013.