

Department of Legislative Services
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FISCAL AND POLICY NOTE
Third Reader

Senate Bill 187

(Senator Lee, *et al.*)

Judicial Proceedings

Judiciary

Criminal Procedure - Victim's Right to Restitution - Appeal

This bill expands the rights of victims by establishing that a victim of a crime for which the defendant or child respondent is charged may file an application for leave to appeal to the Court of Special Appeals from an interlocutory or final order that denies or fails to consider a right secured to the victim by provisions authorizing (1) a victim, who alleges that the victim's right to restitution was not considered or was improperly denied, to file a motion requesting relief within 30 days of the denial or alleged failure to consider, and (2) the court to enter of judgment of restitution if the court finds that the victim's right to restitution was not considered or was improperly denied.

Fiscal Summary

State Effect: None. While the bill may lead to additional hearings in the appellate courts, it is assumed that they can be handled with existing budgeted resources. The Office of the Public Defender can handle the bill's requirements with existing budgeted resources. Revenues are not affected.

Local Effect: None. The circuit courts can handle any additional applications arising from the bill with existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: Maryland law explicitly establishes certain rights for crime victims and their representatives. Article 47 of the Maryland Declaration of Rights requires the State to treat crime victims with "dignity, respect, and sensitivity during all phases of the criminal justice

process.” Article 47 further specifies that in a case originating by indictment or information filed in a circuit court, a crime victim has the right to be informed of victims’ constitutional rights and, on request and if practicable, has the right to be notified of, to attend, and to be heard at a criminal justice proceeding.

Under State law, a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) has a broad range of specific rights during the criminal justice process. One of these rights is the right for a victim of a crime to file an application for leave to appeal to the Court of Special Appeals from an interlocutory order or appeal to the Court of Special Appeals from a final order that denies or fails to consider a statutory right of the victim. The filing of such an application for leave to appeal does not stay other proceedings in a criminal or juvenile case unless all parties consent.

Restitution for Crime Victims: A “victim” for the purposes of restitution is a person who suffers personal injury or property damage or loss directly resulting from a crime or delinquent act, or the person’s representative in the event of the person’s death. A victim is presumed to have a right to restitution if the victim or the State requests restitution and the court is presented with competent evidence of any item listed above. A judgment of restitution does not preclude the property owner or the victim who suffered personal physical or mental injury, out-of-pocket loss of earnings, or support from bringing a civil action to recover damages from the restitution obligor. A civil verdict must be reduced by the amount paid under the criminal judgment of restitution.

Chapter 362 of 2011 requires a court to ensure that a victim of crime is afforded all of the rights provided to these victims under the law. A victim who alleges that the victim’s right to restitution was not considered or was improperly denied may file a motion requesting relief within 30 days of the denial or alleged failure to consider. If the court finds that the victim’s right to restitution was not considered or was improperly denied, the court may enter a judgment of restitution.

Chapter 363 of 2013 authorizes, if a court finds that a victim’s right was not considered or was denied, the court to grant relief to the victim so long as the remedy does not violate a criminal defendant’s or child respondent’s constitutional right to be free from double jeopardy. The court is not permitted to provide a remedy that modifies a sentence of incarceration of a defendant or 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.

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

- as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained or its value substantially decreased;
- as a direct result of the crime or delinquent act, the victim suffered (1) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses; (2) direct out-of-pocket loss; (3) loss of earnings; or (4) expenses incurred with rehabilitation;
- the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene (DHMH) or any other governmental unit;
- a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle;
- the Criminal Injuries Compensation Board paid benefits to a victim; or
- DHMH or other governmental unit paid expenses incurred for HIV testing of specified persons.

The court may order that restitution be paid to (1) the victim; (2) DHMH, the Criminal Injuries Compensation Board, or any other governmental unit; (3) a third-party payor, as specified; (4) any person for whom restitution is authorized by law; or (5) a person who has provided to or for a victim goods, property, or services for which restitution is authorized by law. Payment of restitution to the victim has priority over any payments to any other person or governmental unit. The court may issue a judgment of restitution that directs the defendant or child respondent to pay restitution to a third-party payor if the third party has fully compensated a victim for his or her losses.

If a court issues a judgment of restitution, the court may enter an immediate and continuing earnings withholding order in an amount sufficient to pay the restitution. This order may be entered at the sentencing or disposition hearing, when the defendant or child respondent is placed on work release or probation or when the payment of restitution is overdue. Subject to federal law, earnings withholding orders are required to be executed in the following order of priority: (1) orders issued in a child or spousal support case; (2) orders issued for restitution; and (3) orders issued for any other lien or legal process.

Victim Notification: Many of the rights afforded a victim of crime depend on a victim completing a notification request form or otherwise requesting notifications and rights. Once a victim has filed the notification request form, the State's Attorney is required to notify the victim of (1) all court sentencing proceedings; (2) the terms of any plea agreement; and (3) the victim's right to file a victim impact statement. Additionally, the State's Attorney must notify the victim of the terms of any agreement, action, or proceeding that affects the victim's interests as soon after the proceeding as practicable. The clerk of the court must forward the victim's notification request with the offender's commitment order or probation order and, if an appeal is filed in the case, a copy of the request must be

sent to the Attorney General and the court to which the case has been appealed. The notification request also requires a victim to be notified about post-sentencing proceedings, such as an offender's parole hearing or release under mandatory supervision, and if an offender violates probation, escapes, is recaptured, or dies.

At a hearing on a motion for revision, modification, or reduction of a sentence, the prosecuting attorney must state on the record that proceeding without the appearance of the victim or the victim's representative is justified because (1) the victim or representative has been notified and waived the right to attend the hearing; (2) the victim or representative cannot be located; or (3) the victim has not filed a notification request. If such a statement is not made, or the court is not satisfied with the statement, the court may postpone the hearing.

Other Specified Rights: In addition to the notification and restitution rights, included in statute are rights relating to victim statements, appearances, and security, as specified.

Background: In May 2011, Shyquille Griffin and Antonio Whitely arranged to purchase marijuana from Andrew Lindsey. Unsatisfied with the quantity of marijuana provided, Mr. Whitely shot Mr. Lindsey.

In June 2011, Mr. Griffin and Mr. Whitely were indicted on charges related to the shooting. In November 2011, Mr. Griffin entered a plea agreement representing "the full and complete agreement of the parties," including a sentencing limit of 15 years and a suspension of all but 18 months. However, the agreement did not mention restitution. In December 2011, the court accepted the terms of the plea agreement and postponed sentencing until January 2012.

Mr. Griffin returned to court on January 13, 2012, for sentencing under the plea agreement. The State acknowledged that there was "nothing in the plea agreement about restitution" but advised the court that Mr. Lindsey was seeking \$9,700 in restitution. The court disagreed and did not order restitution.

Mr. Lindsey filed a subsequent motion on February 13, 2012. The circuit court denied the motion on March 7, 2012.

Mr. Lindsey filed an "Application for Leave to Appeal to the Court of Special Appeals" on April 5, 2012, which was granted. The intermediate appellate court reversed the circuit court, holding that although the application was untimely with respect to the January sentencing, the application was timely with respect to the court's March 7 order denying the reconsideration motion. The Court of Special Appeals further held that the circuit court abused its discretion when it denied Mr. Lindsey's original motion for restitution.

The Court of Appeals granted leave to appeal to consider (1) whether the court has statutory authority to review the circuit court's denial of Mr. Lindsey's motion for reconsideration of his request for restitution and (2) whether the circuit court properly denied Mr. Lindsey's motion for reconsideration of his request for restitution. In overturning the decision of the Court of Special Appeals, the Court of Appeals held that current law did not permit a victim to file an application for leave to appeal the denial of a motion for reconsideration of restitution. The court stated that it "construe[s] grants of appellate authority narrowly, and the language of CP § 11-103(e) is unambiguous – it does not include the right to appeal from a denial of a CP § 11-103(e) motion." The court further held that Mr. Griffin's sentencing in January was a final judgment and Mr. Lindsey could not rely on his appeal from the denial of his subsequent motion for reconsideration to escape his failure to timely file his application after the sentencing.

Additional Information

Prior Introductions: None.

Cross File: HB 659 (Delegate Proctor, *et al.*) - Judiciary.

Information Source(s): Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Public Safety and Correctional Services, Department of Legislative Services

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