

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 268 (The President, *et al.*) (By Request - Administration)
 Judicial Proceedings

Victim's Rights - Restitution

This Administration bill (1) requires a court to order restitution for a victim of crime; (2) alters the eligibility requirements for restitution; and (3) makes several changes to procedures relating to judgments of restitution. The bill also requires the Administrative Office of the Courts (AOC), in consultation with the Governor’s Office of Crime Control and Prevention (GOCCP), to make specified recommendations regarding restitution payments and submit a joint report to the Governor and the General Assembly.

Fiscal Summary

State Effect: Special fund revenues increase from collection fees by the Central Collection Unit (CCU) and restitution payments to State entities; special fund expenditures increase by similar amounts, as discussed below. General fund expenditures for the Judiciary increase by at least \$110,300 in FY 2021 only.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	-	-	-	-	-
GF Expenditure	\$110,300	\$0	\$0	\$0	\$0
SF Expenditure	-	-	-	-	-
Net Effect	(\$110,300)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential increase in local revenues, as discussed below. The bill can be implemented with existing budgeted resources.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment.

Analysis

Bill Summary/Current Law:

Judicial Discretion/Mandatory Restitution

A judgment of restitution is a money judgment in favor of the person, governmental unit, or third-party payor to whom the restitution obligor has been ordered to pay restitution. A person or entity to whom a restitution obligor has been ordered to pay restitution has all the rights and obligations of a money judgment creditor under the Maryland Rules. Under current law, a court *may* enter a judgment of restitution ordering a defendant or child respondent to make restitution in addition to any other penalty for the commission of a crime or delinquent act, if specified eligibility criteria are met. The bill *requires* a court to enter a judgment of restitution if specified eligibility criteria are met.

Eligibility for Restitution

Under current law, in order to be eligible for restitution, any of the following must have occurred:

- 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 specified types of expenses, including actual medical or funeral expenses, loss of earnings, or out-of-pocket loss;
- the victim incurred medical expenses that were paid by the Maryland Department of Health (MDH) or any other governmental unit;
- a governmental unit incurred specified types of expenses related to abandoned vehicles;
- the Criminal Injuries Compensation Board paid benefits to a victim; or
- MDH or another governmental unit paid expenses incurred for HIV or Hepatitis C testing.

The bill removes the requirement that specified expenses or losses be the *direct* result of a crime or delinquent act. Instead, the bill requires that any of the eligible

expenses/losses/payments listed above must have occurred *as a result* of the crime or delinquent act. The bill also expands the list of eligible expenses/losses/payments to include (1) medical expenses incurred by another person that were paid by MDH or any other governmental unit; (2) abandoned vehicle-related expenses incurred by the victim or any other person; and (3) Criminal Injuries Compensation Board benefits paid to any other person authorized by law.

Procedures

Under current law, a victim is presumed to have a right to restitution if the victim or State requests restitution and the court is presented with competent evidence of the eligibility criteria listed above. The bill repeals this presumption and substitutes a requirement that prior to a court ordering a judgment of restitution (1) the defendant or child respondent must receive notice that the court will consider the issue of restitution and the amount of restitution being sought; (2) the victim or the State must present the court with competent evidence of the eligible expenses/losses/payments; and (3) subject to existing statutory provisions governing legally sufficient evidence at restitution hearings, the defendant or child respondent must be given a fair opportunity to present evidence to contest the issue of restitution.

Child Defendants and Respondents

Under current law, if a child is the defendant or child respondent, the court *is authorized* to order the child, the child's parent, or both to pay restitution. The bill *requires* the court to order restitution in this situation and retains related provisions pertaining to limits on the amount of restitution ordered and procedures in these cases.

Consideration of an Obligor's Ability to Pay/Refusals to Order Restitution

Under current law, a court need not issue a judgment of restitution if the court finds that the restitution obligor does not have the ability to pay the restitution or there are extenuating circumstances that make a judgment of restitution inappropriate. The bill removes the ability of the court to not order restitution based on the obligor's ability to pay and establishes that extraordinary, rather than extenuating circumstances must exist in order to make a judgment of restitution inappropriate. Also, the bill prohibits a court from considering the current inability of an obligor to pay restitution as an extraordinary circumstance. If a restitution obligor is unable to pay restitution, a court is prohibited from using the nonpayment of restitution as the sole basis to find the obligor in contempt of court, revoke probation, or find that the obligor has violated a condition of release.

In light of the bill's mandatory restitution provisions, the bill alters existing statutory provisions to require a court to state on the record the reasons for the court's

refusal to order restitution that is required (rather than requested) under statute. Notwithstanding any other provision of law, if a restitution obligor challenges the issuance of or amount of a restitution judgment, the obligor must file a notice of appeal or application for leave to appeal within 30 days after the judgment is issued.

Notification of Victims

Under current law, if practicable, the State's Attorney should notify an eligible victim of the victim's right to *request* restitution, help the victim prepare the request, and advise the victim of the steps for collecting restitution that is awarded by the court. The bill establishes that if practicable, the State's Attorney should notify an eligible victim of the victim's *right to* restitution, notify the court and the defendant or child respondent of the restitution being sought, and advise the victim of the steps for a court to award restitution, including the evidence required, and the process for collecting restitution that is awarded.

Reporting Requirement

The bill also requires AOC, in consultation with GOCCP, to make recommendations for including restitution payments and tracking restitution payments as part of the Maryland Electronic Courts (MDEC) records management system and a timeline for implementation of the recommendations. AOC and GOCCP must submit their joint report to the Governor and the General Assembly by December 31, 2020.

Background: Chapter 515 of 2016 (the Justice Reinvestment Act) required GOCCP to study restitution and make recommendations concerning the restitution process, including determining which State unit should assume the duties regarding collection of restitution. In the December 2016 *Report on Restitution Study*, GOCCP recommended that a new unit called the Victims' Services Unit be formed within GOCCP to collect data, develop best practices, and coordinate with State and local entities regarding restitution. As a result of that recommendation, Chapter 422 of 2018 established a Victim Services Unit (VSU) in GOCCP to coordinate State responsibilities concerning services to victims, including the collection of restitution.

Chapter 422 requires VSU to coordinate with the Judiciary, the Department of Public Safety and Correctional Services (DPSCS), the Department of Juvenile Services (DJS), CCU, State's Attorney's offices, and local correctional facilities to (1) collect data; (2) develop best practices, using data and other evidence to the extent available, for restitution collection; (3) coordinate and improve efforts of State and local entities regarding restitution; (4) ensure the interoperability of justice system databases; (5) require that each of the databases has a data field to indicate that there are outstanding restitution orders; and (6) coordinate efforts to improve restitution collection.

In addition, VSU must:

- monitor and provide guidance to the Secretary of Public Safety and Correctional Services on the adoption of regulations establishing minimum mandatory standards for State and local correctional facilities regarding victim notification, restitution, and administrative recordkeeping;
- encourage the use of earnings withholding orders to collect restitution;
- coordinate with CCU to improve restitution collection;
- coordinate with the Division of Parole and Probation (DPP) to modernize and improve collections and collaborate on communicating with parole and probation agents on their role with restitution collection;
- coordinate with DPP and CCU on ways to expedite the referral of cases to CCU;
- develop programs to be presented to the Maryland State's Attorneys' Association to emphasize statutory obligations regarding restitution;
- promote notification to victims; and
- examine the existing remedies available to enforce restitution orders to determine whether the remedies are being effectively used and make recommendations regarding the need for additional remedies.

By December 31, 2020, GOCCP must provide a report to the Governor and the General Assembly that provides an update on issues relating to the implementation of Chapter 422, including improvements to the restitution collection process.

This bill is part of the Governor's legislative package to address violent crime, including initiatives to increase restitution for victims of crime.

State Revenues: Special fund revenues for various State entities increase from fees from overdue restitution and reimbursement for expenditures from restitution payments made, as well as revenues from restitution payments that are ordered to be paid through a State entity. The magnitude of any such increase depends on the actual amount of restitution collected under the bill, which cannot be reliably determined at this time. DLS notes that while the bill expands opportunities for victims to receive judgments for restitution, this does not alter the ability of a defendant to actually pay restitution. The inability of victims

to collect restitution owed them, even though a judgment for restitution has been ordered, is a frequently cited issue among victims of crime.

CCU – Fee Revenues

Because the bill is expected to increase restitution, it is likely that DPP and DJS refer additional unpaid restitution to CCU, resulting in an increase in fee revenues for CCU. CCU collects a 17% fee from overdue restitutions.

MDH and GOCCP

Special fund revenues increase for MDH and GOCCP to the extent that restitution collected under the bill includes reimbursement of Medicaid expenditures and Criminal Injuries Compensation Fund payments.

DPSCS and DJS

Currently, the court orders restitution to be paid through DPP, DJS, the Division of Corrections (DOC), local correction facilities, or directly to a person or agency. To the extent that additional restitution is ordered to be paid *through* a State entity as a result of the bill, special fund revenues increase.

State Expenditures: General fund expenditures for the Judiciary increase by at least \$110,272 in fiscal 2021 only for computer reprogramming costs. DPSCS and DJS can implement the bill with existing budgeted resources. Special fund expenditures may increase for multiple agencies, as discussed below.

Judiciary

General fund expenditures for the Judiciary increase by at least \$110,272 in fiscal 2021 only for computer reprogramming costs. These expenditures are solely associated with the reprogramming necessary to generate automatic notices to defendants that the court will consider restitution and the amount of restitution being sought, as required under the bill. The bill also requires AOC and GOCCP to make recommendations on including restitution payments and the tracking of restitution payments in MDEC. The Judiciary advises that MDEC does not currently perform these functions, and additional costs will be incurred to assess MDEC's systems so that the Judiciary can make informed recommendations. Any costs associated with this assessment are not reflected in the above estimate, as the Judiciary was unable to provide a specific estimate for these costs. The estimate also does not account for costs associated with the implementation of any potential recommendations that may be included in the December 31, 2020 report.

The bill expands the expenses eligible for restitution and removes judicial discretion in ordering restitution. While this does not necessarily affect the number of cases filed, it is likely to increase the number of cases in which restitution needs to be considered, which lengthens existing proceedings, may increase the filing of appeals by restitution obligors, and may increase proceedings related to money judgments. However, any impact associated with these factors can be handled using existing budgeted resources of the Judiciary.

DPSCS, DJS, GOCCP, and CCU

As noted above, the court orders restitution to be paid through DPP, DJS, DOC, local correction facilities, or directly to a person or agency. DOC, DPP, DJS, and CCU can implement the bill with existing budgeted resources. To the extent that additional restitution is ordered to be paid *through* a State entity, special fund expenditures increase correspondingly with special fund revenues, reflecting the disbursement of restitution to victims. To the extent that GOCCP is eligible for additional restitution under the bill, special fund expenditures may increase as a result of this additional funding.

Local Fiscal Effect: Local government revenues may increase to the extent the bill increases restitution payments to local governments for previously incurred expenses. However, the extent to which this occurs can only be determined with actual experience under the bill.

The bill may increase the number of cases in which State's Attorneys have to work with victims on restitution issues. However, the Maryland State's Attorneys' Association advises that the bill does not have a fiscal or operational effect on prosecutors.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 358 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

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

Fiscal Note History: First Reader - February 3, 2020
rh/jkb

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Victims' Rights - Restitution**

BILL NUMBER: HB 358

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS