

BY: Judicial Proceedings Committee
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO HOUSE BILL NO. 768
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “felony” in line 15 down through “pretrial” in line 16 and substitute “criminal case”.

On page 2, strike beginning with “providing” in line 2 down through “trial;” in line 3; in line 9, after “case;” insert “authorizing a victim who files a notification request form and a State’s Attorney to file a leave to appeal an order that denies or fails to consider certain victims’ rights; expanding the rights from which the appeal may be filed to include the right to address a jury in a death penalty sentencing and the right to prepare a victim impact statement; prohibiting the stay of a sentencing or disposition hearing when an appeal is filed under this Act; authorizing the court, under certain terms, to stay certain proceedings from which an appeal has been filed; specifying the parties to a leave to appeal filed under this Act;”; in line 23, strike “of certain crimes”; strike beginning with “transferring” in line 28 down through “notice;” in line 31; in line 34, after “victim;” insert “prohibiting a law enforcement agency from charging a victim for a copy of an incident report in a domestic violence case when a law enforcement officer responds to a request for assistance;”; strike beginning with “eliminating” in line 40 down through “judgements;” in line 42; and in line 48, strike “felony” and substitute “crime; altering the standard of judgment certain claimants are required to prove in order to recover from the Criminal Injuries Compensation Fund”.

On page 3, in line 3, strike “certain persons who were” and substitute “a law enforcement officer who was”; in lines 21 and 22, strike “after a defendant has been found incompetent to stand trial”; in line 29, strike the scored comma and substitute “through”; in line 30, after “775(f)(2),” insert “776,”; in the same line, strike “, 807, 809”; and strike in their entirety lines 39 through 43, inclusive.

On page 4, in line 18, strike “4-511A,”.

(Over)

On page 5, in line 25, strike “stalking under § 121B of this article”; strike beginning with “, A” in line 26 down through “ADULT” in line 27 and substitute “A CRIME”; and in lines 27 and 28, strike “, JUVENILE INTAKE OFFICER,”.

On page 6, in line 4, strike “, IF PRACTICABLE,”; in line 5, strike “IN WRITING AT LEAST 60” and substitute “, IN WRITING, AT LEAST 90”; and in line 26, strike “, INTAKE OFFICER”.

On page 7, in line 10, after “court;” insert “and”; strike in their entirety lines 11 and 12; in line 13, strike “(5)” and substitute “(4)”; in line 23, strike “(4)” and substitute “(3)”; in line 26, strike “, JUVENILE INTAKE OFFICER,”; in line 28, strike “stalking”; strike beginning with the first comma in line 28 down through “ADULT” in line 30 and substitute “A CRIME”; and in line 34, strike “SUBHEADING” and substitute “ARTICLE”.

On page 8, in lines 24 and 25, strike “§ 807” and substitute “§ 808”.

On page 10, strike in their entirety lines 2 through 17, inclusive, and substitute:

“ON REQUEST OF A PARTY, VICTIM, OR WITNESS OF AN ALLEGED CRIME OR DELINQUENT ACT, A JUDGE, STATE'S ATTORNEY, DISTRICT COURT COMMISSIONER, INTAKE OFFICER, OR LAW ENFORCEMENT OFFICER MAY WITHHOLD THE RELEASE OF THE ADDRESS OR TELEPHONE NUMBER OF THE VICTIM OR WITNESS PRIOR TO THE TRIAL OR ADJUDICATORY HEARING, UNLESS A JUDGE DETERMINES THAT, UNDER THE PARTICULAR CIRCUMSTANCES, THE INFORMATION IS NECESSARY AND RELEVANT.”

772.

On motion of either party or on request of a witness, during a criminal trial OR ADJUDICATORY HEARING, a judge may prohibit the release of the address or telephone number of the victim or witness unless the judge determines that, under the particular circumstances, the information is necessary and relevant.

773.

(a) (1) In this section the following words have the meanings indicated.

(2) “DEFENDANT” INCLUDES:

(I) A PERSON WHO IS CHARGED WITH A CRIME; AND

(II) A CHILD WHO IS ALLEGED TO HAVE COMMITTED A
DELINQUENT ACT.

[(2)] (3) “Victim” means a person who[

(i) Has testified as a witness; and

(ii) Is] IS the victim of a crime [of violence under § 643B of this article or a
crime involving, causing, or resulting in death or serious bodily harm] OR DELINQUENT ACT for
which the defendant is being tried.

[(3)] (4) “Representative” means a person who is:

(i) [1. Subpoenaed or has testified; and

2.] Selected by the next of kin or guardian of a person who is deceased
or disabled as a result of a crime [of violence under § 643B of this article or a crime involving,
causing, or resulting in death or serious bodily harm] OR DELINQUENT ACT; or

(ii) Designated by the court in the event of a dispute over the representative.

(5) “TRIAL” INCLUDES AN ADJUDICATORY HEARING AND ANY OTHER
COURT PROCEEDING IN WHICH THE DEFENDANT HAS A RIGHT TO APPEAR.

(b) A victim or representative shall be presumed to have the right to be present [at]
THROUGHOUT the trial.

(c) The judge may sequester a victim or representative from any part of the trial at the request
of the defendant or the State only after a finding of good cause.

(Over)

(d) A judge may remove a victim or representative from the trial for the same causes and in the same manner as the laws or rules of court provide for the exclusion or removal of the defendant.”.

On page 14, after line 5, insert:

“776.

(a) (1) In this section[, “victim of a violent crime”] THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “STATE’S ATTORNEY” HAS THE MEANING PROVIDED IN § 770 OF THIS ARTICLE.

(3) (I) “VICTIM” means a victim of:

[(i)] 1. A crime of violence as defined under § 643B of this article; [or]

2. A CRIME AS DEFINED UNDER § 770 OF THIS ARTICLE; OR

[(ii)] 3. Except as provided in [paragraph (2) of this subsection,] SUBPARAGRAPH (II) OF THIS PARAGRAPH, a crime involving, causing, or resulting in death or serious bodily injury.

[(2)] (II) [“Victim of a violent crime”] “VICTIM” does not include a victim of an offense that is not punishable by imprisonment under the Maryland Vehicle Law or under Title 8, Subtitle 7 of the Natural Resources Article (“State Boat Act”).

(b) (1) In the event of the death or disability of a victim [of a violent crime, the term “victim of a violent crime”], “VICTIM” includes the victim’s:

(i) Spouse or surviving spouse;

(ii) Parent or legal guardian;

(iii) Child; or

(iv) Sibling.

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

(c) Although not a party to a criminal OR JUVENILE DELINQUENCY proceeding, the victim of the [violent] crime [for which the defendant is charged has the right to] OR DELINQUENT ACT OR THE STATE'S ATTORNEY 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 that victim by [§ 773(b) or § 780] § 773(B), § 780, § 780A, OR § 781 of this subtitle or Article 41, § 4-609 of the Code.

(d) [The] (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE filing of an application for leave to appeal under this section may not result in the stay of [other]:

(I) OTHER proceedings in a criminal case IN WHICH THE VICTIM INVOKED OR ATTEMPTED TO INVOKE A RIGHT UNDER § 773(B) OF THIS SUBTITLE without the consent of all of the parties; AND

(II) A SENTENCE IN A CRIMINAL CASE OR A DISPOSITION IN A DELINQUENCY CASE.

(2) A CIRCUIT COURT, THE COURT OF SPECIAL APPEALS, OR THE COURT OF APPEALS MAY STAY A PROCEEDING UNDER THE TERMS THE COURT CONSIDERS PROPER.

(E) THE PARTIES TO A LEAVE TO APPEAL FILED UNDER THIS SECTION SHALL BE:

(1) THE VICTIM;

(Over)

(2) IN A CRIMINAL CASE, THE DEFENDANT;

(3) IN A DELINQUENCY CASE, THE CHILD ALLEGED TO BE DELINQUENT;

AND

(4) ON BEHALF OF THE STATE'S ATTORNEY, THE ATTORNEY GENERAL.”;

strike beginning with “IN” in line 16 down through “PROCEEDING” in line 17; strike beginning with “IN” in line 17 down through “PROCEEDING” in line 18; in line 28, strike “UNDER OATH OR AFFIRMATION TO ADDRESS THE JUDGE” and substitute “TO ADDRESS THE JUDGE OR JURY UNDER OATH OR AFFIRMATION”; and in lines 34 and 35, strike “UNDER OATH OR AFFIRMATION TO ADDRESS THE JUDGE” and substitute “TO ADDRESS THE JUDGE UNDER OATH OR AFFIRMATION”.

On page 15, in line 23, strike “MEANS” and substitute “INCLUDES”; in line 24, strike “OR” and substitute “AND”; and in line 34, after “misdemeanor” insert “OR DELINQUENT ACT THAT WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT”.

On page 16, in line 5, before “of” insert “OR § 808”.

On pages 16 and 17, strike in their entirety the lines beginning with line 27 on page 16 through line 2 on page 17, inclusive, and substitute:

“783A.

(A) IN THIS SUBHEADING THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “DEFENDANT” INCLUDES:

(1) A PERSON WHO IS CHARGED WITH A CRIME; AND

(2) A CHILD WHO IS ALLEGED TO HAVE COMMITTED A DELINQUENT

ACT.

(C) “VICTIM” MEANS AN INDIVIDUAL WHO SUFFERS DIRECT OR THREATENED PHYSICAL, EMOTIONAL, OR FINANCIAL HARM AS A DIRECT RESULT OF A CRIME OR DELINQUENT ACT, INCLUDING A FAMILY MEMBER OR GUARDIAN OF A MINOR, INCOMPETENT, OR HOMICIDE VICTIM.”.

On page 17, in line 14, strike “FELONY” and substitute “crime”; and in lines 15 and 16, strike “THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT”.

On page 18, in lines 15 and 16, and in line 34, in each instance, strike “DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES” and substitute “Maryland Parole Commission”.

On page 19, in lines 23 and 24, strike “DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES” and substitute “DIVISION OF PAROLE AND PROBATION”.

On page 20, in line 2, strike “IF PRACTICABLE,”; and in lines 12 and 13, strike “, IN ADVANCE IF PRACTICABLE, IF” and substitute “IN ADVANCE, IF POSSIBLE, AND IF NOT, AS SOON AS POSSIBLE REGARDING”.

On page 22, in line 31, strike “WHEN”; and in line 33, after “subpoena” insert “AND WITHOUT CHARGE”.

On page 23, in line 16, after “RESPONSIBLE” insert “BY REASON OF INSANITY”; strike beginning with the colon in line 25 through “(2)” in line 27; and in line 27, strike “§ 807” and substitute “§ 808”.

On page 25, strike in their entirety lines 14 through 17, inclusive, and substitute:

“(b) (A) (1) On conviction of a crime, acceptance of a plea of nolo contendere, or imposition of probation before judgment under § 641 of this article, the court may issue [an order] A JUDGMENT of restitution directing the defendant to make restitution in addition to any other penalty for the commission of the crime, if:”.

(Over)

On page 26, strike in their entirety lines 1 through 11, inclusive; and in lines 12, 18, 25, 30, and 33, strike “(4)”, “(5)”, “(6)”, “(7)”, and “(8)”, respectively, and substitute “(3)”, “(4)”, “(5)”, “(6)”, and “(7)”, respectively.

On page 27, in line 2, strike “OR DISPOSITION IN A JUVENILE DELINQUENCY CASE”; and in line 6, strike “OR DISPOSITION”.

On page 28, in line 33, strike “OR LIABLE PARENT’S”; and in line 38, strike “JUDGMENT” and substitute “order”.

On page 29, in line 36, strike “OR LIABLE PARENT”.

On page 33, after line 3, insert:

“808.

(a) [(1) The juvenile] NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE court may enter a judgment of restitution UNDER § 807 OF THIS SUBHEADING against the parent of a child, the child, or both in any case in which the court finds a child has committed a delinquent act [and during or as a result of the commission of that delinquent act has:

(i) Stolen, damaged, destroyed, converted, unlawfully obtained, or substantially decreased the value of the property of another; or

(ii) Inflicted personal injury on another, requiring the injured person to incur medical, dental, hospital, funeral, or burial expenses; or

(iii) Caused the victim of the delinquent act to incur reasonable counseling expenses from a licensed health care provider, if the delinquent act involved:

1. Personal injury;

2. Child abuse under § 35C of this article;

3. Abuse or neglect of vulnerable persons under § 35D of this article;

4. Incest, rape, or sexual offense in any degree;

5. Sodomy under § 553 of this article; or

6. Unnatural or perverted sexual practices under § 554 of this article]

OR AN OFFENSE FOR WHICH THE CHILD HAS BEEN CHARGED AS AN ADULT.

[(2) The juvenile court may order the parent of a child, a child, or both to make restitution to:

(i) The victim;

(ii) Any governmental entity, including the Criminal Injuries Compensation Board; or

(iii) A third party payor, including an insurer, that has made payment to the victim to compensate the victim for a property loss under paragraph (1)(i) of this subsection or pecuniary loss under paragraph (1)(ii) of this subsection.

(3) (i) Restitution payments to the victim have priority over restitution payments to a third party payor.

(ii) If the victim has been compensated for the victim's loss by a third party payor, the juvenile court may order restitution payments to the third party payor in the amount that the third party payor compensated the victim.

(4) Payment of restitution to a victim under this section has priority over payment of restitution to any governmental entity.

(b) Considering the age and circumstances of a child, the juvenile court may order the child to

(Over)

make restitution to the wronged person personally.]

[(c)] (B) (1) A judgment OF RESTITUTION rendered under this section may not exceed:

(i) As to property stolen, destroyed, converted, or unlawfully obtained, the lesser of the fair market value of the property or \$10,000;

(ii) As to property damaged, or substantially decreased in value, the lesser of the amount of damage or the decrease in value of the property not to exceed the fair market value of the property or \$10,000; and

(iii) As to personal injuries inflicted, the lesser of the actual medical, dental, hospital, COUNSELING, funeral, and burial expenses incurred by the injured person as a result of the injury or \$10,000.

(2) As an absolute limit against any one child, his parents, or both, a judgment rendered under this section may not exceed \$10,000 for all acts arising out of a single incident.

[(d)] (C) A restitution hearing to determine the liability of a parent, a child, or both, shall be held not later than 30 days after the SENTENCING OR disposition hearing and may be extended by the [juvenile] court for good cause.

[(e)] (D) A judgment of restitution against a parent may not be entered unless the parent has been afforded a reasonable opportunity to be heard and to present appropriate evidence in the parent's behalf. A hearing under this section may be held as part of [an adjudicatory] A SENTENCING or disposition hearing for the child.

[(f)] The judgment may be enforced in the same manner as enforcing monetary judgments.

(g) The Department of Juvenile Justice is responsible for the collection of restitution payments when the restitution order provides that restitution is to be made in periodic or installment payments, as part of probation, or pursuant to a work plan.]";

in line 4, strike "808." and substitute "809."; in line 5, after "§ 807" insert "or § 808"; in line 12, strike "809." and substitute "810."; and in line 31, strike "§ 810" and substitute "§ 811".

On page 34, in line 3, strike “JUDGMENT” and substitute “order”; in line 5, strike “OR LIABLE PARENT”; in line 6, strike “§ 811” and substitute “§ 812”; in line 19, strike “810.” and substitute “811.”; and in line 22, strike “§ 809” and substitute “§ 810(b)(2)(ii)”.

On page 35, in line 28, strike “811.” and substitute “812.”; and in line 29, after “§ 807” insert “OR § 808”.

On page 36, in lines 13, and 20 and 21, in each instance, strike “OR DEPARTMENT OF JUVENILE JUSTICE”; and in line 31, strike “, DEPARTMENT OF JUVENILE JUSTICE.”.

On page 37, in line 9, strike “OR DEPARTMENT OF JUVENILE JUSTICE”.

On page 38, strike in their entirety lines 8 through 14, inclusive, and substitute:

“(f) “Victim” means a person who suffers:

(1) Personal physical injury or death as a result of a crime; or

(2) Psychological injury as a direct result of[:

(i) First or second degree rape; or

(ii) A first, second, third, or fourth degree sexual offense] A CRIME.”;

and in line 20, before “have” insert “REASONABLY”.

On page 40, in line 23, after “Article;” insert “OR”; and strike beginning with “; OR” in line 26 down through “DUTY” in line 29.

On page 42, in line 33, strike “§ 809” and substitute “§ 810”.

On page 43, in line 3, strike “§ 809” and substitute “§ 810”; and in lines 11 and 27, in each

(Over)

instance, strike “ADOPTED” and substitute “PROMULGATED”.

On page 44, in lines 8, 9, 15, and 35, in each instance, strike “DEPARTMENT” and substitute “Commission”; in line 9, strike “IF PRACTICABLE.”; in line 10, strike “60” and substitute “90”; and in line 16, strike “DEPARTMENT’S” and substitute “Commission’s”.

On page 45, in line 3, strike “ADOPTED” and substitute “promulgated”; and in line 4, strike “DEPARTMENT” and substitute “Commission”.

On page 46, strike in their entirety lines 2 through 22, inclusive.

On page 48, in line 16, strike “OR CHILD”.

On page 49, in line 11, strike “once every 2 years”.

On page 51, in line 5, strike “JUDGMENT” and substitute “order”.