

(PRE-FILED)

By: **Senator Boozer**
Requested: October 2, 1997
Introduced and read first time: January 14, 1998
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Restitution - Juvenile Delinquents**

3 FOR the purpose of prohibiting the court from considering certain factors in
4 determining whether to issue a judgment of restitution against a child; and
5 generally relating to restitution.

6 BY repealing and reenacting, with amendments,
7 Article 27 - Crimes and Punishments
8 Section 807(a)
9 Annotated Code of Maryland
10 (1996 Replacement Volume and 1997 Supplement)

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

13 **Article 27 - Crimes and Punishments**

14 807.

15 (a) (1) A court may issue a judgment of restitution directing a defendant to
16 make restitution in addition to any other penalty for the commission of a crime, if:

17 (i) Property of the victim was stolen, damaged, destroyed,
18 converted, unlawfully obtained, or its value substantially decreased as a direct result
19 of the crime;

20 (ii) The victim suffered actual medical, dental, hospital, counseling,
21 funeral, burial expenses, any other direct out-of-pocket losses, or loss of earnings as
22 a direct result of the crime;

23 (iii) The victim incurred medical expenses that were paid by the
24 Department of Health and Mental Hygiene or any other governmental entity;

1 (iv) A governmental entity incurred expenses in the removal,
2 towing, transporting, preserving, storage, sale, or destruction of an abandoned
3 vehicle;

4 (v) The Criminal Injuries Compensation Board paid benefits to a
5 victim of the crime; or

6 (vi) The Department of Health and Mental Hygiene or other
7 governmental entity paid expenses incurred under § 855 of this subtitle.

8 (2) A victim is presumed to have a right to restitution under paragraph
9 (1) of this subsection if:

10 (i) The victim or the State requests restitution; and

11 (ii) The court is presented with competent evidence of any of items
12 (i) through (vi) of paragraph (1) of this subsection.

13 (3) (i) Notwithstanding any other provision of law, if the defendant is
14 a child, the court may order the child, the child's parent, or both to pay restitution to
15 a victim.

16 (ii) As an absolute limit against one child, the child's parent, or
17 both, a judgment of restitution issued under this section may not exceed \$10,000 for
18 all acts arising out of a single incident.

19 (iii) A court may not enter a judgment of restitution against a parent
20 under this section unless the parent has been afforded a reasonable opportunity to be
21 heard and to present appropriate evidence on the parent's behalf. A hearing under
22 this section may be held as part of the sentencing or disposition hearing.

23 (4) (I) [A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
24 PARAGRAPH, A court need not issue a judgment of restitution under this section if the
25 court finds:

26 [(i)] 1. That the defendant or liable parent does not have the
27 ability to pay the judgment of restitution; or

28 [(ii)] 2. Good cause to establish extenuating circumstances as to
29 why a judgment of restitution is inappropriate in a case.

30 (II) IN DETERMINING WHETHER TO ISSUE A JUDGMENT OF
31 RESTITUTION AGAINST A CHILD, THE COURT MAY NOT CONSIDER:

32 1. THE AGE AND CIRCUMSTANCES OF THE CHILD; OR

33 2. THE CHILD'S PRESENT OR FUTURE ABILITY TO PAY
34 RESTITUTION.

35 (5) The court may order that restitution be made to:

- 1 (i) The victim;
- 2 (ii) The Department of Health and Mental Hygiene, the Criminal
3 Injuries Compensation Board, or any other governmental entity; or
- 4 (iii) A third-party payor, including an insurer, which has made
5 payment to the victim to compensate the victim for a property loss or pecuniary loss
6 under this subsection.
- 7 (6) If the victim has been fully compensated for the victim's loss by a
8 third-party payor, the court may issue a judgment of restitution directing the
9 defendant or liable parent to pay restitution to the third-party payor. Otherwise,
10 payment of restitution to the victim has priority over payment of restitution to the
11 third-party payor.
- 12 (7) Payment of restitution to the victim under this subsection has
13 priority over payment of restitution to the Department of Health and Mental Hygiene
14 or other governmental entity.
- 15 (8) If restitution is requested under this subsection and the court does
16 not order restitution, the court shall state, on the record, the court's reasons for not
17 ordering restitution.
- 18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 1998.