

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 227 (Senators Stone and Hughes)
(Committee to Revise Article 27 – Crimes and Punishments)

Judicial Proceedings

Criminal Procedure - Restitution

The bill establishes a uniform law for all court-ordered restitution. Among other things, it redefines the terms “crime” and “victim;” increases the amounts available to those injured by acts of a child; and authorizes restitution to cover future expenses or loss of earnings, and to repay a third party, including the State, that has paid an expense on behalf of a victim.

The District Court must record and index a restitution judgment as a money judgment, before probation granted to an obligor may be terminated. This requirement is applied retroactively to those currently on probation.

Fiscal Summary

State Effect: \$100,000 annual reduction in general fund revenues to the Division of Parole and Probation and corresponding increase in special fund revenues to the State Victims of Crime Fund. Potential minimal increase in expenditures by the Department of Public Safety and Correctional Services to comply with the bill.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill expands the definition of “crime” for the purposes of restitution eligibility to include any crime contained in the Annotated Code, other than nonjailable motor vehicle offenses. It expands the definition of “victim” for the purposes of restitution eligibility to include a person who dies as a result of a crime or delinquent act.

The bill authorizes restitution if a crime victim is reasonably likely to suffer future expenses as a result of the crime, or expenses for rehabilitation. Certain medical and funeral expenses need no longer be “actual” expenses in order for a victim to receive restitution.

A written statement or bill subject to restitution is legally sufficient evidence of the amount, fairness, and reasonableness of the charge and the necessity of the service.

A victim may receive a restitution judgment up to \$10,000 for each child’s act arising out of a single incident, instead of a maximum cap of \$10,000 for the incident, regardless of the number of actors. If restitution is ordered based on delinquent acts of a child, the victim is to be paid before the State.

A third party, including the State, who pays an expense on behalf of a victim may receive restitution.

Payment of any judgment of restitution is a required condition of probation.

The 2% fee for the cost of collecting restitution payments is shifted from the Division of Parole and Probation to the State Victims of Crime Fund. The bill also transfers unclaimed restitution funds from abandoned property status to the State Victims of Crime Fund.

The Departments of Public Safety and Juvenile Justice must notify the court if a restitution obligor is overdue on a restitution payment, and request that the obligor’s earnings be withheld. A restitution obligor or the obligor’s employer must notify the Central Collection Unit of any change of status of the obligor. The Secretary of Public Safety is to adopt regulations administering the collection and distribution of inmate earnings.

The Clerk of the District Court is to record and index a restitution judgment as a money judgment, whether or not the victim or other payee file a written request to the court to record it.

The bill also repeals the requirement to record and index a judgment of restitution in the civil judgment index; prohibits the assessment of court costs on a payee for filing a notice of satisfaction with the court; and repeals the staying of an execution of a restitution judgment if the obligor files a motion to stay the execution of sentence.

Current Law: The law lists numerous crimes found throughout the Code that may serve as the basis for a restitution order. In *Coles v. State*, 290 Md. 296 (1981), the Court of Appeals held that uniformity to enforce restitution orders would not exist unless all covered offenses were listed in the restitution statute (Title 11, subchapter 6 of the Maryland Code).

In *In re John M.*, 129 Md.App. 165 (1999), the Court of Special Appeals held that restitution could not be ordered to cover anticipated future costs.

A written statement or bill for medical, counseling, or funeral expenses subject to restitution is legally sufficient evidence of the amount, fairness, and reasonableness of the charge and the necessity of the service.

Background: The Committee to Revise Article 27 was appointed in 1991 by the Speaker and the President and charged with making both substantive and stylistic changes to the State's criminal law. The committee is composed of legislators, judges, lawyers representing both defendants and the State, and a victims' rights representative. In past sessions the committee has successfully sponsored legislation to revise the laws on accessory before and after the fact, arson, assault, benefit of clergy, burglary, destructive devices, disorderly conduct, escape, leased or rented goods, Medicaid fraud, offensive contact, prostitution, robbery, sabotage, trespass, and victims' rights.

State Fiscal Impact: The 2% collection fee assessed by the Division of Parole and Probation is used to offset the division's salary expense. Shifting this revenue to the Victims of Crime Fund will reduce the division's budget by \$100,000 per year. The Division of Correction, the Division of Parole and Probation, the Judiciary, and the Department of Juvenile Justice will also incur costs to reprogram computers and to revise and reprint forms; however, it is anticipated that these can be met using existing resources.

The Division of Parole and Probation could incur increased expenses in updating offender payment plans in those cases where the cost of future expenses cannot be determined at the time of sentencing. The Division of Parole and Probation could also incur increased expenditures in connection with an increased number of earnings withholdings orders issued by the court.

The Division of Correction currently has in place procedures to withhold restitution payments for inmates on work release. These procedures do not apply to inmates on institutional assignments who earn money to purchase commissary items. The Division of Correction could incur increased expenditures to the extent that the bill requires it to collect restitution from the earnings of inmates on institutional assignments.

Additional Information

Prior Introductions: None.

Cross File: HB 305 (Delegate Doory) – Judiciary.

Information Source(s): State’s Attorneys’ Association, Department of Juvenile Justice, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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