

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 291 (Senators Giannetti and Stone)
(Committee to Revise Article 27 – Crimes and Punishments)

Judicial Proceedings

Judiciary

Crimes - Restitution - Victims and Payments

This bill makes several revisions to the State's restitution laws.

Fiscal Summary

State Effect: None. The changes would not directly affect State finances.

Local Effect: Potential decrease in local expenditures to the extent that courts award restitution to multicounty agencies, multicounty units, county boards of education, or public authorities for actual costs reasonably incurred as a result of the commission of offenses listed in this bill.

Small Business Effect: None.

Analysis

Bill Summary: A court may order a person who is convicted or found to have committed a delinquent act relating to the manufacture or possession of a destructive device or possession of explosive, incendiary, or toxic material with the intent to create a destructive device to pay restitution to a (1) multicounty agency; (2) county board of education; or (3) public authority for actual costs reasonably incurred due to a violation of this prohibition.

A court may order a person who is convicted or found to have committed a delinquent act relating to the intentional circulation or transmittal of a false statement or rumor

regarding the location or possible detonation of a destructive device or the location or possible release of toxic material to pay restitution to a (1) multicounty unit; (2) county board of education; or (3) public authority for actual costs reasonably incurred in responding to a location or searching for a destructive device as a result of a violation of this prohibition.

A court may include a judgment of restitution relating to the manufacture or possession of a device that is constructed to represent a destructive device, with the intent to terrorize, frighten, intimidate, or harass to a (1) multicounty unit; (2) county board of education; or (3) public authority for actual costs reasonably incurred due to a violation of this prohibition.

In addition to individuals currently eligible to receive court-ordered restitution, the court may order restitution to:

- any person for whom restitution is authorized by law; or
- a person who has provided to or for a victim goods, property, or services for which restitution is authorized.

Payment of restitution to the victim retains priority over any other person or governmental unit.

The bill retains the requirement that the Division of Parole and Probation and the Department of Juvenile Services must forward property or payments in accordance with the judgment of restitution to the person or governmental unit specified in the judgment of restitution.

The bill also defines restitution, for the purpose of treatment and help for victims, as money or services that a defendant is ordered to pay or render to a victim, victim's representative, or other person or governmental unit.

Current Law: A person who suffers personal injury or property damage or loss as a direct result of a crime or delinquent act, or, if the person is deceased, the person's personal representative, is entitled to restitution to cover the victim's actual expenses, including loss of earnings. The Department of Health and Mental Hygiene or another governmental unit may also receive restitution for expenses paid in connection with the act. "Crime" means an act committed by a person in the State that is a crime under common law or the Maryland Code, except for nonjailable transportation offenses, and also includes certain local violations.

Background: The Maryland Court of Appeals addressed the issue of restitution in December 2004 in the case, *Pete v. State*, 384 Md. 47 (2005). Pete was convicted in the

Circuit Court for Dorchester County of second degree assault, among other charges, and received probation in exchange for a suspended sentence. He also was convicted, under the same case number, for reckless driving for an incident occurring approximately two hours after the assault. He was fined \$250 for reckless driving. During the incident underlying the reckless driving conviction, a police cruiser was damaged as a direct result of Pete stopping his truck abruptly as the police cruiser followed it. One condition of the probation for the second degree assault included restitution to the Local Government Insurance Trust (LGIT) for damages to the police cruiser as a direct result of the reckless driving incident. Because restitution was unavailable for either the second degree assault conviction (the damage incurred by the LGIT was not a direct result of the second degree assault and the LGIT was not a victim of the assault) or the reckless driving conviction, the court held that the restitution order as a condition of probation was an illegal sentence.

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, criminal penalty enhancements, destructive devices, disorderly conduct, escape, leased or rented goods, Medicaid fraud, offensive contact, prostitution, robbery, sabotage, trespass, and victims' rights.

Additional Information

Prior Introductions: HB 281/SB 406 of 2005, similar bills, received unfavorable reports from the Judiciary and Judicial Proceedings committees.

Cross File: HB 378 (Delegate Vallario) (Committee to Revise Article 27 – Crimes and Punishments) – Judiciary.

Information Source(s): Montgomery County, Prince George's County, Office of the Public Defender, Department of Legislative Services

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ncs/jr

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