

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 508

(Senator Stone)

Judicial Proceedings

Judiciary

Victim's Rights - Leave to Appeal - Delinquent Acts

This bill grants to a victim of a delinquent act that would be a crime of violence if committed by an adult the right to file for leave to appeal to the Court of Special Appeals from an interlocutory or final order that denies or fails to consider the following statutorily granted rights: (1) the right to notice of a hearing to transfer a case to the juvenile court; (2) the right to attend proceedings; (3) the right to notice of court proceedings; (4) the right to be present at trial; (5) the right to submit a victim impact statement; (6) the right to address the court at sentencing or disposition; and (7) the presumptive right to restitution.

Fiscal Summary

State Effect: Minimal. While this bill would likely lead to some additional hearings in the courts, it is assumed that they could be handled with the existing budgeted resources of the Judiciary.

Local Effect: Minimal – see above.

Small Business Effect: None.

Analysis

Current Law: Although not a party to a criminal proceeding, a victim of a violent crime for which the defendant is charged 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 the victim by provisions of the Criminal Procedure Article governing the transfer of cases to juvenile court, a victim's right to attend proceedings, the presence of a

victim or representative at trial, a victim impact statement in presentence investigations, the right of a victim or representative to address a court during sentencing or disposition hearing, and the right of a victim's representative to address a jury in a death penalty proceeding. There are also rights secured under current provisions of the Correctional Services Article governing parole and probation and relating to presentence investigation reports and other investigations and probationary services.

A crime of violence means:

- abduction;
- first degree arson;
- first or second degree assault;
- first, second, or third degree burglary;
- carjacking and armed carjacking;
- first degree escape;
- kidnapping;
- voluntary manslaughter;
- maiming;
- mayhem;
- first or second degree murder;
- first or second degree rape;
- robbery;
- robbery with a dangerous weapon;
- first, second, or third degree sexual offense;
- an attempt to commit any of the above crimes; or
- assault with intent to commit any of the above crimes or a crime punishable by imprisonment for more than one year.

Violent crime does not include an offense under the Maryland Vehicle Law or under the State Boat Act unless the offense is punishable by imprisonment.

A court may enter a judgment of restitution that orders a defendant or child respondent to make restitution in addition to any other penalty for the commission of a crime or delinquent act, if:

- 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: (1) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses; (2) direct out-of-pocket loss; (3) loss of earnings; or (4) expenses incurred with rehabilitation;
- the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene (DHMH) or any other governmental unit;
- a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle;
- the Criminal Injuries Compensation Board paid benefits to a victim; or
- DHMH or other governmental unit paid expenses incurred under a right to HIV testing.

A victim is presumed to have a right to restitution under these provisions if the victim or the State requests restitution, and the court is presented with competent evidence of any item listed under these provisions. A judgment of restitution does not preclude the property owner or the victim who suffered personal physical or mental injury, out-of-pocket loss of earnings, or support from bringing a civil action to recover damages from the restitution obligor. A civil verdict must be reduced by the amount paid under the criminal judgment of restitution.

Background: On February 29, 2000, DeShawn C., a minor, shot Oscar Antonio Lopez-Sanchez in the back rendering Mr. Lopez-Sanchez permanently paralyzed from the chest down. DeShawn C. was adjudicated in the juvenile court as a delinquent child and committed to the custody of the Department of Juvenile Services.

Mr. Lopez-Sanchez submitted to the juvenile court a written request for restitution for his injuries and a request for a restitution hearing. He documented economic losses as a result of lost wages exceeding \$21,000. DeShawn C. and the State submitted a proposed consent order for restitution in the amount of \$4,427.50, which the juvenile court signed and filed without a hearing. In response, Mr. Lopez-Sanchez filed a motion to reconsider the order or, alternatively, to alter or amend the judgment, asserting that he had been denied the right to receive notice of court proceedings and his presumptive right to restitution. The circuit court denied the motion on the ground that the victim, Mr. Lopez-Sanchez, was not a party to the case and therefore did not have standing to entertain the motion.

Mr. Lopez-Sanchez appealed to the Court of Special Appeals, which dismissed the appeal holding that: (1) petitioner had no right to bring a direct appeal under § 12-301 of the Courts Article (which permits parties to appeal from final judgments) because a victim is not a “party” to a delinquency proceeding; and (2) petitioner had no right to file an application for leave to appeal under § 11-103 of the Criminal Procedure Article (which permits victims of a violent crime to file an application for leave to appeal to the Court of Special Appeals from an order that fails to consider certain victims’ rights) because the statute applies only to crime victims and not to victims of delinquent acts.

In affirming the decision of the Court of Special Appeals, the Court of Appeals reiterated that because a victim is not a “party,” a victim does not enjoy the right to appeal from final judgments granted to parties under § 12-302 of the Courts Article. Additionally, the court discussed the legislative history of § 11-103 of the Criminal Procedure Article. During the 1997 session, the General Assembly expressly considered and rejected an amendment to this section that would have expanded the appeal rights of victims to include victims of delinquent acts. The court stated, [a]ny right of the victim to appeal, or to file an application for leave to appeal, must originate from the General Assembly, not from this Court.”

Additional Information

Prior Introductions: None.

Cross File: HB 1161 (Delegate Quinter, *et al.*) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of Public Safety and Correctional Services, Department of Legislative Services

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