

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 289 (Senators Giannetti and Stone)  
(Committee to Revise Article 27 – Crimes and Punishments)

Judicial Proceedings

Judiciary

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Criminal Procedure - Restitution - Application of Provisions

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This bill provides that the restitution laws of this State may not be construed to limit the authority of a court to direct a defendant or a child found to have committed a delinquent act to make restitution or to perform certain services, as specified by the court, for the victim as an alternative means of restitution.

The bill also provides that any order of restitution made by a court shall be governed by Title 11, Subtitle 6 of the Criminal Procedure Article.

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Fiscal Summary

**State Effect:** Any changes to the award and administration of restitution as a result of this legislation could be handled with existing State resources.

**Local Effect:** Any changes to the award and administration of restitution as a result of this legislation could be handled with existing local resources.

**Small Business Effect:** None.

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Analysis

**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.

If a child is a defendant or a child respondent, a court may order the child, the child’s parent, or both to pay restitution. Statute limits restitution payments for acts committed by children at \$10,000 for each child’s acts arising out of a single incident. This does not include any civil remedies available to the victim. A court cannot enter a restitution judgment against a parent unless the parent has been given a reasonable opportunity to be heard and present evidence.

**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.

**State Expenditures:** Any changes to the award and administration of restitution as a result of this legislation could be handled with existing State resources.

The bill does not specify who is to ensure that services ordered as a part of restitution are performed. The Judiciary advises that if the courts are to supervise the performance of services, there would be moderate operational impact.

The Division of Parole and Probation disburses \$16 million annually in the form of restitution and related court costs. The division advises that this legislation will not increase its responsibilities or have a fiscal or operational impact on the division.

**Local Expenditures:** Any changes to the award and administration of restitution as a result of this legislation could be handled with existing local resources.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 377 (Delegate Vallario) (Committee to Revise Article 27 – Crimes and Punishments) – Judiciary.

**Information Source(s):** State’s Attorneys’ Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2006  
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