

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 308

(Delegate Vallario)

Judiciary

Judicial Proceedings

Criminal Procedure - Restitution - Priority to Victims

This bill provides that, subject to specified exceptions, payment of restitution to a victim has priority over any payments to any other person or governmental unit.

Fiscal Summary

State Effect: Minimal. The bill may result in a delay in collecting program fees for the Drinking Driver Monitor Program.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: 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 for HIV testing of specified persons.

A “victim” is a person who suffers personal injury or property damage or loss directly resulting from a crime or delinquent act, or the person’s representative in the event of the person’s death. A victim is presumed to have a right to restitution if the victim or the State requests restitution, and the court is presented with competent evidence of any item listed above. 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.

The court may order that restitution be paid to (1) the victim; (2) DHMH, the Criminal Injuries Compensation Board, or any other governmental unit; (3) a third-party payor; (4) any person for whom restitution is authorized by law; or (5) a person who has provided to or for a victim goods, property, or services for which restitution is authorized by law. Payment of restitution to the victim has priority over payment of restitution to any other person or governmental unit. The court may issue a judgment of restitution that directs the defendant or child respondent to pay restitution to a third-party payor if the third party has fully compensated a victim for his or her losses.

If a court issues a judgment of restitution, the court may enter an immediate and continuing earnings withholding order in an amount sufficient to pay the restitution. This order may be entered at the sentencing or disposition hearing, when the defendant or child respondent is placed on work release or probation, or when the payment of restitution is overdue. Subject to federal law, earnings withholding orders are required to be executed in the following order of priority: (1) orders issued in a child or spousal support case; (2) orders issued for restitution; and (3) orders issued for any other lien or legal process.

Collection responsibilities for orders of restitution fall first to the Division of Parole and Probation. If collections remain outstanding, the division may refer such cases to the Central Collection Unit in the Comptroller’s Office.

Background: The Budget Reconciliation and Financing Act of 2005 established a monthly fee of \$45 to be imposed to offenders under the Drinking Driver Monitor Program (DDMP). This program fee is for fiscal 2006 through 2010 only. The Department of Public Safety and Correctional Services advises that due to the importance of generating revenues to sustain the DDMP program, this program fee is paid first from any monies collected. Subject to this exception, it has been standard practice since 1991 that the Division of Parole and Probation collect fees in the following order of priority: (1) restitution; (2) fines; (3) court costs; (4) public defender costs; (5) restitution collection fees; and (6) supervision fees.

State Fiscal Effect: The Division of Parole and Probation advises that only 159 offenders, or less than 1% of offenders assigned to DDMP, have an order for restitution. This bill does not waive the requirement that these offenders pay the program fee, but it would postpone the collection of the fee until the restitution obligations of the offenders have been met. The Division of Parole and Probation advises that any initial decrease in special fund revenues from the delay in collecting program fees is not expected to have a significant impact on DDMP.

Additional Information

Prior Introductions: None.

Cross File: SB 526 (Senator Stone, *et al.*) – Judicial Proceedings.

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

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