

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 801
Judiciary

(Delegate Valentino-Smith, *et al.*)

Judicial Proceedings

Criminal Procedure - Victims' Rights - Enforcement

This bill requires a court to ensure that a victim of crime is afforded all of the rights provided to these victims under the law. A victim who alleges that the victim's right to restitution was not considered or was improperly denied may file a motion requesting relief within 30 days of the denial or alleged failure to consider. If the court finds that the victim's right to restitution was not considered or was improperly denied, the court may enter a judgment of restitution.

The bill takes effect June 1, 2011.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing resources.

Local Effect: The bill is procedural and is not anticipated to have a material effect on local finances.

Small Business Effect: None.

Analysis

Current Law: Article 47 of the Maryland Declaration of Rights grants victims of crime in cases originating in a circuit court "...the right to be informed of the rights established in this Article and, upon request and if practicable, to be notified of, to attend, and to be heard at a criminal justice proceeding...." However, Article 47 also notes that any rights afforded victims of crime under the Declaration of Rights do not authorize victims to take any action to stay a criminal proceeding.

Upon first contact with a victim or victim's representative (victim/representative), a law enforcement officer, District Court commissioner, or juvenile intake officer is required to give a victim/representative a pamphlet informing the victim/representative of the victim's rights under Article 47. For circuit court cases and juvenile court cases (involving offenses that are heard in the circuit court if committed by an adult), a prosecuting attorney is required to deliver or mail the informational pamphlet and a victim notification form to the victim/representative within 10 days after the filing or the unsealing of an indictment or information in circuit court, whichever is later. The prosecuting attorney must also certify compliance with this requirement to the clerk of the circuit court or certify that the victim/representative cannot be identified. A victim/representative who files a victim notification form has complied with Article 47 and every section of Maryland law requiring a victim/representative to request notice to be notified prior to certain proceedings and/or address the court.

If practicable, a court must allow a victim/representative to address the court under oath at a hearing in which the court is imposing a sentence, considering the disposition of a juvenile court proceeding, or altering a sentence or disposition. A victim/representative is afforded this right through: (1) a request by the prosecuting attorney; or (2) filing a victim notification request form. Courts may authorize a similar request if asked to do so by the victim/representative. The defendant or child respondent may cross-examine a victim/representative on the factual statements made to the court. A victim/representative has the right not to address the court and a person may not attempt to coerce a victim/representative to address the court. A victim of a violent crime or the victim's representative who has been denied the right of notification and participation, as specified, 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 the victim's right to address the court. The filing of an application for leave to appeal does not stay the other proceedings in the case unless all of the parties consent. Even though a victim/representative is technically not a party in the appeal, the victim/representative is allowed to participate in a manner similar to a party under the Maryland Rules. This enhanced participation is limited to matters in the appeal that concern the rights of the victim/representative.

If a victim/representative fails to appear at a hearing on a motion for a revision, modification, or reduction of a sentence or disposition in circuit court or juvenile court, the prosecuting attorney must state on the record that proceeding without the appearance of the victim/representative is justified because: (1) the victim/representative was contacted by the prosecuting attorney and waived the right to attend the hearing; (2) efforts were made to contact the victim/representative and to the best knowledge and belief of the prosecuting attorney, the victim/representative cannot be located; or (3) the victim/representative has not filed a notification request form.

If the court is not satisfied by the statement that proceeding without the appearance of the victim/representative is justified, or if no statement is made, the court may postpone the hearing.

In general, a court is authorized to order a defendant or child respondent to make restitution for a variety of expenses incurred or property losses sustained by a victim, including loss of earnings. This restitution is in addition to any penalties for the commission of a crime or delinquent act. A victim is presumed to have a right of restitution if the victim or the State makes a request to the court and the court is presented with competent evidence of the claimed loss/expense.

A judgment of restitution does not preclude the property owner or 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 made in these cases must be reduced by the amount paid under the criminal judgment restitution.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510