

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 666
Judiciary

(Delegate Smigiel, *et al.*)

Judicial Proceedings

Criminal Procedure - Victims' Rights - Remedy and Priority of Restitution

This bill specifies that if a court finds that a victim's right was not considered or was denied, the court may grant relief to the victim so long as the remedy does not violate a criminal defendant's or child respondent's constitutional right to be free from double jeopardy. The court is not permitted to provide a remedy that modifies a sentence of incarceration of a defendant or commitment of a child respondent unless the victim requests relief from a violation of the victim's right within 30 days of the alleged violation.

The bill expands the rights of victims by establishing that a victim of any crime (rather than only the victims of violent crime) would have the right to file an application for leave to appeal to the Court of Special Appeals from an interlocutory order and would have the right to a direct appeal to the Court of Special Appeals from a final order denying the victim specified victims' rights. The filing of an appeal or application for leave to appeal by the victim does not stay the other proceedings in the case unless the court finds that the accused's rights to a speedy trial or adjudication will not be violated. Finally, the bill requires that, subject to specified exceptions, payment of restitution to a victim has priority over any payments to any other person or governmental unit.

The bill is prospective and applies only to appeals pending or filed on or after the bill's effective date which is June 1, 2012.

Fiscal Summary

State Effect: Minimal impact on State finances to the extent that the bill results in a delay in collecting program fees for the Drinking Driver Monitor Program. Any increase in caseload for the Court of Special Appeals as a result of the bill 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: 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.

Maryland law explicitly provides certain rights for crime victims and their representatives. Article 47 of the Maryland Declaration of Rights requires the State to treat crime victims with “dignity, respect, and sensitivity during all phases of the criminal justice process.” Article 47 further specifies that in a case originating by indictment or information filed in a circuit court, a crime victim has the right to be informed of victims’ constitutional rights and, on request and if practicable, has the right to be notified of, to attend, and to be heard at a criminal justice proceeding. Under Maryland law, a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) has a broad range of specific rights during the criminal justice process.

Victim Notification

Law enforcement officers, District Court commissioners, and juvenile intake officers are responsible for giving an identified victim a pamphlet that advises the victim of the rights, services, and procedures available in the time before and after the filing of a charging document. Also, within 10 days after the filing or unsealing of an indictment or information, the State’s Attorney must provide a victim with a pamphlet that describes the rights, services, and procedures available to a victim after the indictment or information is filed and a notification request form by which a victim may request notice of various proceedings. The pamphlets are prepared by the State Board of Victim Services.

Many of the rights afforded a victim of crime depend on a victim completing a notification request form or otherwise requesting notifications and rights. Once a victim has filed the notification request form, the State's Attorney is required to notify the victim of (1) all court sentencing proceedings; (2) the terms of any plea agreement; and (3) the victim's right to file a victim impact statement. Additionally, the State's Attorney must notify the victim of the terms of any agreement, action, or proceeding that affects the victim's interests as soon after the proceeding as practicable. The clerk of the court must forward the victim's notification request with the offender's commitment order or probation order, and if an appeal is filed in the case, a copy of the request must be sent to the Attorney General and the court to which the case has been appealed. The notification request also requires a victim to be notified about post-sentencing proceedings, such as an offender's parole hearing or release under mandatory supervision, and if an offender violates probation, escapes, is recaptured, or dies.

In a 2008 decision, the Court of Appeals concluded that a trial court could not vacate an altered sentence because a victim who had completed a victim notification request form was not notified of the reconsideration hearing in which the defendant's sentence was reduced. See *Hoile v. State*, 404 Md. 591, 948 A.2d 30 (2008). In response, the legislature passed Chapter 573 of 2009, which requires the prosecuting attorney at a hearing on a motion for revision, modification, or reduction of a sentence, to state on the record that proceeding without the appearance of the victim or the victim's representative is justified because (1) the victim or representative has been notified and waived the right to attend the hearing; (2) the victim or representative cannot be located; or (3) the victim has not filed a notification request. If such a statement is not made, or the court is not satisfied with the statement, the court may postpone the hearing.

Other Specified Rights

In addition to the notification rights, a victim of a crime has numerous other rights established by statute. Included is the right:

- to have the victim's safety considered by the court, a District Court commissioner, or a juvenile intake officer in setting conditions of pretrial or prehearing release, including possibly imposing a condition of no contact with the victim;
- if practicable, to attend any proceeding in which the right to appear has been granted to a defendant;
- to remain present, except under specific circumstances, at a criminal trial or delinquency hearing after initially testifying;

- if practicable, to personally, or through a representative, address the judge (or jury in a death penalty case) before the imposition of a sentence or other disposition, or conversely, to choose not to address the court and to make this decision without coercion;
- to advance notification of, and to present oral testimony at, a parole hearing if the victim has made a request for the hearing to be open to the public;
- to advance notification of, and to present oral or written testimony at, a license suspension hearing held as a result of a fatal vehicular accident if the victim's representative has filed a victim's representation notification form;
- to advance notification of a hearing related to lifetime sexual offender supervision if the victim or victim's representative has requested notification or filed a notification request form;
- to advance notification of a hearing on a request for shielding of all court records relating to an interim, temporary, or final protective order that has been denied or dismissed, and the right to appear at the hearing and object to the shielding;
- to advance notification of, and to attend, a hearing on a petition for writ of actual innocence;
- to request that the inmate be prohibited from having any contact with the victim as a condition of parole, mandatory supervision, work release, or other administrative release;
- to address a three judge panel that reviews a request to change an offender's sentence;
- to submit a victim impact statement and recommendation to be considered by the Maryland Parole Commission when an inmate is considered for commutation of sentence, pardon, or remission of sentence;
- to file an application for leave to appeal to the Court of Special Appeals from an order of a trial court that denies or fails to consider a statutory right of the victim of a violent crime;
- to be advised of the protection available and, on request, to be protected by criminal justice agencies, to the extent reasonable, practicable, and (in the agency's discretion) necessary, from harm or threats of harm arising out of the crime victim's or witness's cooperation with law enforcement and prosecution efforts;

- during any phase of the investigative or court proceedings, to be provided, to the extent practicable, a waiting area that is separate from a suspect or defendant and the family and friends of a suspect or defendant;
- to be informed by the appropriate criminal justice agency of financial assistance, Criminal Injuries Compensation Act funds, and any other social services available;
- to be informed in appropriate cases by the State's Attorney of the right to request restitution and, on request, be provided assistance in the preparation of the request and advice as to the collection of any restitution awarded; and
- not to be deprived of employment solely because of job time lost attending a proceeding for which there is a right to attend.

Restitution for Crime Victims

Chapter 362 of 2011 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.

Most of the rights available to a victim of a crime in which the offender is an adult are also available to a victim of a delinquent act by a child.

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.

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: Offenders under the Drinking Driver Monitor Program (DDMP) pay a \$55 monthly supervision fee, which is deposited into a special fund to support the program. 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 as of February 1, 2012, there were 535 open, active cases in DDMP that owe \$326,429 in restitution. This represents approximately 5% of the expected DDMP revenue for fiscal 2012. 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 while general funds may be needed to supplement special funds delayed by the bill, the delay in collecting program fees is not expected to have a significant impact on DDMP.

The Administrative Office of the Courts advises that the Court of Special Appeals had 1,980 new filings in 2010. Although the bill expands the right of victims to appeal court orders regarding victim's rights, it is not anticipated that this expansion will increase general fund expenditures for the Judiciary in a substantial manner.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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