

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 37
Judiciary

(Delegate Smigiel)

Declaration of Rights - Victims' Bill of Rights

This bill proposes an amendment to the Maryland Declaration of Rights to expand the constitutionally provided rights of a victim of crime in the State.

Fiscal Summary

State Effect: None. It is assumed that the potential for increased costs to include any constitutional amendments proposed by the General Assembly on the ballot at the next general election will have been anticipated in the State Board of Elections' budget.

Local Effect: The bill is procedural and is not anticipated to have a material effect on local finances. In addition, it is assumed that the potential for increased costs to notify voters of any constitutional amendments proposed by the General Assembly, and to include any proposed constitutional amendments on the ballot at the next general election, will have been anticipated in local boards of elections' budgets.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes that the rights of a crime victim also apply during the juvenile justice process and that a court with jurisdiction is required to act promptly regarding a victim's request to enforce a right.

Specifically, the proposed rights of victims to be set forth in the State Constitution are:

- the right of a crime victim to be treated with fairness;
- the right of a crime victim to be free of intimidation, harassment, or abuse during the criminal or juvenile justice process;
- the right of a crime victim to be reasonably protected from the defendant or child respondent or persons acting on behalf of the defendant or child respondent;
- the right of a crime victim to have the safety of the victim or victim's family be considered in fixing the amount of bail and release conditions of the defendant or child respondent;
- the right of a crime victim to set reasonable conditions on the conduct of an interview, deposition, or discovery request of the victim;
- the right of a crime victim, upon request, to be notified of and informed about the pre-trial disposition of the case;
- the right of a crime victim, upon request, to confer with the prosecuting attorney on certain pre-trial issues;
- the right of a crime victim, upon request, to have reasonable notice of and be present for all public proceedings at which the defendant or child respondent has the right to be present and all parole and other post-conviction release proceedings;
- the right of a crime victim, upon request, to be heard at proceedings in which the right of the victim is at issue;
- the right of a crime victim to provide certain information and sentencing recommendations to the State;
- the right of a crime victim, upon request, to receive the presentence report at the same time as the defendant or child respondent, except for confidential portions;
- the right of a crime victim to be informed, upon request, of the conviction, sentence, place of incarceration, scheduled and actual release date, and, if applicable, time and date of escape of the defendant or child respondent from State custody;
- the right of a crime victim to restitution including when the case is placed on a stet docket or the defendant receives a probation before judgment;
- the right of a victim to be the first individual paid restitution from money or property collected from a person ordered to pay restitution;
- the right of a crime victim to the prompt return of personal property when the property is no longer needed as evidence of the crime;
- the right of a crime victim to be informed of all parole procedures, participate in the parole process, provide certain information to the State, and, upon request, be notified of the parole or other release of the defendant;

- the right of a crime victim to have the safety of the victim, the victim's family, and the general public considered before the State makes a post-judgment release decision;
- the right of a crime victim, a victim's lawful representative or attorney, or the prosecuting attorney, upon request, to enforce the victim's rights in a trial or appellate court with jurisdiction over the case.

Current Law: 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 proceedings 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.

In addition, 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.

Background: The proposed constitutional provisions are similar to those provided under the California state constitution.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of State Police; Judiciary (Administrative Office of the Courts), Maryland State Board of Elections; Carroll, Harford, Montgomery, and St. Mary's counties; Department of Juvenile Services; State's Attorneys' Association; Department of Legislative Services

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