

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 484  
Judiciary

(Delegate Conaway)

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Criminal Procedure - Restitution - Out-of-Pocket Loss

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This bill specifies the following items as examples of direct out-of-pocket losses suffered by a victim that may be considered when entering a judgment of restitution: (1) attorney's fees; (2) court costs; (3) replacement costs; and (4) fines, late fees, interest, or other penalties.

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Fiscal Summary

**State Effect:** The bill is not expected to materially affect State finance or operations.

**Local Effect:** The bill is not expected to materially affect local finances or operations.

**Small Business Effect:** Minimal.

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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 imposed 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; (4) expenses incurred with rehabilitation;

- the victim incurred medical expenses that were paid by the Maryland Department of Health (MDH) or any other governmental unit;
- a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle, as specified;
- the Criminal Injuries Compensation Board paid benefits to a victim; or
- MDH or another governmental unit paid expenses incurred for HIV or Hepatitis C testing, as specified.

A victim is presumed to have a right of restitution under these provisions if the victim or the State requests it, and the court is presented with competent evidence of any of the aforementioned items.

### *Direct Out-of-pocket Losses*

In a 2023 opinion, the Appellate Court of Maryland examined whether attorney’s fees, which were incurred by a victim of a theft as the victim attempted to recover the stolen funds, were properly awarded in a restitution order. After an examination of the legislative history and plain language of the statute (as summarized above) and the context of “direct out-of-pocket loss” in relation to the remainder of the pertinent provisions, the court held that the circuit court erred in awarding the attorney’s fees. The court concluded that under § 11-603(a)(2)(ii) of the Criminal Procedure Article (“direct out of pocket loss”), a court is exclusively authorized to award restitution losses resulting from a victim’s physical and/or mental injury (*Shivers v. State*, No. 879, September Term 2021, filed January 3, 2023).

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## **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Governor’s Office of Crime Prevention, Youth, and Victim Services; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Budget and Management; Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2023  
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