

CRIME VICTIMS RIGHTS

Senate Bill 137 (Substitute H-1)
Senate Bill 138 (Substitute H-1)
Senate Bill 139 (Substitute H-2)
Senate Bill 469 (Substitute H-2)
Senate Bill 470 (Substitute H-1)
Senate Bill 472 (Substitute H-1)
Senate Bill 473 (Substitute H-2)
Senate Bill 474 as passed by the Senate

First Analysis (9-21-93)

Sponsor: Sen. William Van Regenmorter
Senate Committee: Judiciary
House Committee: Judiciary

THE APPARENT PROBLEM:

Michigan law has for some time recognized and protected the rights of crime victims. In 1976, Public Act 223 established a crime victims compensation program that offers crime victims reimbursement for their out-of-pocket expenses of medical care, lost wages, and other expenses arising from having been a victim of crime. In 1985, the Crime Victim's Rights Act was enacted, providing for specific rights of felony victims, such as the right to make a statement at sentencing. It also specified duties for the criminal justice system; for example, the prosecutor must provide a victim with information on suggested procedures if the victim is subjected to threats or intimidation, and authorities must notify a victim of the escape or impending release of the offender. The Crime Victim's Rights Act was expanded in 1988 to provide for the rights of victims of juvenile offenders and of certain specified "serious misdemeanors."

At the November 1988 election, voters approved Proposal B, which added Article I, Section 24 to the state constitution, stating that crime victims have the following rights, as provided by law: to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process; to timely disposition of the case following the arrest of the accused; to be reasonably protected from the accused throughout the criminal justice process; to notification of court proceedings; to attend trial and all other court proceedings the accused has the right to attend; to confer with the prosecution; to make a statement to the court at sentencing; to

restitution; and to information about the conviction, sentence, imprisonment, and release of the accused.

Article I, Section 24 also stated that the legislature could provide for an assessment against convicted defendants to pay for the costs of recognizing crime victims' rights. In 1989, Public Act 196 was enacted, creating a new public act that established a criminal assessments commission and required people convicted of certain crimes to pay assessments. For felons, the assessment is \$30; for people convicted of serious misdemeanors (as defined in the Crime Victim's Rights Act) or impaired or intoxicated driving, the assessment is \$20. The money goes into the Crime Victim Rights Fund, which is to be used for reimbursing courts and local units of government for their costs of implementing the Crime Victim's Rights Act (such costs are considered mandated state costs for which the state must provide reimbursement according to Article IX, Section 29), and for restitution services provided under the crime victims compensation act.

While the state's crime victims laws have served as models for other states, many have pointed out various ways in which they might be improved. A common complaint is the lack of force of restitution provisions. While courts may order restitution as part of a sentence or as a condition of probation, there is no requirement for them to do so; such discretion can lead to approaches to restitution that vary from court to court. As restitution can be one of the most meaningful ways of having the

punishment fit the crime, many have urged that restitution provisions be strengthened and broadened.

Over the years, suggestions for improvements have come from victims, prosecutors, and courts. Crime victim advocates and criminal law experts have worked to fashion the many suggestions into comprehensive legislation to strengthen statutes providing for the rights of crime victims.

THE CONTENT OF THE BILLS:

The bills constitute a package to broaden and strengthen laws affecting crime victims. In general, the bills would mandate restitution and broaden its application, increase opportunities for victims to make statements, increase and broaden the application of crime victim assessments, and broaden notification provisions that alert victims to changes in an offender's status. The bills would take effect January 1, 1994, but none could take effect unless all were enacted. (Note: many matters would be addressed through parallel and complementary provisions in several bills. For brevity, this analysis generally describes such provisions under only one bill heading.)

The main bill in the package, Senate Bill 137, would amend the Crime Victim's Rights Act (MCL 780.752 et al.), which provides for crime victims to receive restitution, to be notified of the status of a case, and to make impact statements for use in sentencing. Victims' rights are articulated through the parallel provisions of the act's three articles: Article I, which deals with felonies and two-year misdemeanors; Article II, which deals with offenses committed by juveniles; and, Article III, which deals with specified "serious misdemeanors."

Senate Bill 137 would generally require restitution to be ordered as part of a sentence (restitution orders are at present allowed, not required); require prosecutors to consult with victims before finalizing plea bargain agreements; extend restitution to associations and governmental entities (individuals and businesses can already receive restitution); broaden allowable restitution to include homemaking costs and the costs of seizing evidence; increase the amount of restitution that a juvenile offender's parents can be ordered to pay; require victims to be notified of an offender's release on bail (including pending appeal), escape, or transfer to a nonsecure facility; and, expand the list of

"serious misdemeanors" to which Article III applies. The bill proposes numerous changes to the act; a more detailed description follows the brief descriptions of the other bills in the package.

Senate Bill 138 would amend the expungement law, Public Act 213 of 1965 (MCL 780.621 et al.) to require that the victim of an assaultive crime or serious misdemeanor be notified when the offender seeks expungement. The prosecuting attorney would notify the victim of the proceedings by first class mail. The victim would have the right to appear at any proceeding under the act and make a written or oral statement. The bill also would increase from \$15 to \$25 the fee that an expungement applicant must pay to the state police, and require the state police to check F.B.I. records.

Senate Bill 139 would amend the Code of Criminal Procedure (MCL 765.15 et al.) to require that a defendant's cash bail be used to pay any ordered restitution or other "victim payment," to make both restitution and payment of the crime victim's assessment mandatory conditions of probation, to allow a court to make wage assignment for restitution a condition of probation, and to give priority to victim payments (meaning restitution and crime victims' assessments) in the collection and distribution of payments arising out the same criminal proceeding. If a convicted defendant had to pay victim payments and any combination of other fines, costs, and payments, half of all money collected from the person would be applied first to victim payments, and the balance to other payments.

The bill also would affect sentences of life probation: the various optional conditions of probation (including limited jail time, payment of costs, community service, and wage assignment), which do not at present apply to life probation, would be extended to apply to the first five years of life probation.

Senate Bill 469 would amend the juvenile code (MCL 712A.18 et al.) to require the probate court to order a juvenile offender or his or her parents to pay restitution as provided by the Crime Victim's Rights Act (restitution in conjunction with community service or paid employment could continue to be ordered as a condition of probation).

The bill would specifically authorize the probate court to order a juvenile to engage in community service, to order a juvenile lawbreaker to pay a civil

fine in the same amount as any civil or penal fine provided by the broken law or ordinance, and to order a juvenile to pay court costs. Fines and costs collected from a juvenile would be distributed under provisions paralleling those for adults under the Code of Criminal Procedure.

The probate court would be required to order a juvenile offender to pay the assessment to be required by Public Act 196 of 1989 under Senate Bill 470.

A victim of an assaultive offense or serious misdemeanor committed by a juvenile would be notified of the offender's application to have his or her juvenile record expunged, and would be given the opportunity to make a statement. These provisions would parallel those to be added to the expungement law by Senate Bill 138. The "application fee" that goes to the state police for conducting a records check also would be increased, from \$15 to \$25.

Senate Bill 470 would amend Public Act 196 of 1989 (MCL 780.901 et al.), which provides for assessments to be levied against certain offenders and assigns the revenues to the victim's rights fund, which provides money for victim's rights services. Among other things, the bill would increase the amount and expand the application of assessments. Felony assessments would be increased from \$30 to \$40, and misdemeanor assessments would be increased from \$20 to \$30.

In addition, misdemeanor assessments, which now are imposed only on offenders convicted of "serious misdemeanors" (as specified by the Crime Victim's Rights Act) or drunk driving, would be expanded to include "specified misdemeanors," including certain drinking and "driving" (including operating a boat, plane, train, or off-road vehicle) offenses, embezzlement, false pretenses (passing bad checks), larceny, retail fraud, malicious destruction of property, and fleeing and eluding.

Assessments would be newly imposed upon juvenile offenders, who would be ordered to pay assessments of \$20.

Courts, which now must transmit all victim assessment money to the Department of Treasury, would be allowed to retain ten percent of all assessments received to cover costs of collecting the assessment and providing crime victim's rights

services. A court that provided crime victim's rights services could apply annually to the Department of Management and Budget (which oversees victims programs) for funding to cover costs in excess of those covered by other funding (including the retained ten percent of collected assessments) under the act.

Senate Bill 472 would amend the corrections code (Public Act 232 of 1953, MCL 791.236 and 791.240a) to require an order of parole to include a condition requiring the parolee to pay any required crime victim assessment. Restitution orders issued by the sentencing court must already be made a condition of parole; the bill would in addition require a parole officer to check at least twice yearly to ensure that restitution was being paid as ordered. If restitution was not being paid, the parole officer would file a report with the parole board, which in turn would provide copies to the court, the prosecutor, and the victim.

Senate Bill 473 would amend the law providing for bail in cases involving traffic offenses and misdemeanors (Public Act 257 of 1966, MCL 780.66 and 780.67) to require a defendant's cash bail deposit to be used to pay any victim payments, costs, and fines arising out of the same criminal proceeding. The money would be allocated as provided by Senate Bill 139. Defendants who make cash deposits of bail would be notified that their cash deposits could be used to collect victim payments or to satisfy a judgment for a fine and court costs.

Senate Bill 474 would amend the crime victims compensation act (Public Act 223 of 1976, MCL 18.351 and 18.355) to explicitly allow compensation payments to be made for out-of-pocket expenses of homemaking and child care services, and to allow the crime victims compensation board to, for good cause shown, extend the period in which a claim for crime victims compensation may be filed.

A more detailed description of Senate Bill 137 follows.

Victims. The articles' definitions of "victim" would be expanded to include guardians and victim designees for victims who were emotionally unable to participate in the legal process.

Notification provisions. Various provisions for notifying victims of changes in a defendant's status

would be strengthened, clarified and made consistent between the three articles of the act. Prosecutors would have to provide victims with various forms that the victim could submit in order to be notified by the corrections department, sheriff's department, or Department of Social Services (as applicable) of an offender's expected release date, any transfer of the offender from a secure to a nonsecure facility, the escape of the offender, any decision to set a parole date, and similar matters. (See below for descriptions of other notification provisions specific to juveniles or appeals.)

Victim consultation. Before finalizing any negotiation that might result in a dismissal, plea or sentence bargain, or pretrial diversion, the prosecutor would have to offer the victim the opportunity to consult with him or her (current law simply requires an opportunity to consult, without specifying the timing of the consultation).

Restitution provisions. Restitution provisions would be extended to apply to all legal entities that suffer direct physical or financial harm as a result of a crime. Courts generally would be required to order restitution; as under current law, this requirement could be eased where undue hardship would fall on the defendant or his or her dependents. Restitution could be ordered to pay the costs of seizing or impounding a victim's property. Restitution also could include the costs of homemaking and child care expenses incurred as a result of the crime.

Where restitution was ordered as a condition of probation (see Senate Bill 139), the probation officer would have to check on restitution compliance at least twice yearly. The final review would have to be conducted at least 60 days before probation expired. The probation officer would notify the court and the prosecutor of a probationer's failure to pay restitution, and the prosecutor would notify the victim of the final review. If the court determined that restitution was not being paid, it would have to promptly take action necessary to compel compliance.

Various provisions for enforcement of restitution that now or would apply to felony cases also would be adopted in Article III, which applies to serious misdemeanors, and also would be adapted for juvenile offenders (see below).

Juvenile offenders. Various provisions for victim notification would be extended to apply to juvenile offenders who were tried as adults under juvenile waiver provisions. The prosecutor also would notify the victim of a juvenile's dispositional review hearing, and the victim would have the opportunity to provide a statement at that hearing.

Offenses to which Article II (which deals with juvenile offenders) applies would be expanded to include furnishing alcoholic beverages to an underage person, reckless driving, and drunk boating. Applicable offenses also would include enumerated offenses that were subsequently reduced to a lesser charge.

The investigating agency that filed a complaint or petition in juvenile court for certain juvenile offenses would have to place a statement on the complaint or petition that the offense resulted in damage to another individual's property or physical injury or death to another individual.

Various victim's rights functions now assigned to the probate court would be transferred to the prosecutor (this would be consistent with other victim's rights functions), although the court and the prosecutor could agree otherwise.

The amount of restitution that a juvenile's parents could be ordered to pay would be increased from \$2,500 to \$5,000. As the juvenile code now provides, a juvenile could not be ordered to pay more than 30 percent of his or her net income per pay period.

Juvenile caseworkers would have to review cases for compliance with restitution orders at least twice a year under provisions paralleling those that the bill would establish for review of probationers. As with probationers, the court would promptly take action necessary to compel compliance if a motion was filed to enforce payment of restitution.

Serious misdemeanors. The list of "serious misdemeanors" to which Article III applies would be expanded to include fourth degree child abuse, indecent exposure, furnishing alcoholic liquor to an underaged person, stalking, reckless driving, drunk boating, and any offense that was originally charged as a serious misdemeanor but subsequently reduced.

Law enforcement officers investigating certain serious misdemeanors would have to note on the complaint, appearance ticket, or traffic citation filed with the court that the offense caused damage to another's property or physical injury or death to an individual.

Based upon any credible evidence of defendant threats against a victim, the prosecutor could move that a defendant's bond be revoked (similar protection already exists for victims of felonies or juveniles).

Appeals. If the prosecutor was notified that the defendant was ordered released pending an appeal, he or she would, within 24 hours, use any means reasonably calculated to give the victim notice of that order. Similarly prompt notification of a victim would be required if a conviction was reversed on appeal or remanded for further proceedings (current law simply requires victims to be notified of the results of appeals). If the attempt to provide notice within 24 hours was unsuccessful, notice would have to be given as soon as possible. Upon the victim's request, the prosecutor would have to give him or her a brief explanation of the appeal process, including possible dispositions.

Employment security. Provisions protecting victims from employer sanctions for attending court would be extended to apply to "victim representatives," who would be people (such as parents or guardians) acting on behalf of victims. Employer penalties would continue to be misdemeanors, but the bill would newly specify jail time of 90 days and/or a \$500 fine as the possible penalties.

Victim responsibilities. Victims of juveniles would have the responsibility to keep the Department of Social Services informed of their current addresses and telephone numbers (felony and misdemeanor victims already have similar responsibilities regarding the corrections department and sheriffs' departments).

Speedy trial. Provisions calling for speedy trial, which now apply to child abuse and sexual assault victims, would be extended to disabled victims and victims over 65 years of age.

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted substitutes that differed from the Senate-passed versions in

numerous areas, including in provisions for distribution of money obtained from convicted defendants, in not providing for the prosecutor to appear at parole hearings, and in proposed increases in crime victim's assessments.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency has reported that Senate Bill 137 would have an indeterminate fiscal impact on state and local courts, and would result in increased costs to the state in victims' rights services grants. The agency reports that prosecutors currently receive \$2.55 million to implement victims' rights, and juvenile courts receive \$160,000. The criminal assessment commission in 1990 estimated that costs of full implementation of victims' rights would be an additional \$500,000. (4-28-93)

With regard to expunctions under Senate Bill 138, the Senate Fiscal Agency reports that the state police received 439 requests for expunction in fiscal year 1990-91, and 324 requests in fiscal year 1991-92. The fee for an F.B.I. check is reported to be \$23. (4-27-93)

With regard to crime victim assessments, the Senate Fiscal Agency reports that according to the Crime Victims Compensation Board, \$1.19 million was collected in victim assessments in fiscal year 1990-91, of which \$194,000 was from felony assessments and \$996,000 was from serious misdemeanor assessments. (4-28-93)

ARGUMENTS:

For:

The bills would enact comprehensive and cohesive reforms of the state's victims rights laws. They do not propose any change in direction for the state, rather a strengthening and clarification of the existing framework, with improvements in procedures, broadening of scope, and increases in revenue-generating criminal assessments. Authorities' responsibilities--especially with regard to consulting with victims and notifying them of relevant hearings and changes in an offender's status--would be more clearly spelled out. Restitution provisions would be expanded and strengthened, and restitution would be generally required, rather than left to broad judicial discretion. While costs would be greater, so would revenues generated by criminal and juvenile assessments. The bills would improve the position

of victims in the criminal justice process and simultaneously provide the means to pay for those improvements.

Against:

The bills are all too likely to prove misguided. Stronger restitution provisions could yield little, as very few criminals have the means to pay restitution. Similarly, stronger provisions for payment of crime victim assessments, together with increases in those assessments, could mean that limited offender resources would be used to pay assessments, to the detriment of other court costs and the efficient functioning of the criminal justice system. With a larger voice for victims, and especially with additional sanctions for failure to pay restitution, would come a tendency for increased use of incarceration, thus increasing burdens on the already overburdened corrections system and further draining funds from programs (such as education and family services) that can help to prevent crime.

Against:

To try to use an offender's cash bail to cover victim payments could lead to problems. For one thing, the proposal likely would raise constitutional challenges about whether bail, which is meant to guarantee appearance at trial, may legitimately be used for victim payments; the proposal could be considered to impair a constitutional right to bail. Further, by reducing incentives to post bail and drying up loans of bail money from family members, the proposal could increase jailings, thus exacerbating problems with jail crowding. Finally, if bail money is to be used for victim payments, it could drain funds away from the other court fines and costs toward which a defendant's cash bail may now be used. At a minimum, the proposal would be contrary to court rules, and judges would tend to resolve procedural conflicts with court rules in favor of the rules.

POSITIONS:

The Crime Victims Compensation Board supports the bills. (9-9-93)

National Parents of Murdered Children supports the bills. (9-17-93)

The Prosecuting Attorneys Association of Michigan supports the bills. (9-16-93)

Save our Sons and Daughters (SOSAD) supports the bills. (9-16-93)

The Department of Management and Budget supports the concept of the bills. (9-9-93)

The Michigan Sheriffs' Association supports the concept of the bills. (9-17-93)

The Michigan Court Administrators Association supports the concept of the bills and believes that the current versions minimize the administrative impact on courts. (9-17-93)

The Michigan Association of Counties supports the concept of the bills, but has concerns about lack of reimbursement to counties for the cost of providing services. (9-16-93)

The State Appellate Defender's Office supports and has supported the concept of additional rights for crime victims; however, the office has expressed specific concerns regarding provisions that may increase costs to the Department of Corrections. (9-14-93)

The Michigan District Judges Association has no formal position on the House substitutes, but believes that its concerns have been addressed in the current versions. (9-20-93)

The Michigan Council on Crime and Delinquency opposes the bills as holding out false hope of meaningful restitution for victims. (9-16-93)