



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 925 (as enrolled)
 Senate Bill 929 (as enrolled)
 Senate Bill 969 (as enrolled)
 Senate Bill 970 (as enrolled)
 Sponsor: Senator William Van Regenmorter (Senate Bills 925 & 970)
 Senator John D. Cherry, Jr. (Senate Bills 929 & 969)
 Senate Committee: Judiciary
 House Committee: Judiciary and Civil Rights

PUBLIC ACT 559 of 1996
PUBLIC ACT 560 of 1996
PUBLIC ACT 561 of 1996
PUBLIC ACT 562 of 1996

Date Completed: 1-14-97

RATIONALE

Michigan law contains a number of provisions designed to protect the interests of crime victims (described briefly in BACKGROUND, below). Since at least 1976, there have been statutory provisions for the reimbursement of victims' financial losses, and in 1988 the voters approved a constitutional amendment providing for an assessment against convicted defendants to pay for crime victims' rights. As a result of various enactments and amendments, the law now requires courts to impose assessments against individuals convicted of a felony, a serious misdemeanor, a specified misdemeanor, or a local ordinance substantially corresponding to a specified misdemeanor, as well as juvenile offenders and their parents.

Despite these statutory and constitutional provisions, some people believe that victims continue to be inadequately compensated while the interests of offenders are excessively accommodated. For example, although the law requires a court to order restitution to a victim or victim's estate (or to the Crime Victims Compensation Board or another person who compensated the victim for a loss), the court may order partial, rather than full, restitution. The law also requires that a restitution order be as fair as possible to the victim "without unduly complicating or prolonging the sentencing process", and requires a court to consider the defendant's financial situation and special circumstances when determining the amount of restitution. In addition, a defendant who is not in default may petition the court for a cancellation of unpaid restitution. Further, despite the mandatory language in the law, some judges reportedly refuse to order

restitution. It was suggested that the law should be changed to ensure that the interests of victims are given priority over the interests of criminals.

CONTENT

Senate Bill 925 amends the Department of Corrections (DOC) law to require the DOC to deduct 50% of the funds received by a prisoner over \$50 in a given month for the payment of restitution, and to forward the restitution to the victim whenever the amount collected exceeds \$100.

Senate Bills 929, 969, and 970 amend the Code of Criminal Procedure, the juvenile code, and the Crime Victim's Rights Act, respectively, to do the following:

- Eliminate a court's authority to order partial, rather than full, restitution.
- Require a court to state on the record its reasons for not ordering restitution, if the victim receives other compensation.
- Eliminate specified ending dates for restitution installment periods.
- Remove the ability of an offender to petition the court for the cancellation of an unpaid portion of restitution.
- Delete a requirement that a restitution order be as fair as possible without complicating or prolonging the disposition or sentencing process.
- Specify that a restitution order is a judgment and lien.

- **Require a court to give the DOC a copy of the restitution order, if a person ordered to pay restitution is remanded to the DOC's jurisdiction.**

Senate Bills 969 and 970 also:

- **Remove the maximum limit on the amount of restitution a juvenile offender's parents may be ordered to pay.**
- **Delete a restriction that prohibits a court from ordering a juvenile offender to pay restitution in an amount over 30% of his or her income.**
- **Reduce the factors that a court must consider in determining the amount of restitution to order.**

In addition, Senate Bill 970 requires that all of the balance of an escrow account created from a defendant's proceeds from contracts relating to his or her crime, be paid to the Crime Victim's Rights Assessment Fund after specified allotments are satisfied.

All of the bills will take effect on June 1, 1997. Senate Bills 925, 969, and 970 were tie-barred to Senate Bill 929, which was tie-barred to the other three bills. A detailed description of the bills follows.

Senate Bill 925

The bill specifies that, if a prisoner is ordered to pay restitution to a crime victim and the DOC receives a copy of the restitution order from the court, the Department must deduct 50% of the funds received by the prisoner over \$50 in a given month for the payment of restitution. The DOC promptly must forward the restitution amount to the crime victim, as provided in the restitution order, whenever the amount collected for restitution exceeds \$100. If the prisoner is paroled, transferred to a community program, or discharged on his or her maximum sentence, the entire amount collected for restitution must be forwarded to the victim. These requirements are to remain in effect until all of the restitution is paid. The DOC may not enter into any agreement with a prisoner that modifies these requirements. Any agreement in violation of this prohibition will be void.

Any funds owed by the DOC or to be paid on behalf of any DOC employees to satisfy a

judgment or settlement to a person for a claim that arose while he or she was incarcerated, must be paid to satisfy any restitution orders imposed on the person of which the Department has a record. This payment must be made as described above.

The DOC must notify the prisoner, in writing, of all deductions and payments made under the bill. The obligation to pay funds under the bill may not be compromised.

The bill defines "fund" or "funds" as that portion of a judgment or settlement that remains to be paid to a claimant after statutory and contractual court costs, attorney fees, and expenses of litigation, subject to the court's approval, have been deducted.

Senate Bills 929, 969, & 970

Restitution Orders

Under the Code of Criminal Procedure, the juvenile code, and the Crime Victim's Rights Act, the court is required to order that a criminal or juvenile offender make full or partial restitution to any victim of the offense, in addition to or in lieu of any other penalty or disposition authorized by law, except as otherwise allowed under those statutes. If a victim is deceased, restitution must be made to the victim's estate. Under the bills, the court must order full restitution to victims, unless restitution is ordered, instead, to a third party who compensated the victim or his or her estate for losses incurred by the victim. The bills delete a requirement that, if the court does not order restitution, or orders only partial restitution, it state on the record the reasons for that action.

The statutes require a court to order restitution to the Crime Victims Compensation Board or to any individual, partnership, corporation, association, governmental entity, or other legal entity that has compensated the victim or victim's estate for a loss incurred by the victim, to the extent of the compensation paid to the victim for that loss. The court also must order restitution to persons or entities that have provided certain services to the victim as a result of the criminal or juvenile offense, for the costs of services provided. The court may not order restitution to a victim or victim's estate, if the victim or estate has received or is to receive other compensation for that loss. The bills specify that if the court does not order restitution to the victim or estate for this reason, the court must state on the record, with specificity, the reasons for its actions. If an entity entitled to

restitution under these provisions cannot or refuses to be reimbursed for compensating the victim or the victim's estate, the State Treasurer must deposit the restitution paid for that entity in the Crime Victim's Rights Assessment Fund, or its successor fund.

End of Restitution Installment Period

Under the Code of Criminal Procedure, the juvenile code, and the Crime Victim's Rights Act, the end of a period of restitution or the last installment on a restitution payment cannot be later than the following (as applicable):

- The end of the period of probation, if probation is ordered.
- If a juvenile offender is made a State ward, when the jurisdiction of the Department of Social Services over the juvenile expires.
- If a juvenile offender is made a ward of the court, when the court's jurisdiction over the juvenile expires.
- Three years after the date of disposition, for a juvenile offender, or when the juvenile court's jurisdiction over the juvenile expires, whichever is later.
- For a criminal offender, two years after the end of imprisonment or discharge from parole, whichever occurs later, if the court does not order probation but imposes a term of imprisonment.
- For a criminal offender, three years after the date of sentencing, if none of the above applies.

The bills delete those provisions for the end of an installment period, and provide, instead, that an order of restitution remains effective until it is satisfied in full.

Cancellation or Modification of Restitution Order

Under the Code of Criminal Procedure, the juvenile code, and the Crime Victim's Rights Act, an offender who is required to pay restitution and who is not in default of the payment of the restitution may, at any time, petition the court for a cancellation of any unpaid portion. If it appears to the court's satisfaction that payment of the amount due will impose a manifest hardship on the offender or his or her family, the court may cancel all or part of the amount due or modify the method of payment. The bills, instead, allow an offender who is not in default to petition the court to modify the method of payment. If the court determines that payment of the restitution will impose a

hardship, it may modify the method of payment, but may not cancel all or part of the amount due.

Parental Contribution

Under the juvenile code and the Crime Victim's Rights Act, if the court determines that a juvenile offender will be unable to pay all of the restitution ordered, after notice to the juvenile's parent and opportunity for the parent to be heard, the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the offense to pay not more than \$5,000 of the restitution ordered. Senate Bills 969 and 970 delete that limit and specify that a parent may be ordered to pay any portion of the restitution amount that is outstanding. The bills also provide, however, that an order for a parent to pay a portion of the restitution does not relieve the juvenile of his or her obligation to pay restitution, but the amount owed by the juvenile must be offset by any amount paid by his or her parent.

Restitution Determination

All of the bills delete requirements that an order of restitution be as fair as possible to the victim or victim's estate without unduly complicating or prolonging the disposition or sentencing process. Senate Bills 969 and 970 also delete provisions prohibiting a court from ordering a juvenile offender to pay restitution in an amount that exceeds 30% of his or her net income per pay period from paid employment.

Under both the juvenile code and the Crime Victim's Rights Act, in determining whether to order restitution and the amount of that restitution, the court must consider the amount of the loss sustained by any victim as a result of the offense; the financial resources and earning ability of the offender, and, if a juvenile, of his or her supervisory parent; the financial needs of the offender and his or her dependents; and other factors the court considers appropriate. Under Senate Bills 969 and 970, the court is to consider only the amount of the loss sustained by any victim. In the case of juvenile offenders, in determining whether to order the juvenile's parent to pay restitution, the court also must consider the financial resources of the juvenile's parent.

Judgment and Lien

All of the bills specify that restitution ordered under the amended statute is a judgment and lien against all property of the person ordered to pay

restitution for the amount specified in the order of restitution. The lien may be recorded as provided by law.

Notification of the DOC

All of the bills specify that, if an offender who is ordered to pay restitution is remanded to the DOC's jurisdiction, the court must provide a copy of the restitution order to the Department, when the defendant is remanded to the DOC. In the case of a juvenile offense, under Senate Bills 969 and 970, if the juvenile court determines that an individual who is ordered to pay restitution is remanded to the DOC's jurisdiction, the court must provide a copy of the restitution order to the Department, when the court makes that determination.

Offender's Proceeds

The Crime Victim's Rights Act provides that a person convicted of a crime, or a juvenile adjudicated for an offense, may not derive any profit from the sale of his or her recollections, thoughts, and feelings with regard to the offense, until the victim receives any restitution or compensation ordered for him or her against the offender and expenses of incarceration are recovered and until an escrow account created under the Act is terminated. An attorney for the county in which the conviction or adjudication occurred may petition the court to order the offender to forfeit all or any part of the proceeds received or to be received. The proceeds must be held in escrow for a period of not more than five years. During the existence of the escrow account, the proceeds have to be distributed in the following priority:

- To satisfy an order of restitution.
- To satisfy any civil judgment in favor of the victim against the offender.
- To satisfy any reimbursement ordered under the Prisoner Reimbursement To The County Act, or ordered under the State Correctional Facility Reimbursement Act.

After those payments, 50% of the balance remaining in the escrow account is payable to the offender and the remaining 50% is payable to the State General Fund for use of the Crime Victims Compensation Board, to pay compensation claims. Senate Bill 970 deletes authorization for the offender to receive 50% of the balance and, instead, requires that the entire balance be paid to the Crime Victim's Rights Assessment Fund.

MCL 791.220h (S.B. 925)
769.1a (S.B. 929)

712A.30 & 712A.31 (S.B. 969)
780.766 et al. (S.B. 970)

BACKGROUND

Public Act 223 of 1976 established a crime victims' compensation program that offers victims reimbursement for out-of-pocket losses. In 1985, Public Act 87 created the Crime Victim's Rights Act to establish various rights of felony victims, including the rights to receive notice of the status of a case, to make an impact statement, and to receive restitution. Public Acts 21 and 23 of 1988 extended these rights to victims of serious misdemeanors and juvenile offenses. Also in 1988, the voters approved Proposal B, which added Article 1, Section 24 to the Michigan Constitution, stating specific rights of crime victims and permitting the Legislature to provide for an assessment against convicted defendants to pay for crime victims' rights.

Subsequently, Public Act 196 of 1989 was enacted to create the Crime Victim's Rights Fund; impose an assessment on individuals convicted of a felony, a serious misdemeanor, or impaired or intoxicated driving; and credit the assessments to the Fund. In 1993, Public Acts 341 through 348 of 1993 made a number of changes to the laws relating to victims' rights and compensation. Among other things, those amendments require, rather than allow, a court to order restitution. In addition, Public Act 345 increased the assessment on felons, and provides for an assessment on people convicted of a serious misdemeanor or a specified misdemeanor (instead of a serious misdemeanor or impaired or intoxicated driving). More recently enacted, Public Act 26 of 1996 provides that the definition of "specified misdemeanor" (in Public Act 196 of 1989) includes a local ordinance substantially corresponding to a State law listed in that definition.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan has taken numerous steps to protect the rights of crime victims and to provide for restitution to individuals and entities that suffer physical or financial harm as a result of a crime. Current law, however, gives too much weight to the interests of criminal offenders and the criminal justice system when the amount of restitution is determined. Moreover, some judges reportedly do not order

restitution at all. These bills strengthen the existing laws by requiring judges to order full restitution in every case, and making the victim's loss the sole criterion when a judge is determining the amount of restitution (except restitution paid by a juvenile offender's parents). In addition, offenders will no longer be able to petition for a cancellation of unpaid restitution, there will be no limit on the duration of restitution installment payments, and restitution will be a lien against all property of the person ordered to pay. The bills also remove limits on the amount that juvenile offenders and their parents may be ordered to pay.

Supporting Argument

Senate Bill 925 will facilitate the actual payment of restitution by requiring the Department of Corrections to deduct funds from a prisoner's account and forward the amount to the victim. This should not be burdensome to the DOC, however, since the Department will not have to forward payments until the amount collected for restitution exceeds \$100, and the amount of a deduction will be limited to 50% of the funds received over \$50 in a given month. Senate Bills 929, 969, and 970 will ensure that the DOC is notified by the court when a criminal or juvenile offender who is ordered to pay restitution, is remanded to the Department's jurisdiction.

Supporting Argument

Convicted criminals should not be entitled to any profit from their offenses. Senate Bill 970 will ensure that the Crime Victim's Rights Assessment Fund--and, ultimately, crime victims--receives the entire balance of an escrow account containing the proceeds from the sale of an offender's recollections, thoughts, and feelings (after the payment of restitution, civil damages, and reimbursement).

Response: It is possible that this amendment actually could harm crime victims. If offenders stand to receive no profit whatsoever from writing books or selling their stories, they might have no incentive to do so, which could lead to less money available for restitution.

Opposing Argument

Indigent defendants may not be able to afford to pay any restitution. If these individuals continue to be financially responsible for their children, mandatory restitution could threaten economic support and risk further harm to an abuser's family. Under the bills, a court may no longer consider a defendant's financial circumstances and responsibilities.

Response: A defendant will still be able to petition the court for a modification in the method of payment, if payment will impose a manifest

hardship on the offender or his or her family. Also, since the bills remove the limits on restitution installment payments, offenders actually might be given more time to make payments.

Legislative Analyst: S. Margules

FISCAL IMPACT

Senate Bill 925

The bill will have no fiscal impact on local government and might have a fiscal impact on the Department of Corrections.

The additional administrative requirements of deducting funds from a prisoner's account for an order of restitution may result in increased costs, the amount of which will depend on the extent to which new computer programming is required in order to implement an effective monitoring system. This new function will be in addition to the transactions and oversight the Department currently provides for prisoners' accounts.

Senate Bills 929, 969 & 970

The fiscal impact will depend on the ability of a criminal or juvenile offender to pay full restitution ordered by the court. It is indeterminate whether the stricter enforcement methods will produce additional revenue for the Crime Victims Compensation Board.

The bills will have no fiscal impact on the Department of Corrections.

Additionally, Senate Bill 970 might mean additional revenue to the State if an offender receives any profit resulting from his or her crime. Since the bill prohibits the offender from receiving any of the proceeds, however, it is indeterminate whether this will cause a reduction in the number of offenders engaging in profit-making activities, thus reducing funds for restitution to crime victims from the Crime Victims Compensation Board or funds for restitution to counties and the State.

Fiscal Analyst: M. Hansen
M. Ortiz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.