



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 969 and 970 (as introduced 4-18-96)
Sponsor: Senator John D. Cherry, Jr. (Senate Bill 969)
Senator William Van Regenmorter (Senate Bill 970)
Committee: Judiciary

Date Completed: 4-23-96

CONTENT

Senate Bills 969 and 970 would amend the juvenile code and the Crime Victim's Rights Act, respectively, to do all of the following:

- Eliminate a court's authority not to order restitution or to order a juvenile or criminal offender to make partial, rather than full, restitution to victims, the Crime Victims Compensation Board, or to any legal entity that compensated the victim.
- Require a court to state on the record, with specificity, its reasons for not ordering restitution to a victim, if the victim received other compensation.
- Eliminate specified ending dates for restitution installment periods.
- Remove the ability of an offender to petition the court for a cancellation of an unpaid portion of restitution.
- Remove the maximum limit on the amount of restitution a juvenile offender's parents may be ordered to pay.
- Delete a requirement that an order of restitution be as fair as possible without complicating or prolonging the disposition or sentencing process.
- Delete a restriction that prohibits a court from ordering a juvenile offender to pay restitution in an amount over a specified portion of his or her income.
- Reduce the factors that a court must consider in determining the amount of restitution to be ordered.

Senate Bill 970 also would do all of the following:

- Specify that an order of restitution would be a judgment and lien.
- Require a court to give to the Department of Corrections (DOC) a copy of the restitution order, if a person ordered to pay restitution were remanded to the DOC's jurisdiction.
- Require that all, rather than 50%, 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 State General Fund after specified allotments were satisfied.

Senate Bill 969 is tie-barred to Senate Bill 970 and to a bill that has yet to be introduced (request no. 06116'95 a). Senate Bill 970 is tie-barred to Senate Bill 929, which would amend the Code of Criminal Procedure to make a restitution order a judgment and lien and require notification of the DOC.

Restitution Orders

Under both 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 acts. If a victim is deceased, restitution must be made to the victim's estate. Under the bills, the court would have to order full restitution to victims, unless restitution were ordered, instead, to a third party who compensated the victim or his or her estate for losses incurred by the victim. The bills would 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.

A court must 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 bill specifies that if the court did not order restitution to the victim or estate for this reason, the court would have to state on the record, with specificity, the reasons for its actions.

End of Restitution Installment Period

Under 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:

- 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 (DSS) 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 would delete those provisions for the end of an installment period, and provide, instead, that an order of restitution would remain effective until it was satisfied in full.

Cancellation or Modification of Restitution Order

Under both 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, would allow an offender who was not in default to petition the court to modify the method of payment. If the court determined that payment of the restitution would impose a hardship, it could modify the method of payment, but could not cancel all or part of the amount due.

Parental Contribution

Under both 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. The bills would delete that limit and specify that a parent could be ordered to pay any portion of the restitution amount that was outstanding. The bills also provide, however, that an order for a parent to pay a portion of the restitution would not relieve the juvenile of his or her obligation to pay restitution, but the amount owed by the juvenile would have to be offset by any amount paid by his or her parent.

Restitution Determination

The bills would delete a requirement 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. The bills also would delete a provision 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 the bills, the court would have 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 could consider the financial resources of the juvenile's parent.

Judgment and Lien

Senate Bill 970 specifies that restitution ordered under the Crime Victim's Rights Act would be 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 could be recorded as provided by law.

Notification of the DOC

Senate Bill 970 specifies that, if a criminal offender who was ordered to pay restitution were remanded to the DOC's jurisdiction, the court would have to provide a copy of the restitution order to the Department, when the defendant was remanded to the DOC. In the case of a juvenile offense, if the juvenile court determined that an individual who was ordered to pay restitution were remanded to the DOC's jurisdiction, the court would have to provide a copy of the restitution order to the Department, when the court made 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, cannot 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 would delete authorization for the offender to receive 50% of the balance and, instead, would require that the entire balance be paid to the State General Fund for the use of the Crime Victims Compensation Board.

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

Legislative Analyst: P. Affholter

FISCAL IMPACT

The fiscal impact would depend on the ability of the juvenile to pay full restitution ordered by the court. It is indeterminate whether the stricter enforcement methods will produce additional revenue for crime victims.

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

Fiscal Analyst: M. Bain
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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.