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SFA



BILL ANALYSIS

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Senate Bills 780 and 781 (as passed by the Senate)
Sponsor: Senator John D. Cherry, Jr. (Senate Bill 780)
Senator William Van Regenmorter (Senate Bill 781)
Committee: Judiciary

Date Completed: 12-9-97

RATIONALE

Michigan statutes and the State Constitution contain a number of provisions designed to protect the interests of crime victims. These provisions include requirements that a court order a convicted offender to pay restitution to the victim or the victim's estate. In addition, under the Code of Criminal Procedure and the Crime Victim's Rights Act, if a defendant is placed on probation or parole, any victim restitution ordered must be a condition of that probation or parole, which means that probation or parole may be revoked if the defendant fails to pay. The current statutes, however, do not authorize courts to order the payment of restitution as a condition of sentencing, which would allow a court to impose imprisonment if a defendant failed to pay. This was pointed out in a March 11, 1997, unpublished decision of the Michigan Court of Appeals (*People v Aidem*, Docket No. 185142). Relying on several earlier, published Court of Appeals decisions, the Court in *Aidem* held that, "...any sentence must have a statutory basis". The Court also stated, "The conditional sentence statute...is not applicable because the statute authorizes only the imposition of a conditional sentence and a fine, with or without costs, to be paid within a stated time... [A] sentence of restitution is not equivalent to the imposition of a fine under the sentencing statute. Moreover, while... [the Crime Victim's Rights Act] allows for restitution as a condition of probation or parole, it does not authorize the suspension of a sentence upon the payment of restitution." Therefore, it has been suggested that the statutes should be amended to permit sentences to be conditioned upon restitution. (A description of crime victim laws enacted between 1976 and 1996 is contained in **BACKGROUND**, below.)

CONTENT

Senate Bills 780 and 781 would amend the Code of Criminal Procedure and the Crime

Victim's Rights Act, respectively, to allow a court to order the payment of restitution as a condition of sentencing. The court could impose imprisonment if a defendant failed to comply with the restitution order. The bills are tie-barred.

Currently, under the Code and the Act, if a defendant is placed on probation or paroled, any victim restitution ordered must be a condition of that probation or parole. The court may revoke probation and the parole board may revoke parole if the defendant fails to comply with the order and has not made a good faith effort to comply. The bills also provide that if the court imposed a conditional sentence, any restitution ordered would have to be a condition of that sentence. The court could impose imprisonment under the conditional sentence if the defendant failed to comply with the order and had not made a good faith to comply.

Currently, in determining whether to revoke probation or parole, the court or parole board must consider the defendant's employment status, earning ability, and financial resources, the willfulness of his or her failure to pay, and any other special circumstances that have a bearing on the defendant's ability to pay. Under the bills, the court also would have to consider those factors in determining whether to impose imprisonment.

Under the Code of Criminal Procedure, if a person is convicted of an offense punishable by a fine or imprisonment, the court may impose a conditional sentence and order the person to pay a fine, with or without the costs of prosecution, within a limited time stated in the sentence; in default of payment, the court may sentence the person to imprisonment as provided by law. Under Senate Bill 780, the court could condition a sentence upon the payment of a fine, with or without the costs of prosecution, and restitution as provided in the Code

or the Crime Victim's Rights Act.

In addition, the Code provides that, except for a person who is convicted of first- or third-degree criminal sexual conduct, the court also may place the offender on probation with the condition that he or she pay a fine, costs, damages, or any combination in installments within a limited time and, upon default of any of those payments, impose sentence as provided by law. Under Senate Bill 780, probation also could be conditioned upon the payment of restitution.

MCL 769.1a & 769.3 (S.B. 780)
780.766 & 780.826 (S.B. 781)

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, a voter-approved ballot proposal 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 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). 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.

Public Acts 519 and 520 of 1996 consolidated the Crime Victims Compensation Board and the

Criminal Assessments Commission into a new "Crime Victim Services Commission". Public Act 519 also included acts of international terrorism as a compensable crime; increased the maximum amount of an award for funeral expenses; and exempted a claimant's file and testimony before the Commission from the Freedom of Information Act.

Public Acts 559 to 562 of 1996 made additional amendments. Public Act 559 requires the Department of Corrections 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. Public Acts 560, 561, and 562 eliminated the ability of a court to order partial, rather than full, restitution; removed the ability of an offender to petition the court for a cancellation of an unpaid portion of restitution; deleted a requirement that a restitution order be as fair as possible without complicating or prolonging the disposition or sentencing process; and specify that a restitution order is a judgment and lien. Public Acts 561 and 562 also removed the limit on the amount of restitution a juvenile offender's parents may be ordered to pay; and deleted a prohibition against ordering a juvenile offender to pay restitution in an amount over 30% of his or her income. In addition, Public Act 562 requires that all 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 certain allotments are made.

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

As the Court of Appeals pointed out in *People v Aidem*, current statutory law does not expressly permit a sentence to be conditioned upon the payment of restitution. Although this decision was unpublished, and therefore is not binding in other cases, the Court did base its conclusion on several published decisions of the Michigan Court of Appeals (e.g., *People v Neil*, 99 Mich App 677 (1980)). These bills would address the statutory omission, and encourage the payment of restitution. A defendant presumably would rather pay restitution than go to prison, and a defendant who is not incarcerated is better able to pay than one who is in prison. The bills would advance the goal of making victims whole.

Legislative Analyst: S. Lowe

FISCAL IMPACT

To the extent that these bills would allow a judge to impose imprisonment for failure to pay restitution, costs for the Department of Corrections or county jails could increase. However, the amount of that increase is indeterminate.

In order to determine the cost increase, one would have to know the type of crime for which a conditional sentence is most likely imposed, the number of times restitution was not paid, and the likelihood that a judge would impose imprisonment given a failure to comply with an order to pay restitution. This information is not available at this time.

Fiscal Analyst: K. Firestone

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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.