



**House  
Legislative  
Analysis  
Section**

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**INCONSISTENCIES IN VICTIM'S  
RIGHTS PROVISIONS**

**House Bill 5866 as introduced  
Sponsor: Rep. Brian Palmer**

**House Bill 5867 as introduced  
Sponsor: Rep. Jerry Vander Roest**

**Committee: Civil Law and the Judiciary  
First Analysis (4-18-02)**

***THE APPARENT PROBLEM:***

Public Act 503 of 2000 amended the Crime Victim's Rights Act to, among many things, make a number of changes to provisions regarding restitution. Generally, courts can require an individual convicted of a crime to make financial restitution to his or her victim or victims. Public Act 503 made many significant changes, such as including of certain losses that were not previously allowed; allowing treble damages if the crime caused the death or serious bodily injury of the victim; changing the process of collecting restitution; allowing a court to require parents, under certain conditions, to pay the restitution costs if their child was unable to pay; and, if the person who was to receive the restitution could not be found or refused the money, allowing the money to be deposited into the Crime Victim's Rights Fund.

Though the Probate Code and the Code of Criminal Procedure contained almost identical provisions regarding restitution as the Crime Victim's Rights Act, these two acts were not amended when Senate Bill 1180 (which became PA 503) was being considered. As a result, inconsistencies exist between the provisions on restitution contained in the three acts. The potential for problems arising from these inconsistencies became apparent earlier this session as the legislature debated the package of bills addressing terrorism, especially since some of the bills called for mandatory restitution to victims injured in a terrorist act and restitution for political subdivisions for costs related to responding to terrorist acts. To avoid potential conflicts and confusion, it has been recommended that the victim restitution provisions in the three acts be reconciled to each other.

***THE CONTENT OF THE BILLS:***

House Bills 5866 and 5867 would amend the Code of Criminal Procedure (MCL 769.1a) and Chapter XIIA of the Probate Code (MCL 712A.30), respectively, to provide consistency between the two acts and the Crime Victim's Rights Act in provisions relating to crime victims' compensation.

House Bill 5866 would amend the Code of Criminal Procedure to conform to provisions in the Crime Victim's Rights Act by adding the following:

- After providing notice to a juvenile offender's parents (excluding foster parents) and an opportunity to be heard, a court may order that the parents pay restitution when a juvenile is unable to pay all of the restitution ordered. This provision would not relieve the juvenile of his or her obligation, but the amount owed by the juvenile would be offset by any amount paid by the parents.
- A court must take into account a parent's financial resources if it orders the parent to pay restitution, with due regard to any other moral or financial obligations, and must also require that payments be made in specified installments and within a specified period of time.
- A parent may petition the court for a modification of the restitution amount or for a cancellation of any unpaid portion; and allow the court to cancel all or part of the restitution if it decides that this would impose a hardship on the parent.

House Bill 5867 would amend Chapter XIIA of the Probate Code, relating to juveniles, to conform to provisions currently in the Crime Victim's Rights Act to:

- Delete outdated references to the Crime Victims Compensation Board and replace them with

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references to the Crime Victim Services Commission, which replaced the board.

- Add that a juvenile parole violation, as well as a probation violation, not be considered grounds for imprisonment for failure to pay restitution unless the court finds that the violator has the resources to pay.

New provisions. The bills would add identical provisions to each act to incorporate existing provisions in the Crime Victim's Rights Act that would do the following:

- Require that the compensation paid for physical and psychological care be based on the "reasonably determined cost of the services actually incurred and reasonably expected to be incurred," rather than on actual costs. The bills would also add that homemaking and child care expenses provided without compensation by a relative, friend, or any other person, would have to be compensated in an amount equal to the costs that would reasonably be incurred as a result of the violation for that homemaking and child care, based on the rates in the area for comparable services.
- Clarify that a defendant must pay an amount equal to the actual cost of funeral and related services.
- Require restitution for the loss of an income tax deduction for a victim who died. A person who claims a deceased victim on his or her income tax returns would have to be compensated in an amount equal to the loss of the tax deductions or credits for each year the victim could reasonably have been claimed as a dependent.
- Permit a court to order up to three times the amount of restitution otherwise allowed under the acts if a violation resulted in bodily injury that caused the death of a victim, or in serious impairment of a body function.
- Eliminate the current requirement that restitution paid for an entity that cannot or that refuses to be reimbursed be deposited, instead, in the Crime Victim's Rights Fund.
- Specify that when a court has been petitioned to modify a method of payment to avoid imposing a hardship on a defendant's family, that the court also ensure that the modification would not also impose a hardship on the victim before granting a modification
- Add that, before canceling all or part of an obligation of parents who had been ordered to pay

restitution on behalf of a juvenile, a court would have to ensure that modifying the method of payment would not impose a manifest hardship on the victim.

- Add that, when restitution has been ordered as a condition of probation, a court must order any employed defendant to execute a wage assignment to pay the restitution; that, when restitution has been ordered to be made within a specific time period, the probation officer must review the case at the end of the specified period of time to determine if restitution had been paid in full; and that, if the probation officer determines at any review that restitution has not been paid, he or she would have to file a written report of the violation or petition the court for a probation violation.

- Add that a court could not impose a fee on a victim, victim's estate, or prosecuting attorney for enforcing an order of restitution.

- Add that restitution could be deposited in the Crime Victim's Rights Fund if a person or entity entitled to restitution could not be located or refused to claim the restitution within two years after the date that it could have been claimed. However, the person or entity could claim that restitution any time by applying to the court that originally ordered and collected it, in which case the court would have to notify the Crime Victim Services Commission of the application and the commission would have to approve a reduction in the court's revenue transmittal to the fund equal to the restitution owed to the person or entity. The court would have to use the reduction to reimburse that restitution to the person or entity.

Definitions. The bills would, in conformity with the Crime Victim's Rights Act, define "serious impairment of a body function" to mean one or more of the following: loss of a limb, hand, foot, or eye, or of the use of these; loss or substantial impairment of a bodily function; serious visible disfigurement; a comatose state that lasted for more than three days; measurable brain damage or mental impairment; a skull fracture or other serious bone fracture; subdural hemorrhage or subdural hematoma; and loss of a body organ.

House Bill 5866 would define "juvenile" to mean a person within the court's jurisdiction, as provided in Section 2d or 4 of Chapter XIII of the Probate Code (MCL 712A.2d and 712A.4).

**BACKGROUND INFORMATION:**

For more information on Public Act 503 of 2000, which is the basis for the proposed statutory changes to the Probate Code and the Code of Criminal Procedure, see the House Legislative Analysis Section's analysis of Senate Bill 1180 dated 12-12-00 and the Senate Fiscal Agency's summary of enrolled Senate Bill 1180 dated 4-17-02.

**FISCAL IMPLICATIONS:**

Fiscal information is not available.

**ARGUMENTS:*****For:***

Though the bills appear to make substantive changes to their respective acts, they merely incorporate language added to the Crime Victim's Rights Act by Public Act 503 of 2000. Since the Code of Criminal Procedure, the Probate Code, and the Crime Victim's Rights Act contain almost identical provisions regarding restitution to crime victims, previous legislation has generally been offered as a package to similarly amend each of the three acts. It is unclear why the 2000 legislation only focused on the Crime Victim's Rights Act. Unfortunately, it has become apparent that it is necessary to amend the other two acts to avoid inconsistencies of law. The bills, therefore, represent an attempt to bring all three acts into conformity.

***Against:***

Having similar, or even identical, provisions in three separate acts can be confusing. Perhaps it is time to review these laws and determine if it would be better to consolidate the provisions pertaining to victim restitution in a single act, rather than having the provisions repeated in several places.

***Response:***

Senate Bill 1234 (Substitute S-1), which was reported by the Senate Judiciary Committee and is now pending action on the Senate floor, would repeal Section 1a of Chapter IX of the Code of Criminal Procedure. This is the section of law that House Bill 5866 would amend to conform to the Crime Victim's Rights Act. If Senate Bill 1234 were enacted into law, it would reduce the confusion arising from duplicative provisions of law, and would render House Bill 5866 unnecessary.

**POSITIONS:**

There are no positions on the bill.

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.