

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

**SFA****BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 1234 (as introduced 4-16-02)  
Sponsor: Senator Joel D. Gougeon  
Committee: Judiciary

Date Completed: 4-17-02

## **CONTENT**

**The bill would amend Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure to do all of the following in regard to the payment of restitution to crime victims:**

- **Revise provisions regarding the payment of certain costs when a crime results in physical or psychological injury to a victim.**
- **Require that court-ordered restitution include an amount equal to the loss of a tax deduction or tax credit if a deceased victim could have been claimed as a dependent on his or her parent's or guardian's income tax returns.**
- **Allow the court to order up to three times the amount of restitution otherwise allowed, if a crime resulted in the death of a victim or the serious impairment of a body function of a victim.**
- **Revise provisions pertaining to the deposit of unclaimed restitution amounts into the Crime Victim's Rights Fund.**
- **Require the court to find that modifying the method of payment would not impose a manifest hardship on the victim, if a defendant sought modification.**
- **Allow the court to order the parent or parents having supervisory responsibility for a juvenile offender to pay any portion of an outstanding restitution order.**
- **Allow a court to order an employed defendant to execute a wage assignment to pay restitution.**
- **Revise requirements for the review of cases in which payment of restitution is a condition of probation.**
- **Prohibit a court from imposing a fee on a victim, victim's estate, or prosecuting attorney for enforcing an order of restitution.**

### Payment of Costs

Chapter IX of the Code provides that, when sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation, the court must order the defendant to make full restitution to any victim. If a violation results in physical or psychological injury to a victim, the restitution order may require that the defendant pay an amount equal to the cost of one or more of the following:

- Actual medical and related professional services and devices relating to physical and psychological care.
- Actual physical and occupational therapy and rehabilitation.
- Psychological and medical treatment for members of the victim's family that has been incurred as a result of the violation.
- Actual homemaking and child care expenses incurred as a result of the violation.

In each of those cases, the bill would refer to an amount equal to the reasonably determined cost of the care or services actually incurred and reasonably expected to be incurred. In the

case of homemaking and child care expenses, the bill provides that, if homemaking and child care were provided without compensation by a relative, friend, or any other person, the restitution would have to include an amount equal to the costs that would reasonably be incurred for those services and care, based on the rates in the area for comparable services.

#### Tax Deduction or Tax Credit

The bill specifies that, if a deceased victim could have been claimed as a dependent by his or her parent or guardian on Federal, State, or local income tax returns, the restitution order would have to include a requirement that the defendant pay an amount equal to the loss of the tax deduction or tax credit. The amount of reimbursement could be estimated for each year the victim could reasonably have been claimed as a dependent.

#### Triple Restitution

Under the bill, if a crime resulting in bodily injury also resulted in the death of a victim or serious impairment of a body function of a victim, the court could order up to three times the amount of restitution otherwise allowed.

"Serious impairment of a body function of a victim" would include, but not be limited to, one or more of the following:

- Loss of a limb or the use of a limb.
- Loss of a hand or foot or the use of a hand or foot.
- Loss of an eye or ear or the use of an eye or ear.
- 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.
- Loss of a body organ.

#### Unclaimed Restitution

The bill would delete a requirement that, if an entity entitled to restitution for compensating a victim or victim's estate cannot or refuses to be reimbursed for that compensation, the restitution paid for that entity be deposited by the State Treasurer in the Crime Victim's Rights Fund or its successor fund.

The bill provides, instead, that if a person or entity entitled to restitution could not be located or refused to claim the restitution within two years after the date on which the person or entity could have claimed the restitution, the restitution paid to that person or entity would have to be deposited in the Crime Victim's Rights Fund or its successor. A person or entity entitled to that restitution could claim it at any time, however, by applying to the court that originally ordered and collected it. 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 provide that restitution to the person or entity.

#### Payment Modification

Under the Code, a defendant who is required to pay restitution and who is not in willful default may petition the sentencing judge or the judge's successor to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the

defendant or his or her immediate family, the court may modify the method of payment. The bill also would require the court to determine that modifying the method of payment would not impose a manifest hardship on the victim.

#### Parental Payment of Juvenile's Restitution

Under the bill, if the court determined that a juvenile was or would be unable to pay all of the restitution ordered, after notice to the juvenile's parent or parents and an opportunity for the parent or parents to be heard, the court could order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which the restitution order was based to pay any outstanding portion of the order. An order under this provision would not relieve the juvenile of his or her obligation, but the amount owed by the juvenile would have to be offset by any amount paid by the parent or parents. (Under this provision, "juvenile" would include a juvenile tried as an adult and "parent" would not include a foster parent.)

If the court ordered a parent to pay restitution, it would have to take into account the parent's financial resources and the burden that payment would impose, with due regard to any other moral or legal financial obligations the parent might have. If a parent were required to pay restitution, the court would have to provide for payment to be made in specified installments and within a specified period of time.

A parent ordered to pay restitution could petition the court for a modification of the restitution amount he or she owed or for a cancellation of any unpaid portion of his or her obligation. The court would have to cancel all or part of the parent's obligation if the court determined that payment would impose a manifest hardship on the parent and that modifying the method of payment would not impose a manifest hardship on the victim.

#### Restitution as Probationary Condition

The Code provides that, in each case in which payment of restitution is ordered as a condition of probation, the probation officer assigned to the case must review it at least twice yearly to ensure that restitution is being paid as ordered. The bill specifies that, if the restitution were ordered to be made within a specific period of time, the probation officer would have to review the case at the end of that period to determine if the restitution had been paid in full.

The Code requires that the final review of the case be conducted at least 60 days before the end of the probationary period. If the probation officer determines that restitution is not being paid as ordered, he or she must file a written report of the violation with the court. Under the bill, if the probation officer made that determination at any review, he or she would have to file a written report with the court or petition the court for a probation violation.

MCL 769.1a

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would make the Code of Criminal Procedure consistent with changes to the Crime Victim's Rights Act contained in Public Act 503 of 2000, and therefore would have no fiscal impact.

Fiscal Analyst: Bill Bowerman  
Dana Patterson

S0102\S1234sa

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.