

Legislative Analysis



REVISIONS TO CRIME VICTIM'S RIGHTS ACT

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4588 as enrolled

Public Act 184 of 2005

Sponsor: Rep. William Van Regenmorter

House Committee: Judiciary

Senate Committee: Judiciary

Second Analysis (8-21-06)

BRIEF SUMMARY: The bill would amend the Crime Victim's Rights Act to implement a variety of amendments to the act's three articles, including requiring full restitution from a defendant whose conviction is set aside or dismissed upon successful completion of probation or who received a deferred or delayed sentence.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the state and local units of government, depending on how it affected amounts collected for penal fines, court fees, offender supervision fees, and the Crime Victim's Rights Fund. It also could increase administrative costs for the Department of Corrections and the Department of Human Services.

THE APPARENT PROBLEM:

The Crime Victim's Rights Act was created to establish various rights for victims of a felony or a crime designated as a serious misdemeanor and victims of crimes committed by juveniles. Under the act, among other things, victims have the right to be notified of the status of the case, to receive notification when the defendant is released on probation or parole, to address the parole board in person or in writing, and to receive restitution for injuries or property damage sustained by the crime.

Recently, it has become apparent that some loopholes still exist in the act. For instance, if a defendant is sentenced to a term of imprisonment, the victim can request notification of upcoming parole hearings. However, if the defendant is released on probation first, but subsequently violates the conditions of probation and then is incarcerated for more than 90 days, the notification rights regarding parole hearings are not triggered. Also, there currently are no rights of notification if a defendant is found not guilty by reason of insanity and placed in a hospital or facility.

Furthermore, if a victim suffers physical harm or damage to his or her property, the court must order the defendant, upon conviction, to make full restitution. However, for certain crimes, and for young defendants assigned to youthful trainee status, the court may grant a deferred sentence. If the defendant successfully completes probation, the charges are dismissed and the sentence discharged. Clearly, a crime has been committed and a victim has suffered, but technically there is no conviction. In such cases, reportedly, there has

been confusion over the court's authority to require restitution to be made to the victim. Legislation is being offered to address these and other concerns.

THE CONTENT OF THE BILL:

The bill would amend the Crime Victim's Rights Act to implement a variety of amendments to each of the act's three articles. The articles apply to victims of adult felonies, juvenile offenses, and serious misdemeanors. It would also rename the act as the William Van Regenmorter Crime Victim's Rights Act. The bill would take effect January 1, 2006.

The bill would make several changes and additions to the article pertaining to victims of adult felonies as follows.

Notification requirements. The bill would revise the definition of "defendant" to include a person found not guilty by reason of insanity. Upon a victim's written request, the director of a hospital or facility where a defendant who had been found not guilty by reason of insanity was being hospitalized (or admitted by court order) would be required to notify the victim of a pending transfer of the defendant to a less secure hospital or facility, to alternative care or treatment, community placement, or to aftercare reintegration; or, a pending leave, absence, furlough, or other release from confinement whether temporary or permanent. The notice must be given by any means reasonably calculated to give the victim prompt actual notice. The bill would incorporate the definition of "hospital" and "facility" contained in the Mental Health Code.

Several provisions would be amended to include references to the hospital or facility. For example, victims choosing to receive certain notices or exercise rights under the act currently must keep the prosecuting attorney, Department of Corrections (DOC), or Department of Human Services (DHS) or the county juvenile agency informed of their current address and phone number; the bill would expand this to include the hospital or facility to which a defendant found not guilty by reason of insanity was admitted.

Furthermore, if the defendant were sentenced to probation, the DOC or the sheriff, as applicable, would have to notify the victim if the probation were revoked and the defendant sentenced to the DOC or to jail for more than 90 days. The notice would have to include a form that the victim could submit to the DOC or the sheriff to receive notices as provided in the act. Similarly, the DOC would have to notify a victim prior to the placement of a prisoner in the special alternative incarceration unit if the victim had submitted a written request for notification. The notification would have to be given to the victim not later than 30 days before the proposed placement. In making the decision on whether or not to object to the placement of the defendant in a special alternative incarceration unit, the sentencing judge or the judge's successor would have to review an impact statement submitted by the victim.

Other Provisions. Other changes include specifying that a record of a victim's oral statement or a written statement given before the parole board would not be subject to

public disclosure under the Freedom of Information Act and that a victim would not be restricted to only one request for a calculation of a prisoner's earliest release date or earliest parole eligibility date.

In addition, the bill would place the following substantially similar amendments in each of the act's three articles:

- Require restitution – in addition to current requirements – to be ordered for an offense that was resolved by assignment of the defendant or juvenile to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that was not an acquittal, or unconditional dismissal.
- Require, instead of permit, orders of restitution to include one or more actions on the part of the defendant specified in the bill.
- Include in the list of payments for restitution an amount equal to income actually lost by the spouse, parent, sibling, child, or grandparent of the victim if the family member left employment, either temporarily or permanently, to care for the victim.
- If the victim was a minor, the order of restitution would have to require the defendant to pay to a parent of the victim an amount determined to be reasonable for any of the following that were actually incurred or reasonably expected to be incurred by the parent as a result of the crime: homemaking and child care expenses; income loss not ordered to be paid under other provisions in the act; mileage; lodging or housing; meals; and/or any other cost incurred in exercising the rights of the victim or a parent under the act.
- Require defendants to pay restitution during periods of incarceration if they receive more than \$50 in a month. This would apply to defendants sentenced to prison or jail and juveniles sentenced to prison, jail, or a juvenile facility. Fifty percent of the amount over \$50 received in a month by a defendant would be deducted by the DOC, sheriff, DHS, or county juvenile agency. When the amount deducted accumulated to an amount exceeding \$100 or when the defendant or juvenile was paroled, released on probation, transferred to community programs, or discharged on the maximum sentence, the money would be forwarded by the appropriate agency to the crime victim. The defendant or juvenile would have to be notified in writing, by the appropriate agency, of all deductions and payments made under this provision. These requirements would remain in effect until all of the restitution had been paid. The DOC, sheriff, DHS, or county juvenile agency would not enter into any agreement with a defendant or juvenile that modified the requirements of this provision; an agreement in violation of this provision would be void.
- If payment of restitution is a condition of probation, the bill would require, instead of allow, a court to order any employed defendant to execute a wage

assignment to pay the restitution. If the defendant missed two or more scheduled payments, the court would have to order a wage assignment to pay the restitution.

- Require the restitution amount to be deposited into the William Van Regenmorter Crime Victim's Rights Fund if a person refused to accept the restitution.
- If a defendant owing restitution declares bankruptcy, require a court to forward a copy of that notice to the prosecuting attorney, who in turn would have to forward a copy to the victim at the last known address.
- Allow an order of restitution to be amended on a motion by the prosecuting attorney, victim, or defendant based upon new information related to the injury, damages, or loss for which restitution had been ordered.
- Further restrict an offender's ability to profit from his or her criminal actions by prohibiting the sale of memorabilia of the person or the crime, or the sale of the person's property that has had its value increased or enhanced by the person's notoriety. Similarly amend a provision pertaining to forfeiture of proceeds received or to be received by the defendant from contracts relating to the crime. Currently, proceeds ordered forfeited from such sales must be placed in an escrow account, and the act details a priority for distribution of the funds with payments for restitution ranking first. The bill would add distributions to repay fines, costs, and other assessments ordered against the defendant and would place it last in priority.
- Require a prosecuting attorney to provide the victim with a brief explanation in plain English of the appeal process regardless of whether or not the victim requested it.
- Specify a procedure to follow when applying money collected for the payment of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments when a defendant is paying for more than one proceeding and does not indicate the specific proceeding to which the payment is to be applied.

Furthermore, the bill would add to the definition of "offense" (as used in the articles pertaining to juveniles and serious misdemeanors) the crimes of contributing to the neglect or delinquency of a minor, injuring a highway construction worker in a work zone, intentionally aiming a firearm without malice, and using the Internet or a computer to make prohibited communications. (For serious misdemeanors, the latter crime would only apply if it resulted in a misdemeanor conviction). Lastly, under current law, if a defendant out on bail for a serious misdemeanor engages in acts or threats of physical violence against a victim or the victim's immediate family, a prosecutor can move that the defendant's bond or personal recognizance be revoked. The bill would eliminate this provision.

MCL 780.752 et al.

ARGUMENTS:

For:

The Crime Victim's Rights Act is in need of updating in part due to new laws enacted since the last revision (e.g., injuring a highway construction worker in a work zone) and also because of new law enforcement methods. There are also a few loopholes or gaps that need to be addressed, such as ensuring that victims receive notification of a defendant's release from incarceration if the defendant had been incarcerated only after violating probation. Currently, notification requirements are only triggered if the defendant is incarcerated immediately after sentencing. Also, it is important that victims receive notification of escapes, transfers, releases, etc. of defendants who have been declared not guilty by reason of insanity but have been placed in a hospital or facility for treatment.

Another significant change is to clarify that restitution is also to be ordered in cases in which the defendant or juvenile receives a deferred or dismissed sentence. For example, a defendant or juvenile who successfully completes youthful trainee status (typically youths charged with a crime when they were between 17 and 20 years old), is not considered to have been convicted of a crime. The same is true for defendants who qualify to have one nonviolent felony or misdemeanor conviction set aside and their record expunged. In addition, any defendant or juvenile that received more than \$50 in a month would have to pay restitution to their victim even while incarcerated. Until such time that the restitution was paid in full or the defendant or juvenile released on probation, parole, or served his or her full sentence, 50 percent of the amount over \$50 that a defendant or juvenile received in a month would have to be paid to the victim. The defendant or juvenile would have to be notified of the amounts collected and paid under this provision.

The bill would also tighten the act's "Son of Sam" provisions, which prohibits a defendant from profiting from the crime. In addition to current prohibitions, the bill would prohibit the sale of memorabilia of the defendant or the crime, or the sale of any of the defendant's property that has only become valuable because of the notoriety attached to the crime (e.g., Jack the Ripper's hairbrush). If it became known that the defendant had sold such items, the money received could be seized and applied to outstanding balances still owed by the defendant relating to restitution, a civil judgment, reimbursement for costs of incarceration, and now – under the bill – fines, costs, and other court assessments.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

■ 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.