**Statement Regarding HB 4915 – September 11, 2014**
For House Committee on Judiciary
Submitted by Bruce A. Timmons

**Legislative History of CVRF**:
The Crime Victim's Rights Fund (**CVRF**) receives revenue from a unique constitutionally-authorized assessment against criminals convicted of crimes. Const 1963, Art I, §24(3), adopted in 1988, provides: "(3) The legislature may provide for an assessment against convicted defendants to pay for crime victims' rights.". (Emphasis added.) 1989 PA 196, enacted the next year provides for setting the assessment in criminal cases and implements how the CVRF is to be used. The CVR assessment was originally applied only to felonies and serious misdemeanors where either there was a victim or serious likelihood that a person who suffer physical injury or loss of property. It did not apply to lesser misdemeanors.

When the District Court was created by 1968 PA 154, a $3 judgment fee was imposed for all misdemeanors – before we were aware of a 1965 Court of Appeals decision in People v Barber that invalidated an attempt to surcharge fines in criminal cases to fund law enforcement training. By 1970, MCL 600.8381 was amended to replace the "judgment fee" with "minimum costs". It was out of the same concern that I recommended the inclusion of the assessment provision in Art I, §24, so it could withstand any similar challenge.

MCL 780.901(b) defines "crime victim's rights services" as "services required to implement fully the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, and services prescribed under this act. The "rights" provided under 1985 PA 87 directly impact victim's rights to be informed of the criminal process involving the case that affects them or a deceased victim – when proceedings occur, when a victim has the right to make an impact statement, and when a victim is entitled to notice (including release of a prisoner from jail or prison) – and to receive restitution.

A perceived surplus in the Crime Victim's Rights Fund has led to recent "raids" upon it to balance the GF/GP budget – some of which could be questioned as an unconstitutional diversion from a constitutionally authorized assessment. Never mind, of course, that in fiscal years prior to 2010 more money was expended for crime victim's rights services than was collected from crime victim's rights assessments. Prior to 2010 payouts were exceeding income.

In 2008, MCL 780.904 was amended to allow the surplus in the crime victim's rights fund to be siphoned off for these 5 objectives for the fiscal year ending September 30, 2009:

(a) The operation and enhancement of the sex offender registry compiled and maintained under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736.

(b) The Amber alert program under the Michigan Amber alert act, 2002 PA 712, MCL 28.751 to 28.754.

(c) Treatment services for victims of conduct prohibited under sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g.

(d) Polygraph examination as that term is defined under section 2 of the polygraph protection act of 1981, 1982 PA 44, MCL 37.202.

(e) The expert witness testimony of a forensic scientist.

The uses allowed under MCL 780.904(2)(a) to (e) – with the possible exception of subdivision (c) – are arguably law enforcement expenses, more related to prosecution of the offense than "victim services". (The Amber alert system may not involve a crime victim.) →

Late in 2009, HB 5592 was introduced to balance the MSP budget for FY 2009-10 and to allow use of the surplus in the CVRF in *any* fiscal year. Prosecutors, who rely upon the CVRF for reimbursement for services they provide for victims, were concerned that the draw-down on the surplus would shortly mean the state would be unable to fund crime victim's rights services that the fund was created to do and thereby create yet one more unfunded mandate on counties. HB 5666 was passed in 2009 to again permit use of CVRF surplus for the five MSP programs noted above for FY 2009-10.

The Prosecuting Attorneys Association of Michigan (PAAM), in order to protect its funding for victim's services, then helped develop a package of 3 bills with these concurrent objectives – protecting its funding for crime victim's rights under 1985 PA 87, providing funding for trauma centers that other advocates are seeking, increasing compensation for victims under 1976 PA 223, and increasing the crime victim's rights assessments to cover the additional costs. Faced with concerns from advocates against domestic violence, a work group that included DCH, DHS, PAAM, trauma centers, and advocates against domestic violence (DVP&TB and MCADSV) reached a compromise that was incorporated into SB 1003. The full package was: SB 1003 allocated up to $3.5 million annually for trauma centers, HB 5661 raised assessment on convicted criminals, and HB 5667 increased victim compensation. More specifically:

**SB 1003 (H-1), 2010 PA 280**, amended the section distributing the CVRF, MCL 780.905, to:
- Eliminate further diversion of the CVRF for the 5 MSP purposes.
- Allow indefinite funding, **up to $3.5 million annually**, from the fund's surplus, if any, for the establishment and maintenance of a statewide trauma system (including staff support and related emergency medical services program activities) through FY 2013-14.
- Reduce the $3.5 million by half after October 1, 2014, "**unless the amount expended is reasonably proportional to crime victims' utilization of the statewide trauma system**".
  [Note that it was no where stated who would **determine that**.]
- Include an effective date of April 1, 2011.
- Be tiebarred to HBs 5661 and 5667.

**HB 5661, 2010 PA 281,** amended the section distributing the CVRF, MCL 780.905, to:
- Increase the crime victim's rights assessment for a felony from $60 to **$130**.
- Increase the crime victim's rights assessment for ***any*** misdemeanor to **$75**. [Until then there was an assessment of $50 for "a serious misdemeanor or a specified misdemeanor". These are limited lists of misdemeanors found in MCL 780.901(h) and MCL 780.811 (via 780.901(g).).]
- Increase the crime victim's rights assessment for juvenile offenses from $20 to $25. [Juvenile offense is one that if committed by an adult would be a felony, serious misdemeanor, or a specified misdemeanor.]

**HB 5667, 2010 PA 282,** amended the crime victim's compensation act, MCL 18.361, to:
- Increase the ceiling on the aggregate award for victim's compensation from $15,000 to $25,000. [***Note***: The $15,000 limit has been in effect since the original 1976 statute.]
- Revise the amounts allowed for funeral expenses from $2,000 to $5,000.
- Extend grief counseling to grandparents and grandchildren.
- Allow up to $500 for cleaning up the crime scene (once permitted by the investigating law enforcement agency) if the crime scene is located at the residence of the victim or of a surviving spouse, parent, grandparent, child, sibling, or grandchild of a victim of a crime who died as a direct result of the crime.

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**HB 4915 As Introduced**:

One of the key parts of the 2010 compromise was that the amount of funds available the statewide trauma system would be cut in half (to $1.5 million) "**unless the amount expended is reasonably proportional to crime victims' utilization of the statewide trauma system**".

The sole rationale for use of CVRF money for this purpose is that trauma centers serve "crime victims". Absent that connection, there is no justification for the use of a constitutionally dedicated restricted revenue fund for this purpose. The October 1, 2014, date was a concession by critics in 2010 to allow funding for a statewide trauma system that was not dependent upon service to crime victims.

After 3 years where is the data as to the utilization of the statewide trauma system for crime victims? DCH's attempt to answer that last March does not warrant the proposed bill.

**HB 4915** would extend by 4 years the date for reducing CVRF money for the trauma system regardless of whether the amount expended is reasonably proportional to crime victims' utilization of the statewide trauma system. It's an extended blank check without accountability.

When HB 4915 was considered by this Committee last March, SB 678 was pending on Third Reading in the Senate to earmark $10 million of tobacco settlement money to fund the trauma system. Later on SB 678 was amended and enacted to instead provide stable funding for maintenance of the Capitol, without providing funds for a statewide trauma system.

Since March, EHB 5313, 2014 PA 252, Art IV (DCH Budget, FY 2014-15), Part 1, Sec. 120, was enacted to provide a one-time appropriation of $1.3 million for "Statewide trauma system". Note how Sec. 1904 describes how that money is to be used:

> **Sec. 1904. From the funds appropriated in part 1 for the statewide trauma system, the department shall allocate funds to establish and operate statewide systems for trauma, stroke, ST segment elevation myocardial infarction, perinatal, and other time-dependent systems of care.**

That objective is clearly a significantly broader agenda than treating crime victims.

**Reasons not to extend the date and even to eliminate use of CVRF money altogether**:

- The Constitution authorizes an assessment to fund crime victim's rights, not just anything the Legislature finds it convenient to pay for. Expediency sets dangerous precedents.
- Just because trauma centers are desperate for money does not mean the CVRF is the right pot. The end does not justify the means.
- As was feared in 2010, the deal is being broken to perpetuate use of CVRF money without substantiation of service to crime victims. Commitments made to advance legislation are quickly forgotten in the era of term limits. Who was here in 2010? Who will be here in 2018 when the proposed sunset is likely to be extended again?
- A statewide trauma system benefits ALL citizens of the state and serves those who suffer serious injury by anyone whose car slides off road into a tree, who falls off a roof, who mangles a limb in an industrial accident, or who is injured playing sports. Moreover the boilerplate provision in 2014 PA 252 includes heart attack, stroke, and perinatal emergency services. The purported service to crime victims is little more than a guise to access restricted revenue that was never intended for that purpose and to avoid the tough call to prioritize GF/GP funding.
- How attenuated must an expenditure be from revenue generated for a constitutionally authorized purpose from a constitutionally authorized source before it becomes a tax?

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- **Without the money for the trauma system, the CVRF would not need the level of revenue** generated by doubling the assessment for felonies and imposing a $75 CVR assessment on ALL misdemeanors (like trespass and MIP). The CVR assessments could be reduced to more reasonable levels and again exclude minor offenses.
- We tend to look at bills with tunnel vision. Here is a larger context. In 1969 the only "extra" monetary penalty in criminal cases beyond fines and costs (all of which stayed local) was the $3 judgment fee in district court. That evolved into "minimum costs" which have escalated to **$68** for felonies and **$50** for misdemeanors plus the CVR assessment of **$130** or **$75** respectively – amounting to **$198** for felonies and **$125** for misdemeanors. (For traffic civil infractions, once subject as misdemeanors to the same $3 judgment fee, the state justice system assessment is now $40.) If judges reduce local fines and costs in light of these "state" fees, the result is effectively a **diversion of local revenue for a state-dictated purpose that could otherwise fund local courts and law enforcement**. Another name for it? **Reverse revenue sharing**.

Respectfully,

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