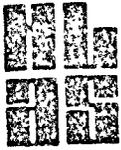


JUVENILE PROBATION: RESTITUTION



House Legislative Analysis Section

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone 517/373-6466

House Bill 4558 as passed by the House
Second Analysis (7-27-87)

Sponsor: Rep. Kay M. Hart
Committee: Judiciary

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THE APPARENT PROBLEM:

Because the juvenile code is silent on whether a judge may order restitution or community service as a condition of probation, there is uncertainty over whether juvenile court judges have this authority. Some courts have assumed it, while others evidently are reluctant to do so without express statutory permission. In order to ensure that courts have this alternative, amendments to the juvenile code have been proposed.

THE CONTENT OF THE BILL:

The bill would amend the juvenile code to specifically authorize the court to, as a condition of probation, order a juvenile lawbreaker to do one of the following two things:

- pay restitution to the victim, plus perform community service or services for the victim (services for the victim would be ordered only if the victim wished it); or,
- seek and maintain employment in order to pay restitution.

Restitution could not be ordered as a condition of probation unless the juvenile would be able to pay at least part of it during the term of his or her probation. The court would have to provide for payment in specified installments and within a specified period of time. In determining the amount and manner of payment, the court would have to consider the juvenile's financial resources and the burden that payment would impose, with due regard for any other moral or legal financial obligations that he or she may have. When a juvenile was ordered to find a job and pay restitution with the earnings, the amount ordered could not exceed 30 percent of the net income per pay period.

A juvenile who was not in intentional default on restitution, or an adult acting on his or her behalf, could ask the court to modify the amount owed or cancel any unpaid portion. The court would cancel all or part of the amount remaining due if satisfied that payment would impose a manifest hardship on the juvenile. If all or part of restitution was canceled, the court could modify the conditions of probation to require the juvenile to engage in community service.

The court could revoke or alter the conditions of parole for intentional default on restitution or an intentional refusal to perform community service.

If a juvenile was unable to pay all or part of the restitution ordered, the court could order a custodial parent to pay all or part of the unpaid amount, up to a maximum of \$2,500.

The bill would take effect January 1, 1988.

MCL 712A.18

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no fiscal impact. (5-13-87)

ARGUMENTS:

For:

Restitution has a twofold benefit: it helps the victim, and it teaches the wrongdoer that actions have consequences. It can even imbue that person with a new sense of responsibility. The bill would ensure that juvenile courts have the authority to order restitution and community service of adjudicated juveniles, and it would do so within the standards set for adult restitution by the United States Supreme Court. Further, the bill would minimize disparate treatment of poor and affluent youngsters by providing that (1) if restitution was paid, some sort of service would have to be performed, and (2) if a juvenile had to work to pay restitution, then the court could not order that services be performed.

Against:

The bill should not allow a court to require parents to pay restitution. The juvenile code is for the disposition and rehabilitation of juveniles. It is the child, not the parent, over whom the court has jurisdiction in a delinquency proceeding. The financial responsibilities of the parents of juvenile lawbreakers would be more properly dealt with in some other law.

Response: If the parents have the resources, they should be made to pay restitution so that the victim is assured of receiving payment and parents are induced to involve themselves in their child's problems. Although the Revised Judicature Act allows a person to collect up to \$2,500 from parents for a child's malicious destruction of property, that process requires the victim to initiate civil litigation. Many of the victims of juvenile crime are poor people to whom the legal system is virtually inaccessible. By providing for restitution from parents where necessary, the bill would ensure that victims are treated fairly. The provisions would not constitute precedent-setting requirements outside the scope of the juvenile code, for the code already allows the juvenile court to make various demands of parents.

Against:

Another way to teach older delinquents that actions have consequences would be to jail them for a brief period. Specific statutory provisions could ensure that the jailing was applied only to serious offenders, and that the juveniles were shielded from adult criminals, visited by someone outside the jail system, and checked frequently by jail employees.

Response: Juvenile jailing is a complex and controversial issue that is not germane to the subject at hand — namely, providing restitution to victims. Juvenile jailing is a matter for separate legislation.

Against:

The bill would allow a court to require a juvenile to seek and maintain part-time or full-time employment. Full-time employment could be an inappropriate requirement for a

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younger delinquent who is legally required to attend school.

POSITIONS:

The Michigan Council on Crime and Delinquency supports the bill. (7-22-87)

The Prosecuting Attorneys Association of Michigan supports the bill. (7-21-87)

The Probate Judges Association supported the bill as reported out of committee, but does not have a formal position on the House-passed version at this time. (7-13-87)

The Michigan Federation of Private Child and Family Agencies opposes providing for payment of restitution by a juvenile's parents, but supports providing for payment of restitution and performance of community service by the juvenile offender. (7-23-87)
