

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

House Bill 4558 (Substitute S-1 as reported)**Sponsor:** Representative Kay M. Hart**House Committee:** Judiciary**Senate Committee:** Judiciary**Date Completed:** 2-9-88**RATIONALE**

Since the juvenile code is silent on whether a judge may order restitution or community service as a condition of probation, there is some uncertainty over whether juvenile court judges have such authority. Some courts have assumed it, while others reportedly are reluctant to do so without express statutory authority. In order to ensure that courts have this alternative, some feel that the juvenile code should be amended to grant juvenile court judges the express authority to order restitution and community service.

CONTENT

The bill would amend the juvenile code to authorize the juvenile court to order a juvenile offender, as a condition of probation, to do either of the following:

- Pay restitution to the victim, and either engage in community service or, with the victim's consent, perform services for the victim.
- Seek and maintain paid part- or full-time employment and pay restitution to the victim from earnings of that employment.

A court could not require a juvenile to pay restitution unless the juvenile was or would be able to pay all or part of the restitution during his or her probation. If a court ordered a juvenile to find work to pay restitution, the amount of restitution could not exceed 30% of the juvenile's net income from that job.

If a juvenile were unable to pay all of the restitution ordered, the court could order the juvenile's custodial parent to pay all or part of the unpaid restitution, after the parent was given notice and an opportunity to be heard. The amount a parent could be ordered to pay could not exceed \$2,500.

A juvenile who was required to pay restitution and who was not in intentional default, or an adult acting on the juvenile's behalf, could ask the court to modify the amount owed or cancel any unpaid portion. A parent who was ordered to pay restitution also could seek a modification or cancellation.

A court would be required to cancel all or part of the restitution due from a juvenile or parent if the court were satisfied that payment would impose a manifest hardship on the juvenile or parent. If a court canceled all or part of a juvenile's restitution order, it could require the juvenile to perform community service. If a court found that a juvenile intentionally defaulted or refused to perform community service, the court could revoke or alter the terms and conditions of probation.

If a court ordered a juvenile or parent to pay restitution, the court would have to consider the party's financial resources and the burden that payment would impose, with due regard to any other moral or legal financial obligations the juvenile or parent had. When ordering restitution, the court would have to provide for payment in specified installments and within a specified period of time.

The bill would require compliance with the fingerprinting provisions of House Bill 4598 before an order of disposition could be entered.

The bill would take effect June 1, 1988.

MCL 712A.18

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted a substitute (S-1) to the bill that incorporates language from House Bill 4599 that would require a juvenile court to ensure that a child had been fingerprinted before entering an order of disposition and to report the disposition to the State Police. The substitute also includes an effective date of June 1, 1988. (The House-passed version included an effective date of January 1, 1988.)

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS**Supporting Argument**

Restitution orders should be an option for juvenile court judges because restitution aids the victim while teaching the offender that actions have consequences. Such a lesson could even help to invest a young offender with a new sense of responsibility. The bill would ensure that juvenile courts had 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 if restitution were paid, some sort of service would have to be performed, unless a juvenile were ordered to seek employment to pay restitution.

In addition, the bill would allow the court to order parents to pay all or part of the restitution ordered if the child were unable to pay. The bill would allow the court to order a child's custodial parent to pay up to \$2,500. This would ensure that the victim received payment and could induce

the parent to become more involved the child's problems.

Response: Parental responsibilities for restitution should not be based on an arbitrary amount, but on ability to pay. If a parent could afford more than \$2,500 and the restitution order called for higher payments, the parent should have to cover it. On the other hand, a parent who could not reasonably pay that much shouldn't have to.

Opposing Argument

The bill would allow a court to require a juvenile to seek and maintain part-time or full-time employment. Court-ordered employment could be an inappropriate requirement for a juvenile who was legally required to attend school.

Legislative Analyst: P. Affholter

Fiscal Analyst: B. Bowerman

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.