

**CRIME VICTIMS RIGHTS
AMENDMENTS**

**Senate Bill 1180 (Substitute H-1)
First Analysis (12-12-00)**

**Sponsor: Sen. William Van Regenmorter
House Committee: Criminal Law and
Corrections
Senate Committee: Judiciary**

THE APPARENT PROBLEM:

The Crime Victim's Rights Act was enacted in 1985 in response to public criticism of the criminal justice system. Some people felt that those accused of committing crimes were better protected under the Constitution than the victims of crimes. The Crime Victim's Rights Act sought to counter-balance some of the apparent problems with the system by seeking to empower victims. The act required prosecutors and other law enforcement officials to allow crime victims the opportunity to participate in the criminal justice process and to treat those victims with a degree of deference. The act initially addressed only crime victims' rights in felonies committed by adults. Over the years, the law has expanded to provide further protections for victims; juvenile offenses and serious misdemeanors have been added to the types of crimes that warrant application of the act, as have expanded restitution requirements, and expansion of the notice provisions, to name a few. However, many feel that 15 years after the act was enacted, there are further protections that should be provided to crime victims. Among the changes that crime victim rights advocates suggest are better privacy protections for victims, expansion of the notification provisions, expansion of the types of costs that warrant restitution, and an increase in the amount of restitution that may be granted where death or serious impairment has occurred.

THE CONTENT OF THE BILL:

The bill would amend the Crime Victim's Rights Act to implement a wide variety of amendments intended to enhance the act's effectiveness and limit certain abuses. The bill would place substantially similar amendments in each of the act's three articles. The articles apply to victims of adult felonies, juvenile offenses, and serious misdemeanors.

Victims. The bill would change who could be treated as a victim under the act. Parents, guardians, or custodians of a victim would not be able to claim a victim's rights where that parent, guardian or custodian was either the defendant or was incarcerated. Further, no one could exercise rights and privileges as a victim where he or she was charged with a crime that arose from the same transaction wherein he or she claimed to have been a victim. A prisoner who was the victim of a crime would not be allowed to exercise the rights or privileges provided under the act; however, he or she could submit a written statement to the court for consideration at the time of sentencing. The bill would also specify that a victim of a crime that was prosecuted under a local ordinance would have the same rights that he or she would have had if the prosecution had proceeded under a similar state law.

Notice. In addition to the current provisions allowing a victim to call for information about the crime, the bill would allow a victim to ask that he or she be informed when an arrest occurs. The investigating law enforcement agency would have to promptly notify the victim about both the arrest or pretrial release of a defendant, and a sheriff or juvenile agency would be required to notify the investigating agency if a defendant held by either entity was released from custody. The notification provided by a prosecuting attorney to a victim would have to include a convenient means for the victim to notify the prosecutor that the victim intended to assert his or her rights under the act.

The Department of Corrections would be required to provide a victim with notice of any transfer from a community residential program or tether program to another such program or to a state correctional facility, or if a juvenile was transferred from one juvenile facility to another. This would expand the current law which only requires notification if the transfer is from a secure to a nonsecure facility. Further, the

department would be required to notify a victim about a prisoner's pending release 90 days before he or she is discharged from prison. Current law only requires this notification when it is practical. A victim would also have to be notified if a prisoner was convicted of a new crime or was returned to a correctional facility for a violation of parole.

Protections for victim's privacy. A victim's work address and phone number would be barred from inclusion in the court file or ordinary court documents except where contained in the trial transcripts or, in the case of addresses, is used to identify the place where the crime occurred. Inclusion of a victim's home address and phone number is already barred, unless used to identify the crime scene. Further, the bill would bar the following information and visual representations of a victim from disclosure under the Freedom of Information Act: home and work addresses and telephone numbers, unless the address is used to identify where the crime occurred; and any pictures, photos, drawings, or other visual representation, including any film, videotape, or digitally stored image of the victim.

The bill would make it clear that although a victim may be sequestered prior to giving testimony, he or she may not be sequestered from the trial after he or she has testified. The bill would also provide that at sentencing, a victim could appoint another person, not necessarily an attorney, to make the victim's oral impact statement. The person designated to provide the statement would have to be 18 years old or older, but could not be either the defendant or a person who was incarcerated.

Restitution. The bill would also allow the inclusion of certain losses (for purposes of restitution) that are not currently allowed. An order of restitution could include reasonably determined costs that are actually incurred or are reasonably expected to be incurred. Currently, only actual costs may be included. Reasonable costs for homemaking or child care could be awarded based upon local rates for comparable services even if the actual services were provided by someone else without charge. In cases where a deceased victim could have been claimed as a dependent on his or her parent's or guardian's federal, state, and local tax returns, restitution could be awarded to cover an amount equal to the lost tax deduction or credit. The amount for the lost deduction or credit could be calculated for each year that the victim could reasonably have been claimed as a dependent. In addition, if a crime caused the death or serious bodily injury of the victim, the court could order up to three times the amount of

restitution otherwise allowed. Serious impairment of a body function would include the types of injuries listed in the drunk driving laws, but would also include the loss of a body organ.

Furthermore, the bill would also make a number of changes to the process of collecting restitution. Under the bill, a court could order any employed defendant to execute a wage assignment to pay restitution. A court could enforce an order of restitution *sua sponte* (on its own, without a waiting for a motion). A court could not impose a fee on a victim, a victim's estate, or a prosecuting attorney for their efforts to enforce an order of restitution. If restitution was to be paid in full within a specified time period, at the end of that period the probation officer assigned to the case would be required to review the case to determine if full payment had been made. Further, if at any time the probation officer determined that restitution was not being paid as ordered, he or she would be required to report the violation or petition the court for a probation violation.

The bill would also allow a court to require a parent or parents (not a foster parent) who had supervisory responsibility over a juvenile at the time the crime occurred to pay the restitution costs owed by the juvenile. A court could order the parent or parents to pay if the juvenile is or will be unable to pay all of the restitution costs. The parent or parents would be given notice and an opportunity to be heard. Payment on the outstanding portion of the restitution order by the juvenile's parent or parents would not absolve the juvenile of his or her obligation to pay restitution. However, the amount owed would be offset by the amounts paid by the parent or parents.

In making its decision whether to require the parent or parents of a juvenile to pay the juvenile's restitution, a court would have to take into account the parent's financial resources and the burden that the payment of restitution will impose, as well as any other moral or legal obligations the parent might have. If a parent is required to pay restitution, the court must provide for the payment to be made in specified installments and within a specified period of time. The parent could petition for modification or cancellation of the amount owed. All or part of the parent's obligation could be cancelled if the court determined that payment of the amount due would impose a manifest hardship on the parent and if the court also determined that modifying the method of payment will not impose a manifest hardship on the victim.

Finally, the bill would also provide that if the person who was to receive the ordered restitution cannot be

located or refuses the money, the money would, two years after the date it could have been claimed, be deposited in the Crime Victim's Rights Fund. The party entitled to the restitution could still claim the money at a later date by applying to the court that originally ordered and collected it. The court would have to pay the amount owed from funds that would otherwise be paid to the fund.

Payment priority. Payments made by a defendant for fines, costs, restitution or other payments arising out of the same criminal proceeding would be applied in the following manner – the first 50 percent of each payment made would be applied to the amount owed to the victim with the balance to be applied to the other amounts owed. If the crime involved violation of state law, the remaining 50 percent would be applied first to the costs owed, then to fines, then to probation or parole supervision fees, and finally to assessments and other payments, including reimbursing third parties who reimbursed the victim. If the crime was a violation of a local ordinance, the remaining 50 percent would be applied first to pay for costs and fees, and then towards assessments and other payments. [Note: Payment priorities are also listed in the Code of Criminal Procedure (MCL 769.1a, and the Juvenile Code (MCL 712A.30 and 712A.31).]

Advance notice. If a prosecuting attorney had provided an appellate court with appropriate notice, the court would be required to expedite delivery of an order or opinion that would reverse a conviction or juvenile adjudication, vacate a sentence or disposition, deny the prosecutors appeal, or remand a case for a new trial. An expedited delivery would require that the document be delivered to the prosecuting attorney's office by any means reasonably calculated to give the prosecuting attorney prompt notice.

Juveniles. The bill would also prohibit a juvenile's case from being diverted or otherwise removed from the adjudicative process unless the court notifies the prosecutor in writing and allows the prosecutor to address the court before the case is removed. Before any action is taken, the prosecutor would have to inform the victim and the victim would have to be allowed to attend the hearing and address the court. Before finalizing any informal disposition of the case, the prosecuting attorney would have consult with the victim. In addition, a court would be required to accept a prosecutor's petition to have the court take jurisdiction over a juvenile offense, unless the court found that the allegations were not sufficient to support a claim of jurisdiction. Further, even if the court decided to divert or otherwise remove the case from the

adjudicative process, it would be required to order full restitution.

The bill would take effect on January 1, 2001.

MCL 780.2 et al.

HOUSE COMMITTEE ACTION:

The House Committee on Criminal Law and Corrections adopted a substitute bill that incorporated a number of amendments. A limitation on the availability of the victim's name under the Freedom of Information Act was eliminated. A requirement that the appellate courts give prosecutors 48 hours advance notice on certain orders was limited to require the court to provide for expedited delivery of such orders instead. An effective date was added and a number of other amendments were made for consistency.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have an indeterminate impact on the state and local units of government. (12-5-00)

ARGUMENTS:

For:

Michigan has been a leader in the provision of crime victims' rights. As was the case when the act was first adopted, many crime victims feel helpless and vulnerable for months after the crime; knowing what is going on and being able to make an impact statement helps many victims to feel more in control of their lives and helps them to publicly state how they feel and the impact that the crime has had on their lives. The restitution requirements serve to help the victims and to force the person who committed the crime to make a recompense for his or her actions, hopefully causing him or her to contemplate the all of the costs of those actions.

Against:

The bill raises questions as to how far victims rights laws should be extended. Wouldn't the application of punitive damages like the treble damages allowed in the bill be better left to civil courts, than to allow a court to apply them based solely on the victim's level of injury? For that matter, is restitution for the loss of a loved one's tax deduction a reasonable inclusion in the act? Is it reasonable to require full restitution from a juvenile offender who is diverted from the formal

docket and whose case does not result in an adjudication?

Furthermore, it is possible that the bill oversteps its bounds. A number of the new provisions have counterparts in other acts and could create conflict and/or confusion. For example, the bill would require a court to accept a prosecuting attorney's petition to invoke the court's jurisdiction over a juvenile offense. The law regarding the jurisdiction and authority of the family division of the circuit court on such matters states that the court has jurisdiction "only if" a prosecutor files a petition (MCL 712A.2). Whether the impact or intent of the bill's provisions is to change or to emphasize that law, the fact remains that such language would be much better placed in the Juvenile Code. Its inclusion in the bill risks confusion, and could be seen as attempting to change the Juvenile Code's provisions through the Victim's Rights Act.

Similar confusion could result from other provisions of the bill. Allowing a court to retain money owed to the Crime Victim's Rights Fund for payment to a victim who had not collected his or her money before the amount was forwarded to the fund could conflict with the requirements of the Crime Victim Services Commission (MCL 780.905). Provisions establishing priority for restitution payments already exist in the Juvenile Code and the Code of Criminal Procedure. The Juvenile Code also contains provisions regarding the obligation of supervisory parents to pay amounts owed by their children. The Code of Criminal Procedure also contains provisions that set rules for types and amounts of restitution that may be ordered. In all these cases, conflicts could arise (if they don't already exist) when amendments are made to one act without making similar amendments to the other act.

Finally, perhaps it is time to consider consolidation of the act's provisions rather than maintaining what are in essence three separate acts – one for adult felonies, one for juvenile offenses and another for serious misdemeanors.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (12-7-00)

The Michigan Press Association does not oppose the bill. (12-7-00)

The Michigan District Judges Association has withdrawn its opposition to the bill and continues to support the bill's general concepts. (12-7-00)

Analyst: W. Flory

#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.