

EXPAND PERSONS ELIGIBLE TO GIVE VICTIM IMPACT STATEMENT

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House Bill 5798 as enacted
Public Act 370 of 2018
Sponsor: Rep. Thomas A. Albert
House Committee: Law and Justice
Senate Committee: Judiciary
Complete to 6-19-19

BRIEF SUMMARY: House Bill 5798 amends the William Van Regenmorter Crime Victim's Rights Act to expand the definition of victim for the purpose of victim impact statements.

FISCAL IMPACT: House Bill 5798 would have an indeterminate fiscal impact on the state and on local units of government. (See **Fiscal Information**, below, for further discussion.)

THE APPARENT PROBLEM:

Michigan has long recognized and protected certain rights of crime victims. In 1976, Public Act 223 created the Crime Victims Compensation Board for the reimbursement of crime victims. Then, in 1985, the Crime Victim's Rights Act was enacted as Public Act 87 to provide certain rights to victims, including the ability to make victim impact statements during sentencing hearings based on an order of priority. In 1986, *People v Kisielewicz* expanded the eligible persons allowed to give a victim impact statement notwithstanding the order of priority given under statute. The Michigan Court of Appeals held that parents of a victim have a right under the Crime Victim's Rights Act to make an impact statement. The court also allowed victim impact statements from the victim's grandparents, aunt, and uncle.¹ According to the *Michigan Bar Journal*, several other Michigan cases have cited *People v Kisielewicz* to allow the expansion of victim impact statements.²

Despite the expansion of victim impact statements by the Michigan Court of Appeals, this practice has not been codified in statute. This bill would codify the long-standing practice.

THE CONTENT OF THE BILL:

Article 1 of the Crime Victim's Rights Act provides for rights of a victim of a crime that either is designated by law as a felony or is punishable by imprisonment for more than one year. Article 2 provides for rights of a victim of certain juvenile offenses. Article 3 provides for rights of a victim of a "serious misdemeanor," which includes specific violations of law listed in Article 3.

¹ *People v. Kisielewicz*, 156 Mich App 724; 402 NW2d 497 (1986).

² David W. Thompson, "The Impact of *People v. Kisielewicz*," *Michigan Bar Journal*, March 2018.
<http://www.michbar.org/file/barjournal/article/documents/pdf4article3340.pdf>

The bill amends Articles 1, 2, and 3 to allow an individual listed below, as long as he or she is not a defendant in the case, to make a victim impact statement if the victim is deceased, if the victim is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process, or if the victim consents to the designation of an individual listed below as a victim for purposes of submitting or making a victim impact statement only:

- The spouse of the victim.
- A child of the victim if the child is 18 years of age or older.
- A parent of the victim.
- The guardian or custodian of a child of the victim if the child is less than 18 years of age.
- A sibling of the victim.
- A grandparent of the victim.
- A guardian or custodian of the victim if the victim is less than 18 years of age at the time of the commission of the crime and if that guardian or custodian is not incarcerated.

Previously, “a parent, guardian, or custodian of a victim who is less than 18 years of age at the time of the commission of the crime and who is neither the defendant nor incarcerated” could give a victim impact statement. The bill, as described above, continues to prohibit an incarcerated guardian or custodian of a minor victim from providing a victim impact statement, but allows a victim’s parent to provide one whether incarcerated or not.

The bill took effect March 17, 2019.

MCL 780.752, 780.781, and 780.811

FISCAL INFORMATION:

House Bill 5798 would have an indeterminate fiscal impact on the state and on local units of government. Expanding eligibility for victim impact statements could lead to additional court cases and subsequent convictions. Information is not available on the number of convictions that would result under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

ARGUMENTS:

For:

Supporters of the bill argued that because Michigan courts are currently allowing statements from a wider group of individuals than delineated in statute, the bill would neither change current practice nor be a burden to implement. Instead, the bill would ensure consistency and continuation of that practice across all Michigan courts.

Against:

No arguments opposing the bill were presented during House committee testimony.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.