



**House
Legislative
Analysis
Section**

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**RESTITUTION FOR CRIME: ADD
DOMESTIC VIOLENCE SHELTERS**

**House Bill 4509 with committee
amendments**

Sponsor: Rep. Eric Bush

House Bill 4510 as introduced

Sponsor: Rep. James Ryan

House Bill 4608 as introduced

Sponsor: Rep. Roland Jersevic

First Analysis (4-6-95)

Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

In 1993, the legislature enacted a package of laws (Public Acts 341 through 348) that broadened and strengthened laws affecting crime victims. Among other things, the 1993 laws require, rather than allow, courts to order restitution for crime victims; extended eligibility for restitution to include not only individuals and businesses but also associations, governmental entities, "or any other legal entity that suffered direct physical or financial harm"; require certain juvenile defendants (those "waived" into the circuit court from the juvenile division of the probate court in the case of certain crimes) to pay restitution to their victims; and add certain expenses (the costs of child care, homemaking, and the seizure or impoundment of property) for which restitution can be ordered.

Legislation has been proposed to add domestic violence shelters to the provisions allowing the payment of restitution directly to an organization that provides services to a crime victim.

THE CONTENT OF THE BILLS:

The bills would amend the Crime Victim's Rights Act, the Code of Criminal Procedure, and the juvenile code to allow payment of restitution directly to shelter programs for victims of domestic violence (and their dependent children) and to allow prosecutors to enforce such restitution orders.

Under these three laws, if a crime victim or his or her family consents, an order of restitution may

require that the defendant make restitution in the form of services (in lieu of money) or make restitution to someone (a "person") designated by the victim or his or her estate if that person had provided services to the victim as the result of the crime. The acts also specify who may enforce an order of restitution to a victim or victim's estate in the same manner as a judgment in a civil action; namely, the prosecuting attorney or the victim or the victim's estate named in the order to receive the restitution.

The bills would amend each of these acts to allow a shelter program for victims of domestic violence (or a similar community service program) to be one of the "persons" designated by the victim (or his or her estate) to receive restitution for services provided to the victim, and to allow the prosecuting attorney to enforce such an order of restitution.

House Bill 4509 would amend the Crime Victim's Rights Act (MCL 780.766 et al.); House Bill 4510 would amend the Code of Criminal Procedure (MCL 769.1a); and House Bill 4608 would amend the juvenile code (MCL 712A.30).

BACKGROUND INFORMATION:

Currently, restitution payments may be ordered for (a) property lost or damaged as the result of a crime, (b) the costs of the victim's medical and related professional services and devices, (c) physical and occupational therapy and rehabilitation,

House Bills 4509, 4510 and 4608 (4-6-95)

(d) income loss suffered by the victim as the result of the crime, (e) the costs of psychological and medical services to members of the victim's family, (f) child care and homemaking expenses, and, where the victim had been killed, (g) funeral expenses. However, if the victim or the victim's estate consents, the order of restitution may require that instead of paying the above restitution, the defendant make restitution (a) in services instead of money or (b) to a person designated by the victim or his or her estate if that person provided services to the victim as the result of the crime.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bills 4509 and 4510 would have no fiscal implications. The agency reports that House Bill 4608 would result in no costs to the state. (4-4-95)

The Department of Social Services says that it is impossible to estimate the fiscal impact of the bills, as use of the proposed provision would be determined by the courts on a case-to-case basis. The new laws on domestic violence that became effective during the past nine months should increase the numbers of abusers who are arrested, prosecuted, and convicted, and thus subject to victim restitution provisions. The department does not anticipate that the bills would have a negative impact on the assessments collected from defendants by the court and earmarked for the Crime Victims Compensation Fund administered within the Department of Management and Budget, and although courts and probation departments would bear the administrative costs related to collection of restitution and distribution of funds to domestic violence shelter providers, administrative systems already are in place to handle collection and distribution of victim restitution, so these costs should be minimal. (4-5-95)

ARGUMENTS:

For:

The bills would provide concrete ways of holding abusive family members accountable for their abusive behavior, while at the same time providing a possible source of additional funding for domestic violence shelters.

Domestic violence continues to be a serious problem that threatens the health and welfare of families regardless of their socioeconomic status.

According to the Department of Social Services, there was a 77 percent increase in the number of domestic abuse incidents reported between 1989 (19,416) and 1993 (34,505). And even despite this dramatic increase in reported abuse cases, reportedly the number of actual cases still is being underreported. The department reports that in Michigan, in fiscal year 1993-94, domestic violence shelters provided over 212,000 nights of shelter and counseling, advocacy, and other support services to 6,340 adult victims and their children, with another 9,780 adult victims being helped on a non-residential basis. Given the number of assaultive crimes that occur within families (the Federal Bureau of Investigation reported that in 1989, 28 percent of female murder victims were killed by their male partners), the bills would provide another way to hold domestic abusers accountable for their actions by allowing the possibility that they be required to pay for some of the services that their assaultive behavior necessitates.

Michigan reportedly has 45 domestic violence shelters, and though the cost of domestic violence services varies somewhat in different communities, virtually every shelter could use additional funding. The DSS currently awards \$4.1 million in grants, through the Domestic Violence Prevention and Treatment Board, to support emergency shelter, counseling, and advocacy services, but these grants, by statute, cover only part of the actual costs of the services provided by the shelters. To cover these additional costs, domestic violence service agencies use volunteers, do community fund raising, and, in many cases, receive funds from other sources such as the United Way, local foundations, and other federal, state, and local sources. By providing for victim restitution fees, the bills would supplement the funding to domestic violence shelters and enhance their ability to provide these much-needed services.

Against:

The bills would allow courts to order restitution be made to a domestic violence shelter if consent was given by the victim or his or her estate, which means that it would be possible -- though not likely -- that restitution could be ordered paid to a domestic violence shelter even in cases of crimes that didn't involve domestic violence. What is more, when the defendant is poor, his or her ability to provide support to dependent children could conceivably be jeopardized by the requirement that restitution be paid. Finally, it seems rather odd to

amend the juvenile code to require juveniles to reimburse domestic violence shelters. Are there that many cases of juveniles assaulting family members, who then must make use of the services of domestic violence shelters?

Response:

In determining the amount of restitution, the court must, by law, consider the defendant's earning ability, financial resources, and any other special circumstances that could affect his or her ability to pay. Thus reimbursement to domestic violence shelters -- or any other restitution payments, for that matter -- will only be required when determined to be appropriate by the court (and when authorized by the victim or his or her estate). Further, the bills amending the Code of Criminal Procedure and the juvenile code are essentially companion bills which are necessary to implement the bill amending the Crime Victim's Rights Act because of the constitutional prohibition against amendment by reference. But with regard, specifically, to amending the juvenile code, unfortunately there are indeed juveniles who assault family members, sometimes having learned such behavior from one of their parents -- as in the case of the two sons who had been abused by their father and who, as they grew older, began abusing their mother. Given the number of assaultive crimes committed within families, the bills represent a positive change in existing law.

POSITIONS:

The Department of Social Services supports the bills. (4-5-95)

The Michigan Coalition Against Domestic Violence (the membership association of domestic violence shelters) supports the bills. (4-5-95)

The Calhoun County Prosecutor's Office supports the bill. (4-5-95)