



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 925 (Substitute S-1 as passed by the Senate)
Senate Bill 929 (Substitute S-2 as passed by the Senate)
Senate Bill 969 (Substitute S-2 as passed by the Senate)
Senate Bill 970 (Substitute S-2 as passed by the Senate)
Sponsor: Senator William Van Regenmorter (Senate Bills 925 & 970)
Senator John D. Cherry, Jr. (Senate Bills 929 & 969)
Committee: Judiciary

Date Completed: 5-29-96

RATIONALE

Michigan law contains a number of provisions designed to protect the interests of crime victims (described briefly in BACKGROUND, below). Since at least 1976, there have been statutory provisions for the reimbursement of victims' financial losses, and in 1988 the voters approved a constitutional amendment providing for an assessment against convicted defendants to pay for crime victims' rights. As a result of various enactments and amendments, the law now requires courts to impose assessments against individuals convicted of a felony, a serious misdemeanor, a specified misdemeanor, or a local ordinance substantially corresponding to a specified misdemeanor, as well as juvenile offenders and their parents.

Despite these statutory and constitutional provisions, some people believe that victims continue to be inadequately compensated while the interests of offenders are excessively accommodated. For example, although the law requires a court to order restitution to a victim or victim's estate (or to the Crime Victims Compensation Board or another person who compensated the victim for a loss), the court may order partial, rather than full, restitution. The law also requires that a restitution order be as fair as possible to the victim "without unduly complicating or prolonging the sentencing process", and requires a court to consider the defendant's financial situation and special circumstances when determining the amount of restitution. In addition, a defendant who is not in default may petition the court for a cancellation of unpaid restitution. Further, despite the mandatory language in the law, some judges reportedly refuse to order

restitution. It has been suggested that the law should be changed to ensure that the interests of victims are given priority over the interests of criminals.

CONTENT

Senate Bill 925 (S-1) would amend the Department of Corrections (DOC) law to require the DOC to deduct 50% of the funds received by a prisoner over \$50 in a given month for the payment of restitution, and to forward the restitution to the victim whenever the amount collected exceeded \$100.

Senate Bills 929 (S-2), 969 (S-2), and 970 (S-2) would amend the Code of Criminal Procedure, the juvenile code, and the Crime Victim's Rights Act, respectively, to do the following:

- Eliminate a court's authority to order partial, rather than full, restitution.
- Require a court to state on the record its reasons for not ordering restitution, if the victim received other compensation.
- Eliminate specified ending dates for restitution installment periods.
- Remove the ability of an offender to petition the court for the cancellation of an unpaid portion of restitution.
- Delete a requirement that a restitution order be as fair as possible without complicating or prolonging the disposition or sentencing process.
- Specify that a restitution order would be a judgment and lien.

- **Require a court to give the DOC a copy of the restitution order, if a person ordered to pay restitution were remanded to the DOC's jurisdiction.**

Senate Bills 969 (S-2) and 970 (S-2) also would:

- **Remove the maximum limit on the amount of restitution a juvenile offender's parents may be ordered to pay.**
- **Delete a restriction that prohibits a court from ordering a juvenile offender to pay restitution in an amount over 30% of his or her income.**
- **Reduce the factors that a court must consider in determining the amount of restitution to order.**

In addition, Senate Bill 970 (S-2) would require that all of the balance of an escrow account created from a defendant's proceeds from contracts relating to his or her crime, be paid to the Crime Victim's Rights Assessment Fund after specified allotments were satisfied.

All of the bills would take effect on June 1, 1996. Senate Bills 925 (S-1), 969 (S-2), and 970 (S-2) are tie-barred to Senate Bill 929, which is tie-barred to the other three bills. A detailed description of the bills follows.

Senate Bill 925 (S-1)

The bill specifies that, if a prisoner were ordered to pay restitution to a crime victim and the DOC received a copy of the restitution order from the court, the Department would have to deduct 50% of the funds received by the prisoner over \$50 in a given month for the payment of restitution. The DOC promptly would have to forward the restitution amount to the crime victim, as provided in the restitution order, whenever the amount collected for restitution exceeded \$100. If the prisoner were paroled, transferred to a community program, or discharged on his or her maximum sentence, the entire amount collected for restitution would have to be forwarded to the victim. These requirements would remain in effect until all of the restitution was paid. The DOC could not enter into any agreement with a prisoner that modified these requirements. Any agreement in violation of this prohibition would be void.

Any funds owed by the DOC or to be paid on behalf of any DOC employees to satisfy a

judgment or settlement to a person for a claim that arose while he or she was incarcerated, would have to be paid to satisfy any restitution orders imposed on the person of which the Department had a record. This payment would have to be made as described above.

The DOC would have to notify the prisoner, in writing, of all deductions and payments made under the bill. The obligation to pay funds under the bill could not be compromised.

"Fund" or "funds" would mean that portion of a judgment or settlement that remained to be paid to a claimant after statutory and contractual court costs, attorney fees, and expenses of litigation, subject to the court's approval, had been deducted.

Senate Bills 929 (S-2), 969 (S-2), & 970 (S-2)

Restitution Orders

Under the Code of Criminal Procedure, the juvenile code, and the Crime Victim's Rights Act, the court is required to order that a criminal or juvenile offender make full or partial restitution to any victim of the offense, in addition to or in lieu of any other penalty or disposition authorized by law, except as otherwise allowed under those acts. If a victim is deceased, restitution must be made to the victim's estate. Under the bills, the court would have to order full restitution to victims, unless restitution were ordered, instead, to a third party who compensated the victim or his or her estate for losses incurred by the victim. The bills would delete a requirement that, if the court does not order restitution, or orders only partial restitution, it state on the record the reasons for that action.

A court must order restitution to the Crime Victims Compensation Board or to any individual, partnership, corporation, association, governmental entity, or other legal entity that has compensated the victim or victim's estate for a loss incurred by the victim, to the extent of the compensation paid to the victim for that loss. The court also must order restitution to persons or entities that have provided certain services to the victim as a result of the criminal or juvenile offense, for the costs of services provided. The court may not order restitution to a victim or victim's estate, if the victim or estate has received or is to receive other compensation for that loss. The bills specify that if the court did not order restitution to the victim or estate for this reason, the court would have to state on the record, with

specificity, the reasons for its actions. If an entity entitled to restitution under these provisions could not or refused to be reimbursed for compensating the victim or the victim's estate, the State Treasurer would have to deposit the restitution paid for that entity in the Crime Victim's Rights Assessment Fund, or its successor fund.

End of Restitution Installment Period

Under the Code of Criminal Procedure, the juvenile code, and the Crime Victim's Rights Act, the end of a period of restitution or the last installment on a restitution payment cannot be later than the following (as applicable):

- The end of the period of probation, if probation is ordered.
- If a juvenile offender is made a State ward, when the jurisdiction of the Department of Social Services over the juvenile expires.
- If a juvenile offender is made a ward of the court, when the court's jurisdiction over the juvenile expires.
- Three years after the date of disposition, for a juvenile offender, or when the juvenile court's jurisdiction over the juvenile expires, whichever is later.
- For a criminal offender, two years after the end of imprisonment or discharge from parole, whichever occurs later, if the court does not order probation but imposes a term of imprisonment.
- For a criminal offender, three years after the date of sentencing, if none of the above applies.

The bills would delete those provisions for the end of an installment period, and provide, instead, that an order of restitution would remain effective until it was satisfied in full.

Cancellation or Modification of Restitution Order

Under the Code of Criminal Procedure, the juvenile code, and the Crime Victim's Rights Act, an offender who is required to pay restitution and who is not in default of the payment of the restitution may, at any time, petition the court for a cancellation of any unpaid portion. If it appears to the court's satisfaction that payment of the amount due will impose a manifest hardship on the offender or his or her family, the court may cancel all or part of the amount due or modify the method of payment. The bills, instead, would allow an offender who was not in default to petition the

court to modify the method of payment. If the court determined that payment of the restitution would impose a hardship, it could modify the method of payment, but could not cancel all or part of the amount due.

Parental Contribution

Under the juvenile code and the Crime Victim's Rights Act, if the court determines that a juvenile offender will be unable to pay all of the restitution ordered, after notice to the juvenile's parent and opportunity for the parent to be heard, the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the offense to pay not more than \$5,000 of the restitution ordered. Senate Bills 969 (S-2) and 970 (S-2) would delete that limit and specify that a parent could be ordered to pay any portion of the restitution amount that was outstanding. The bills also provide, however, that an order for a parent to pay a portion of the restitution would not relieve the juvenile of his or her obligation to pay restitution, but the amount owed by the juvenile would have to be offset by any amount paid by his or her parent.

Restitution Determination

All of the bills would delete requirements that an order of restitution be as fair as possible to the victim or victim's estate without unduly complicating or prolonging the disposition or sentencing process. Senate Bills 969 (S-2) and 970 (S-2) also would delete provisions prohibiting a court from ordering a juvenile offender to pay restitution in an amount that exceeds 30% of his or her net income per pay period from paid employment.

Under both the juvenile code and the Crime Victim's Rights Act, in determining whether to order restitution and the amount of that restitution, the court must consider the amount of the loss sustained by any victim as a result of the offense; the financial resources and earning ability of the offender, and, if a juvenile, of his or her supervisory parent; the financial needs of the offender and his or her dependents; and other factors the court considers appropriate. Under Senate Bills 969 (S-2) and 970 (S-2), the court would have to consider only the amount of the loss sustained by any victim. In the case of juvenile offenders, in determining whether to order the juvenile's parent to pay restitution, the court also could consider the financial resources of the juvenile's parent.

Judgment and Lien

All of the bills specify that restitution ordered under the amended statute would be a judgment and lien against all property of the person ordered to pay restitution for the amount specified in the order of restitution. The lien could be recorded as provided by law.

Notification of the DOC

All of the bills specify that, if an offender who was ordered to pay restitution were remanded to the DOC's jurisdiction, the court would have to provide a copy of the restitution order to the Department, when the defendant was remanded to the DOC. In the case of a juvenile offense, under Senate Bills 969 (S-2) and 970 (S-2), if the juvenile court determined that an individual who was ordered to pay restitution were remanded to the DOC's jurisdiction, the court would have to provide a copy of the restitution order to the Department, when the court made that determination.

Offender's Proceeds

The Crime Victim's Rights Act provides that a person convicted of a crime, or a juvenile adjudicated for an offense, cannot derive any profit from the sale of his or her recollections, thoughts, and feelings with regard to the offense, until the victim receives any restitution or compensation ordered for him or her against the offender and expenses of incarceration are recovered and until an escrow account created under the Act is terminated. An attorney for the county in which the conviction or adjudication occurred may petition the court to order the offender to forfeit all or any part of the proceeds received or to be received. The proceeds must be held in escrow for a period of not more than five years. During the existence of the escrow account, the proceeds have to be distributed in the following priority:

- To satisfy an order of restitution.
- To satisfy any civil judgment in favor of the victim against the offender.
- To satisfy any reimbursement ordered under the Prisoner Reimbursement To The County Act, or ordered under the State Correctional Facility Reimbursement Act.

After those payments, 50% of the balance remaining in the escrow account is payable to the offender and the remaining 50% is payable to the State General Fund for use of the Crime Victims Compensation Board, to pay compensation

claims. Senate Bill 970 (S-2) would delete authorization for the offender to receive 50% of the balance and, instead, would require that the entire balance be paid to the Crime Victim's Rights Assessment Fund.

MCL 791.220g (S.B. 925)
769.1a (S.B. 929)
712A.30 & 712A.31 (S.B. 969)
780.766 et al. (S.B. 970)

BACKGROUND

Public Act 223 of 1976 established a crime victims' compensation program that offers victims reimbursement for out-of-pocket losses. In 1985, Public Act 87 created the Crime Victim's Rights Act to establish various rights of felony victims, including the rights to receive notice of the status of a case, to make an impact statement, and to receive restitution. Public Acts 21 and 23 of 1988 extended these rights to victims of serious misdemeanors and juvenile offenses. Also in 1988, the voters approved Proposal B, which added Article 1, Section 24 to the Michigan Constitution, stating specific rights of crime victims and permitting the Legislature to provide for an assessment against convicted defendants to pay for crime victims' rights.

Subsequently, Public Act 196 of 1989 was enacted to create the Crime Victim's Rights Fund; impose an assessment on individuals convicted of a felony, a serious misdemeanor, or impaired or intoxicated driving; and credit the assessments to the Fund. In 1993, Public Acts 341 through 348 of 1993 made a number of changes to the laws relating to victims' rights and compensation. Among other things, those amendments require, rather than allow, a court to order restitution. In addition, Public Act 345 increased the assessment on felons, and provides for an assessment on people convicted of a serious misdemeanor or a specified misdemeanor (instead of a serious misdemeanor or impaired or intoxicated driving). The most recent amendment, Public Act 26 of 1996, provides that the definition of "specified misdemeanor" (in Public Act 196 of 1989) includes a local ordinance substantially corresponding to a State law listed in that definition.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan has taken numerous steps to protect the rights of crime victims and to provide for restitution to individuals and entities that suffer physical or financial harm as a result of a crime. Current law, however, gives too much weight to the interests of criminal offenders and the criminal justice system when the amount of restitution is determined. Moreover, some judges reportedly do not order restitution at all. These bills would strengthen the existing laws by requiring judges to order full restitution in every case, and making the victim's loss the sole criterion when a judge was determining the amount of restitution (except restitution paid by a juvenile offender's parents). In addition, offenders could no longer petition for a cancellation of unpaid restitution, there would be no limit on the duration of restitution installment payments, and restitution would be a lien against all property of the person ordered to pay. The bills also would remove limits on the amount that juvenile offenders and their parents may be ordered to pay.

Supporting Argument

Senate Bill 925 (S-1) would facilitate the actual payment of restitution by requiring the Department of Corrections to deduct funds from a prisoner's account and forward the amount to the victim. This should not be burdensome to the DOC, however, since the Department would not have to forward payments until the amount collected for restitution exceeded \$100, and the amount of a deduction would be limited to 50% of the funds received over \$50 in a given month. Senate Bills 929 (S-2), 969 (S-2), and 970 (S-2) would ensure that the DOC was notified by the court when a criminal or juvenile offender who was ordered to pay restitution, was remanded to the Department's jurisdiction.

Supporting Argument

Convicted criminals should not be entitled to any profit from their offenses. Senate Bill 970 (S-2) would ensure that the Crime Victim's Rights Assessment Fund--and, ultimately, crime victims--received the entire balance of an escrow account containing the proceeds from the sale of an offender's recollections, thoughts, and feelings (after the payment of restitution, civil damages, and reimbursement).

Response: It is possible that this amendment actually could harm crime victims. If offenders stood to receive no profit whatsoever from writing books or selling their stories, they might have no incentive to do so, which could lead to less money available for restitution.

Opposing Argument

Indigent defendants may not be able to afford to pay any restitution. If these individuals continued to be financially responsible for their children, mandatory restitution could threaten economic support and risk further harm to an abuser's family. Under the bills, a court could no longer consider a defendant's financial circumstances and responsibilities.

Response: A defendant could still petition the court for a modification in the method of payment, if payment would impose a manifest hardship on the offender or his or her family. Also, since the bills would remove the limits on restitution installment payments, offenders actually could be given more time to make payments.

Legislative Analyst: S. Margules

FISCAL IMPACT

Senate Bill 925 (S-1)

The bill would have no fiscal impact on local government and could have a fiscal impact on the Department of Corrections.

The additional administrative requirements of deducting funds from a prisoner's account for an order of restitution could result in increased costs, the amount of which would depend on the extent to which new computer programming was required in order to implement an effective monitoring system. This new function would be in addition to the transactions and oversight the Department currently provides for prisoners' accounts.

Senate Bill 929 (S-2), 969 (S-2) & 970 (S-2)

The fiscal impact would depend on the ability of a criminal or juvenile offender to pay full restitution ordered by the court. It is indeterminate whether the stricter enforcement methods would produce additional revenue for the Crime Victims Compensation Board.

The bill would have no fiscal impact on the Department of Corrections.

Additionally, Senate Bill 970 (S-2) could mean additional revenue to the State if an offender received any profit resulting from his or her crime. Since the bill would prohibit the offender from receiving any of the proceeds, however, it is indeterminate whether this would cause a reduction in the number of offenders engaging in profit-making activities, thus reducing funds for

restitution to crime victims from the Crime Victims Compensation Board or funds for restitution to counties and the State.

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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.