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BILL ANALYSIS

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House Bill 4588 (Substitute H-2 as passed by the House)
Sponsor: Representative William Van Regenmorter
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 9-23-05

CONTENT

The bill would amend the Crime Victim's Rights Act to do all of the following:

- **Include in Article 1 (which applies to felonies) a defendant who was found not guilty by reason of insanity.**
- **Apply certain notification requirements to a hospital or facility where a defendant was hospitalized or admitted (for mental health treatment).**
- **Add to the offenses to which Article 2 (juvenile offenses) and Article 3 (serious misdemeanors) apply.**
- **Require, rather than allow, a court to order restitution under certain circumstances.**
- **Extend the Act's restitution provisions to a defendant who was assigned to youthful trainee status or received a delayed sentence or deferral of judgment.**
- **Require restitution for lost income of a victim's family member who left employment to care for a victim.**
- **Enact restitution provisions relating to scheduled payments, an amended order of restitution, the bankruptcy of a person ordered to pay restitution, and payments involving more than one proceeding.**
- **Revise provisions in Articles 1, 2, and 3 that prohibit an offender from profiting from his or her crime.**
- **Require the Department of Corrections (DOC) or county sheriff to notify a victim under Article 1 if an offender's probation were revoked and he or she were sentenced to more than 90 days' imprisonment.**

The bill also would rename the Act the "William Van Regenmorter Crime Victim's Rights Act".

The bill would take effect January 1, 2006.

Not Guilty By Reason of Insanity & Hospital Responsibilities

Under Article 1, "defendant" means a person charged with or convicted of committing a crime against a victim. The bill would include a person found not guilty by reason of insanity of committing a crime against a victim. ("Crime" for purposes of Article 1, means a violation of penal law for which the offender may be punished by more than one year's imprisonment, or an offense expressly designated by law as a felony.)

A victim who receives a notice under Article 1 from the prosecuting attorney regarding his or her rights under the Act and who chooses to receive any notice or exercise any right under Article 1 must keep certain people informed of his or her current address and telephone number. The bill would require the victim to keep a hospital or facility informed of that information, if the defendant were hospitalized in or admitted to a hospital or facility.

Under Article 1, when a defendant is sentenced to a term of imprisonment or ordered to be placed in a juvenile facility, the prosecuting attorney must give the victim a form he or she may submit to receive notices provided for under the Act. The bill also would require the prosecutor to provide the form when a defendant was

hospitalized in or admitted to a hospital or facility.

Under the bill, on a victim's written request, the director of a hospital or facility where a defendant found not guilty by reason of insanity was hospitalized or admitted by court order would have to notify the victim of the following:

- A pending transfer of the defendant to a less secure hospital or facility.
- A pending transfer of the defendant to alternative care or treatment or community placement.
- A pending leave, absence, furlough, or other release from confinement for the defendant, whether temporary or permanent.

The notice would have to be given by any means reasonably calculated to give the victim prompt actual notice. A victim's address and telephone number maintained by a hospital or facility would be exempt from disclosure under the Freedom of Information Act.

Under Article 1, a victim who requests notification of escape and the prosecuting attorney who is prosecuting or has prosecuted the crime for which a person is detained or under sentence, must be given immediate notice of the escape by any means reasonably calculated to give prompt actual notice. The person who must give notice depends on the facility from which the defendant escaped. The bill would include in the notice requirement the escape of a defendant hospitalized or admitted to a facility. The required notice would have to be given by the director of the hospital or facility.

Under the bill, for purposes of Article 1, "hospital" and "facility" would mean those terms as defined in Section 100b the Mental Health Code (MCL 330.1100b). (Under the Code, "hospital" means an inpatient program operated by the Department of Community Health for the treatment of individuals with serious mental illness or serious emotional disturbance or a psychiatric hospital or psychiatric unit licensed under the Code. "Facility" means a residential facility for the care or treatment of individuals with serious mental illness, serious emotional disturbance, or developmental disability that is either a State facility or a licensed facility.)

Juvenile Offenses & Serious Misdemeanors

Article 2 of the Act deals with juvenile offenses and Article 3 applies to serious misdemeanors. The bill would add the following to the list of offenses to which Articles 2 and 3 apply:

- Contributing to the neglect or delinquency of a minor (MCL 750.145).
- Using the internet or a computer to make a prohibited communication (MCL 750.145d).
- Intentionally aiming a firearm without malice (MCL 750.233).
- Injuring a worker in a work zone (MCL 257.601b(2)).

Restitution

The bill specifies that, for offenses under Articles 1, 2, and 3 that were resolved by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that was not an acquittal or unconditional dismissal, the court would have to order the restitution required under the Act.

The Act provides that, if a felony, juvenile offense, or serious misdemeanor results in damage to or loss or destruction of a victim's property or results in the seizure or impoundment of a victim's property, the order of restitution may require the defendant to do one or more of the following, as applicable:

- Return the property to the owner or to a person designated by the owner.
- If return of the property is impossible, impractical, or inadequate, pay for the value of the property.
- Pay the costs of the seizure or impoundment, or both.

The bill would require, rather than allow, the order of restitution to mandate that the defendant take one or more of those actions.

Under the Act, if a felony, juvenile offense, or serious misdemeanor results in physical or psychological injury to a victim, the order of restitution may require that the defendant do one or more of the following, as applicable:

- Pay an amount equal to the reasonably determined costs of medical and related professional services and devices actually incurred and reasonably expected to be incurred relating to physical and psychological care.
- Pay an amount equal to the reasonably determined cost of physical and occupational therapy and rehabilitation actually incurred and reasonably expected to be incurred.
- Reimburse the victim or his or her estate for after-tax income loss suffered by the victim as a result of the crime.
- Pay an amount equal to the reasonably determined cost of psychological and medical treatment for members of the victim's family actually incurred and reasonably expected to be incurred as a result of the crime.
- Pay an amount equal to the reasonably determined costs of homemaking and child care expenses actually incurred and reasonably expected to be incurred as a result of the crime or, if homemaking or child care is provided without compensation, an amount equal to the costs that reasonably would be incurred as a result of the crime, based on the rates in the area for comparable services.
- Pay an amount equal to the cost of actual funeral and related services.
- If the deceased victim could be claimed as a dependent by his or her parent or guardian on the parent's or guardian's Federal, State, or local income tax returns, pay an amount equal to the loss of the tax deduction or tax credit.

The bill would require, rather than allow, the order of restitution to mandate that the defendant take one or more of those actions. Under the bill, the order of restitution also could require the defendant to pay an amount equal to income actually lost by the victim's spouse, parent, sibling, child, or grandparent because the family member left his or her employment, temporarily or permanently, to care for the victim because of the injury.

The Act provides in Articles 1, 2, and 3 that, in each case in which payment of restitution is ordered as a condition of probation, the court may order any employed defendant to execute a wage assignment to pay the restitution. The bill provides, instead, that the court would have to order any employed defendant to make regularly scheduled restitution payments. If the defendant

missed two or more regularly scheduled payments, the court would have to order the defendant to execute a wage assignment to pay the restitution.

The bill would allow the court to amend an order of restitution on a motion by the prosecuting attorney, the victim, or the defendant based upon new information related to the injury, damages, or loss for which the restitution was ordered.

Under the bill, a court that received notice that a defendant who had an obligation to pay restitution had declared bankruptcy would have to forward a copy of that notice to the prosecuting attorney. The prosecutor then would have to forward the notice to the victim at the victim's last known address.

All three articles of the Act specify how payments must be allocated if a person is subject to any combination fines, costs, restitution, assessments, probation or parole supervision fees, or other payments arising out of the same criminal proceeding. The bill specifies that, if a person were subject to fines, costs, restitution, assessments, probation or parole supervision fees, or other payments in more than one proceeding in a court, and if a person making a payment of those amounts did not indicate the proceeding for which the payment was made, the court first would have to apply the money paid to a proceeding in which there was unpaid restitution.

Offenders' Profit from Crimes

All three articles of the Act provide that a person convicted of a crime or found responsible for a juvenile offense may not derive any profits from the sale of his or her recollections, thoughts, and feelings with regard to the offense committed by that person, until the victim receives any restitution or compensation ordered for him or her against the defendant, expenses of incarceration are recovered, and an escrow account created under the Act is terminated. The Act allows an attorney for the county in which the conviction occurred or the Attorney General to petition the court to order the defendant to forfeit all or any part of proceeds received or to be received from contracts relating to the depiction of the crime or the defendant's recollections, thoughts, or feelings about the crime in books, magazines, media entertainment, or

live entertainment. The proceeds must be held in escrow for up to five years, during which time the proceeds must be distributed for restitution ordered to be paid to the victim, civil judgments in favor of the victim, or reimbursement ordered under the Prisoner Reimbursement to the County Act or the State Correctional Facility Reimbursement Act, in that order.

Under the bill, those provisions also would apply to the defendant's proceeds from the sale of memorabilia related to the crime and the sale of the defendant's property if its value had been enhanced or increased by his or her notoriety arising from the crime. Also, amounts in escrow could be used for fines, costs, and other assessments ordered against the defendant, after restitution, civil judgments, and reimbursements were paid.

Revoked Probation

Under the bill, if a defendant were sentenced to probation, the Department of Corrections or the county sheriff, as applicable, would have to notify a victim under Article 1 if the probation were revoked and the defendant were sentenced to the DOC or to jail for more than 90 days. The notice would have to include a form the victim could submit to the DOC or the sheriff to receive other notices under the Act.

Boot Camp Placement

Under the bill, if the DOC determined that a defendant was eligible for special alternative incarceration (boot camp), the Department would have to notify the victim of the offender's boot camp placement, if the victim had submitted a written request for notification under the Act. The notification would have to be made within 30 days before placement was intended to occur. In making the decision on whether to object to the placement of the defendant in boot camp, the sentencing judge or the judge's successor would have to review an impact statement submitted by the victim.

Other Provisions

Under all three articles of the Act, the prosecuting attorney must notify a victim, upon request, of certain information concerning a defendant's appeal. The required notice includes the time and place of any appellate court proceedings, and any changes to the time or place of the

proceedings. The bill would refer, instead, to appellate court oral arguments.

The Act requires the sheriff or the DOC to give a victim, upon request, certain information about a prisoner who has been sentenced to imprisonment under the jurisdiction of the sheriff or the DOC. The required information includes notice of the sheriff's calculation of the prisoner's earliest release date or the DOC's calculation of the prisoner's earliest parole eligibility date, if the sentence exceeds 90 days. The bill would delete a provision under which the victim may request notice of the calculation one time only.

Under the Act, a victim has the right to address or submit a written statement to a parole board. The bill specifies that a record of an oral statement or a written statement would be exempt from disclosure under the Freedom of Information Act.

MCL 780.751 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. To the extent that the bill would increase the level of restitution being paid, it could increase revenue in the Crime Victim's Rights Fund while also decreasing or delaying payments for fines, costs, assessments, and supervision fees, which support local libraries, courts, and law enforcement as well as the budgets for the Department of Corrections, the Michigan State Police, and the Judiciary. The bill also could potentially create additional administrative costs to local sheriffs, the Department of Corrections, and the Department of Community Health due to increased notification standards.

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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.