

## CRIME VICTIMS RIGHTS ASSESSMENTS

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### Senate Bills 535-538 as passed by the Senate

Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary

Senate Committee: Judiciary

### First Analysis (12-13-11)

**BRIEF SUMMARY:** Together, the bills would amend various acts to impose a crime victim's rights assessment for conviction of any crime, rather than just for a felony, serious misdemeanor, or specified misdemeanor.

**FISCAL IMPACT:** These proposals would have a positive fiscal impact on state and local government by increasing revenue to the Crime Victim Right's Fund to the collection level intended by enactment of a package of bills in December 2010. Current fiscal year Fund revenues are below levels anticipated, and will probably be insufficient to satisfy appropriations even with the passage of SB 536. The impact is discussed in greater detail later in the analysis. (See *Fiscal Information*.)

### THE APPARENT PROBLEM:

Public Act 582 of 2004 (enrolled House Bill 6102) required the Department of Community Health to develop, implement, and promulgate rules for the implementation and operation of a Statewide Trauma Care System within the Emergency Medical Services System. A trauma care system develops and coordinates the delivery of trauma care services within a state's borders. Efficient and timely trauma care can significantly increase survival rates and decrease the severity of disabling injuries, thus reducing the impact on a state's economy through lost wages and productivity and decreasing the reliance on public pay systems such as Medicaid. Public Act 582 also required the department to review and identify potential funding mechanisms and sources for the Statewide Trauma Care System.

Last year, the Crime Victim's Rights Fund was identified as a source for trauma care system funding. Under the Crime Victim Compensation Program, which is administered by the Department of Community Health, revenue from the fund helps pay out-of-pocket medical expenses, lost earnings, and funeral bills of crime victims. It also provides reimbursement for grief counseling, crime scene clean-up, and other financial assistance. The assessments imposed on persons convicted of certain criminal offenses provide revenue for the Crime Victim's Rights Fund. Assessments are also imposed on individuals with deferred sentences and those assigned to youthful trainee status.

Public Act 280 of 2010 (enrolled Senate Bill 1003) amended what is known as the Crime Victim's Rights Services Act (Public Act 196 of 1989) to authorize the use of up to \$3.5 million of the fund to establish and maintain a statewide trauma system per fiscal year.

Beginning October 1, 2014, trauma system expenditures will be capped at \$1.75 million per fiscal year unless the amount spent is reasonably proportional to crime victims' utilization of the statewide trauma system. A companion bill, Public Act 282 of 2010 (enrolled House Bill 5667) increased victim compensation maximums paid from the Crime Victim's Rights Fund.

To help ensure there would be sufficient revenue in the fund to cover both the increased victim compensation maximums and the trauma system, a companion bill, House Bill 5661 (Public Act 281 of 2010), increased the amount for the assessments imposed for felonies and misdemeanors and eliminated language that restricted the assessment only to serious misdemeanors and specified misdemeanors—thus seeming to broaden the assessment to include all crimes. The bill, however, failed to remove the restrictive language in another provision in which courts are required to order each person charged with an offense that is a felony, a serious misdemeanor, or a specified misdemeanor to pay the assessment. The result is that assessments are not being imposed for all misdemeanors and the revenues in the fund may not be sufficient to cover the increased expenditures required by Public Acts 280 and 282. It has been suggested that the law be amended to require all misdemeanor convictions, not just those designated as a serious misdemeanor or specified misdemeanor, to trigger a crime victim's rights assessment.

#### ***THE CONTENT OF THE BILLS:***

Senate Bill 536 would amend the Crime Victim's Rights Services Act (MCL 780.901 and 780.905) to do the following:

- Require a court to order a crime victim's rights assessment for all crimes (rather than just for a felony, serious misdemeanor, or specified misdemeanor).
- Delete the definitions of "serious misdemeanor" and "specified misdemeanor."
- Revise the definition of "juvenile offense" so that it would refer to offenses committed by a juvenile that if committed by an adult would be a crime (rather than those that if committed by an adult would be a felony, serious misdemeanor, or specified misdemeanor).

Senate Bill 537 would amend the Juvenile Code (MCL 712A.18 and 712A.18m) to do both of the following:

- Require the juvenile court to order the juvenile to pay certain costs of not less than \$53 for any misdemeanor, rather than for a misdemeanor that is a serious misdemeanor or specified misdemeanor.
- Require a juvenile court to order a juvenile to pay a crime victim's rights assessment if the court entered a judgment of conviction for any crime, rather than just for a felony, serious misdemeanor, or specified misdemeanor.

Senate Bills 535 and 538 would amend the Code of Criminal Procedure (MCL 769.1j) and Revised Judicature Act (MCL 600.8381), respectively, to define "specified

misdemeanor" in the same way as that term is currently defined in the crime victim's rights services act.

***HOUSE COMMITTEE ACTION:***

The committee reported the Senate-passed versions without further amendment.

***BACKGROUND INFORMATION:***

The following information was provided by the Senate Fiscal Agency in an analysis on Senate Bills 535-538 dated 8-29-11:

Crime Victim Compensation in Michigan

The Crime Victim Services Commission, within the Michigan Department of Community Health (MDCH), is the state agency charged with overseeing a wide range of funding and services for victims of crime. The following information comes from the MDCH website and the Crime Victim Services Commission annual report for fiscal year (FY) 2009-10.

Michigan's crime victim compensation program may award financial assistance to crime victims for the unreimbursable costs of medical expenses, counseling, loss of earnings or support, and burial assistance to survivors. Medical expenses include hospital bills, doctor bills, laboratory fees, ambulance charges, and other related costs. Loss of earnings may be paid to a victim for the period of medical disability resulting from the criminal injury, and loss of support may be paid to survivors upon the death of a victim of homicide if the victim was their primary source of support. Victim compensation is awarded as a last resort; publicly or privately sponsored insurance and court-ordered restitution must be paid first. In addition, victim compensation is awarded only when the losses represent a financial hardship for the victim.

There are limits, specified in statute, on the amounts that can be paid for various categories of compensation awards. In addition to the crime victim assessments imposed on convicted criminal defendants, the program receives Federal funds from criminal fines ordered in Federal courts.

The MDCH administers three victim service programs providing over \$20 million in services for over 250,000 people each year. Programs include crime victim's compensation, crime victim's rights, and crime victim's assistance. All program efforts are fully supported by criminal assessments or fines paid by convicted defendants in state and federal courts. The Commission provides an advisory function in policy development, determines the amount of revenue needed for crime victim's rights services, and acts as the appeals forum for compensation claims. The Commission also supports training and technical assistance for state victim advocates, and is the project leader for the statewide automated crime victim notification project.

According to the Commission's annual report, the program paid out more than \$5 million in direct financial assistance to crime victims in 2,286 claim awards in FY 2009-10 for

crime victim compensation. The Commission also awarded more than \$13.3 million in crime victim assistance grants, funding 96 projects. In 33 years of operation, the program has paid out \$79.0 million in 32,402 awards of financial compensation.

#### Public Acts 280, 281, and 282 of 2010

Public Act 280 amended the Crime Victim's Rights Services Act to allow excess revenue in the Crime Victim's Rights Fund that has not been used for crime victim compensation to be used to provide for the establishment and maintenance of a statewide trauma system, including staff support associated with trauma and related to emergency medical services program activities. Not more than \$3.5 million from the Fund may be spent for this purpose in any fiscal year. Beginning October 1, 2014, the amount spent from the Fund for the trauma system may not exceed \$1.75 million unless the amount spent is reasonably proportional to crime victims' use of the statewide trauma system.

Public Act 281 amended the Crime Victim's Rights Services Act to increase crime victim's rights assessments imposed on offenders. The Act increased the assessments for felonies from \$60 to \$130; for serious or specified misdemeanors from \$50 to \$75; and for juvenile offenses from \$20 to \$25.

Public Act 282 amended the Crime Victim's Compensation Act to increase the maximum amounts of victim compensation. Public Act 282 raised the maximum aggregate award from \$15,000 to \$25,000 per claimant. It increased the maximum amounts for funeral expenses from \$2,000 to \$5,000, and for weekly lost wages from \$200 to \$350. The amendments also increased compensation for psychological counseling from 26 hours with an hourly rate of \$95, to 35 hours with an hourly rate of \$125. Grief counseling costs were separated from the funeral maximum amount and may be reimbursed at a maximum of \$500. The act also added crime-scene cleanup costs in certain instances, covered at up to \$500.

### ***FISCAL INFORMATION:***

#### **Judiciary**

These proposals would have a positive fiscal impact on state and local government. This package of bills increases the types of offenses that would require a crime victim's rights assessment, thus increasing the Crime Victim's Rights Fund's overall revenue. The exact amount of revenue generated is indeterminate, and would depend on the number of criminal convictions in a given year.

#### **Community Health**

FY 2011-12: Senate Bill 536 will increase revenue to the Crime Victim Right's Fund to the collection level intended by enactment of a package of bills in December 2010. Current fiscal year appropriations of the Fund total \$18.2 million in the Department of Community Health budget, anticipating a full year of deposits to the Fund at the increased level of assessments enacted December 2010. Current fiscal year Fund revenues are below levels anticipated, and will probably be insufficient to satisfy appropriations even with the passage of SB 536.

Current projections indicate the Fund is short by approximately \$2.2 million to satisfy appropriations of \$14.7 million for crime victims program uses in FY 2011-12. The Department indicates that with contained spending, the shortfall may be \$1.2 million. Funds will not be available to satisfy \$3.5 million in appropriations for the statewide trauma system, which can be expended only when additional excess revenue is available according to the statutory prioritization of uses of the Fund. Total projected Fund shortfall to satisfy appropriations is \$5.7 million.

***ARGUMENTS:***

***For:***

Legislation enacted last year to increase the maximum compensation provided to crime victims for various services and to utilize revenue from crime victim's rights assessments for support of a statewide trauma system has stretched the limits of the Crime Victim's Rights Fund. Simply put, there is not enough money in the fund to cover all the statutory requirements. Some would argue that last year's legislative changes intended crime victim's rights assessments to be imposed on all misdemeanors— not just on serious or specified misdemeanors. Imposing the assessment on all misdemeanors would generate more revenue to the fund and would correct what some believe to be an unintentional error that continues to limit courts from imposing the assessment on all crimes.

***Against:***

The bill package contains several drafting errors that if enacted as currently written, would create even more ambiguity. In addition, if left unchanged, the bills represent a shift in policy in that juveniles would be treated differently from adults with respect to court-ordered assessments and that the historical distinction between minor offenses and serious misdemeanors would be obliterated.

***Against:***

Some feel that expanding imposition of a crime victim's rights assessment to include all misdemeanors is unfair as it would impose the assessment for crimes that were victimless, such as urinating in public and also for very minor offenses. The change in policy might make sense if all expenditures from the fund went to criminal justice related services or programs as it used to, but now some of the fund revenue would go to support a trauma system.

***Response:***

Though true that offenders convicted of minor offenses and so-called "victimless" crimes would now have to pay crime victim's rights assessments, it is also true that money has to come from somewhere. Besides, a statewide trauma system would benefit victims of violent crimes and drunken driving accidents by providing care in a timely manner. Thus, a trauma system would increase a crime victim's chance for survival and recovery.

***POSITIONS:***

A representative of the Crime Victim Services Commission testified in support of the bills. (12-1-11)

The Office of Attorney General indicated support for the bills. (12-1-11)

The Prosecuting Attorney Association of Michigan (PAAM) indicated support for the bills. (12-1-11)

The Michigan Domestic Violence Prevention and Treatment Board indicated support for the bills. (12-1-11)

The Michigan District Judges Association indicated opposition to the bills, in particular SB 538, since that bill extended the assessment to all crimes.

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■ 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.