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**SFA****BILL ANALYSIS**

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Senate Bill 1233 (Substitute S-1 as passed by the Senate)  
Senate Bill 1234 (Substitute S-1 as passed by the Senate)  
Senate Bill 1235 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator William Van Regenmorter (Senate Bill 1233)  
Senator Joel D. Gougeon (Senate Bill 1234)  
Senator Bill Bullard, Jr. (Senate Bill 1235)  
Committee: Judiciary

Date Completed: 4-23-02

### **RATIONALE**

Public Act 503 of 2000 (Senate Bill 1180) made numerous amendments to the Crime Victim's Rights Act, including changes that expanded the payments that an order of restitution may include, allow a court to order up to three times the amount of restitution otherwise applicable if a crime results in the death or serious impairment of a body function of a victim, and prohibit a juvenile's case from being diverted or otherwise removed from the adjudicative process unless the court notifies the prosecutor and allows the prosecutor to address the court, and the prosecutor informs the victim of the hearing and gives the victim an opportunity to consult with the prosecutor on the matter. The changes made by Public Act 503 took effect on June 1, 2001.

The juvenile code, the Code of Criminal Procedure, and the Juvenile Diversion Act also deal with restitution by juvenile offenders and the diversion of juvenile cases from the adjudicative process. Since June 1, 2001, those statutes have been in conflict with the amended restitution and diversion provisions of the Crime Victim's Rights Act. It has been suggested that the juvenile code and the Juvenile Diversion Act be brought into conformity with the Crime Victim's Rights Act, and that the restitution provisions in Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure be repealed because they essentially duplicate the restitution provisions of the Crime Victim's Rights Act.

### **CONTENT**

**Senate Bill 1233 (S-1) would amend the juvenile code to specify that certain juvenile cases could not be diverted, or otherwise removed from the adjudicative process, unless the court first gave written notice to the prosecuting attorney and allowed him or her to address the court on the issue, and the prosecutor notified the victim of the proposed removal. The bill also would make various changes in regard to the payment of restitution to victims of juvenile offenders.**

**Senate Bill 1234 (S-1) would repeal Section 1a of Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure, which provides that, when sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation, the court must order the defendant to make full restitution to any victim.**

**Senate Bill 1235 (S-1) would amend the Juvenile Diversion Act to prescribe certain requirements for the review of a diversion agreement and to specify that any diversion of a minor under the Act would have to comply with the Crime Victim's Rights Act.**

A more detailed description of Senate Bills 1233 (S-1) and 1235 (S-1) follows.

## **Senate Bill 1233 (S-1)**

### Overview

The bill would restrict the diversion of certain juvenile cases and, in regard to the payment of restitution to victims of juvenile offenders, would do all of the following:

- Extend restitution requirements to cases in which juveniles were convicted of criminal offenses, and to informally resolved cases.
- Revise provisions regarding the payment of certain costs when an offense results in physical or psychological injury to a victim.
- Require that court-ordered restitution include an amount equal to the loss of a tax deduction or tax credit if a deceased victim could have been claimed as a dependent on his or her parent's or guardian's income tax returns.
- Allow the court to order up to three times the amount of restitution otherwise allowed, if an offense resulted in the death of a victim or the serious impairment of a body function of a victim.
- Revise provisions pertaining to the deposit of unclaimed restitution amounts into the Crime Victim's Rights Fund.
- Require the court to find that modifying the method of payment would not impose a manifest hardship on the victim, if a juvenile or juvenile's parent sought modification.
- Allow a court to order an employed juvenile to execute a wage assignment to pay restitution.
- Revise requirements for the review of cases in which payment of restitution is a condition of probation.
- Prohibit a court from imposing a fee on a victim, victim's estate, or prosecuting attorney for enforcing an order of restitution.

### Juvenile Diversion

Under the bill, except for a dismissal of a juvenile petition based on a judicial finding on the record that the petition and the facts supporting it were insufficient to support a claim of jurisdiction by the family division of circuit court (family court), a case involving the alleged commission of an offense listed below by a juvenile could not be diverted, placed on the consent calendar, or made subject to any other prepetition or

preadjudication procedure that removed the case from the adjudicative process unless the court did both of the following:

- Gave written notice to the prosecuting attorney of the court's intent to remove the case from the adjudicative process.
- Allowed the prosecuting attorney the opportunity to address the court on that issue before the case was removed from the adjudicative process.

Before any formal or informal action was taken, the prosecutor would have to notify the victim of the time and place of the hearing on the proposed removal. Before finalizing any informal disposition, preadjudication, or expedited procedure, the prosecutor would have to give the victim an opportunity to consult with him or her to obtain the victim's views about that manner of disposing of the case.

These provisions would apply to the following offenses:

- A violation of a Michigan penal law for which a juvenile offender, if convicted as an adult, could be punished by more than one year's imprisonment, or an offense expressly designated by law as a felony.
- Assault, including domestic violence; aggravated assault, including aggravated domestic violence; breaking and entering, or illegal entry; fourth-degree child abuse; enticing a child for immoral purposes; discharging a firearm intentionally aimed at a person; discharge of an intentionally aimed firearm resulting in injury; indecent exposure; or stalking (MCL 750.81; 750.81a; 750.115; 750.136b; 750.145a; 750.234; 750.235; 750.335a; or 750.411h).
- Leaving the scene of a personal injury accident or operating a vehicle or a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance or with an unlawful body alcohol content, if the violation involved an accident resulting in damage to another individual's property or physical injury or death to another individual (MCL 257.617a, 257.625, or 324.80176).
- Selling or furnishing alcohol to an individual under 21 years of age, if the violation resulted in physical injury or death to any individual (MCL 436.1701).

- A violation of a local ordinance substantially corresponding to a law enumerated above.
- A violation described above that was subsequently reduced to a violation not included in that list.

#### Restitution in Criminal or Informal Case

Under the code, at the dispositional hearing for a juvenile offense, the family court must order that the juvenile make full restitution to any victim of his or her course of conduct that gave rise to the disposition or to the victim's estate. The bill would apply that requirement to a sentencing as well as a dispositional hearing. The bill also specifies that, for an offense that was resolved informally by means of a consent calendar diversion or any other informal method that did not result in a dispositional hearing, the court would have to order restitution before the offense was resolved informally.

#### Payment of Costs

If a juvenile offense results in physical or psychological injury to a victim, the restitution order may require that the defendant pay an amount equal to the cost of one or more of the following:

- Actual medical and related professional services and devices relating to physical and psychological care.
- Actual physical and occupational therapy and rehabilitation.
- Psychological and medical treatment for members of the victim's family that has been incurred as a result of the violation.
- Actual homemaking and child care expenses incurred as a result of the violation.

In each of those cases, the bill would refer to an amount equal to the reasonably determined cost of the care or services actually incurred and reasonably expected to be incurred. In the case of homemaking and child care expenses, the bill provides that, if homemaking and child care were provided without compensation by a relative, friend, or any other person, the restitution would have to include an amount equal to the costs that would reasonably be incurred for those services and care, based on the rates in the area for comparable services.

#### Tax Deduction or Tax Credit

The bill specifies that, if a deceased victim could have been claimed as a dependent by his or her parent or guardian on Federal, State, or local income tax returns, the restitution order would have to include a requirement that the juvenile pay an amount equal to the loss of the tax deduction or tax credit. The amount of reimbursement would have to be estimated for each year the victim could reasonably have been claimed as a dependent.

#### Triple Restitution

Under the bill, if a juvenile offense resulting in bodily injury also resulted in the death of a victim or serious impairment of a body function of a victim, the court could order up to three times the amount of restitution otherwise allowed.

"Serious impairment of a body function of a victim" would be defined as that term is used in the Michigan Vehicle Code (MCL 257.58c). Under the Vehicle Code, serious impairment includes, but is not limited to, one or more of the following:

- Loss of a limb or the use of a limb.
- Loss of a foot, hand, finger, or thumb or the use of a foot, hand, finger, or thumb.
- Loss of an eye or ear or the use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state that lasts for more than three days.
- Measurable brain or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.
- Loss of an organ.

#### Unclaimed Restitution

The bill would delete a requirement that, if an entity entitled to restitution for compensating a victim or victim's estate cannot or refuses to be reimbursed for that compensation, the restitution paid for that entity be deposited by the State Treasurer in the Crime Victim's Rights Fund or its successor fund.

The bill provides, instead, that if a person or entity entitled to restitution could not be located or refused to claim the restitution within two years after the date on which the person or entity could have claimed the restitution, the restitution paid to that person or entity would have to be deposited in the Crime Victim's Rights Fund or its successor. A person or entity entitled to that restitution could claim it at any time, however, by applying to the court that originally ordered and collected it. The court would have to notify the Crime Victim Services Commission of the application, and the Commission would have to approve a reduction in the court's revenue transmittal to the Fund equal to the restitution owed to the person or entity. The court would have to use the reduction to provide that restitution to the person or entity.

#### Payment Modification

Under the code, a juvenile who is required to pay restitution and who is not in willful default may petition the family court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the juvenile or his or her immediate family, the court may modify the method of payment. The bill also would require the court to determine that modifying the method of payment would not impose a manifest hardship on the victim.

#### Parental Payment of Juvenile's Restitution

The code provides that, if the court determines that a juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile's parent and an 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 acts upon which a restitution order is based to pay any outstanding portion of the order. An order under this provision does not relieve the juvenile of his or her obligation, but the amount owed by the juvenile must be offset by any amount paid by the parent or parents. The bill specifies that, under this provision, "juvenile" would include a juvenile tried as an adult.

A parent ordered to pay restitution may petition the court for a modification of the restitution amount he or she owes or for a cancellation of any unpaid portion of his or her

obligation. The court must cancel all or part of the parent's obligation if the court determines that payment will impose a manifest hardship on the parent. The bill would require, in addition, that the court determine that modifying the method of payment would not impose a manifest hardship on the victim.

#### Restitution as Probationary Condition

The code provides that, in each case in which payment of restitution is ordered as a condition of probation, the juvenile caseworker or probation officer assigned to the case must review it at least twice yearly to ensure that restitution is being paid as ordered. The bill specifies that, if the restitution were ordered to be made within a specific period of time, the probation officer would have to review the case at the end of that period to determine if the restitution had been paid in full.

The code requires that the final review of the case be conducted at least 60 days before the probationary period expires. If the juvenile caseworker or probation officer determines that restitution is not being paid as ordered, he or she must file a written report of the violation with the court. Under the bill, if the juvenile caseworker or probation officer made that determination at any review, he or she would have to file a written report with the court or petition the court for a probation violation.

#### **Senate Bill 1235 (S-1)**

The Juvenile Diversion Act provides criteria and procedures under which certain minors can be diverted from the family court system. The Act applies to minors who are under 17 years old and who are not accused of or charged with an assaultive offense, and for whom a family court petition has not been filed or, if filed, has not been authorized by the court. A juvenile may be diverted when he or she has been apprehended either for an act that would be a crime if committed by an adult or for a status offense (an act that would not be an offense if committed by an adult, such as truancy).

Under the Act, if a petition has not been filed or authorized, a law enforcement official or court intake worker may either release the

juvenile into the custody of his or her parent, guardian, or custodian and discontinue the investigation, or divert the matter by making an agreement with the juvenile and his or her parent, guardian, or custodian to refer the juvenile to a person or organization that will assist the minor and his or her family to resolve the problem that led to the minor's apprehension. (Alternatively, the law enforcement official or court worker may file a petition with the court or authorize a petition that has been filed.)

A diversion agreement results from a conference between the law enforcement official or court intake worker and the juvenile and his or her parent, guardian, or custodian, in which the juvenile agrees to comply with the diversion agreement and referral plan, and the law enforcement agency or court worker agrees not to seek a family court petition.

The bill specifies that any diversion of a minor under the Act would have to comply with the Crime Victim's Rights Act.

Also, under the bill, if a juvenile were diverted from the family court, the court intake worker and the law enforcement officer would have to hold a conference to review the minor's diversion 180 days after the diversion agreement was entered into. At that conference, the intake worker and law enforcement officer would have to determine whether the minor had complied with the terms of the diversion agreement and referral plan.

The Act provides that, if a minor fails to comply with the terms of a diversion agreement and referral plan, the law enforcement official or the court intake worker may revoke the agreement. If the diversion agreement is revoked, a petition may be filed with the family court and authorized by that court. Under the bill, a diversion agreement could not be revoked later than 30 days after the date of the diversion review conference required by the bill.

MCL 712A.11 & 712A.30 (S.B. 1233)  
769.1a (S.B. 1234)  
722.825 (S.B. 1235)

## **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**

Amendments to the juvenile offender provisions of the Crime Victim's Rights Act that were enacted by Public Act 503 of 2000 resulted in inconsistencies between that Act and the juvenile code and Juvenile Diversion Act with respect to restitution and diversion. By bringing the statutes governing juveniles into conformity with the Crime Victim's Rights Act, Senate Bills 1233 (S-1) and 1235 (S-1) would avoid any confusion over how restitution and diversion issues are to be handled in juvenile cases. Senate Bill 1235 (S-1) also would require that a diversion review conference be held six months after a diversion agreement was reached. This would provide a basis for determining whether a juvenile was in compliance with a diversion agreement, and whether the agreement should be revoked.

## **Supporting Argument**

The Crime Victim's Rights Act deals with court-ordered restitution that offenders are required to pay to victims or their estates. Section 1a of Chapter IX of the Code of Criminal Procedure essentially duplicates that Act's restitution provisions. Indeed, Section 1a was enacted in 1985 as parallel legislation to the bill that created the Crime Victim's Rights Act. When statutory restitution provisions are revised, then, it is necessary to make identical changes to both the Crime Victim's Rights Act and the Code of Criminal Procedure, or to follow-up one statutory revision with another in order to ensure consistency between the two laws. By repealing Section 1a of Chapter IX of the Code of Criminal Procedure, Senate Bill 1234 (S-1) would remove this cumbersome and unnecessary statutory duplication.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bill 1233 (S-1)**

The bill would make the juvenile code consistent with changes to the Crime Victim's Rights Act contained in Public Act 503 of 2000, and therefore would have no fiscal impact.

### **Senate Bill 1234 (S-1)**

The bill would have no fiscal impact on State or local government.

**Senate Bill 1235 (S-1)**

The bill would have an indeterminate impact on local units of government, depending on the number of cases, the current review procedures for diversion review conferences, and the availability of law enforcement officers for conferences. It appears that the bill would have no fiscal impact on the Family Independence Agency. At this time it is uncertain whether the Department has any involvement in handling the diversion program.

Fiscal Analyst: Bill Bowerman  
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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.