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SFA**BILL ANALYSIS**

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Senate Bill 1233 (as introduced 4-17-02)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 4-17-02

CONTENT

The bill 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 victim was notified of the proposed removal.

The bill also would do all of the following in regard to the payment of restitution to victims of juvenile offenders:

- 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 include, but not be limited to, one or more of the following:

- Loss of a limb or the use of a limb.
- Loss of a hand or foot or the use of a hand or foot.
- 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 lasted for more than three days.
- Measurable brain damage or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.
- Loss of a body 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.

MCL 712A.11 & 712A.30

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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.

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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.