

# HOUSE BILL 250

E2  
HB 666/12 – JUD

3lr0929

---

By: **Delegates Smigiel, Afzali, Eckardt, Frank, Hershey, Jacobs, Krebs, McComas, McDermott, W. Miller, Oaks, and Parrott**

Introduced and read first time: January 23, 2013

Assigned to: Judiciary

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Victims’ Rights – Remedy and Priority of Restitution**

3 FOR the purpose of expanding the applicability of certain appeal rights from a victim  
4 of a violent crime to a victim of a nonviolent crime; authorizing a certain victim  
5 to appeal to the Court of Special Appeals from a certain final order; authorizing  
6 the court to stay certain other proceedings and actions upon motion of a certain  
7 victim or victim’s representative if all parties consent or the court finds that the  
8 accused’s right to a speedy trial or adjudication will not be violated; providing  
9 that if the court finds that a victim’s right under a certain provision of law was  
10 not considered or was improperly denied, the court may grant the victim relief  
11 provided the remedy does not violate a certain constitutional right of a  
12 defendant or child respondent; prohibiting a court from providing a remedy that  
13 modifies a certain sentence or commitment unless the victim requests relief  
14 from a violation of the victim’s right within a certain number of days of the  
15 alleged violation; altering a provision of law so as to provide that payment of  
16 restitution to a victim has priority over any payments to any other person or  
17 governmental unit, subject to certain exceptions; providing for the application of  
18 this Act; and generally relating to enforcement of victims’ rights and priority of  
19 restitution.

20 BY repealing and reenacting, with amendments,  
21 Article – Criminal Procedure  
22 Section 11–103 and 11–606  
23 Annotated Code of Maryland  
24 (2008 Replacement Volume and 2012 Supplement)

25 BY repealing and reenacting, without amendments,  
26 Article – Criminal Procedure  
27 Section 11–617(b)  
28 Annotated Code of Maryland

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2008 Replacement Volume and 2012 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article – Criminal Procedure**

5 11–103.

6 (a) (1) In this section, [“violent crime”] **“CRIME”** means:

7 (i) a crime [of violence];

8 (ii) a delinquent act that would be a crime [of violence] if  
9 committed by an adult; or

10 (iii) except as provided in paragraph (2) of this subsection, a  
11 crime or delinquent act involving, causing, or resulting in death or serious bodily  
12 injury.

13 (2) [“Violent crime”] **“CRIME”** does not include an offense under the  
14 Maryland Vehicle Law or under Title 8, Subtitle 7 of the Natural Resources Article  
15 unless the offense is punishable by imprisonment.

16 (b) Although not a party to a criminal or juvenile proceeding, a victim of a  
17 [violent] crime for which the defendant or child respondent is charged may file an  
18 application for leave to appeal to the Court of Special Appeals from an interlocutory  
19 **ORDER or APPEAL TO THE COURT OF SPECIAL APPEALS FROM A** final order that  
20 denies or fails to consider a right secured to the victim by § 4–202 of this article, §  
21 11–102, § 11–104, § 11–302, § 11–402, § 11–403, § 11–404, or § 11–603 of this title, §  
22 3–8A–06, § 3–8A–13, or § 3–8A–19 of the Courts Article, or § 6–112 of the Correctional  
23 Services Article.

24 (c) [The filing of an application for leave to appeal under this section does  
25 not stay other proceedings in a criminal or juvenile case unless] **IN THE INTEREST OF**  
26 **JUSTICE, A TRIAL OR APPELLATE COURT MAY STAY PROCEEDINGS AND ACTIONS**  
27 **IN A CRIMINAL OR JUVENILE CASE ON MOTION OF A VICTIM OR VICTIM’S**  
28 **REPRESENTATIVE IF:**

29 (1) all parties consent; **OR**

30 (2) **THE COURT FINDS THAT THE ACCUSED’S RIGHTS TO A SPEEDY**  
31 **TRIAL OR ADJUDICATION WILL NOT BE VIOLATED.**

1 (d) (1) For purposes of this section, a victim's representative, including  
2 the victim's spouse or surviving spouse, parent or legal guardian, child, or sibling, may  
3 represent a victim of a [violent] crime who dies or is disabled.

4 (2) If there is a dispute over who shall be the victim's representative,  
5 the court shall designate the victim's representative.

6 (e) (1) In any court proceeding involving a crime against a victim, the  
7 court shall ensure that the victim is in fact afforded the rights provided to victims by  
8 law.

9 **(2) IF A COURT FINDS THAT A VICTIM'S RIGHT WAS NOT**  
10 **CONSIDERED OR WAS DENIED, THE COURT MAY GRANT THE VICTIM RELIEF**  
11 **PROVIDED THE REMEDY DOES NOT VIOLATE THE CONSTITUTIONAL RIGHT OF A**  
12 **DEFENDANT OR CHILD RESPONDENT TO BE FREE FROM DOUBLE JEOPARDY.**

13 **(3) A COURT MAY NOT PROVIDE A REMEDY THAT MODIFIES A**  
14 **SENTENCE OF INCARCERATION OF A DEFENDANT OR A COMMITMENT OF A**  
15 **CHILD RESPONDENT UNLESS THE VICTIM REQUESTS RELIEF FROM A VIOLATION**  
16 **OF THE VICTIM'S RIGHT WITHIN 30 DAYS OF THE ALLEGED VIOLATION.**

17 **[(2)] (4)** (i) A victim who alleges that the victim's right to  
18 restitution under § 11-603 of this title was not considered or was improperly denied  
19 may file a motion requesting relief within 30 days of the denial or alleged failure to  
20 consider.

21 (ii) If the court finds that the victim's right to restitution under  
22 § 11-603 of this title was not considered or was improperly denied, the court may  
23 enter a judgment of restitution.

24 11-606.

25 (a) The court may order that restitution be paid to:

26 (1) the victim;

27 (2) the Department of Health and Mental Hygiene, the Criminal  
28 Injuries Compensation Board, or any other governmental unit;

29 (3) a third-party payor, including:

30 (i) an insurer; or

31 (ii) any other person that has, under Part I of this subtitle:

1 1. compensated the victim for a property or pecuniary  
2 loss; or

3 2. paid an expense on behalf of a victim;

4 (4) any person for whom restitution is authorized by law; or

5 (5) a person who has provided to or for a victim goods, property, or  
6 services for which restitution is authorized under § 11–603 of this subtitle.

7 (b) (1) Subject to paragraph (2) of this subsection **AND § 11–617(B) OF**  
8 **THIS SUBTITLE**, payment of restitution to the victim has priority over [payment of  
9 restitution] **ANY PAYMENTS** to any other person or governmental unit.

10 (2) If the victim has been fully compensated for the victim’s loss by a  
11 third–party payor, the court may issue a judgment of restitution that directs the  
12 restitution obligor to pay restitution to the third–party payor.

13 11–617.

14 (b) Subject to federal law, the order of priority of execution of an earnings  
15 withholding order is:

16 (1) first, an earnings withholding order issued under § 10–128 of the  
17 Family Law Article;

18 (2) second, an earnings withholding order issued under this section;  
19 and

20 (3) lastly, any other lien or legal process.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
22 construed to apply only prospectively and may not be applied or interpreted to have  
23 any effect on or application to an appeal pending or filed before the effective date of  
24 this Act.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 June 1, 2013.