

SENATE BILL 268

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CF HB 358

By: **The President (By Request – Administration) and Senators Bailey, Beidle, Carozza, Cassilly, Eckardt, Edwards, Elfreth, Gallion, Hershey, Jennings, Ready, Salling, Serafini, Simonaire, and West**

Introduced and read first time: January 20, 2020

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Victim's Rights – Restitution**

3 FOR the purpose of altering procedures relating to the award of a judgment of restitution;
4 requiring a court to enter a judgment of restitution under certain circumstances;
5 requiring certain notice, evidence, and procedures before a certain court orders a
6 judgment of restitution; requiring a court to order a certain individual to pay
7 restitution under certain circumstances; altering the circumstances under which a
8 court is not required to order restitution; prohibiting a court from considering a
9 certain individual's current ability to pay restitution under certain circumstances;
10 prohibiting a court from making certain findings if a certain individual is unable to
11 pay restitution; authorizing a certain individual to file a notice of appeal or
12 application for leave to appeal within a certain time under certain circumstances;
13 requiring certain notice to a certain individual under certain circumstances relating
14 to restitution; requiring the Administrative Office of the Courts, in consultation with
15 the Governor's Office of Crime Control and Prevention, to make certain
16 recommendations and report in a certain manner relating to restitution on a certain
17 electronic records system; and generally relating to restitution for crime victims.

18 BY repealing and reenacting, with amendments,
19 Article – Criminal Procedure
20 Section 11–603, 11–604, 11–605, and 11–614(a)
21 Annotated Code of Maryland
22 (2018 Replacement Volume and 2019 Supplement)

23 BY adding to
24 Article – Criminal Procedure
25 Section 11–607(d)
26 Annotated Code of Maryland
27 (2018 Replacement Volume and 2019 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Criminal Procedure**

4 11–603.

5 (a) **[A IN ACCORDANCE WITH THIS SUBTITLE, A court [may] SHALL** enter a
6 judgment of restitution that orders a defendant or child respondent to make restitution in
7 addition to any other penalty for the commission of a crime or delinquent act, if **AS A**
8 **RESULT OF THE CRIME OR DELINQUENT ACT:**

9 (1) **[as a direct result of the crime or delinquent act,]** property of the victim
10 was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value
11 substantially decreased;

12 (2) **[as a direct result of the crime or delinquent act,]** the victim suffered:

13 (i) actual medical, dental, hospital, counseling, funeral, or burial
14 expenses or losses;

15 (ii) direct out-of-pocket loss;

16 (iii) loss of earnings; or

17 (iv) expenses incurred with rehabilitation;

18 (3) the victim **OR ANY OTHER PERSON** incurred medical expenses that
19 were paid by the Maryland Department of Health or any other governmental unit;

20 (4) a governmental unit, **THE VICTIM, OR ANY OTHER PERSON** incurred
21 expenses in removing, towing, transporting, preserving, storing, selling, or destroying an
22 abandoned vehicle as defined in § 25–201 of the Transportation Article;

23 (5) the Criminal Injuries Compensation Board paid benefits to a victim **OR**
24 **ANY OTHER PERSON AUTHORIZED BY LAW;** or

25 (6) the Maryland Department of Health or other governmental unit paid
26 expenses incurred under Subtitle 1, Part II of this title.

27 (b) **[A victim is presumed to have a right to restitution under subsection (a) of**
28 **this section if] THE FOLLOWING PROCEDURES SHALL APPLY BEFORE A COURT**
29 **ORDERS A JUDGMENT OF RESTITUTION:**

30 (1) **[the victim or the State requests restitution] THE DEFENDANT OR**

1 CHILD RESPONDENT SHALL RECEIVE NOTICE THAT THE COURT WILL CONSIDER THE
2 ISSUE OF RESTITUTION IN THE CASE AND THE AMOUNT OF RESTITUTION BEING
3 SOUGHT; [and]

4 (2) the VICTIM OR THE STATE SHALL PRESENT THE court [is presented]
5 with competent evidence of any item listed in subsection (a) of this section; AND

6 (3) SUBJECT TO THE PROVISIONS OF § 11-615 OF THIS SUBTITLE, THE
7 DEFENDANT OR CHILD RESPONDENT SHALL BE GIVEN A FAIR OPPORTUNITY TO
8 PRESENT EVIDENCE TO CONTEST THE ISSUE OF RESTITUTION.

9 (c) (1) A judgment of restitution does not preclude the property owner or the
10 victim who suffered personal physical or mental injury, out-of-pocket loss of earnings, or
11 support from bringing a civil action to recover damages from the restitution obligor.

12 (2) A civil verdict shall be reduced by the amount paid under the criminal
13 judgment of restitution.

14 (d) In making a disposition on a finding that a child at least 13 years old has
15 committed an act of graffiti under § 6-301(d) of the Criminal Law Article, the court shall
16 order the child to perform community service or pay restitution or both.

17 11-604.

18 (a) Subject to subsection (b) of this section and notwithstanding any other law, if
19 a child is the defendant or child respondent, the court [may] **SHALL** order the child, the
20 child's parent, or both to pay restitution.

21 (b) A judgment of restitution for \$10,000 issued under Part I of this subtitle is the
22 absolute limit for each child's acts arising out of a single incident.

23 (c) (1) A court may not enter a judgment of restitution against a parent under
24 Part I of this subtitle unless the parent has been afforded a reasonable opportunity to be
25 heard and to present evidence.

26 (2) A hearing under this subsection may be held as part of the sentencing
27 or disposition hearing.

28 11-605.

29 (a) (1) A court need not issue a judgment of restitution under Part I of this
30 subtitle if the court finds[:

31 (1) that the restitution obligor does not have the ability to pay the
32 judgment of restitution; or

1 (2)] that there are [extenuating] **EXTRAORDINARY** circumstances that
2 make a judgment of restitution inappropriate.

3 **(2) (I) A COURT MAY NOT CONSIDER THE CURRENT INABILITY OF**
4 **A RESTITUTION OBLIGOR TO PAY RESTITUTION AS AN EXTRAORDINARY**
5 **CIRCUMSTANCE UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

6 **(II) IF A RESTITUTION OBLIGOR IS UNABLE TO PAY**
7 **RESTITUTION, A COURT MAY NOT USE THE NONPAYMENT OF RESTITUTION AS THE**
8 **SOLE BASIS TO:**

9 **1. FIND THE RESTITUTION OBLIGOR IN CONTEMPT OF**
10 **COURT;**

11 **2. REVOKE PROBATION; OR**

12 **3. FIND THAT THE RESTITUTION OBLIGOR HAS**
13 **VIOLATED A CONDITION OF RELEASE.**

14 (b) A court that refuses to order restitution that is [requested] **REQUIRED** under
15 Part I of this subtitle shall state on the record the reasons.

16 11-607.

17 **(D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF A RESTITUTION**
18 **OBLIGOR CHALLENGES THE ISSUANCE OF OR AMOUNT OF A RESTITUTION**
19 **JUDGMENT, THE RESTITUTION OBLIGOR SHALL FILE A NOTICE OF APPEAL OR**
20 **APPLICATION FOR LEAVE TO APPEAL WITHIN 30 DAYS AFTER THE ISSUANCE OF THE**
21 **JUDGMENT OF RESTITUTION.**

22 11-614.

23 (a) If practicable, the State's Attorney should:

24 (1) notify an eligible victim of the victim's right to [request] restitution;
25 [and]

26 (2) [help the victim to prepare the request] **NOTIFY THE COURT AND THE**
27 **DEFENDANT OR CHILD RESPONDENT OF THE RESTITUTION BEING SOUGHT UNDER**
28 **THIS SUBTITLE; and**

29 **(3) advise the victim as to the steps for A COURT TO AWARD**
30 **RESTITUTION, INCLUDING THE EVIDENCE REQUIRED, AND THE PROCESS FOR**
31 **collecting restitution that is awarded.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Administrative Office of
2 the Courts in consultation with the Governor's Office of Crime Control and Prevention shall
3 make recommendations for including restitution payments and tracking restitution
4 payments as part of the Maryland Electronic Courts records management system, and a
5 timeline for implementing the recommendations. The Administrative Office of the Courts,
6 and the Governor's Office of Crime Control and Prevention, shall report jointly to the
7 Governor and, in accordance with § 2-1257 of the State Government Article, the General
8 Assembly on their recommendations on or before December 31, 2020.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2020.