



Testimony for the Senate Judicial Proceedings Committee

February 6, 2020

SB 268 Victim's Rights – Restitution

TONI HOLNESS
PUBLIC POLICY DIRECTOR

UNFAVORABLE

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 610
TAKOMA PARK, MD 20912
T/240-274-5295

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
JOHN HENDERSON
PRESIDENT

The ACLU of Maryland urges an unfavorable report on SB 268, which (1) removes the court's consideration of the defendant's ability to pay from the decision whether to order restitution; (2) mandates that restitution be ordered; (3) expands the scope of persons and agencies eligible for restitution to an indeterminable universe of those who may have incurred medical expenses that were paid by the government; (3) removes the requirement that the victim have suffered "directly" as a result of the defendant's conduct; and (4) requires that youth also be ordered to pay restitution.

Mandatory Restitution from an already disproportionately poor population is impractical

Removing the consideration of the defendant's ability to pay is not only an impractical measure, but does a disservice to victims who are unlikely to ever receive restitution from many defendants, who are disproportionately poor. In 2015, with regard to the federal inmate population, the Department of Justice found that "[b]y far, the greatest impediment to collecting full restitution is the lack of relationship between the amount ordered and its corresponding collectibility."¹ The same is likely the case for Maryland's jail and prison population, who are disproportionately poor upon incarceration and certainly do not gain wealth while incarcerated. Moreover, upon release from incarceration, individuals continue to be saddled with criminal records that hinder employability, thereby preventing them from earning a living and fulfilling restitution demands.

In removing consideration of the defendant's ability to pay, the court would be prevented from considering the single most influential factor in whether restitution can actually be collected.

Mandatory restitution, without consideration of the Defendant's

¹ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-05-80, CRIMINAL DEBT: COURT-ORDERED RESTITUTION AMOUNTS FAR EXCEED LIKELY COLLECTIONS FOR THE CRIME VICTIMS IN SELECTED FINANCIAL FRAUD CASES 21 (2005).



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Maryland

ability to pay, may be unconstitutional

SB 268 mandates that courts order restitution but also states that the defendant's failure to pay restitution cannot itself be the sole basis for holding the defendant in contempt of court, revoking the defendant's probation, or violating the defendant's parole. In *Bearden v. Georgia*, 461 U.S. 660 (1983), the Supreme Court held that before sentencing a defendant to incarceration for failure to pay restitution or a criminal fine, the court must inquire into the defendant's ability to pay. SB 268 toes the line of unconstitutionality by proposing mandatory orders of restitution, but is cleverly drafted to likely survive a constitutional challenge because the defendant's failure to pay the mandated restitution cannot trigger incarceration.

SB 268 proposes an impractically indeterminable universe of potential victims to whom restitution may be ordered

SB 268 expands the scope of persons and agencies eligible for restitution to an indeterminable universe of those who may have incurred medical expenses that were paid by the government and removes the requirement that the victim have suffered "directly" as a result of the defendant's conduct. It is virtually impossible to know who all may have suffered some medical injury directly or indirectly as a result of the defendant's conduct. This provision will almost certainly invite false claims of injury against defendants.

For the foregoing reasons, we respectfully urge an unfavorable report on SB 268.