

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.



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

Article – Criminal Procedure

11–603.

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

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

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

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

(ii) direct out-of-pocket loss;

(iii) loss of earnings; or

(iv) expenses incurred with rehabilitation;

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

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

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

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

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

(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

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

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

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

1. FIND THE RESTITUTION OBLIGOR IN CONTEMPT OF COURT;

2. REVOKE PROBATION; OR

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

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

11-607.

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

11-614.

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

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

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

(3) advise the victim as to the steps for A COURT TO AWARD RESTITUTION, INCLUDING THE EVIDENCE REQUIRED, AND THE PROCESS FOR 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.