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**M E M O R A N D U M**

**DATE:** July 13, 2001

**TO:** Chief Judges  
cc: Court Administrators and Clerks

**FROM:** John D. Ferry, Jr.

**SUBJ:** SCAO Administrative Memorandum 2001-07  
Public Act 503 of 2000 - Amendments to the Crime Victim's Rights Act

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Public Act 503 of 2000 made significant changes to the Crime Victim's Rights Act, MCL 780.751 *et seq.* Many of these changes affect Michigan trial courts. The purpose of this Administrative Memorandum is to make courts aware of the changes and provide guidance for complying with the new law.

Public Act 503 takes effect on June 1, 2001. Courts will need to decide the appropriate method for implementing the new provisions according to the effective date. For example, some provisions may logically apply to crimes committed on or after June 1, 2001, while other provisions may apply to cases filed on or after that date, or may apply to all cases, regardless of the date of the alleged crime or the filing of the case.

The following provisions of Public Act 503 pertain to courts:

**I. Definition of "Victim"**

A parent, guardian, or custodian of a minor victim or a victim who is mentally or emotionally unable to participate in the legal process may exercise the rights of the victim, unless the parent, guardian, or custodian is the defendant or is incarcerated. A person who is charged with an offense arising from the same transaction as the charged offense may not be considered a victim. No incarcerated individual may exercise the rights of victims afforded by the act, except that he or she may submit a written statement for the court to consider at sentencing. (MCL 780.752, 780.781, 780.811)

## II. Court Files

Under current law, felony files may not contain the address or telephone number of the victim, except in the transcript or to identify the location of the crime. P.A. 503 adds to that prohibition the work address and phone number of the victim. (MCL 780.758(2)).

## III. Courtroom Procedure

Victims may not be sequestered after they first testify. (MCL 780.761, 780.789, 780.821) The victim has the right to appear and make an oral impact statement at the sentencing of the defendant. If the victim is physically or emotionally unable to make the oral impact statement, the victim may designate any other person 18 years of age or older who is neither the defendant nor incarcerated to make the statement on his or her behalf. The other person need not be an attorney. (MCL 780.765, 780.793, 780.825)

**Discussion:** Note MRE 615 and MCL 600.1420 which allow the court to exclude certain persons from the courtroom when they are not testifying. These provisions may apply to situations in which a victim may be called as a rebuttal witness.

## IV. Duties of Appellate Courts

“If the conviction is ordered reversed, the sentence is vacated, the case is remanded for a new trial, or the prosecuting attorney’s appeal is denied, and if the prosecuting attorney has filed the appropriate notice with the appellate court, the appellate court shall expedite delivery of the relevant document to the prosecuting attorney’s office by any means reasonably calculated to give the prosecuting attorney prompt notice.” (MCL 780.768a, 780.796, 780.828)

## V. Calculation of Restitution

**A. Crimes resulting in physical or psychological injury:** The following costs, whether incurred or reasonably expected to be incurred, may be included in the calculation of restitution:

- medical services;
- physical therapy and rehabilitation;
- medical and psychological treatment for victims’ family members;
- homemaking and child care expenses; and
- federal, state, and local tax deductions or credits which are lost due to the death of a victim if the deceased victim could have been claimed as a dependent.

If homemaking or child care services are provided without charge, restitution may include the amount which would be charged for those services in the area. (MCL 780.766(4), 780.794(4), 780.826(4))

**Discussion:** Calculation of amounts not yet incurred but reasonably expected to be incurred will present challenges to court staff (primarily probation officers, who recommend restitution as part of the presentence investigation report). Simple scenarios, such as monthly counseling sessions which will last for a predetermined duration, will be relatively straightforward. But future expenses which may go on for an unknown period of time, or which may vary in amount over time, will be more complicated. Especially complex will be the value of tax benefits not realized, since the value of future deductions is dependent upon the future income of the parents or guardians.

The court's initial estimate should be based on evidence presented in the presentence investigation report, a separate report, at the sentencing or dispositional hearing, or at a restitution hearing. In cases where costs will continue to accrue, courts should enter an order with a specific (even if estimated) amount of restitution; "open" orders should not be entered. As costs continue to accrue, the restitution order should be amended, periodically if necessary, and always state a specific amount. Orders with estimated costs should be automatically calendared for future review.

In all cases, the court is obliged to order amounts which are "reasonably determined" or "reasonably expected to be incurred" despite the difficulty of calculating those amounts.

**B. *Crimes resulting in death or serious impairment of a body function:*** The court may order three times the amount otherwise allowed as restitution. (MCL 780.766(5), 780.794(5), 780.826(5)) "Serious impairment of a body function of a victim" includes, but is not limited to, one or more of the following:

- (A) loss of a limb or use of a limb
- (B) loss of a hand or foot or use of a hand or foot
- (C) loss of an eye or use of an eye or ear
- (D) loss or substantial impairment of a bodily function
- (E) serious visible disfigurement
- (F) a comatose state that lasts for more than three days
- (G) measurable brain damage or mental impairment
- (H) a skull fracture or other serious bone fracture
- (I) subdural hemorrhage or subdural hematoma
- (J) loss of a body organ.

## **VI. Method of Payment of Restitution**

If restitution is made a condition of probation, the court may order the defendant to execute a wage assignment to pay the restitution if he or she is employed. (MCL 780.766(18), 780.794(18), 780.826(15))

The court may modify the method of payment of restitution if the existing method imposes a manifest hardship on the defendant *and* if modifying the method of repayment will *not* impose a manifest hardship on the victim. (MCL 780.766(12), 780.794(12), 780.826(12))

If a juvenile is unable to pay restitution, the court may order the parent(s) of the juvenile to pay restitution after notifying the parent(s) and conducting a hearing. Restitution to be paid by parents must be made in specified installments and within a specified period of time. (MCL 780.766(15) and (16) add this provision to apply to designated cases and traditional waiver cases.)

## **VII. Duties of Probation Officers**

If restitution is ordered as a condition of probation and is ordered to be paid within a specified period of time, the probation officer must review the case at the expiration of that period of time to determine if restitution has been paid in full. (MCL 780.766(18), 780.794(18), 780.826(15))

## **VIII. Collection of Restitution by Victims**

Courts may not impose a fee on a victim, victim's estate, or prosecuting attorney for enforcing an order of restitution. (MCL 780.766(20), 780.794(20), 780.826(17))

**Discussion:** Collection activity pursued by the victim or on behalf of the victim's estate is a civil process based upon the original criminal judgment. The filing of a writ of garnishment, execution, or other civil remedy would neither require a new judgment, result in the opening of a new case for caseload purposes, nor require the payment of any fee.

The clerk should file all post-judgment collection documents in the criminal case. An internal transfer of the file from the criminal division to the civil division for processing of post-judgment activity is one method of administering the work flow. Courts that elect to create a separate file for civil collection procedures should ensure that it will not be counted as a new case on the caseload report.

## **IX. Unclaimed Restitution**

If a person entitled to receive restitution which the court has collected fails to claim it from the court within two years of being eligible to do so, the court must remit the unclaimed amount to the Crime Victim's Rights Fund on its monthly transmittal to the state. That person may subsequently claim the restitution by applying to the court which collected and remitted it. The court must notify the Crime Victim Services Commission of the claim, and the Commission must approve a reduction in the transmittal to the Crime Victim's Rights Fund to pay the victim. (MCL 780.766(21), 780.794(21), 780.826(18))

### **Discussion:**

It will probably be rare that a person who is entitled to restitution waits more than two years to claim it. When it happens, though, some complications may arise.

If the amount of the claim does not exceed that month's transmittal to the Crime Victim's Rights Fund (line 5 on the Circuit/Probate/FOC transmittal form, line 4 on the District/Municipal transmittal form), the court should pay the victim, and deduct that amount from the transmittal, remitting the remaining balance to the state.

If the claim exceeds the amount to be transmitted that month, the court may handle it in one of two ways:

- First, the court may pay the full amount which would otherwise be transmitted on the Crime Victim's Rights Fund line of that month's transmittal to the victim as partial payment, and continue this practice for as many months as it takes to pay the victim in full.
- Alternatively, the court's funding unit may appropriate money to a fund it establishes to pay these amounts. This local fund would pay a restitution claim in full, then be reimbursed over a period of time from the amounts which would otherwise be transmitted on the Crime Victim's Rights Fund line. If the court and funding unit choose this option, the court must establish appropriate accounting practices and controls to track amounts owed to the local fund.

**In no event should the court pay restitution amounts claimed after two years from any other source of court funds.**

While unlikely, it is possible that the court will receive multiple claims which, when combined, exceed the monthly transmittal amount or the balance in the local fund. If this occurs, the court should pay victims partial amounts in proportion to the total amounts claimed.

The Department of Community Health's Crime Victim Services Program will be revising the Crime Victims Assessment Report to allow courts to indicate what deductions are being made from the transmittal.

## **X. Juvenile Proceedings**

Designated cases are subject to the provisions of Article 2 of the Crime Victim's Rights Act. (MCL 780.781(1))

In cases where the victim has requested notification of pretrial release, a juvenile facility must notify the law enforcement agency responsible for investigating the crime when the juvenile is released. (MCL 780.785(1))

The Family Division of Circuit Court must accept a petition seeking to invoke the court's jurisdiction in a juvenile case, unless it finds on the record that the factual allegations do not support assumption of jurisdiction. (MCL 780.786)

Before processing the case through informal means, the court must notify the prosecutor in writing of its intent to remove the case from the adjudicative process and allow the prosecutor to notify the victim. The prosecutor and the victim may address the court regarding how the case will be handled. Any order removing the case from the adjudicative process must order full restitution. (MCL 780.786b(1))

Victims have the right to submit a written or oral impact statement prior to sentencing in a designated case. If no pre-sentence investigation report is prepared, the court must notify the prosecuting attorney of the date and time of sentencing at least ten days prior to the disposition (or sentencing for designated cases). (MCL 780.792(2))

If requested in writing by the victim, the court or FIA, as applicable, must notify the victim if the juvenile is detained for committing another criminal offense. (MCL 780.798(1)(d))

**Discussion:** Note that "accept" in MCL 780.786 does not necessarily mean "authorize for filing." See especially MCL 712A.11(2), MCR 5.932(A) and MCR 5.935(B)(3), giving the court the authority to determine whether to authorize the petition.

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Prior to the enactment of P.A. 503, the Crime Victim's Rights Act required the court to notify the victim directly before diverting a case and allowed the victim to address the court at a hearing. The new statutory scheme is similar to the old one, but requires courts to coordinate this process with the prosecuting attorney. Courts should collaborate with the prosecutors in their jurisdictions to develop a process for communication and notification, which will in turn facilitate the notification of victims.