

Legislative Analysis



VICTIM IMPACT STATEMENT

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5262 reported from committee without amendment
Sponsor: Rep. Wayne Schmidt

House Bill 5263 without amendment
Sponsor: Rep. Margaret E. O'Brien

Senate Bill 628 with committee amendment
Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary
Senate Committee: Judiciary (SB 628)

First Analysis (2-3-14)

BRIEF SUMMARY: The bills would allow a parent to submit a victim's impact statement if the crime involving the child as victim occurred when the child was still a minor.

FISCAL IMPACT: The bills would have no fiscal implications for state or local units of governments.

THE APPARENT PROBLEM:

Under the William Van Regenmorter Crime Victim's Rights Act (CVRA), a victim of a crime has the right to make an impact statement to be included in the presentence investigation report and the right to make an oral impact statement when the offender is sentenced. The victim's written impact statement is included in the presentence report presented to the court before an offender is sentenced. At sentencing, a victim may also give an oral statement. If the victim is a minor, a parent or legal guardian may provide the impact statement, either in place of or in addition to, one provided by the minor victim.

It has been noted that some crimes, such as statutory rape, may not be reported until after the victim reaches the age of majority. In addition, a victim who was a minor at the time an offense was committed may be an adult by the time a conviction is rendered and the presentence report is being prepared. In such cases, the parents or legal guardian of the victim cannot submit a victim's impact statement. Some parents and guardians would like the court to know how the crime affected their child or ward. Thus, legislation is being offered to allow the parents or guardians of a person who was a victim of a crime while a minor to still provide a statement even if the victim is now an adult.

THE CONTENT OF THE BILLS:

The William Van Regenmorter Crime Victim's Rights Act (CVRA) provides for the rights of the victim of a crime. Article 1 applies to a crime that is either designated by law a felony or is punishable by imprisonment for more than one year; Article 2 applies to a crime committed by a juvenile that, if convicted as an adult, may be punished by imprisonment for more than 1 year or an offense expressly designated by law as a felony; Article 3 applies to crimes designated as serious misdemeanors. The rights, which are the same in all three Articles, include the right to make an impact statement that will be included in the presentence investigation report and the right to make an oral impact statement when the offender is sentenced.

The definition of "victim" in each Article is also identical and the term means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime, and includes, among others, an exception for a parent, guardian, or custodian of a victim who is less than 18 years of age and who is neither the defendant nor incarcerated, if the parent, guardian, or custodian so chooses.

The bills would specify that *for the purpose of making an impact statement only*, the definition of "victim" would include a parent, guardian, or custodian of a victim who is less than 18 years of age at the time of the commission of the crime and who is neither the defendant nor incarcerated, if that parent, guardian, or custodian so chooses.

(An individual who is charged with an offense arising out of the same transactions from which the charge against the defendant arose is not eligible to exercise the privileges and rights established for victims. Thus, even if the victim/offender had been a minor at the time of the offense, the parents or guardian could not provide a victim impact statement under the bills.)

Senate Bill 628 would amend Article 1 of the CVRA (MCL 780.752) to apply to victims of a felony crime. House Bill 5262 would amend Article 2 (MCL 780.781) to apply to victims of certain crimes committed by juveniles. House Bill 5263 would amend Article 3 (MCL 780.811) to apply to victims of a serious misdemeanor offense.

The bills would take effect on July 1, 2014.

ARGUMENTS:

For:

Reportedly, it is not uncommon for certain crimes involving children as victims, such as rape, to not be reported until after the victim reaches adulthood. Parents and guardians of those victims have found that under the current provisions of the William Van Regenmorter Crime Victim's Rights Act (CVRA), they are not allowed to submit a victim's impact statement or speak at the offender's sentencing once their child or ward is 18 years of age or older. Thus, their accounts of how the crime impacted their child or ward, and the affect the crime had on the household, go unheard. Some feel it is

important for the court to hear, and to consider, the information that could be provided by these individuals. Moreover, being able to confront the offender and speak at the sentencing is also an important step in the healing process.

Response:

Many guardianships end when the minor reaches the age of 18. There may be situations in which the victim was under a guardianship at the time the crime was committed but who has since aged out (for example, foster placement). The former foster parent or guardian may also wish to tell the court the impact the crime had on the victim, themselves, and others in their care. However, it is not clear if the bill as written would apply in such a situation to one of these individuals, as the person would no longer be the victim's guardian.

POSITIONS:

The Ogemaw County Prosecuting Attorney submitted written testimony in support of Senate Bill 628. (1-23-14)

The Office of Attorney General indicated support for Senate Bill 628. (1-23-14)

The Prosecuting Attorneys Association of Michigan indicated support for Senate Bill 628. (1-23-14)

(At the time the above positions were submitted, House Bills 5262 and 5263 had not yet been introduced.)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.