October 2005

Update: Juvenile Traffic Benchbook (Revised Edition)

CHAPTER 4

Dispositions for Criminal Traffic Violations

4.5 Restitution, Crime Victim's Rights Assessment, and Reimbursement of Costs of Service

A. Restitution

"Victim" defined.

On page 50, add the following text to the end of the first paragraph:

MCL 712A.30(1)(b) states in part:

> "For purposes of subsections (2), (3), (6), (8), (9), and (13), victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or other legal entity that suffers direct physical or financial harm as a result of a juvenile offense."

MCL 780.794(1)(b) contains substantially similar language.

In *In re McEvoy*, 267 Mich App 55 (2005), the trial court ordered the juvenile and his parents to pay restitution to a school district's insurer. On appeal, the juvenile's parents argued "that pursuant to the definition of 'victim' in MCL 712A.30(1)(b), the school district is a victim for purposes of only 'subsections (2), (3), (6), (8), (9), and (13)' and therefore parents may not be required to pay restitution under subsection (15) to a 'non-individual' victim." *McEvoy, supra* at 63. The Court of Appeals rejected this argument, stating:

> "Foremost in negating appellants' logic is the fact that the word victim does not appear in subsection (15), and therefore there is no need to define the term for purposes of that subsection. Further, the key language in the definition of the term 'victim' is identical in both the juvenile code and the CVRA[.] . . . Subsection (2) is the key substantive provision providing for restitution and that

> subsection expressly states that the court shall order that the juvenile 'make full restitution to any victim,' which by definition includes a legal entity such as the school district." [Citations and footnotes omitted.] *McEvoy, supra* at 64.

More importantly, a review of the restitution provisions in both the Juvenile Code and CVRA reveal that the subsections not applicable to the definition of "non-individual" victims have no logical application to legal entities (e.g., restitution for physical or psychological injuries or death) or are primarily procedural. *Id.* at 64–65.

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"Victim" defined.

Insert the following text after the partial paragraph at the top of page 52:

In *In re McEvoy*, 267 Mich App 55 (2005), the trial court ordered a juvenile's parents to pay restitution to a school district's insurer for damage caused by the juvenile setting fire to a high school. The restitution amount was based on the amount the insurer paid to the insured under the insurance policy—the replacement value of the damaged property. The Court of Appeals vacated the restitution order and remanded for redetermination of the amount of loss actually suffered by the school district. *Id.* at 75. The Court construed MCL 712A.30(8), which, like MCL 780.794(8), requires a court to order restitution to a legal entity that has compensated a direct victim "for a loss incurred by the [direct] victim to the extent of the compensation paid for that loss." The Court stated that under MCL 712A.30(8), "an entity that compensated a victim 'for a loss incurred by the victim' is entitled to receive restitution 'to the extent of the compensation paid for *that* loss,' clearly meaning the loss of the victim, not the loss of the compensating entity." *McEvoy, supra* at 76. The Court noted that the statutory provisions for calculating restitution for property damage or destruction use the value of the property damaged or destroyed—the victim's actual loss—as the basis for a restitution order. The Court stated:

> "Under the circumstances of the case, the loss of the compensating entity is based on the commercial transaction involved, i.e., the school district's purchase of replacement coverage insurance, rather than the loss resulting from the fire, which underscores that the result is incongruent with the purpose of the statute. Although the amount of restitution is within the discretion of the trial court, the court erred to the extent it ordered restitution to SET-SEG on the basis of the amount SET-SEG compensated the school district, rather than the amount of the actual loss sustained by the school. Restitution must be based on the value of the property damaged, i.e., the victim's actual loss." *Id.* at 77–78.

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A. Restitution

Ordering a juvenile's parent to pay restitution.

On page 57 immediately before subsection (B), insert the following text:

The Juvenile Code does not limit the amount of restitution for which a supervisory parent may be held liable. *In re McEvoy*, 267 Mich App 55, 67 (2005). In *McEvoy*, a juvenile pled guilty to arson of real property and malicious destruction of personal property for setting fire to a high school. The trial court ordered the juvenile and his supervising parents to pay restitution but limited the parents' liability to their insurance proceeds. The juvenile's parents appealed the order, arguing that the Parental Liability Act, MCL 600.2913, when read along with MCL 712A.30, limits a parent's liability to $2,500.00 in civil court actions. The Court of Appeals rejected the parents' argument, indicating that the Juvenile Code previously contained limits on a parent's liability, and the Legislature removed those limits. *McEvoy, supra* at 66. Furthermore, MCL 712A.30(9) provides that the amount of restitution paid to a victim must be set off against any compensatory damages recovered in a civil proceeding, clearly recognizing that restitution is independent of any damages sought in a civil proceeding. *McEvoy, supra* at 67.

In *McEvoy*, the parents also argued that because MCL 712A.30(15) allows the court to impose unlimited restitution without a showing of fault on the part of the supervisory parent, it unconstitutionally deprives the parents of substantive due process. Applying a "rational basis" standard of review, the Court of Appeals disagreed. *McEvoy, supra* at 68. The Court first noted that although the Juvenile Code does not contain a limit on the amount a parent may be ordered to pay, it does limit imposition of liability to a parent having supervisory responsibility of the juvenile at the time of the criminal acts. In addition, a court must consider a parent's ability to pay and may cancel all or part of the parent's obligation if payment will impose a manifest hardship. *Id.* at 69–70. Thus, parental liability may not be imposed solely based on a familial relationship.

> "The Legislature has clearly sought to link *liability* with *responsibility* in a reasonable, but purposeful manner, rather than burdening society generally or the victim, in particular, for the costs of a juvenile's illegal acts. The statute reasonably imposes

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liability on the parent responsible for supervising the child." *Id.* at 70.

The Court concluded that the provisions for restitution by a supervisory parent bear a reasonable relationship to a permissible legislative objective; therefore, there is no violation of the parents' due process rights.

The parents also argued "that MCL 712A.30 is an unconstitutional bill of attainder because it punishes parents for their status, not their conduct." *McEvoy, supra* at 72. A bill of attainder is a "legislative act that determines guilt and inflicts punishment upon an identifiable group of individuals without the protections of a judicial trial." *Id.* In order to determine whether the statute acts as a bill of attainder, the court must determine if the statute "inflicts forbidden punishment." The Court of Appeals determined that the restitution provisions of MCL 712A.30 "do not fall within the historical meaning of legislative punishment and are not validly characterized as punishment in the constitutional sense." *McEvoy, supra* at 73. The restitution provisions were designed to serve a nonpunitive purpose: to enable victims to be fairly compensated for losses. The Court also noted that MCL 712A.30(16) and (17) are specific provisions to mitigate any undue financial burden imposed upon parents. The Court concluded that given the nonpunitive nature of the sanctions and the statute's purpose and effect, it does not act as a bill of attainder. *McEvoy, supra* at 73–74.

CHAPTER 6

Elements of Selected Criminal Traffic Offenses

6.9 Section 625(1) and (8) Offenses—OWI

D. Issues

On page 101, change the subsection lettering from "C" to "D." On page 103, immediately before Section 6.10, insert the following text:

*Tetrahydro-cannabinol.

Carboxy THC,* a metabolite of THC (the psychoactive ingredient of marijuana), is not a schedule 1 controlled substance; however, the presence of carboxy THC in a person's blood is conclusive evidence of THC's presence in that person's body. Because marijuana is a schedule 1 controlled substance (MCL 333.7212(1)(c)) and because the presence of carboxy THC proves the presence of THC in a person's body, the presence of carboxy THC in a person's blood may establish that the individual violated MCL 257.625(8). *People v Derror (On Reconsideration)*, ___ Mich App ___, ___ (2005).

In determining whether the trial court properly concluded that carboxy THC is not a schedule 1 controlled substance, the *Derror* Court first looked at the plain language of the relevant statutes. The Court noted that carboxy THC was not a "synthetic equivalent" of THC and that it clearly was "not a part of the actual plant" for purposes of the definition of marijuana found in MCL 333.7212(1)(d). The Court held that the trial court correctly found that carboxy THC was not a schedule 1 drug and further explained this conclusion in light of the standard rules of statutory construction:

> "We note that the Legislature could have included metabolites in the definition of marijuana or schedule 1 controlled substances if it so intended. Under the probate code, for example, certain parties are required to report if 'a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body.' '[T]he Legislature is presumed to be aware of all existing statutes when enacting new laws.' As the Legislature expressly included metabolites in another statute, we must assume that it intended to expressly *exclude* the regulation of these substances in the public health code." *Derror, supra* at ___ (footnotes omitted).

Although carboxy THC is not a schedule 1 drug and could not, alone, satisfy the requirement in MCL 257.625(8) that a person operated a vehicle with the presence of any amount of a controlled substance in his or her body, "the presence of carboxy THC in a person's blood *conclusively* establishes the prior ingestion of THC." *Derror, supra* at ___.

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