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From: bjctimmons@comcast.net
Sent: Tuesday, March 2, 2021 5:07 PM
To: SenROutman@senate.michigan.gov; Rep. Mary Whiteford (District 80)
Cc: SenJStamas@senate.michigan.gov; Rep. Thomas Albert (District 86); Susan Frey; Rep. Graham Filler (District 93); Nick Capone; Matt Carnagie; angelotti@senate.michigan.gov; sjones@senate.michigan.gov
Subject: Submitting Statement on DHHS budget to "Stop the Steal" of Money from the Crime Victim's Rights Fund
Attachments: CVRA raid to fund trauma system-03.02.2021.docx

The Honorable Rick Outman, Chair, and Members of the Senate Appropriations
Subcommittee on Community Health/Human Services
The Honorable Mary Whiteford, Chair, and Members of the House Appropriations
Subcommittee on Health and Human Services

Please find attached the Statement I am submitting to your respective Senate and House Subcommittees regarding the continuing diversion of Crime Victim's Rights Fund money to develop the statewide trauma system – to the tune of \$3.5 million annually for the past eleven years (one year was higher).

I do not question the need for a statewide trauma system but do challenge how it is being funded.

This Statement includes the history of the Crime Victim's Rights Fund (CVRF), its origin and purpose, and the diversion of its funding beginning in 2008 for purposes unrelated the victim rights or services – first to MSP and now to DHHS. That diversion is nothing less than a raid under false pretenses that the diversion is related to crime victim's rights as set forth in the Constitution, Article I, Section 24, for which the crime victim's rights assessments are collected and for which the CVRF was established.

I have included recommendations to stop the diversion, replace the lost money with GF/GP, and return the CVRF assessments to pre-2010 levels.

Respectfully,

Bruce A. Timmons
Okemos MI

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March 2, 2021

To: Chair Rick Outman and Members of the Senate Appropriations
Subcommittee on Community Health/Human Services
To: Chair Mary Whiteford and Members of the House Appropriations
Subcommittee on Health and Human Services

Regarding the FY 2021-22 Budget for DHHS

Please – finally! – “Stop the Steal”, of the Money, from the Crime Victim’s Rights Fund.

Buried deep in the DHHS budget – for **thirteen** fiscal years – is an all too typical “redirection” or diversion of restricted revenue created with one clear objective to serve an entirely different purpose – under a dubious and arguably unconstitutional rationale to benefit an influential lobby, a ruse that has become more transparent over the past decade even as the use of the money has become less than transparent where neither legislators nor the public are likely to find it – or to paraphrase a long ago radio show, “only the shadow (medical/hospital lobby) knows”.

The following recites the history of the Crime Victim’s Rights Fund, its origin and purpose and how at least \$3.5 million annually has been diverted to pay for development of a statewide trauma system for **eleven** fiscal years. I presume there is common agreement that Michigan needs a statewide trauma system. It is a worth GF/GP expenditure. The objection raise here is misuse of the funding source and who is being “taxed” to provide it.

Let us begin with the lost memory of term-limited legislators.

Crime Victim’s Rights and the Crime Victim’s Rights Fund:

The Michigan Constitution, **Art I, sec. 24**, provides:

§ 24 Rights of crime victims; enforcement; assessment against convicted defendants.

Sec. 24. (1) Crime victims, as defined by law, shall have the following rights, as provided by law:

The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

The right to timely disposition of the case following arrest of the accused.

The right to be reasonably protected from the accused throughout the criminal justice process.

The right to notification of court proceedings.

The right to attend trial and all other court proceedings the accused has the right to attend.

The right to confer with the prosecution.

The right to make a statement to the court at sentencing.

The right to restitution.

The right to information about the conviction, sentence, imprisonment, and release of the accused.

(2) The legislature may provide by law for the enforcement of this section.

(3) **The legislature may provide for an assessment against convicted defendants to pay for crime victims’ rights.**

History: Add. H.J.R. P, approved Nov. 8, 1988, Eff. Dec. 24, 1988 (Emphasis added.)

Rep. William Van Regenmorter, sponsor of HJR P, in the next Session introduced legislation that became **1989 PA 196**, MCL 780.901 to 780.911, to create the crime victim’s assessment commission (later replaced by the crime victims services commission by 1996 PA 520),

established the **crime victim's rights fund (CVRF)**, and – consistent with Art I, Sec, 24 – defined "crime victim's rights services" as “services required to implement fully the William Van Regenmorter Crime Victim' Rights Act, 1985 PA 87, MCL 780.751 to 780.834, and services prescribed under this act”. MCL 780.901. The "rights" provided under 1985 PA 87 directly impact victim's rights to be informed of the criminal process involving the case that affects them or a deceased victim – when proceedings occur, when a victim has the right to make an impact statement, and when a victim is entitled to notice (including release of a prisoner from jail or prison) – and to receive restitution.

As first enacted, the CVRF per MCL 780.905 received revenue from the unique constitutionally-authorized assessment (Art. I, Sec. 24(3)) against individuals upon conviction for felonies and a limited number of misdemeanors and for comparable juvenile dispositions. The same section specified the assessments and implemented how the fund is to be used.

The original assessments were \$60 for a felony, \$50 for specified or serious misdemeanors (those that were serious enough to risk injury to victims), and \$20 for juveniles.

But no good idea goes uncompromised in a term-limited Legislature that forgets a law's origin.

The Beginning of the Diversion of CVRF Revenue to Non-Victim Purposes in 2008:

A perceived surplus in the **Crime Victim's Rights Fund** led to "raids" upon it to balance the GF/GP budget – some of which could be questioned as an unconstitutional diversion from a constitutionally-authorized assessment. Never mind, of course, that at the time more money was being expended for crime victim's rights services than was being collected from crime victim's rights assessments. Payouts were exceeding income.

Nonetheless, in **2008, PA 396** amended MCL 780.904 to allow “surplus” in the CVRF to be siphoned off for these 5 objectives in the **MSP** budget for FY 2008-09:

(a) The operation and enhancement of the sex offender registry compiled and maintained under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736.

(b) The Amber alert program under the Michigan Amber alert act, 2002 PA 712, MCL 28.751 to 28.754.

(c) Treatment services for victims of conduct prohibited under sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g.

(d) Polygraph examination as that term is defined under section 2 of the polygraph protection act of 1981, 1982 PA 44, MCL 37.202.

(e) The expert witness testimony of a forensic scientist.

The uses allowed under MCL 780.904(2)(a) to (e) – with the possible exception of subdivision (c) – were arguably law enforcement expenses, more related to prosecution of the offense than "victim services". (The Amber alert system may not even involve a crime victim.)

The next year **HB 5592** was introduced to balance the MSP budget for FY 2009-10 – to allow use of the surplus in the CVRF in **any** fiscal year. Prosecutors, who rely upon the CVRF for reimbursement for services they provide for victims, were concerned that the draw-down on the surplus would shortly mean the state would be unable to fund crime victim's rights services that the fund was created to do and thereby create yet one more unfunded mandate on counties. That bill was not passed, but HB 5666, **2010 PA 202**, was enacted to extend the provision of 2009 PA 396 for another fiscal year, FY 2009-10. →

The Diversion of CVRF to Develop a Statewide Trauma System Began in 2010:

Then came the diversion in the same 2010 legislative Session that still applies today – to fund the development of a statewide trauma system, which is attributable to the political leverage of the medical/hospital lobby and the inability or unwillingness of the Legislature to find **\$3,500,000** in GF/GP in a DHHS budget of \$14.1 Billion (\$2.4 Billion GF/GP) in 2010 and through 2020.

2010 PA 280 (SB 1003), eff 4/1//2011, amended MCL 780.904 distributing the CVRF to:

- Eliminate further diversion of the CVRF for the 5 MSP purposes allowed for FY 2008-09 and 2009-10.

- Allow **up to \$3.5 million annually**, from the fund's surplus, if any, for the establishment and maintenance of a statewide trauma system (including staff support and related emergency medical services program activities) through FY 2013-14.

- Reduce the \$3.5 million by half after **October 1, 2014**, "unless the amount expended is reasonably proportional to crime victims' utilization of the statewide trauma system". [**Who even now determines that? The fox in the henhouse? After 10 years, still no formula.**]

"The compromise" in 2010: PAAM was instrumental in developing a package of 3 bills in 2010 – involved in the discussion but necessarily in agreement was a work group that included DCH, DHS, trauma centers, and advocates against domestic violence – with these concurrent objectives: protecting PAAM's funding for crime victim's rights under 1985 PA 87, providing funding for trauma centers that the medical/hospital was seeking, increasing compensation for victims under 1976 PA 223, and **increasing the crime victim's rights assessments** to cover the additional costs. At one of the House Judiciary Committee meetings on these bills, the entire AHOB Room 531 was filled with white coats (doctors), SRO. [HB 5661 raised assessment on convicted criminals, SB 1003 allocated up to \$3.5 million annually for trauma centers, and HB 5667 increased victim compensation.]

2010 PA 281 (HB 5661), eff 12/16/2010, amended MCL 780.905 (CVRF assessments) to:

- Increase the crime victim's rights assessment for a felony from \$60 to **\$130**.

- Increase the crime victim's rights assessment for any misdemeanor to **\$75** – thus eliminating Van Regenmorter's narrower categories of misdemeanor that posed risk of harm to people.

- Increase the crime victim's rights assessment for comparable juvenile offenses from \$20 to **\$25**.

So much for the "promised" short-term reevaluation: Whatever the selling point that the raid on CVRF would be scaled back after 5 years has been dispelled for a decade as the diversion of CVRF money continues unabated at the same annual \$3.5 million level. **2014 PA 299** (HB 4915) extended the 2014 date to **2018**. The following year, **2015 PA 9** (SB 138), eff 6/30/2015, siphoned off an extra \$1.3 million dollars: "For the 2014-2015 fiscal year only, not more than **\$4,800,000.00** shall be expended for this purpose from the fund.". **2018 PA 221** (5901), eff 9/24/2018, extended the date for limiting the withdrawal to October 1, **2021** – the current 2020-21 fiscal year. How soon will there be a bill to extend the date once again?

The Problems with this Diversion:

- o The Constitution authorizes an assessment to **fund crime victim's rights, not just anything the Legislature finds it convenient to pay for**. Expediency sets dangerous precedents.

- o Just because trauma centers are desperate for money does not mean the CVRF is the right or even legal funding source. →

- o How attenuated must an expenditure be from revenue generated for a constitutionally authorized purpose from a constitutionally authorized source before it becomes a tax?
- o The diversion of funds legitimately raised to provide, or reimburse for, crime victim's rights services in order to pay for general law enforcement functions or development of a statewide trauma system is at the expense of victim's rights and services and has set a precedent for further diversion in the future in lieu of general fund support for broader public health services or some other 'worthy objectives' (like MSP) – a pattern now for **13** years. .
- o Once the foot is in the door, is the CVRF vulnerable to an increased diversion for the statewide trauma system when other revenue options are slim, just as occurred in 2015?
- o **Who determines victim utilization of the trauma system? Those who benefit from the funding?** There is no legislative guidance as to how to determine “reasonable proportionality”. **Ten years later** there is still no data to support the premise that the trauma system is reasonably proportional to crime victims' utilization of the statewide trauma system.
- o It is clear that the argument that a trauma system benefits ‘crime victims’ is pretense, contrived to capture the money – as evidenced by the continued extension of the date for determining the proportion of trauma center utilization by crime victims. Where is the accountability? Why does the Legislature perpetuate the myth?
- o **If more uses of the CVRF had not been added, the fund would not need the additional revenue that the higher assessments have generated.**
- o **Extension of assessments to ALL misdemeanors is unwarranted and outrageous.** Newly covered in 2010 were minor offenses, like minor in possession (later a CI), trespass, or shoplifting (retail fraud second or third degree).
- o Why cannot DHHS and the Legislature find a, relatively speaking – measly, \$3.5 million GF/GP out of a \$28.5 Billion Gross (\$5.1 Billion GF/GP) DHHS budget (FY 2020-21)? Maybe, try harder?

Reform Recommendations:

1. Terminate the use of the CVRF and the crime victim's rights assessment revenue as a funding source for the development of the statewide trauma system, requiring amendment to MCL 780.904.
2. As worthy as a statewide trauma system unquestionably is, replace the CVRF money with a state general fund **GF/GP** appropriation.
3. Reduce the crime victim's rights assessments for felons, misdemeanants, and juveniles to the pre-2010 levels, including the more limited set of misdemeanors; but if and inly to the extent necessary, provide somewhat higher assessment levels than the pre-2010 amounts to fund the crime victim's rights services as the CVRF was created to do.

Respectfully,

Bruce A. Timmons

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Retired attorney, the last 30 years of a 45-year career in various legal and policy positions with the Michigan Legislature as Legal Counsel and Policy Advisor, House Republican Policy Office (1983-2012)