

Act No. 343
Public Acts of 1993
Approved by the Governor
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Senator Van Regenmorter

ENROLLED SENATE BILL No. 139

AN ACT to amend section 15 of chapter V, section 1a of chapter IX, and sections 3 and 7 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," section 1a of chapter IX as added by Act No. 89 of the Public Acts of 1985, section 3 of chapter XI as amended by Act No. 185 of the Public Acts of 1993, and section 7 of chapter XI as added by Act No. 78 of the Public Acts of 1988, being sections 765.15, 769.1a, 771.3, and 771.7 of the Michigan Compiled Laws; and to add section 6c to chapter V and section 22 to chapter XV.

The People of the State of Michigan enact:

Section 1. Section 15 of chapter V, section 1a of chapter IX, and sections 3 and 7 of chapter XI of Act No. 175 of the Public Acts of 1927, section 1a of chapter IX as added by Act No. 89 of the Public Acts of 1985, section 3 of chapter XI as amended by Act No. 185 of the Public Acts of 1993, and section 7 of chapter XI as added by Act No. 78 of the Public Acts of 1988, being sections 765.15, 769.1a, 771.3, and 771.7 of the Michigan Compiled Laws, are amended and section 6c is added to chapter V and section 22 is added to chapter XV to read as follows:

CHAPTER V

Sec. 6c. If a defendant for whom bail or bond is required personally fulfills that requirement by a cash deposit, the defendant shall be notified that upon the defendant's conviction the cash deposit may be used to collect a fine, costs, restitution, assessment, or other payment pursuant to section 15(2) of this chapter.

Sec. 15. (1) If bond or bail is forfeited, the court shall enter an order upon its records directing the disposition of the cash, check, or security within 45 days of the order. The treasurer or clerk, upon presentation of a certified copy of such order, shall dispose of the cash, check, or security pursuant to the order. The court shall set aside the forfeiture and discharge the bail or bond, within 1 year from the time of the forfeiture judgment, in accordance with subsection (2) if the person who forfeited bond or bail is apprehended, the ends of justice have not been thwarted, and the county has been repaid its costs for apprehending the person.

(2) If bond or bail is discharged, the court shall enter an order with a statement of the amount to be returned to the depositor. If the court ordered the defendant to pay a fine, costs, restitution, assessment, or other payment, the court shall order the fine, costs, restitution, assessment, or other payment collected out of cash bond or bail personally deposited by the defendant under this chapter, and the cash bond or bail used for that purpose shall be allocated as provided in section 22 of chapter XV. Upon presentation of a certified copy of the order, the treasurer or clerk having the cash, check, or security shall pay or deliver it as provided in the order to the person named in the order or to that person's order.

(3) If the cash, check, or security is in the hands of the sheriff or any officer other than the treasurer or clerk, the officer holding it shall dispose of the cash, check, or security as the court orders upon presentation of a certified copy of the court's order.

CHAPTER IX

Sec. 1a. (1) As used in this section, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a felony, misdemeanor, or ordinance violation. For purposes of subsections (2), (3), (4), (7), (9), (10), (11), and (16), victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of a felony, misdemeanor, or ordinance violation.

(2) Except as provided in this section, the court, when sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full or partial restitution to the victim of the defendant's course of conduct that gives rise to the conviction, or to the victim's estate.

(3) If the court does not order restitution, or orders only partial restitution under this section, the court shall state on the record the reasons for that action.

(4) If a felony, misdemeanor, or ordinance violation results in damage to or loss or destruction of property of a victim of the felony, misdemeanor, or ordinance violation or results in the seizure or impoundment of property of a victim of the felony, misdemeanor, or ordinance violation, the order of restitution may require that the defendant do 1 or more of the following:

(a) Return the property to the owner of the property or to a person designated by the owner.

(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraph (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:

(i) The value of the property on the date of the damage, loss, or destruction.

(ii) The value of the property on the date of sentencing.

(c) Pay the cost of the seizure or impoundment, or both.

(5) If a felony, misdemeanor, or ordinance violation results in physical or psychological injury to a victim, the order of restitution may require that the defendant do all of the following, as applicable:

(a) Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.

(b) Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation.

(c) Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the felony, misdemeanor, or ordinance violation.

(d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family which has been incurred as a result of the felony, misdemeanor, or ordinance violation.

(e) Pay an amount equal to the cost of actual homemaking and child care expenses incurred as a result of the felony, misdemeanor, or ordinance violation.

(6) If a felony, misdemeanor, or ordinance violation resulting in bodily injury also results in the death of a victim, the order of restitution may require that the defendant pay an amount equal to the cost of actual funeral and related services.

(7) Instead of restitution under subsections (4) to (6), if the victim or the victim's estate consents, the order of restitution may require that the defendant make restitution in services in lieu of money, or make restitution to a person designated by the victim or the victim's estate, if that person provided services to the victim as a result of the felony, misdemeanor, or ordinance violation.

(8) If the court orders restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

(9) Any order of restitution shall be as fair as possible to the victim or the victim's estate without unduly complicating or prolonging the sentencing process.

(10) Except as otherwise provided in this section, the court shall order restitution to the crime victims compensation board or to individuals, partnerships, corporations, associations, governmental entities, or any other legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. However, an order of restitution shall require that all restitution to a victim or a victim's estate under the order be made before any restitution to any other person under that order is made. The court shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss.

(11) Any amount paid to a victim or a victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victims compensation board made after an order of restitution under this section.

(12) If not otherwise provided by the court under this subsection, restitution shall be made immediately. However, the court may require that the defendant make restitution under this section within a specified period or in specified installments. The end of the period or the last installment shall not be later than the following:

(a) The end of the period of probation, if probation is ordered.

(b) Two years after the end of imprisonment or discharge from parole, whichever occurs later, if the court does not order probation but imposes a term of imprisonment.

(c) Three years after the date of sentencing in any other case.

(13) In determining the amount of restitution, the court shall consider the defendant's earning ability, financial resources, and any other special circumstances that may have a bearing on the defendant's ability to pay.

(14) If the defendant is placed on probation or paroled, any restitution ordered under this section shall be a condition of that probation or parole. The court may revoke probation and the parole board may revoke parole if the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole, the court or parole board shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

(15) A defendant who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the sentencing judge or his or her successor for a cancellation of any unpaid portion of restitution. If it appears to the satisfaction of the court that payment of the amount due will impose a manifest hardship on the defendant or his or her immediate family, the court may cancel all or part of the amount due in restitution or modify the method of payment.

(16) An order of restitution to a victim or a victim's estate may be enforced by the prosecuting attorney or a victim or a victim's estate named in the order to receive the restitution in the same manner as a judgment in a civil action.

(17) Notwithstanding any other provision of this section, a defendant shall not be imprisoned, jailed, or incarcerated for a violation of probation or parole, or otherwise, for failure to pay restitution as ordered under this section unless the court or parole board determines that the defendant has the resources to pay the ordered restitution and has not made a good faith effort to do so.

(18) In each case in which payment of restitution is ordered as a condition of probation, the probation officer assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review shall be conducted not less than 60 days before the expiration of the probationary period. If the probation officer determines that restitution is not being paid as ordered, the probation officer shall file a written report of the violation with the court on a form prescribed by the state court administrative office. The report shall include a statement of the amount of the arrearage, and any reasons for the arrearage that are known by the probation officer. The probation officer shall immediately provide a copy of the report to the prosecuting attorney. If a motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance.

CHAPTER XI

Sec. 3. (1) The sentence of probation shall include all of the following conditions:

(a) The probationer shall not, during the term of his or her probation, violate any criminal law of this state, or any ordinance of any municipality in the state.

(b) The probationer shall not, during the term of his or her probation, leave the state without the consent of the court granting his or her application for probation.

(c) The probationer shall report to the probation officer, either in person or in writing, monthly, or as often as the probation officer requires. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws.

(d) The probationer, if convicted of a felony, pay a probation supervision fee as prescribed in section 3c of this chapter.

(e) The probationer shall pay restitution to the victim of the defendant's course of conduct giving rise to the conviction or to the victim's estate as provided in chapter IX. An order for payment of restitution may be modified and shall be enforced as provided in chapter IX.

(f) The probationer shall pay an assessment ordered under section 5 of Act No. 196 of the Public Acts of 1989, being section 780.905 of the Michigan Compiled Laws.

(2) As a condition of probation, the court may require the probationer to do 1 or more of the following:

(a) Be imprisoned in the county jail for not more than 12 months, at the time or intervals, which may be consecutive or nonconsecutive, within the probation as the court determines. However, the period of confinement shall not exceed the maximum period of imprisonment provided for the offense charged if the maximum period is less than 12 months. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to a state institution or agency described in Act No. 150 of the Public Acts of 1974.

(b) Pay immediately or within the period of his or her probation a fine imposed when placed on probation.

(c) Pay costs pursuant to subsection (4).

(d) Engage in community service.

(e) Agree to pay any restitution, assessment, fine, or cost imposed by the court by wage assignment.

(3) Subsection (2) may be applied to a person who is placed on probation for life pursuant to sections 1(4) and 2(3) of this chapter for the first 5 years of that probation.

(4) The court may impose other lawful conditions of probation as the circumstances of the case require or warrant, or as in its judgment are proper. If the court requires the probationer to pay costs, the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer.

(5) If the court imposes costs as part of a sentence of probation, all of the following apply:

(a) The court shall not require a probationer to pay costs unless the probationer is or will be able to pay them during the term of probation. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the probationer and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations.

(b) A probationer who is required to pay costs and who is not in willful default of the payment of the costs, at any time, may petition the sentencing judge or his or her successor for a remission of the payment of any unpaid portion of those costs. If the court determines that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

(6) If a probationer is required to pay costs as part of a sentence of probation, the court may require payment to be made immediately or the court may provide for payment to be made within a specified period of time or in specified installments.

(7) If a probationer is ordered to pay costs as part of a sentence of probation, compliance with that order shall be a condition of probation. The court may revoke probation if the probationer fails to comply with the order and if the probationer has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the probationer's employment status, earning ability, and financial resources, and the willfulness of the probationer's failure to pay, and any other special circumstances that may have a bearing on the probationer's ability to pay. The proceedings provided for in this subsection are in addition to those provided in section 4 of this chapter.

Sec. 7. (1) If a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws, is found by the court to have violated probation by being convicted of a felony or a misdemeanor punishable by more than 1 year imprisonment, the court shall revoke probation and order the juvenile committed to the department of corrections for a term of years that shall not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation with credit granted against the sentence for the period of time the juvenile served on probation.

(2) If a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to a state institution or agency described in Act No. 150 of the Public Acts of 1974 is found by the court to have violated probation other than as provided in subsection (1), the court shall not order the juvenile committed to the department of corrections, but the court shall continue probation and order the juvenile to pay restitution as provided by law. The court may order any of the following for the juvenile:

- (a) A change of placement.
- (b) Community service.
- (c) Substance abuse counseling.
- (d) Mental health counseling.
- (e) Participation in a vocational-technical education program.
- (f) Incarceration in a county jail for not more than 30 days. If a juvenile is under 17 years of age, the juvenile shall be placed in a room or ward out of sight and sound from adult prisoners.
- (g) Other participation or performance as the court considers necessary.

CHAPTER XV

Sec. 22. (1) If a person is subject to any combination of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments arising out of the same criminal proceeding, money collected from that person for the payment of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments shall be allocated as provided in this section.

(2) Except as otherwise provided in this subsection, if a person is subject to payment of victim payments and any combination of other fines, costs, assessments, probation or parole supervision fees, or other payments, 50% of all money collected from that person shall be applied to payment of victim payments, and the balance shall be applied to payment of fines, costs, supervision fees, and other assessments or payments. If any fines, costs, supervision fees, or other assessments or payments remain unpaid after all of the victim payments have been paid, any additional money collected shall be applied to payment of those fines, costs, supervision fees, or other assessments or payments. If any victim payments remain unpaid after all of the fines, costs, supervision fees, or other assessments or payments have been paid, any additional money collected shall be applied toward payment of those victim payments.

(3) In cases involving prosecutions for violations of state law, money allocated under subsection (2) for payment of fines, costs, probation and parole supervision fees, and assessments or payments other than victim payments shall be applied in the following order of priority:

- (a) Payment of costs.
- (b) Payment of fines.
- (c) Payment of probation or parole supervision fees.
- (d) Payment of assessments and other payments.

(4) In cases involving prosecutions for violations of local ordinances, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

- (a) Payment of fines and costs.
- (b) Payment of assessments and other payments.

(5) As used in this section, "victim payment" means restitution ordered to be paid to the victim or the victim's estate, but not to a person who reimbursed the victim for his or her loss, or an assessment ordered under section 5 of Act No. 196 of the Public Acts of 1989, being section 780.905 of the Michigan Compiled Laws.

Section 2. This amendatory act shall take effect May 1, 1994.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

- (a) Senate Bill No. 137.
- (b) Senate Bill No. 138.
- (c) Senate Bill No. 469.
- (d) Senate Bill No. 470.
- (e) Senate Bill No. 472.
- (f) Senate Bill No. 473.

This act is ordered to take immediate effect.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved -----

Governor.