



# HOUSE BILL No. 5664

June 22 1994 Introduced by Reps Martin, Porreca, Pitoniak, Willard, Stille, Voorhees, Weeks and LeTarte and referred to the Committee on Judiciary

A bill to amend section 1a of Act No 175 of the Public Acts of 1927, entitled as amended 'The code of criminal procedure,' as amended by Act No 343 of the Public Acts of 1993, being section 769 1a of the Michigan Compiled Laws

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Section 1a of Act No 175 of the Public Acts of  
2 1927, as amended by Act No 343 of the Public Acts of 1993, being  
3 section 769 1a of the Michigan Compiled Laws, is amended to read  
4 as follows

5 Sec 1a (1) As used in this section, 'victim' means an  
6 individual who suffers direct or threatened physical, financial,  
7 or emotional harm as a result of the commission of a felony,  
8 misdemeanor, or ordinance violation For purposes of  
9 subsections (2), (3), (4), (7), (9) (10), (11), and (16), victim

1 includes a sole proprietorship partnership corporation  
2 association, governmental entity, or any other legal entity that  
3 suffers direct physical or financial harm as a result of a  
4 felony, misdemeanor, or ordinance violation

5 (2) Except as provided in this section, the court, when sen-  
6 tencing a defendant convicted of a felony misdemeanor or ordi-  
7 nance violation shall order, in addition to or in lieu of any  
8 other penalty authorized by law or in addition to any other pen-  
9 alty required by law, that the defendant make full or partial  
10 restitution to ~~the~~ ANY victim of the defendant's course of con-  
11 duct that gives rise to the conviction, or to the victim s  
12 estate

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

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

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

24 (b) If return of the property under subdivision (a) is  
25 impossible, impractical, or inadequate, pay an amount equal to  
26 the greater of subparagraph (1) or (2), less the value,

1 determined as of the date the property is returned of that  
2 property or any part of the property that is returned

3 (1) The value of the property on the date of the damage,  
4 loss, or destruction

5 (2) The value of the property on the date of sentencing

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

7 (5) If a felony, misdemeanor, or ordinance violation results  
8 in physical or psychological injury to a victim, the order of  
9 restitution may require that the defendant do ~~all~~ 1 OR MORE of  
10 the following, as applicable

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

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

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

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

23 (e) Pay an amount equal to the cost of actual homemaking and  
24 child care expenses incurred as a result of the felony, misde-  
25 meanor, or ordinance violation

26 (6) If a felony, misdemeanor, or ordinance violation  
27 resulting in bodily injury also results in the death of a victim,

1 the order of restitution may require that the defendant pay an  
2 amount equal to the cost of actual funeral and related services

3 (7) Instead of restitution under subsections (4) to (6), if  
4 the victim or the victim's estate consents, the order of restitu-  
5 tion may require that the defendant make restitution in services  
6 in lieu of money or make restitution to a person designated by  
7 the victim or the victim's estate, if that person provided serv-  
8 ices to the victim as a result of the felony misdemeanor or  
9 ordinance violation AS USED IN THIS SUBSECTION AND SUBSECTION  
10 (16) PERSON INCLUDES BUT IS NOT LIMITED TO, A SHELTER PROGRAM  
11 FOR VICTIMS OF DOMESTIC VIOLENCE AND THEIR DEPENDENT CHILDREN  
12 ESTABLISHED UNDER ACT NO 389 OF THE PUBLIC ACTS OF 1978, BEING  
13 SECTIONS 400 1501 TO 400 1510 OF THE MICHIGAN COMPILED LAWS, OR  
14 SIMILAR COMMUNITY SERVICE PROGRAM

15 (8) If the court orders restitution under this section the  
16 court shall, if the victim is deceased order that the restitu-  
17 tion be made to the victim's estate

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

21 (10) Except as otherwise provided in this section, the court  
22 shall order restitution to the crime victims compensation board  
23 or to ANY individuals, partnerships, corporations, associations,  
24 governmental entities or ~~any~~ other legal entities that have  
25 compensated the victim or the victim's estate for a loss incurred  
26 by the victim to the extent of the compensation paid for that  
27 loss However an order of restitution shall require that all

1 restitution to a victim or a victim's estate under the order be  
2 made before any restitution to any other person under that order  
3 is made. The court shall not order restitution to be paid to a  
4 victim or victim's estate if the victim or victim's estate has  
5 received or is to receive compensation for that loss.

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

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

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

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

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

26 (13) In determining the amount of restitution, the court  
27 shall consider the defendant's earning ability, financial

1 resources and any other special circumstances that may have a  
2 bearing on the defendant s ability to pay

3 (14) If the defendant is placed on probation or paroled, any  
4 restitution ordered under this section shall be a condition of  
5 that probation or parole The court may revoke probation and the  
6 parole board may revoke parole if the defendant fails to comply  
7 with the order and if the defendant has not made a good faith  
8 effort to comply with the order In determining whether to  
9 revoke probation or parole, the court or parole board shall con-  
10 sider the defendant s employment status, earning ability finan-  
11 cial resources the willfulness of the defendant s failure to  
12 pay and any other special circumstances that may have a bearing  
13 on the defendant s ability to pay

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

22 (16) An order of restitution ~~to a victim or a victim's~~  
23 ~~estate~~ may be enforced by the prosecuting attorney, ~~or~~ a  
24 victim ~~or~~ a victim s estate OR ANY OTHER PERSON named in the  
25 order to receive the restitution in the same manner as a judgment  
26 in a civil action

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

8 (18) In each case in which payment of restitution is ordered  
9 as a condition of probation, the probation officer assigned to  
10 the case shall review the case not less than twice yearly to  
11 ensure that restitution is being paid as ordered The final  
12 review shall be conducted not less than 60 days before the expi-  
13 ration of the probationary period If the probation officer  
14 determines that restitution is not being paid as ordered, the  
15 probation officer shall file a written report of the violation  
16 with the court on a form prescribed by the state court adminis-  
17 trative office The report shall include a statement of the  
18 amount of the arrearage and any reasons for the arrearage that  
19 are known by the probation officer The probation officer shall  
20 immediately provide a copy of the report to the prosecuting  
21 attorney If a motion is filed or other proceedings are initi-  
22 ated to enforce payment of restitution and the court determines  
23 that restitution is not being paid or has not been paid as  
24 ordered by the court, the court shall promptly take action neces-  
25 sary to compel compliance