



SENATE BILL No. 139

January 13, 1993, Introduced by Senator VAN REGENMORTER
and referred to the Committee on Judiciary.

A bill to amend section 1a of chapter IX and section 3 of
chapter XI of Act No. 175 of the Public Acts of 1927, entitled as
amended

"The code of criminal procedure,"

section 1a of chapter IX as added by Act No. 89 of the Public
Acts of 1985 and section 3 of chapter XI as amended by Act
No. 184 of the Public Acts of 1989, being sections 769.1a and
771.3 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1a of chapter IX and section 3 of chap-
2 ter XI of Act No. 175 of the Public Acts of 1927, section 1a of
3 chapter IX as added by Act No. 89 of the Public Acts of 1985 and
4 section 3 of chapter XI as amended by Act No. 184 of the Public
5 Acts of 1989, being sections 769.1a and 771.3 of the Michigan
6 Compiled Laws, are amended to read as follows:

CHAPTER IX

1
2 Sec. 1a. (1) In addition to the court's authority to order
3 restitution as part of a sentence pursuant to chapter XI, the
4 judge of a court of competent jurisdiction may order, in addition
5 to or in the place of any other penalty authorized by law, a
6 person convicted of any felony or misdemeanor to make full or
7 partial restitution to the victim of the defendant's course of
8 conduct ~~which~~ THAT gives rise to the conviction or to the
9 victim's estate. If upon the conviction of a felony or a misde-
10 meanor punishable by imprisonment for more than 1 year, the court
11 does not order restitution, or orders only partial restitution,
12 the court shall state on the record the reasons for that action.

13 (2) If a crime results in damage to or loss or destruction
14 of property of a victim of the crime, the order of restitution
15 may require that the defendant do either of the following:

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

18 (b) If return of the property under subdivision (a) is
19 impossible, impractical, or inadequate, pay an amount equal to
20 the greater of ~~subparagraphs~~ SUBPARAGRAPH (i) or (ii), less the
21 value, determined as of the date the property is returned, of
22 that property or any part of the property that is returned:

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

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

1 (3) If a crime results in physical or psychological injury
2 to a victim, the order of restitution may require that the
3 defendant do all of the following, as applicable:

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

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

9 (c) Reimburse the victim or the victim's estate for
10 after-tax income loss suffered by the victim as a result of the
11 crime.

12 (d) Pay an amount equal to the cost of psychological and
13 medical treatment for members of the victim's family ~~which~~ THAT
14 has been incurred as a result of the crime.

15 (4) If a crime resulting in bodily injury also results in
16 the death of a victim, the order of restitution may require that
17 the defendant pay an amount equal to the cost of actual funeral
18 and related services.

19 (5) Instead of restitution under subsections (2) to (4), if
20 the victim or the victim's estate consents, the order of restitu-
21 tion may require that the defendant make restitution in services
22 in lieu of money, or make restitution to a person designated by
23 the victim or the victim's estate, if that person provided serv-
24 ices to the victim as a result of the crime.

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

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

4 (8) The court shall not order restitution with respect to a
5 loss for which the victim or the victim's estate has received or
6 is to receive compensation, including insurance, except that the
7 court may, in the interest of justice, order restitution to the
8 crime victims compensation board or to any person who has compen-
9 sated the victim or the victim's estate for such a loss to the
10 extent that the crime victims compensation board or a person paid
11 the compensation. An order of restitution shall require that all
12 restitution to a victim or a victim's estate under the order be
13 made before any restitution to any other person under that order
14 is made.

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

22 (10) If not otherwise provided by the court under this sub-
23 section, restitution shall be made immediately. However, the
24 court may require that the defendant make restitution under this
25 section within a specified period or in specified installments.
26 The end of the period or the last installment shall not be later
27 than the following:

1 (a) The end of the period of probation, if probation is
2 ordered pursuant to chapter XI.

3 (b) Two years after the end of imprisonment or discharge
4 from parole, whichever occurs later, if the court does not order
5 probation.

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

8 (11) An order of restitution may be enforced by the prose-
9 cuting attorney or a victim or a victim's estate named in the
10 order to receive the restitution in the same manner as a judgment
11 in a civil action.

12 (12) As used in this section, ~~and in section 3 of chapter~~
13 ~~XI,~~ "victim" means an individual who suffers direct or threat-
14 ened physical, financial, or emotional harm as a result of the
15 commission of a crime OR A PARTNERSHIP, CORPORATION, ASSOCIATION,
16 GOVERNMENTAL ENTITY, OR ANY OTHER LEGAL ENTITY THAT SUFFERS
17 DIRECT PHYSICAL OR FINANCIAL HARM AS A RESULT OF THE COMMISSION
18 OF A CRIME.

19 CHAPTER XI

20 Sec. 3. (1) The ~~conditions~~ SENTENCE of probation shall
21 include ALL OF the following CONDITIONS:

22 (a) ~~That the~~ THE probationer shall not, during the term of
23 his or her probation, violate any criminal law of this state, or
24 any ordinance of any municipality in the state.

25 (b) ~~That the~~ THE probationer shall not, during the term of
26 his or her probation, leave the state without the consent of the
27 court granting his or her application for probation.

1 (c) ~~That the~~ THE probationer shall make a report to the
2 probation officer, either in person or in writing, monthly, or as
3 often as the probation officer ~~may require~~ REQUIRES. This sub-
4 division does not apply to a juvenile placed on probation and
5 committed under section 1(3) or (4) of chapter IX to a state
6 institution or agency described in the youth rehabilitation serv-
7 ices act, Act No. 150 of the Public Acts of 1974, being sections
8 803.301 to 803.309 of the Michigan Compiled Laws.

9 ~~(d) That the probationer, if convicted of a felony, pay a~~
10 ~~probation oversight fee or perform community service as pre-~~
11 ~~scribed in section 3e.~~

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

14 (a) Be imprisoned in the county jail for not more than 12
15 months, at the time or intervals, which may be consecutive or
16 nonconsecutive, within the probation as the court may determine.
17 However, the period of confinement shall not exceed the maximum
18 period of imprisonment provided for the offense charged if the
19 maximum period is less than 12 months. This subdivision does not
20 apply to a juvenile placed on probation and committed under sec-
21 tion 1(3) or (4) of chapter IX to a state institution or agency
22 described in Act No. 150 of the Public Acts of 1974, being sec-
23 tions 803.301 to 803.309 of the Michigan Compiled Laws.

24 (b) Pay immediately or within the period of his or her pro-
25 bation, a fine imposed at the time of being placed on probation.

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

1 (d) Pay restitution to the victim or the victim's estate.

2 (e) Engage in community service.

3 (3) Subsection (2) ~~shall~~ DOES not apply to a person who is
4 placed on probation for life pursuant to sections 1(3) and 2(3)
5 of this chapter.

6 (4) The court may impose other lawful conditions of proba-
7 tion as the circumstances of the case may require or warrant, or
8 as in its judgment may be proper. If the court requires the pro-
9 bationer to pay costs, the costs shall be limited to expenses
10 specifically incurred in prosecuting the defendant or providing
11 legal assistance to the defendant and probationary oversight of
12 the probationer.

13 (5) If the court imposes restitution or costs as part of a
14 sentence of probation, the following ~~shall~~ apply:

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

22 (b) A probationer who is required to pay restitution or
23 costs and who is not in willful default of the payment of the
24 restitution or costs, at any time, may petition the sentencing
25 judge or his or her successor for a remission of the payment of
26 any unpaid portion of restitution, costs, or both. If it appears
27 to the satisfaction of the court that payment of the amount due

1 will impose a manifest hardship on the probationer or his or her
2 immediate family, the court may remit all or part of the amount
3 due in restitution or costs or modify the method of payment.

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

9 (7) If a probationer is ordered to pay restitution or costs
10 as part of a sentence of probation, compliance with that order
11 ~~shall be~~ IS a condition of probation. The court may revoke
12 probation if the probationer fails to comply with the order and
13 if the probationer has not made a good faith effort to comply
14 with the order. In determining whether to revoke probation, the
15 court shall consider the probationer's employment status, earning
16 ability, AND financial resources, ~~and~~ the willfulness of the
17 probationer's failure to pay, and any other special circumstances
18 that may have a bearing on the probationer's ability to pay. The
19 proceedings provided for in this subsection ~~shall be~~ ARE in
20 addition to those provided in section 4 of this chapter. A juve-
21 nile placed on probation and committed under section 1(3) or (4)
22 of chapter IX to a state institution or agency described in Act
23 No. 150 of the Public Acts of 1974, being sections 803.301 to
24 803.309 of the Michigan Compiled Laws, shall not be committed to
25 the department of corrections for failure to comply with a resti-
26 tution order.

1 (8) AS USED IN THIS SECTION, "VICTIM" MEANS AN INDIVIDUAL
2 WHO SUFFERS DIRECT OR THREATENED PHYSICAL, FINANCIAL, OR
3 EMOTIONAL HARM AS A RESULT OF THE COMMISSION OF A CRIME OR A
4 PARTNERSHIP, CORPORATION, ASSOCIATION, GOVERNMENTAL ENTITY, OR
5 ANY OTHER LEGAL ENTITY THAT SUFFERS DIRECT PHYSICAL OR FINANCIAL
6 HARM AS A RESULT OF THE COMMISSION OF A CRIME.

7 Section 2. This amendatory act shall not take effect unless
8 Senate Bill No. 137

9 of the 87th Legislature is enacted into law.