



SENATE BILL No. 471

March 9, 1993, Introduced by Senators VAN REGENMORTER, CISKY, DINGELL, DE GROW, DUNASKISS, FAUST and KELLY and referred to the Committee on Judiciary.

A bill to amend section 15 of chapter V, 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 765.15, 769.1a, and 771.3 of the Michigan Compiled Laws; and to add section 6b to chapter V and section 22 to chapter XV.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 15 of chapter V, section 1a of chapter
2 IX, and section 3 of chapter XI of Act No. 175 of the Public Acts
3 of 1927, section 1a of chapter IX as added by Act No. 89 of the
4 Public Acts of 1985 and section 3 of chapter XI as amended by Act
5 No. 184 of the Public Acts of 1989, being sections 765.15,

1 769.1a, and 771.3 of the Michigan Compiled Laws, are amended and
2 section 6b is added to chapter V and section 22 is added to chap-
3 ter XV to read as follows:

4 CHAPTER V

5 SEC. 6B. IF A PERSON FOR WHOM BAIL OR BOND IS REQUIRED FUL-
6 FILLS THAT REQUIREMENT BY A CASH DEPOSIT, THE PERSON SHALL BE
7 NOTIFIED THAT THE CASH DEPOSIT MAY BE USED TO COLLECT AN ASSESS-
8 MENT PURSUANT TO SECTION 15(B) OF THIS CHAPTER.

9 Sec. 15. (a) If ~~such~~ bond or bail ~~be~~ IS forfeited, the
10 court shall enter an order upon its records directing ~~—, within~~
11 ~~45 days of the order,~~ the disposition of ~~such~~ THE cash, check,
12 or security ~~—, and the~~ WITHIN 45 DAYS OF THE ORDER. THE trea-
13 surer or clerk, upon presentation of a certified copy of such
14 order, shall ~~make disposition thereof~~ DISPOSE OF THE CASH,
15 CHECK, OR SECURITY PURSUANT TO THE ORDER. The court shall set
16 aside the forfeiture and discharge the bail or bond, within 1
17 year from the time of the forfeiture judgment, in accordance with
18 subsection (b) ~~of this section~~ if the person who forfeited bond
19 or bail is apprehended, ~~and~~ the ends of justice have not been
20 thwarted, and the county has been repaid its costs for apprehend-
21 ing the person.

22 (b) If ~~such~~ bond or bail ~~be~~ IS discharged, the court
23 shall enter an order ~~to that effect~~ with a statement of the
24 amount to be returned to the depositor. IF THE COURT ORDERED THE
25 DEPOSITOR TO PAY AN ASSESSMENT UNDER SECTION 5 OF ACT NO. 196 OF
26 THE PUBLIC ACTS OF 1989, BEING SECTION 780.905 OF THE MICHIGAN
27 COMPILED LAWS, THE COURT SHALL ORDER THE ASSESSMENT COLLECTED OUT

1 OF CASH BOND OR BAIL DEPOSITED UNDER THIS CHAPTER. Upon
 2 presentation of a certified copy of ~~such~~ THE order, the trea-
 3 surer or clerk having ~~such~~ THE cash, check, or security shall
 4 pay or deliver ~~the same~~ IT AS PROVIDED IN THE ORDER to the
 5 person named ~~therein~~ IN THE ORDER or to ~~his~~ THAT PERSON'S
 6 order.

7 (c) ~~In case such~~ IF THE cash, check, or security ~~shall~~
 8 ~~be~~ IS in the hands of the sheriff or any officer ~~,~~ other than
 9 ~~such~~ THE treasurer or clerk, ~~at the time it is declared dis-~~
 10 ~~charged or forfeited,~~ the officer holding ~~the same~~ IT shall
 11 ~~make such disposition thereof~~ DISPOSE OF THE CASH, CHECK, OR
 12 SECURITY as the court ~~shall order,~~ ORDERS upon presentation of
 13 a certified copy of the COURT'S order. ~~of the court.~~

14 CHAPTER IX

15 Sec. 1a. (1) In addition to the court's authority to order
 16 restitution as part of a sentence pursuant to chapter XI, the
 17 judge of a court of competent jurisdiction may order, in addition
 18 to or in the place of any other penalty authorized by law, a
 19 person convicted of ~~any~~ A felony or misdemeanor to make full or
 20 partial restitution to the victim of the defendant's course of
 21 conduct ~~which gives~~ GIVING rise to the conviction or to the
 22 victim's estate. If upon the conviction of a felony or a misde-
 23 meanor punishable by imprisonment for more than 1 year ~~,~~ the
 24 court does not order restitution ~~,~~ or orders only partial res-
 25 titution, the court shall state on the record the reasons for
 26 that action.

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

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

6 (b) If return of the property under subdivision (a) is
7 impossible, impractical, or inadequate, pay an amount equal to
8 the greater of ~~subparagraphs (i) or (ii),~~ SUBPARAGRAPH (i) OR
9 (ii) less the value, determined as of the date the property is
10 returned, of that property or any part of the property that is
11 returned:

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

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

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

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

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

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

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

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

8 (5) Instead of restitution under subsections (2) to (4), if
9 the victim or the victim's estate consents, the order of restitu-
10 tion may require that the defendant make restitution in services
11 in lieu of money, or make restitution to a person designated by
12 the victim or the victim's estate, if that person provided serv-
13 ices to the victim as a result of the crime.

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

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

20 (8) The court shall not order restitution with respect to a
21 loss for which the victim or the victim's estate has received or
22 is to receive compensation, including insurance, except that the
23 court may, in the interest of justice, order restitution to the
24 crime victims compensation board or to any person who has compen-
25 sated the victim or the victim's estate for such a loss to the
26 extent that the crime victims compensation board or a person paid
27 the compensation. 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.

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

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

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

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

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

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

1 (12) UPON APPLICATION OF THE PROSECUTING ATTORNEY OR THE
2 VICTIM, THE COURT MAY ORDER PROPERTY OF THE DEFENDANT SEIZED OR
3 WAGES OF THE DEFENDANT GARNISHEED TO PAY RESTITUTION ORDERED
4 UNDER THIS SECTION. THE APPLICATION SHALL BE ON A FORM PRE-
5 SCRIBED BY THE STATE COURT ADMINISTRATOR.

6 (13) ~~-(12)-~~ As used in this section and in section 3 of
7 chapter XI, "victim" means an individual who suffers direct or
8 threatened physical, financial, or emotional harm as a result of
9 the commission of a crime.

10 CHAPTER XI

11 Sec. 3. (1) The conditions of probation shall include ALL
12 OF the following:

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

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

19 (c) ~~That the~~ THE probationer shall ~~make a~~ report to the
20 probation officer, either in person or in writing, monthly, or as
21 often as the probation officer ~~may require~~ REQUIRES. This sub-
22 division does not apply to a juvenile placed on probation and
23 committed under section 1(3) or (4) of chapter IX to a state
24 institution or agency described in the youth rehabilitation serv-
25 ices act, Act No. 150 of the Public Acts of 1974, being sections
26 803.301 to 803.309 of the Michigan Compiled Laws.

1 (d) ~~That the probationer, if convicted of a felony, pay a~~
2 ~~probation oversight fee or perform community service as~~
3 ~~prescribed in section 3e.~~ THE PROBATIONER SHALL PAY ANY ASSESS-
4 MENT ORDERED UNDER SECTION 5 OF ACT NO. 196 OF THE PUBLIC ACTS OF
5 1989, BEING SECTION 780.905 OF THE MICHIGAN COMPILED LAWS.

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

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

19 (b) Pay immediately or within the period of his or her pro-
20 bation ~~— a fine imposed at the time of being~~ WHEN placed on
21 probation.

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

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

24 (e) Engage in community service.

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

1 (4) The court may impose other lawful conditions of
2 probation as the circumstances of the case ~~may~~ require or war-
3 rant, or as in its judgment ~~may be~~ ARE proper. If the court
4 requires the probationer to pay costs, the costs shall be limited
5 to expenses specifically incurred in prosecuting the defendant or
6 providing legal assistance to the defendant and probationary
7 oversight of the probationer.

8 (5) If the court imposes restitution or costs as part of a
9 sentence of probation, ALL OF the following ~~shall~~ apply:

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

17 (b) A probationer who is required to pay restitution or
18 costs and who is not in willful default of the payment of the
19 restitution or costs ~~, at any time,~~ may petition the sentencing
20 judge or his or her successor for a remission of the payment of
21 any unpaid portion of restitution ~~, OR~~ costs, or both. If ~~it~~
22 ~~appears to the satisfaction of~~ the court DETERMINES that payment
23 of the amount due will impose a manifest hardship on the proba-
24 tioner or his or her immediate family, the court may remit all or
25 part of the amount due in restitution or costs or modify the
26 method of payment.

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

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

26 (8) UPON APPLICATION OF THE PROSECUTING ATTORNEY OR THE
27 VICTIM, THE COURT MAY ORDER PROPERTY OF THE DEFENDANT SEIZED OR

1 WAGES OF THE DEFENDANT GARNISHEED TO PAY RESTITUTION ORDERED
2 UNDER THIS SECTION. THE APPLICATION SHALL BE ON A FORM PRE-
3 SCRIBED BY THE STATE COURT ADMINISTRATOR.

4 (9) FROM TIME TO TIME, BUT NOT LESS THAN EVERY 2 MONTHS, A
5 PROBATION OFFICER SHALL REPORT TO THE COURT ANY UNPAID AMOUNT OF
6 AN ASSESSMENT MADE A PAROLE CONDITION PURSUANT TO
7 SUBSECTION (1)(D) OR ANY UNPAID AMOUNT OF RESTITUTION MADE A
8 PAROLE CONDITION PURSUANT TO SUBSECTION (2)(D) FOR EACH PROBA-
9 TIONER UNDER THE PROBATION OFFICER'S SUPERVISION.

10 CHAPTER XV

11 SEC. 22. (1) IF A PERSON IS SUBJECT TO 2 OR MORE OF THE
12 FOLLOWING FINES, COSTS, OR PAYMENTS, THE COURT SHALL USE THE FOL-
13 LOWING ORDER OF PRIORITY IN ORDERING AND COLLECTING THOSE FINES,
14 COSTS, OR PAYMENTS:

15 (A) FIRST, ANY ORDER OF RESTITUTION FOR CRIME VICTIMS.

16 (B) SECOND, ANY ASSESSMENT IMPOSED UNDER SECTION 5 OF ACT
17 NO. 196 OF THE PUBLIC ACTS OF 1989, BEING SECTION 780.905 OF THE
18 MICHIGAN COMPILED LAWS.

19 (C) THIRD, ANY CRIMINAL FINE.

20 (D) FOURTH, ANY COURT COSTS.

21 (E) FIFTH, ANY FAMILY SUPPORT ORDER.

22 (F) SIXTH, ANY OTHER COURT-ORDERED PAYMENTS OR ASSESSMENTS.

23 (2) FROM TIME TO TIME, BUT NOT LESS THAN QUARTERLY, THE
24 COURT SHALL REVIEW EACH CASE IN WHICH RESTITUTION OR AN ASSESS-
25 MENT UNDER SECTION 5 OF ACT NO. 196 OF THE PUBLIC ACTS OF 1989 IS
26 ORDERED TO BE PAID. IF THE COURT DETERMINES THAT AN ASSESSMENT
27 OR RESTITUTION IS NOT BEING PAID AS REQUIRED, THE COURT SHALL

1 PROMPTLY CONDUCT A HEARING TO DETERMINE WHAT FURTHER ACTION
 2 SHOULD BE TAKEN, INCLUDING WHETHER PROBATION SHOULD BE REVOKED.
 3 Section 2. This amendatory act shall not take effect unless
 4 Senate Bill No. 470
 5 of the 87th Legislature is enacted into law.