



SENATE BILL No. 1238

September 14, 1994, Introduced by Senators DI NELLO,
GOUGEON and GAST and referred to the Committee on
Judiciary

A bill to amend section 44 of Act No 87 of the Public Acts
of 1985, entitled as amended

"Crime victim's rights act,"

as amended by Act No 341 of the Public Acts of 1993, being sec-
tion 780 794 of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Section 44 of Act No 87 of the Public Acts of
2 1985, as amended by Act No 341 of the Public Acts of 1993, being
3 section 780 794 of the Michigan Compiled Laws, is amended to read
4 as follows

5 Sec 44 (1) For purposes of this section only

6 (a) "Offense" means a violation of a penal law of this state
7 or a violation of an ordinance of a local unit of government of
8 this state punishable by imprisonment or by a fine that is not a
9 civil fine

1 (b) "Victim" means an individual who suffers direct or
2 threatened physical, financial, or emotional harm as a result of
3 the commission of an offense. For purposes of subsections (2),
4 (3), (4), (7), (9), (10), (11), and (15), victim includes a sole
5 proprietorship, partnership, corporation, association, government-
6 tal entity, or other legal entity that suffers direct physical or
7 financial harm as a result of the commission of an offense.

8 (2) Except as provided in this section and section 45, the
9 court, at the dispositional hearing for a juvenile offense, shall
10 order, in addition to or in lieu of any other disposition autho-
11 rized by law, that the juvenile make full or partial restitution
12 to any victim of the juvenile's course of conduct that gives rise
13 to the disposition, or to the victim's estate.

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

17 (4) If a juvenile offense results in damage to or loss or
18 destruction of property of a victim of the offense, or results in
19 the seizure or impoundment of property of a victim of the
20 offense, the order of restitution may require that the juvenile
21 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 (11), 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 (11) The value of the property on the date of disposition

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

7 (5) If a juvenile offense results in physical or psycholog-
8 cal injury to a victim, the order of restitution may require that
9 the juvenile do 1 or more of the following, as applicable

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

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

15 (c) Reimburse the victim or the victim's estate for
16 after-tax income loss suffered by the victim as a result of the
17 offense

18 (d) Pay an amount equal to the cost of psychological and
19 medical treatment for members of the victim's family that has
20 been incurred as a result of the offense

21 (e) Pay an amount equal the costs of actual homemaking and
22 child care expenses incurred as a result of the offense

23 (6) If a juvenile offense resulting in bodily injury also
24 results in the death of a victim, the order of restitution may
25 require that the juvenile pay an amount equal to the cost of
26 actual funeral and related services

1 (7) Instead of restitution under subsections (4) to (6), if
2 the victim or victim's estate consents, the order of restitution
3 may require that the juvenile make restitution in services in
4 lieu of money, or make restitution to a person designated by the
5 victim or victim's estate if that person provided services to the
6 victim as a result of the offense

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

10 (9) Any order of restitution shall be as fair as possible to
11 the victim or victim's estate without unduly complicating or pro-
12 longing the disposition process

13 (10) Except as otherwise provided in this section and
14 section 45, the court shall order restitution to the crime vic-
15 tims compensation board or to any individuals, partnerships, cor-
16 porations, associations, governmental entities, or any other
17 legal entities that have compensated the victim or victim's
18 estate for a loss incurred by the victim to the extent of the
19 compensation paid for that loss. However, an order of restitu-
20 tion shall require that all restitution to a victim or victim's
21 estate under the order be made before any restitution to any
22 other person under that order is made. The court shall not order
23 restitution to be paid to a victim or victim's estate if the
24 victim or victim's estate has received or is to receive compensa-
25 tion for that loss

26 (11) Any amount paid to a victim or victim's estate under an
27 order of restitution shall be set off against any amount later

1 recovered as compensatory damages by the victim or the victim's
2 estate in any federal or state civil proceeding and shall reduce
3 the amount payable to a victim or a victim's estate by an award
4 from the crime victims compensation board made after an order of
5 restitution under this section

6 (12) If not otherwise provided by the court under this sub-
7 section, restitution shall be made immediately However, the
8 court may require that the juvenile make restitution under this
9 section within a specified period or in specified installments
10 The end of the period or the last installment shall not be later
11 than the following

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

14 (b) If the juvenile is made a state ward, when the depart-
15 ment of social services' jurisdiction over the juvenile expires

16 (c) If the juvenile is made a ward of the court, when the
17 court's jurisdiction over the juvenile expires

18 (d) Three years after the date of disposition or when the
19 court's jurisdiction over the juvenile expires, whichever is
20 later

21 (13) If the juvenile is placed on probation, any restitution
22 ordered under this section shall be a condition of that
23 probation The court may revoke probation if the juvenile fails
24 to comply with the order and if the juvenile has not made a good
25 faith effort to comply with the order In determining whether to
26 revoke probation, the court shall consider the juvenile's
27 employment status, earning ability, financial resources, the

1 willfulness of the juvenile's failure to pay, and any other
2 special circumstances that may have a bearing on the juvenile's
3 ability to pay

4 (14) A juvenile who is required to pay restitution and who
5 is not in willful default of the payment of the restitution may
6 at any time petition the court for a cancellation of any unpaid
7 portion of restitution. If it appears to the satisfaction of the
8 court that payment of the amount due will impose a manifest hard-
9 ship on the juvenile or his or her immediate family, the court
10 may cancel all or part of the amount due in restitution or modify
11 the method of payment

12 (15) An order of restitution may be enforced by the prose-
13 cuting attorney or a victim or victim's estate named in the order
14 to receive the restitution in the same manner as a judgment in a
15 civil action

16 (16) Notwithstanding any other provision of this section, a
17 juvenile shall not be detained for a violation of probation, or
18 otherwise, for failure to pay restitution as ordered under this
19 section unless the court determines that the juvenile has the
20 resources to pay the ordered restitution and has not made a good
21 faith effort to do so

22 (17) If the court determines that the juvenile is or will be
23 unable to pay all of the restitution ordered, after notice to the
24 juvenile's parent and an opportunity for the parent to be heard,
25 the court ~~may~~ SHALL order the parent or parents having supervi-
26 sory responsibility for the juvenile at the time of the acts upon
27 which an order of restitution is based to pay not more than

1 ~~\$5,000-00~~ \$10,000 00 of the restitution ordered As used in
2 this subsection, "parent" does not include a foster parent

3 (18) If the court orders a parent to pay restitution under
4 subsection (17), the court shall take into account the financial
5 resources of the parent and the burden that the payment of restitu-
6 tion will impose, with due regard to any other moral or legal
7 financial obligations that the parent may have If a parent is
8 required to pay restitution under subsection (17), the court
9 shall provide for payment to be made in specified installments
10 and within a specified period of time

11 (19) A parent who has been ordered to pay restitution under
12 subsection (17) may petition the court for a modification of the
13 amount of restitution owed or for a cancellation of any unpaid
14 portion of the restitution The court shall cancel all or part
15 of the amount of restitution due, if it appears to the satisfac-
16 tion of the court that payment of the amount due will impose a
17 manifest hardship on the parent

18 (20) In each case in which payment of restitution is ordered
19 as a condition of probation, the juvenile caseworker or probation
20 officer assigned to the case shall review the case not less than
21 twice yearly to ensure that restitution is being paid as
22 ordered The final review shall be conducted not less than 60
23 days before the expiration of the probationary period If the
24 juvenile caseworker or probation officer determines the restitu-
25 tion is not being paid as ordered, the juvenile caseworker or
26 probation officer shall file a written report of the violation
27 with the court on a form prescribed by the state court

1 administrative office The report shall include a statement of
2 the amount of the arrearage, and any reasons for the arrearage
3 that are known by the juvenile caseworker or probation officer
4 The juvenile caseworker or probation officer shall immediately
5 provide a copy of the report to the prosecuting attorney If a
6 motion is filed or other proceedings are initiated to enforce
7 payment of restitution and the court determines that restitution
8 is not being paid or has not been paid as ordered by the court,
9 the court shall promptly take action necessary to compel
10 compliance

11 (21) A court shall not order a juvenile to pay restitution
12 under this section in an amount that exceeds 30% of the
13 juvenile's net income per pay period from the juvenile's paid
14 employment