



HOUSE BILL No. 4608

March 16, 1995, Introduced by Reps. Jersevic, Bush, Nye and Ryan and referred to the Committee on Judiciary and Civil Rights.

A bill to amend section 30 of chapter XIIIA of Act No. 288 of the Public Acts of 1939, entitled as amended

"An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act,"

as added by Act No. 344 of the Public Acts of 1993, being section 712A.30 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 30 of chapter XIIA of Act No. 288 of the
2 Public Acts of 1939, as added by Act No. 344 of the Public Acts
3 of 1993, being section 712A.30 of the Michigan Compiled Laws, is
4 amended to read as follows:

5 CHAPTER XIIA

6 Sec. 30. (1) For purposes of this section and section 31:

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

11 (b) "Victim" means an individual who suffers direct or
12 threatened physical, financial, or emotional harm as a result of
13 the commission of an offense. For purposes of subsections (2),
14 (3), (4), (7), (9), (10), (11), and (15), victim includes a sole
15 proprietorship, partnership, corporation, association, governmen-
16 tal entity, or other legal entity that suffers direct physical or
17 financial harm as a result of the commission of an offense.

18 (2) Except as provided in this section and section 31, the
19 court, at the dispositional hearing for a juvenile offense, shall
20 order, in addition to or in lieu of any other disposition autho-
21 rized by law, that the juvenile make full or partial restitution
22 to any victim of the juvenile's course of conduct that gives rise
23 to the disposition, or to the victim's estate.

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

1 (4) If a juvenile offense results in damage to or loss or
2 destruction of property of a victim of the offense, or results in
3 the seizure or impoundment of property of a victim of the
4 offense, the order of restitution may require that the juvenile
5 do 1 or more of the following:

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

8 (b) If return of the property under subdivision (a) is
9 impossible, impractical, or inadequate, pay an amount equal to
10 the greater of subparagraph (i) or (ii), less the value, deter-
11 mined as of the date the property is returned, of that property
12 or any part of the property that is returned:

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

15 (ii) The value of the property on the date of disposition.

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

17 (5) If a juvenile offense results in physical or psychologi-
18 cal injury to a victim, the order of restitution may require that
19 the juvenile do 1 or more of the following, as applicable:

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

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

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

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

4 (e) Pay an amount equal to the costs of actual homemaking
5 and child care expenses incurred as a result of the offense.

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

10 (7) Instead of restitution under subsections (4) to (6), if
11 the victim or victim's estate consents, the order of restitution
12 may require that the juvenile make restitution in services in
13 lieu of money, or make restitution to a person designated by the
14 victim or victim's estate if that person provided services to the
15 victim as a result of the offense. AS USED IN THIS SUBSECTION,
16 "PERSON" INCLUDES, BUT IS NOT LIMITED TO, A SHELTER PROGRAM FOR
17 VICTIMS OF DOMESTIC VIOLENCE AND THEIR DEPENDENT CHILDREN ESTAB-
18 LISHED UNDER ACT NO. 389 OF THE PUBLIC ACTS OF 1978, BEING SEC-
19 TIONS 400.1501 TO 400.1510 OF THE MICHIGAN COMPILED LAWS, OR A
20 SIMILAR COMMUNITY SERVICE PROGRAM.

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

24 (9) Any order of restitution shall be as fair as possible to
25 the victim or victim's estate without unduly complicating or pro-
26 longing the disposition process.

1 (10) Except as otherwise provided in this section and
2 section 31, the court shall order restitution to the crime
3 victims compensation board or to any individuals, partnerships,
4 corporations, associations, governmental entities, or any other
5 legal entities that have compensated the victim or victim's
6 estate for a loss incurred by the victim to the extent of the
7 compensation paid for that loss. However, an order of restitu-
8 tion shall require that all restitution to a victim or victim's
9 estate under the order be made before any restitution to any
10 other person under that order is made. The court shall not order
11 restitution to be paid to a victim or victim's estate if the
12 victim or victim's estate has received or is to receive compensa-
13 tion for that loss.

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

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

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

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

5 (c) If the juvenile is made a ward of the court, when the
6 court's jurisdiction over the juvenile expires.

7 (d) Three years after the date of disposition or when the
8 court's jurisdiction over the juvenile expires, whichever is
9 later.

10 (13) If the juvenile is placed on probation, any restitution
11 ordered under this section shall be a condition of that
12 probation. The court may revoke probation if the juvenile fails
13 to comply with the order and if the juvenile has not made a good
14 faith effort to comply with the order. In determining whether to
15 revoke probation, the court shall consider the juvenile's employ-
16 ment status, earning ability, and financial resources, the will-
17 fulness of the juvenile's failure to pay, and any other special
18 circumstances that may have a bearing on the juvenile's ability
19 to pay.

20 (14) A juvenile who is required to pay restitution and who
21 is not in willful default of the payment of the restitution may
22 at any time petition the court for a cancellation of any unpaid
23 portion of restitution. If it appears to the satisfaction of the
24 court that payment of the amount due will impose a manifest hard-
25 ship on the juvenile or his or her immediate family, the court
26 may cancel all or part of the amount due in restitution or modify
27 the method of payment.

1 (15) An order of restitution may be enforced by the
2 prosecuting attorney or a victim or victim's estate named in the
3 order to receive the restitution in the same manner as a judgment
4 in a civil action. AS USED IN THIS SUBSECTION, "PERSON"
5 INCLUDES, BUT IS NOT LIMITED TO, A SHELTER PROGRAM FOR VICTIMS OF
6 DOMESTIC VIOLENCE AND THEIR DEPENDENT CHILDREN ESTABLISHED UNDER
7 ACT NO. 389 OF THE PUBLIC ACTS OF 1978, OR A SIMILAR COMMUNITY
8 SERVICE PROGRAM.

9 (16) Notwithstanding any other provision of this section, a
10 juvenile shall not be detained for a violation of probation, or
11 otherwise, for failure to pay restitution as ordered under this
12 section unless the court determines that the juvenile has the
13 resources to pay the ordered restitution and has not made a good
14 faith effort to do so.

15 (17) If the court determines that the juvenile is or will be
16 unable to pay all of the restitution ordered, after notice to the
17 juvenile's parent and an opportunity for the parent to be heard,
18 the court may order the parent or parents having supervisory
19 responsibility for the juvenile at the time of the acts upon
20 which an order of restitution is based to pay not more than
21 \$5,000.00 of the restitution ordered. As used in this subsec-
22 tion, "parent" does not include a foster parent.

23 (18) If the court orders a parent to pay restitution under
24 subsection (17), the court shall take into account the financial
25 resources of the parent and the burden that the payment of resti-
26 tution will impose, with due regard to any other moral or legal
27 financial obligations that the parent may have. If a parent is

1 required to pay restitution under subsection (17), the court
2 shall provide for payment to be made in specified installments
3 and within a specified period of time.

4 (19) A parent who has been ordered to pay restitution under
5 subsection (17) may petition the court for a modification of the
6 amount of restitution owed or for a cancellation of any unpaid
7 portion of the restitution. The court shall cancel all or part
8 of the amount of restitution due, if it appears to the satisfac-
9 tion of the court that payment of the amount due will impose a
10 manifest hardship on the parent.

11 (20) In each case in which payment of restitution is ordered
12 as a condition of probation, the juvenile caseworker or probation
13 officer assigned to the case shall review the case not less than
14 twice yearly to ensure that restitution is being paid as
15 ordered. The final review shall be conducted not less than 60
16 days before the expiration of the probationary period. If the
17 juvenile caseworker or probation officer determines the restitu-
18 tion is not being paid as ordered, the juvenile caseworker or
19 probation officer shall file a written report of the violation
20 with the court on a form prescribed by the state court adminis-
21 trative office. The report shall include a statement of the
22 amount of the arrearage and any reasons for the arrearage that
23 are known by the juvenile caseworker or probation officer. The
24 juvenile caseworker or probation officer shall immediately pro-
25 vide a copy of the report to the prosecuting attorney. If a
26 motion is filed or other proceedings are initiated to enforce
27 payment of restitution and the court determines that restitution

1 is not being paid or has not been paid as ordered by the court,
2 the court shall promptly take action necessary to compel
3 compliance.

4 (21) A court shall not order a juvenile to pay restitution
5 under this section in an amount that exceeds 30% of the
6 juvenile's net income per pay period from the juvenile's paid
7 employment.