



HOUSE BILL No. 4691

April 4, 1995, Introduced by Reps. Cherry, Baird, Martinez, Gubow, Murphy, Curtis, Saunders, LaForge, DeMars, DeHart, Griffin, Brater, Scott, Berman, Pitoniak and Anthony and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 16, 44, and 76 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 sections 780.766, 780.794, and 780.826 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 16, 44, and 76 of Act No. 87 of the
2 Public Acts of 1985, as amended by Act No. 341 of the Public Acts
3 of 1993, being sections 780.766, 780.794, and 780.826 of the
4 Michigan Compiled Laws, are amended to read as follows:

5 Sec. 16. (1) For purposes of this section only, "victim"
6 means an individual who suffers direct or threatened physical,
7 financial, or emotional harm as a result of the commission of a
8 crime. For purposes of subsections (2), (3), (4), (7), (9),

1 (10), (11), and (16), victim includes a sole proprietorship,
2 partnership, corporation, association, governmental entity, or
3 any other legal entity that suffers direct physical or financial
4 harm as a result of a crime.

5 (2) Except as provided in this section and section 17, the
6 court, when sentencing a defendant convicted of a crime, shall
7 order, in addition to or in lieu of any other penalty authorized
8 by law or in addition to any other penalty required by law, that
9 the defendant make full or partial restitution to any victim of
10 the defendant's course of conduct that gives rise to the convic-
11 tion, or to the victim's estate.

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

15 (4) If a crime results in damage to or loss or destruction
16 of property of a victim of the ~~offense~~ CRIME, or results in the
17 seizure or impoundment of property of a victim of the ~~offense~~
18 CRIME, the order of restitution may require that the defendant do
19 1 or more of the following:

20 (a) Return the property to the owner of the property or to a
21 person designated by the owner.

22 (b) If return of the property under subdivision (a) is
23 impossible, impractical, or inadequate, pay an amount equal to
24 the greater of subparagraph (i) or (ii), less the value, deter-
25 mined as of the date the property is returned, of that property
26 or any part of the property that is returned:

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

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

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

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

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

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

13 (c) Reimburse the victim or the victim's estate for
14 after-tax income loss suffered by the victim as a result of the
15 ~~offense~~ CRIME.

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

19 (e) Pay an amount equal to the costs of actual homemaking
20 and child care expenses incurred as a result of the ~~offense~~
21 CRIME.

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

26 (7) Instead of restitution under subsections (4) to (6), if
27 the victim or victim's estate consents, the order of restitution

1 may require that the defendant make restitution in services in
2 lieu of money, or make restitution to a person designated by the
3 victim or victim's estate if that person provided services to the
4 victim as a result of the crime. AS USED IN THIS SUBSECTION,
5 "PERSON" INCLUDES, BUT IS NOT LIMITED TO, A SHELTER PROGRAM FOR
6 VICTIMS OF DOMESTIC VIOLENCE AND THEIR DEPENDENT CHILDREN ESTAB-
7 LISHED UNDER ACT NO. 389 OF THE PUBLIC ACTS OF 1978, BEING
8 SECTIONS 400.1501 TO 400.1510 OF THE MICHIGAN COMPILED LAWS, OR A
9 SIMILAR COMMUNITY SERVICE PROGRAM.

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

13 (9) Any order of restitution shall be as fair as possible to
14 the victim or victim's estate without unduly complicating or pro-
15 longing the sentencing process.

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

1 victim or victim's estate has received or is to receive
2 compensation for that loss.

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

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

16 (a) The end of the period of probation, if probation is
17 ordered.

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

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

23 (13) In determining the amount of restitution, the court
24 shall consider the defendant's earning ability, financial
25 resources, and any other special circumstances that may have a
26 bearing on the defendant's ability to pay.

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

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

20 (16) An order of restitution ~~to a victim or victim's~~
21 ~~estate~~ may be enforced by the prosecuting attorney, ~~or~~ a
22 victim, ~~or~~ A victim's estate, OR ANY OTHER PERSON named in the
23 order to receive the restitution in the same manner as a judgment
24 in a civil action. AS USED IN THIS SUBSECTION, "PERSON"
25 INCLUDES, BUT IS NOT LIMITED TO, A SHELTER PROGRAM FOR VICTIMS OF
26 DOMESTIC VIOLENCE AND THEIR DEPENDENT CHILDREN ESTABLISHED UNDER
27 ACT NO. 389 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 400.1501

1 TO 400.1510 OF THE MICHIGAN COMPILED LAWS, OR A SIMILAR COMMUNITY
2 SERVICE PROGRAM.

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

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

1 Sec. 44. (1) For purposes of this section only:

2 (a) "Offense" means a violation of a penal law of this state
3 or a violation of an ordinance of a local unit of government of
4 this state punishable by imprisonment or by a fine that is not a
5 civil fine.

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

14 (2) Except as provided in this section and section 45, the
15 court, at the dispositional hearing for ~~a juvenile~~ AN offense,
16 shall order, in addition to or in lieu of any other disposition
17 authorized by law, that the juvenile make full or partial resti-
18 tution to any victim of the juvenile's course of conduct that
19 gives rise to the disposition, or to the victim's estate.

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

23 (4) If ~~a juvenile~~ AN offense results in damage to or loss
24 or destruction of property of a victim of the offense, or results
25 in the seizure or impoundment of property of a victim of the
26 offense, the order of restitution may require that the juvenile
27 do 1 or more of the following:

1 (a) Return the property to the owner of the property or to a
2 person designated by the owner.

3 (b) If return of the property under subdivision (a) is
4 impossible, impractical, or inadequate, pay an amount equal to
5 the greater of subparagraph (i) or (ii), less the value, deter-
6 mined as of the date the property is returned, of that property
7 or any part of the property that is returned:

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

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

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

12 (5) If ~~a juvenile~~ AN offense results in physical or psy-
13 chological injury to a victim, the order of restitution may
14 require that the juvenile do 1 or more of the following, as
15 applicable:

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

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

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

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

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

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

7 (7) Instead of restitution under subsections (4) to (6), if
8 the victim or victim's estate consents, the order of restitution
9 may require that the juvenile make restitution in services in
10 lieu of money, or make restitution to a person designated by the
11 victim or victim's estate if that person provided services to the
12 victim as a result of the offense. AS USED IN THIS SUBSECTION,
13 "PERSON" INCLUDES A SHELTER PROGRAM FOR VICTIMS OF DOMESTIC VIO-
14 LENCE AND THEIR DEPENDENT CHILDREN ESTABLISHED UNDER ACT NO. 389
15 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 400.1501 TO 400.1510
16 OF THE MICHIGAN COMPILED LAWS, OR A SIMILAR COMMUNITY SERVICE
17 PROGRAM.

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

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

24 (10) Except as otherwise provided in this section and
25 section 45, the court shall order restitution to the crime vic-
26 tims compensation board or to any individuals, partnerships,
27 corporations, associations, governmental entities, or ~~any~~ other

1 legal entities that have compensated the victim or THE victim's
2 estate for a loss incurred by the victim to the extent of the
3 compensation paid for that loss. However, an order of restitu-
4 tion shall require that all restitution to a victim or victim's
5 estate under the order be made before any restitution to any
6 other person under that order is made. The court shall not order
7 restitution to be paid to a victim or victim's estate if the
8 victim or victim's estate has received or is to receive compensa-
9 tion for that loss.

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

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

23 (a) The end of the period of probation, if probation is
24 ordered.

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

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

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

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

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

24 (15) An order of restitution may be enforced by the prose-
25 cuting attorney, ~~or~~ a victim, ~~or~~ A victim's estate, OR ANY
26 OTHER PERSON named in the order to receive the restitution in the
27 same manner as a judgment in a civil action. AS USED IN THIS

1 SUBSECTION, "PERSON" INCLUDES, BUT IS NOT LIMITED TO, A SHELTER
2 PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE AND THEIR DEPENDENT
3 CHILDREN ESTABLISHED UNDER ACT NO. 389 OF THE PUBLIC ACTS OF
4 1978, BEING SECTION 400.1501 TO 400.1510 OF THE MICHIGAN COMPILED
5 LAWS, OR A SIMILAR COMMUNITY SERVICE PROGRAM.

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

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

20 (18) If the court orders a parent to pay restitution under
21 subsection (17), the court shall take into account the financial
22 resources of the parent and the burden that the payment of resti-
23 tution will impose, with due regard to any other moral or legal
24 financial obligations that the parent may have. If a parent is
25 required to pay restitution under subsection (17), the court
26 shall provide for payment to be made in specified installments
27 and within a specified period of time.

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

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

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

5 Sec. 76. (1) As used in this section:

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

13 (b) "Misdemeanor" means a violation of a law of this state,
14 or of a local ordinance, that is punishable by imprisonment for
15 not more than 1 year or by a fine that is not a civil fine, but
16 is not a felony.

17 (2) Except as provided in this section, the court, when sen-
18 tencing a defendant convicted of a misdemeanor, shall order, in
19 addition to or in lieu of any other penalty authorized by law ~~—~~
20 or in addition to any other penalty required by law, that the
21 defendant make full or partial restitution to any victim of the
22 defendant's course of conduct that gives rise to the conviction,
23 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 misdemeanor results in damage to or loss or
2 destruction of property of a victim of the ~~offense~~ MISDEMEANOR,
3 or results in the seizure or impoundment of property of a victim
4 of the ~~offense~~ MISDEMEANOR, the order of restitution may
5 require that the defendant 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 sentencing.

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

17 (5) If a misdemeanor results in physical or psychological
18 injury to a victim, the order of restitution may require that the
19 defendant do 1 or more of the following, as applicable:

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

23 (b) Pay an amount equal to the cost of ~~the victim's~~ actual
24 physical and 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~~ MISDEMEANOR.

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~~ MISDEMEANOR.

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 MISDEMEANOR.

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

11 (7) Instead of restitution under subsections (4) to (6), if
12 the victim or victim's estate consents, the order of restitution
13 may require that the defendant make restitution in services in
14 lieu of money, or make restitution to a person designated by the
15 victim or victim's estate if that person provided services to the
16 victim as a result of the misdemeanor. AS USED IN THIS SUBSEC-
17 TION, "PERSON" INCLUDES A SHELTER PROGRAM FOR VICTIMS OF DOMESTIC
18 VIOLENCE AND THEIR DEPENDENT CHILDREN ESTABLISHED UNDER ACT
19 NO. 389 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 400.1501 TO
20 400.1510 OF THE MICHIGAN COMPILED LAWS, OR A SIMILAR COMMUNITY
21 SERVICE PROGRAM.

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

25 (9) Any order of restitution shall be as fair as possible to
26 the victim or victim's estate without unduly complicating or
27 prolonging the sentencing process.

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

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

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

26 (a) The end of the period of probation, if probation is
27 ordered.

1 (b) Two years after the end of imprisonment, if the court
2 does not order probation but imposes a term of imprisonment.

3 (c) Three years after the date of sentencing in any other
4 case.

5 (13) If the defendant is placed on probation, any restitu-
6 tion ordered under this section shall be a condition of that
7 probation. The court may revoke probation if the defendant fails
8 to comply with the order and if the defendant has not made a good
9 faith effort to comply with the order. In determining whether to
10 revoke probation, the court shall consider the defendant's
11 employment status, earning ability, financial resources, the
12 willfulness of the defendant's failure to pay, and any other spe-
13 cial circumstances that may have a bearing on the defendant's
14 ability to pay.

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

23 (15) An order of restitution may be enforced by the prose-
24 cuting attorney, ~~or~~ a victim, ~~or~~ A victim's estate, OR ANY
25 OTHER PERSON named in the order to receive restitution in the
26 same manner as a judgment in a civil action. AS USED IN THIS
27 SUBSECTION, "PERSON" INCLUDES, BUT IS NOT LIMITED TO, A SHELTER

1 PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE AND THEIR DEPENDENT
2 CHILDREN ESTABLISHED UNDER ACT NO. 389 OF THE PUBLIC ACTS OF
3 1978, BEING SECTIONS 400.1501 TO 400.1510 OF THE MICHIGAN
4 COMPILED LAWS, OR A SIMILAR COMMUNITY SERVICE PROGRAM.

5 (16) Notwithstanding any other provision of this section, a
6 defendant shall not be imprisoned, jailed, or incarcerated for a
7 violation of probation, or otherwise, for failure to pay restitu-
8 tion as ordered under this section unless the court determines
9 that the defendant has the resources to pay the ordered restitu-
10 tion and has not made a good faith effort to do so.

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

1 ordered by the court, the court shall promptly take action
2 necessary to compel compliance.

3 (18) In determining the amount of restitution, the court
4 shall consider the defendant's earning ability, financial
5 resources, and any other special circumstances that may have a
6 bearing on the defendant's ability to pay.

7 Section 2. This amendatory act shall not take effect unless
8 Senate Bill No. _____ or House Bill No. 4692 (request
9 no. 00830'95) of the 88th Legislature is enacted into law.