



HOUSE BILL No. 4692

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

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

"The code of criminal procedure,"

as amended by Act No. 343 of the Public Acts of 1993, being section 769.1a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1a of Act No. 175 of the Public Acts of
2 1927, as amended by Act No. 343 of the Public Acts of 1993, being
3 section 769.1a of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 1a. (1) As used in this section, "victim" means an
6 individual who suffers direct or threatened physical, financial,
7 or emotional harm as a result of the commission of a felony,
8 misdemeanor, or ordinance violation. For purposes of
9 subsections (2), (3), (4), (7), (9), (10), (11), and (16), victim

1 includes a sole proprietorship, partnership, corporation,
2 association, governmental entity, or any other legal entity that
3 suffers direct physical or financial harm as a result of a
4 felony, misdemeanor, or ordinance violation.

5 (2) Except as provided in this section, the court, when sen-
6 tencing a defendant convicted of a felony, misdemeanor, or ordi-
7 nance violation shall order, in addition to or in lieu of any
8 other penalty authorized by law or in addition to any other pen-
9 alty required by law, that the defendant make full or partial
10 restitution to ~~the~~ ANY victim of the defendant's course of con-
11 duct that gives rise to the conviction, or to the victim's
12 estate.

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

16 (4) If a felony, misdemeanor, or ordinance violation results
17 in damage to or loss or destruction of property of a victim of
18 the felony, misdemeanor, or ordinance violation or results in the
19 seizure or impoundment of property of a victim of the felony,
20 misdemeanor, or ordinance violation, the order of restitution may
21 require that the defendant 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 (i) or (ii), 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 (i) The value of the property on the date of the damage,
4 loss, or destruction.

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

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

7 (5) If a felony, misdemeanor, or ordinance violation results
8 in physical or psychological injury to a victim, the order of
9 restitution may require that the defendant do ~~all~~ 1 OR MORE of
10 the following, as applicable:

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

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

16 (c) Reimburse the victim or the victim's estate for
17 after-tax income loss suffered by the victim as a result of the
18 felony, misdemeanor, or ordinance violation.

19 (d) Pay an amount equal to the cost of psychological and
20 medical treatment for members of the victim's family ~~which~~ THAT
21 has been incurred as a result of the felony, misdemeanor, or
22 ordinance violation.

23 (e) Pay an amount equal to the cost of actual homemaking and
24 child care expenses incurred as a result of the felony, misde-
25 meanor, or ordinance violation.

26 (6) If a felony, misdemeanor, or ordinance violation
27 resulting in bodily injury also results in the death of a victim,

1 the order of restitution may require that the defendant pay an
2 amount equal to the cost of actual funeral and related services.

3 (7) Instead of restitution under subsections (4) to (6), if
4 the victim or the victim's estate consents, the order of restitu-
5 tion may require that the defendant make restitution in services
6 in lieu of money, or make restitution to a person designated by
7 the victim or the victim's estate, if that person provided serv-
8 ices to the victim as a result of the felony, misdemeanor, or
9 ordinance violation. AS USED IN THIS SUBSECTION, "PERSON"
10 INCLUDES, BUT IS NOT LIMITED TO, A SHELTER PROGRAM FOR VICTIMS OF
11 DOMESTIC VIOLENCE AND THEIR DEPENDENT CHILDREN ESTABLISHED UNDER
12 ACT NO. 389 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 400.1501
13 TO 400.1510 OF THE MICHIGAN COMPILED LAWS, OR A SIMILAR COMMUNITY
14 SERVICE PROGRAM.

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

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

21 (10) Except as otherwise provided in this section, the court
22 shall order restitution to the crime victims compensation board
23 or to ANY individuals, partnerships, corporations, associations,
24 governmental entities, or ~~any~~ other legal entities that have
25 compensated the victim or the victim's estate for a loss incurred
26 by the victim to the extent of the compensation paid for that
27 loss. However, 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. The court shall not order restitution to be paid to a
4 victim or victim's estate if the victim or victim's estate has
5 received or is to receive compensation for that loss.

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

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

19 (a) The end of the period of probation, if probation is
20 ordered.

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

24 (c) Three years after the date of sentencing in any other
25 case.

26 (13) In determining the amount of restitution, the court
27 shall consider the defendant's earning ability, financial

1 resources, and any other special circumstances that may have a
2 bearing on the defendant's ability to pay.

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

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

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

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

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

12 (18) In each case in which payment of restitution is ordered
13 as a condition of probation, the probation officer assigned to
14 the case shall review the case not less than twice yearly to
15 ensure that restitution is being paid as ordered. The final
16 review shall be conducted not less than 60 days before the expi-
17 ration of the probationary period. If the probation officer
18 determines that restitution is not being paid as ordered, the
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 probation officer. The probation officer shall
24 immediately provide a copy of the report to the prosecuting
25 attorney. If a motion is filed or other proceedings are initi-
26 ated to enforce payment of restitution and the court determines
27 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 Section 2. This amendatory act shall not take effect unless
4 Senate Bill No. _____ or House Bill No. 4691 (request
5 no. 00830'95 a) of the 88th Legislature is enacted into law.