



SENATE BILL No. 969

April 18, 1996, Introduced by Senators CHERRY and VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to amend sections 30 and 31 of chapter XIIA 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,"

section 30 as amended by Act No. 123 of the Public Acts of 1996, and section 31 as added by Act No. 344 of the Public Acts of

1993, being sections 712A.30 and 712A.31 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 30 and 31 of chapter XIIA of Act
 2 No. 288 of the Public Acts of 1939, section 30 as amended by Act
 3 No. 123 of the Public Acts of 1996 and section 31 as added by Act
 4 No. 344 of the Public Acts of 1993, being sections 712A.30 and
 5 712A.31 of the Michigan Compiled Laws, are amended to read as
 6 follows:

7 CHAPTER XIIA

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

9 (a) ~~"Offense"~~ "JUVENILE OFFENSE" means a violation BY A
 10 JUVENILE of a penal law of this state or a violation BY A
 11 JUVENILE of an ordinance of a local unit of government of this
 12 state punishable by imprisonment or by a fine that is not a civil
 13 fine.

14 (b) "Victim" means an individual who suffers direct or
 15 threatened physical, financial, or emotional harm as a result of
 16 the commission of ~~an~~ A JUVENILE offense. For purposes of sub-
 17 sections (2), (3), ~~(4), (7)~~ (6), (8), (9), ~~(10), (11)~~, and
 18 ~~(15)~~ (13), victim includes a sole proprietorship, partnership,
 19 corporation, association, governmental entity, or other legal
 20 entity that suffers direct physical or financial harm as a result
 21 of the commission of ~~an~~ A JUVENILE offense.

22 (2) Except as provided in ~~this section and section 31, the~~
 23 ~~court,~~ SUBSECTION (8), at the dispositional hearing for a
 24 juvenile offense, THE COURT shall order, in addition to or in

1 lieu of any other disposition authorized by law, that the
2 juvenile make full ~~or partial~~ restitution to any victim of the
3 juvenile's course of conduct that gives rise to the disposition
4 ~~—~~ or to the victim's estate.

5 ~~(3) If the court does not order restitution, or orders only~~
6 ~~partial restitution under this section, the court shall state on~~
7 ~~the record the reasons for that action.~~

8 (3) ~~(4)~~ If a juvenile offense results in damage to or loss
9 or destruction of property of a victim of the JUVENILE offense,
10 or results in the seizure or impoundment of property of a victim
11 of the JUVENILE offense, the order of restitution may require
12 that the juvenile do 1 or more of the following, AS APPLICABLE:

13 (a) Return the property to the owner of the property or to a
14 person designated by the owner.

15 (b) If return of the property under subdivision (a) is
16 impossible, impractical, or inadequate, pay an amount equal to
17 the greater of subparagraph (i) or (ii), less the value, deter-
18 mined as of the date the property is returned, of that property
19 or any part of the property that is returned:

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

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

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

24 (4) ~~(5)~~ If a juvenile offense results in physical or psy-
25 chological injury to a victim, the order of restitution may
26 require that the juvenile do 1 or more of the following, as
27 applicable:

1 (a) Pay an amount equal to the cost of actual medical and
2 related professional services and devices relating to physical
3 and psychological care.

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

6 (c) Reimburse the victim or the victim's estate for
7 after-tax income loss suffered by the victim as a result of the
8 JUVENILE offense.

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

12 (e) Pay an amount equal to the costs of actual homemaking
13 and child care expenses incurred as a result of the JUVENILE
14 offense.

15 (5) ~~(6)~~ If a juvenile offense resulting in bodily injury
16 also results in the death of a victim, the order of restitution
17 may require that the juvenile pay an amount equal to the cost of
18 actual funeral and related services.

19 (6) ~~(7)~~ If the victim or victim's estate consents, the
20 order of restitution may require that the juvenile make restitu-
21 tion in services in lieu of money.

22 (7) ~~(8) If the court orders restitution under this section,~~
23 ~~the court shall, if~~ IF the victim is deceased, THE COURT SHALL
24 order that the restitution be made to the victim's estate.

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

1 (8) ~~(10) Except as otherwise provided in this section and~~
2 ~~section 31, the~~ 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. ~~Except as otherwise provided~~
8 ~~in this section and section 31, the~~ THE court shall also order
9 restitution, for the costs of services provided, to persons or
10 entities that have provided services to the victim as a result of
11 the JUVENILE offense. Services that are subject to restitution
12 under this subsection include, but are not limited to, shelter,
13 food, clothing, and transportation. However, an order of resti-
14 tution shall require that all restitution to a victim or victim's
15 estate under the order be made before any restitution to any
16 other person or entity under that order is made. The court shall
17 not order restitution to be paid to a victim or victim's estate
18 if the victim or victim's estate has received or is to receive
19 compensation for that loss, AND THE COURT SHALL STATE ON THE
20 RECORD WITH SPECIFICITY THE REASONS FOR ITS ACTIONS.

21 (9) ~~(11)~~ Any amount paid to a victim or victim's estate
22 under an order of restitution shall be set off against any amount
23 later recovered as compensatory damages by the victim or the
24 victim's estate in any federal or state civil proceeding and
25 shall reduce the amount payable to a victim or a victim's estate
26 by an award from the crime victims compensation board made after
27 an order of restitution under this section.

1 (10) ~~(+2)~~ If not otherwise provided by the court under
2 this subsection, restitution shall be made immediately. However,
3 the court may require that the juvenile make restitution under
4 this section within a specified period or in specified
5 installments. ~~The end of the period or the last installment~~
6 ~~shall not be later than the following:~~

7 ~~(a) The end of the period of probation, if probation is~~
8 ~~ordered.~~

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

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

13 ~~(d) Three years after the date of disposition or when the~~
14 ~~court's jurisdiction over the juvenile expires, whichever is~~
15 ~~later.~~

16 (11) ~~(+3)~~ If the juvenile is placed on probation, any res-
17 titution ordered under this section shall be a condition of that
18 probation. The court may revoke probation if the juvenile fails
19 to comply with the order and if the juvenile has not made a good
20 faith effort to comply with the order. In determining whether to
21 revoke probation, the court shall consider the juvenile's employ-
22 ment status, earning ability, and financial resources, the will-
23 fulness of the juvenile's failure to pay, and any other special
24 circumstances that may have a bearing on the juvenile's ability
25 to pay.

26 (12) ~~(+4)~~ A juvenile who is required to pay restitution
27 and who is not in willful default of the payment of the

1 restitution may at any time petition the court ~~for a~~
2 ~~cancellation of any unpaid portion of restitution~~ TO MODIFY THE
3 METHOD OF PAYMENT. If ~~it appears to the satisfaction of~~ the
4 court DETERMINES that payment ~~of the amount due~~ UNDER THE ORDER
5 will impose a manifest hardship on the juvenile or his or her
6 immediate family, the court may ~~cancel all or part of the amount~~
7 ~~due in restitution or~~ modify the method of payment.

8 (13) ~~(+5)~~ AN ORDER OF RESTITUTION ENTERED UNDER THIS SEC-
9 TION REMAINS EFFECTIVE UNTIL IT IS SATISFIED IN FULL. An order of
10 restitution may be enforced by the prosecuting attorney, a
11 victim, a victim's estate, or any other person or entity named in
12 the order to receive the restitution in the same manner as a
13 judgment in a civil action.

14 (14) ~~(+6)~~ Notwithstanding any other provision of this sec-
15 tion, a juvenile shall not be detained for a violation of proba-
16 tion, or otherwise, for failure to pay restitution as ordered
17 under this section unless the court determines that the juvenile
18 has the resources to pay the ordered restitution and has not made
19 a good faith effort to do so.

20 (15) ~~(+7)~~ If the court determines that the juvenile is or
21 will be unable to pay all of the restitution ordered, after
22 notice to the juvenile's parent and an opportunity for the parent
23 to be heard, the court may order the parent or parents having
24 supervisory responsibility for the juvenile at the time of the
25 acts upon which an order of restitution is based to pay ~~not more~~
26 ~~than \$5,000.00~~ ANY PORTION of the restitution ordered THAT IS
27 OUTSTANDING. AN ORDER UNDER THIS SUBSECTION DOES NOT RELIEVE THE

1 JUVENILE OF HIS OR HER OBLIGATION TO PAY RESTITUTION, BUT THE
2 AMOUNT OWED BY THE JUVENILE SHALL BE OFFSET BY ANY AMOUNT PAID BY
3 HIS OR HER PARENT. As used in this subsection, "parent" does not
4 include a foster parent.

5 (16) ~~(18)~~ If the court orders a parent to pay restitution
6 under subsection ~~(17)~~ (15), the court shall take into account
7 the financial resources of the parent and the burden that the
8 payment of restitution will impose, with due regard to any other
9 moral or legal financial obligations that the parent may have.
10 If a parent is required to pay restitution under subsection
11 ~~(17)~~ (15), the court shall provide for payment to be made in
12 specified installments and within a specified period of time.

13 (17) ~~(19)~~ A parent who has been ordered to pay restitution
14 under subsection ~~(17)~~ (15) may petition the court for a modifi-
15 cation of the amount of restitution owed or for a cancellation of
16 any unpaid portion of the restitution. The court shall cancel
17 all or part of the amount of restitution due ~~if it appears~~
18 ~~to the satisfaction of~~ the court DETERMINES that payment of the
19 amount due will impose a manifest hardship on the parent.

20 (18) ~~(20)~~ In each case in which payment of restitution is
21 ordered as a condition of probation, the juvenile caseworker or
22 probation officer assigned to the case shall review the case not
23 less than twice yearly to ensure that restitution is being paid
24 as ordered. The final review shall be conducted not less than 60
25 days before the expiration of the probationary period. If the
26 juvenile caseworker or probation officer determines the
27 restitution is not being paid as ordered, the juvenile caseworker

1 or probation officer shall file a written report of the violation
2 with the court on a form prescribed by the state court adminis-
3 trative office. The report shall include a statement of the
4 amount of the arrearage and any reasons for the arrearage that
5 are known by the juvenile caseworker or probation officer. The
6 juvenile caseworker or probation officer shall immediately pro-
7 vide a copy of the report to the prosecuting attorney. If a
8 motion is filed or other proceedings are initiated to enforce
9 payment of restitution and the court determines that restitution
10 is not being paid or has not been paid as ordered by the court,
11 the court shall promptly take action necessary to compel
12 compliance.

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

17 Sec. 31. (1) ~~The court, in~~ IN determining ~~whether to~~
18 ~~order~~ THE AMOUNT OF restitution TO ORDER under section 30 ~~and~~
19 ~~the amount of that restitution~~ OF THIS CHAPTER, THE COURT shall
20 consider the amount of the loss sustained by any victim as a
21 result of the JUVENILE offense. IN DETERMINING WHETHER TO ORDER
22 THE JUVENILE'S PARENT TO PAY RESTITUTION UNDER SECTION 30(15) OF
23 THIS CHAPTER, THE COURT SHALL CONSIDER the financial resources
24 ~~and earning ability~~ of the ~~juvenile and his or her~~
25 ~~supervisory~~ JUVENILE'S parent ~~, the financial needs of the~~
26 ~~juvenile and the juvenile's dependents, and such~~ AND THE other

1 factors ~~as the court considers appropriate~~ SPECIFIED IN SECTION
2 30(16) OF THIS CHAPTER.

3 (2) The court may order the person preparing a report for
4 the purpose of disposition to obtain information pertaining to
5 the factors set forth in subsection (1). That person shall
6 include the information collected in the disposition report or in
7 a separate report, as the court directs.

8 (3) The court shall disclose to the juvenile, the juvenile's
9 ~~supervisory~~ parent, and the prosecuting attorney all portions
10 of the disposition or other report pertaining to the matters
11 described in subsection (1).

12 (4) Any dispute as to the proper amount or type of restitu-
13 tion shall be resolved by the court by a preponderance of the
14 evidence. The burden of demonstrating the ~~earning ability of~~
15 ~~the juvenile and the~~ amount of the loss sustained by a victim as
16 a result of the JUVENILE offense shall be on the prosecuting
17 attorney. The burden of demonstrating the financial resources of
18 the ~~juvenile and his or her supervisory~~ JUVENILE'S parent AND
19 THE OTHER FACTORS SPECIFIED IN SECTION 30(16) OF THIS CHAPTER
20 shall be on the ~~juvenile and his or her supervisory~~ parent. ~~7~~
21 ~~and the burden of demonstrating the financial needs of the juve-~~
22 ~~nile and the juvenile's dependents shall be on the juvenile. The~~
23 ~~burden of demonstrating such other matters as the court considers~~
24 ~~appropriate shall be upon the party designated by the court as~~
25 ~~justice requires.~~

1 Section 2. This amendatory act shall not take effect unless
2 all of the following bills of the 88th Legislature are enacted
3 into law:

4 (a) Senate Bill No. 970

5

6 (b) Senate Bill No. _____ or House Bill No. _____ (request
7 no. 06116'95 a).