

Act No. 523  
Public Acts of 1998  
Approved by the Governor  
January 12, 1999  
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STATE OF MICHIGAN  
89TH LEGISLATURE  
REGULAR SESSION OF 1998

Introduced by Senator Schwarz

# ENROLLED SENATE BILL No. 1191

AN ACT to amend 1985 PA 87, entitled "An act to establish the rights of victims of crime and juvenile offenses; to provide for certain procedures; to establish certain immunities and duties; to limit convicted criminals from deriving profit under certain circumstances; to prohibit certain conduct of employers or employers' agents toward victims; and to provide for penalties and remedies," by amending sections 2, 6, 13a, 20a, 31, 36, 41a, and 48 (MCL 780.752, 780.756, 780.763a, 780.770a, 780.781, 780.786, 780.791a, and 780.798), sections 2, 6, and 36 as amended and sections 13a, 20a, and 41a as added by 1993 PA 341, section 31 as amended by 1996 PA 82, and section 48 as amended by 1996 PA 105.

*The People of the State of Michigan enact:*

Sec. 2. (1) As used in this article:

- (a) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act.
- (b) "Crime" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year or an offense expressly designated by law as a felony.
- (c) "Defendant" means a person charged with or convicted of committing a crime against a victim.
- (d) "Final disposition" means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal, or imposition of sentence by the court.
- (e) "Juvenile" means a person within the jurisdiction of the circuit court under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606.
- (f) "Juvenile facility" means a county facility, institution operated as an agency of the county or the family division of circuit court, or an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, to which a juvenile has been committed or in which a juvenile is detained.
- (g) "Person" means an individual, organization, partnership, corporation, or governmental entity.
- (h) "Prisoner" means a person who has been convicted and sentenced to imprisonment or placement in a juvenile facility for having committed a crime or an act that would be a crime if committed by an adult against a victim.
- (i) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, or a special prosecuting attorney.
- (j) "Victim", except as otherwise defined in this article, means any of the following:
  - (i) An individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime, except as provided in subparagraph (ii), (iii), or (iv).
  - (ii) The following individuals other than the defendant if the victim is deceased:

- (A) The spouse of the deceased victim.
- (B) A child of the deceased victim if the child is 18 years of age or older and sub-subparagraph (A) does not apply.
- (C) A parent of a deceased victim if sub-subparagraphs (A) and (B) do not apply.
- (D) The guardian or custodian of a child of a deceased victim if the child is less than 18 years of age and sub-subparagraphs (A) to (C) do not apply.
- (E) A sibling of the deceased victim if sub-subparagraphs (A) to (D) do not apply.
- (F) A grandparent of the deceased victim if sub-subparagraphs (A) to (E) do not apply.
- (iii) A parent, guardian, or custodian of a victim who is less than 18 years of age if the parent, guardian, or custodian so chooses.
- (iv) A parent, guardian, or custodian of a victim who is mentally or emotionally unable to participate in the legal process.

(2) If a victim as defined in subsection (1)(j)(i) is physically or emotionally unable to exercise the privileges and rights under this article, the victim may designate his or her spouse, child 18 years of age or older, parent, sibling, or grandparent to act in his or her place while the physical or emotional disability continues. The victim shall provide the prosecuting attorney with the name of the person who is to act in his or her place. During the physical or emotional disability, notices to be provided under this article to the victim shall continue to be sent only to the victim.

Sec. 6. (1) Not later than 7 days after the defendant's arraignment for a crime, but not less than 24 hours before a preliminary examination, the prosecuting attorney shall give to each victim a written notice in plain English of each of the following:

- (a) A brief statement of the procedural steps in the processing of a criminal case.
  - (b) A specific list of the rights and procedures under this article.
  - (c) Details and eligibility requirements under 1976 PA 223, MCL 18.351 to 18.368.
  - (d) Suggested procedures if the victim is subjected to threats or intimidation.
  - (e) The person to contact for further information.
- (2) If the victim requests, the prosecuting attorney shall give the victim notice of any scheduled court proceedings and any changes in that schedule.
- (3) Before finalizing any negotiation that may result in a dismissal, plea or sentence bargain, or pretrial diversion, the prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the victim's views about the disposition of the prosecution for the crime, including the victim's views about dismissal, plea or sentence negotiations, and pretrial diversion programs.
- (4) A victim who receives a notice under subsection (1) and who chooses to receive any other notice or notices under this article shall keep the following persons informed of the victim's current address and telephone number:
- (a) The prosecuting attorney, until final disposition or completion of the appellate process, whichever occurs later.
  - (b) The department of corrections or the sheriff as the prosecuting attorney directs if the defendant is imprisoned.
  - (c) The family independence agency or county juvenile agency as the prosecuting attorney directs if the defendant is held in a juvenile facility.

Sec. 13a. When a defendant is sentenced to a term of imprisonment or ordered to be placed in a juvenile facility, the prosecuting attorney shall provide the victim with a form the victim may submit to receive the notices provided for under section 19 or 20a. The form shall include the address of the department of corrections, the sheriff, the family independence agency, or the county juvenile agency, as applicable, to which the form may be sent.

Sec. 20a. (1) Upon a victim's written request, the family independence agency or county juvenile agency, as applicable, shall make a good faith effort to notify the victim before either of the following occurs:

- (a) A juvenile is dismissed from court jurisdiction or discharged from commitment to the family independence agency or county juvenile agency.
- (b) A juvenile is transferred from a secure juvenile facility to a nonsecure juvenile facility.

(2) If the family independence agency or county juvenile agency is not successful in notifying the victim before an event described in subsection (1) occurs, it shall notify the victim as soon as possible after that event occurs by any means reasonably calculated to give prompt actual notice.

(3) Upon the victim's written request, the family independence agency or county juvenile agency, as applicable, shall give to the victim notice of a juvenile's escape. A victim who requests notice of an escape shall be given immediate notice of the escape by any means reasonably calculated to give prompt actual notice. If the escape occurs before the juvenile is delivered to the family independence agency or county juvenile agency, the agency in charge of the juvenile's

detention shall give notice of the escape to the family independence agency or county juvenile agency, which shall then give notice of the escape to the victim who requested notice.

Sec. 31. (1) As used in this article:

(a) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act.

(b) "Court" means the juvenile division of the probate court.

(c) "Juvenile" means an individual alleged or found to be within the court's jurisdiction under section 2(a)(1) of chapter XIIA of 1939 PA 288, MCL 712A.2, for an offense.

(d) "Juvenile facility" means a county facility, an institution operated as an agency of the county or the court, or an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, to which a juvenile has been committed or in which a juvenile is detained.

(e) "Offense" means 1 or more of the following:

(i) A violation of a penal law of this state for which a juvenile offender, if convicted as an adult, may be punished by imprisonment for more than 1 year or an offense expressly designated by law as a felony.

(ii) A violation of section 81, 81a, 115, 136b(5), 145a, 234, 235, 335a, or 411h of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.115, 750.136b, 750.145a, 750.234, 750.235, 750.335a, and 750.411h.

(iii) A violation of section 617a of the Michigan vehicle code, 1949 PA 300, MCL 257.617a, or a violation of section 625 of that act, MCL 257.625, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual.

(iv) Selling or furnishing alcoholic liquor to an individual less than 21 years of age in violation of section 33 of the former 1933 (Ex Sess) PA 8, or section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701, if the violation results in physical injury or death to any individual.

(v) A violation of section 80176(1) or (3) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual.

(vi) A violation of a local ordinance substantially corresponding to a law enumerated in subparagraphs (i) to (v).

(vii) A violation described in subparagraphs (i) to (vi) that is subsequently reduced to a violation not included in subparagraphs (i) to (vi).

(f) "Person" means an individual, organization, partnership, corporation, or governmental entity.

(g) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, or in connection with the prosecution of an ordinance violation, an attorney for the political subdivision that enacted the ordinance upon which the violation is based.

(h) "Victim", except as otherwise defined in this article, means any of the following:

(i) A person who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of an offense, except as provided in subparagraph (ii), (iii), or (iv).

(ii) The following individuals other than the juvenile if the victim is deceased:

(A) The spouse of the deceased victim.

(B) A child of the deceased victim if the child is 18 years of age or older and sub-subparagraph (A) does not apply.

(C) A parent of a deceased victim if sub-subparagraphs (A) and (B) do not apply.

(D) The guardian or custodian of a child of a deceased victim if the child is less than 18 years of age and sub-subparagraphs (A) to (C) do not apply.

(E) A sibling of the deceased victim if sub-subparagraphs (A) to (D) do not apply.

(F) A grandparent of the deceased victim if sub-subparagraphs (A) to (E) do not apply.

(iii) A parent, guardian, or custodian of a victim who is less than 18 years of age if the parent, guardian, or custodian so chooses.

(iv) A parent, guardian, or custodian of a victim who is mentally or emotionally unable to participate in the legal process.

(2) If a victim as defined in subsection (1)(h)(i) is physically or emotionally unable to exercise the privileges and rights under this article, the victim may designate his or her spouse, child 18 years of age or older, parent, sibling, or grandparent to act in his or her place while the physical or emotional disability continues. The victim shall provide the prosecuting attorney with the name of the person who is to act in his or her place. During the physical or emotional disability, notices to be provided under this article to the victim shall continue to be sent only to the victim.

Sec. 36. (1) Within 72 hours after the prosecuting attorney files or submits a petition seeking to invoke the court's jurisdiction for an offense, the prosecuting attorney, or the court pursuant to an agreement under section 48a, shall give to each victim a written notice in plain English of each of the following:

(a) A brief statement of the procedural steps in the processing of a juvenile offense case, including the fact that a juvenile may be waived to the court of general criminal jurisdiction.

(b) A specific list of the rights and procedures under this article.

(c) Details and eligibility requirements under 1976 PA 223, MCL 18.351 to 18.368.

(d) Suggested procedures if the victim is subjected to threats or intimidation.

(e) The person to contact for further information.

(2) If the victim requests, the prosecuting attorney, or the court pursuant to an agreement under section 48a, shall give the victim notice of any scheduled court proceedings and any changes in that schedule.

(3) If the juvenile has not already entered a plea of admission or no contest to the original charge at the preliminary hearing, the prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the victim's views about the disposition of the offense, including the victim's views about dismissal, waiver, and pretrial diversion programs, before finalizing any agreement to reduce the original charge.

(4) Before placing a juvenile in a pretrial diversion program for committing a violation that if committed by an adult would be a crime or a serious misdemeanor, the court shall give the victim an opportunity to be heard regarding that placement. The victim has the right to make a statement at the hearing or submit a written statement, or both. As used in this subsection:

(a) "Crime" means that term as defined in section 2.

(b) "Serious misdemeanor" means that term as defined in section 61.

(5) A victim who receives a notice under subsection (1) and chooses to receive any other notice under this article shall keep the following persons informed of the victim's current address and telephone number:

(a) The prosecuting attorney, or the court if an agreement under section 48a exists.

(b) If the juvenile is made a public ward, the family independence agency or county juvenile agency, as applicable.

Sec. 41a. When a juvenile is ordered to be placed in a juvenile facility, the prosecuting attorney, or the court pursuant to an agreement under section 48a, shall provide the victim with a form the victim may submit to receive the notices from the family independence agency or county juvenile agency, as applicable, provided for under section 48. The form shall include the address of the family independence agency or county juvenile agency to which the form may be sent.

Sec. 48. (1) Upon the victim's written request, the court or the family independence agency or county juvenile agency, as applicable, shall make a good faith effort to notify the victim before any of the following occurs:

(a) The juvenile is dismissed from court jurisdiction or discharged from commitment to the family independence agency or county juvenile agency.

(b) The juvenile is transferred from a secure juvenile facility to a nonsecure juvenile facility.

(c) The juvenile has his or her name legally changed while under the court's jurisdiction or within 2 years after discharge from the court's jurisdiction.

(2) If the court, family independence agency, or county juvenile agency is not successful in notifying the victim before an event described in subsection (1)(a), (b), or (c) occurs, it shall notify the victim as soon as possible after that event occurs.

(3) Upon the victim's written request, the family independence agency, county juvenile agency, or court shall give to the victim notice of a juvenile's escape from a secure detention or treatment facility. A victim who requests notice of an escape shall be given immediate notice of the escape by any means reasonably calculated to give prompt actual notice.

(4) Upon the victim's request, the prosecuting attorney shall give the victim notice of a review hearing conducted under section 18 of chapter XIIIA of 1939 PA 288, MCL 712A.18. The victim has the right to make a statement at the hearing or submit a written statement for use at the hearing, or both.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 89th Legislature are enacted into law:

(a) Senate Bill No. 1183.

(b) Senate Bill No. 1184.

(c) Senate Bill No. 1185.

- (d) Senate Bill No. 1186.
- (e) Senate Bill No. 1187.
- (f) Senate Bill No. 1196.
- (g) Senate Bill No. 1197.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

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Secretary of the Senate.

*Mary B. Bell*

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Clerk of the House of Representatives.

Approved \_\_\_\_\_

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Governor.