

HOUSE BILL No. 5867

April 9, 2002, Introduced by Reps. Vander Roest and Faunce and referred to the Committee on Civil Law and the Judiciary.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 30 of chapter XIIA (MCL 712A.30), as amended
by 1996 PA 561.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

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

(a) "Juvenile offense" means a violation by a juvenile of a
penal law of this state or a violation by a juvenile of an ordinance of a local unit of government of this state punishable by imprisonment or by a fine that is not a civil fine.

(b) "Victim" means an individual who suffers direct or
threatened physical, financial, or emotional harm as a result of
the commission of a juvenile offense. For purposes of
subsections (2), (3), (6), (8), (9), and (13), victim includes a

1 sole proprietorship, partnership, corporation, association,
2 governmental entity, or other legal entity that suffers direct
3 physical or financial harm as a result of the commission of a
4 juvenile offense.

5 (2) Except as provided in subsection (8), at the disposi-
6 tional hearing OR SENTENCING for a juvenile offense, the court
7 shall order, in addition to or in lieu of any other disposition
8 OR PENALTY authorized by law, that the juvenile make full resti-
9 tution to any victim of the juvenile's course of conduct that
10 gives rise to the disposition OR CONVICTION or to the victim's
11 estate. FOR AN OFFENSE THAT IS RESOLVED INFORMALLY BY MEANS OF A
12 CONSENT CALENDAR DIVERSION OR ANY OTHER INFORMAL METHOD THAT DOES
13 NOT RESULT IN A DISPOSITIONAL HEARING, THE COURT SHALL ORDER THE
14 RESTITUTION REQUIRED UNDER THIS SECTION.

15 (3) If a juvenile offense results in damage to or loss or
16 destruction of property of a victim of the juvenile offense, or
17 results in the seizure or impoundment of property of a victim of
18 the juvenile offense, the order of restitution may require that
19 the juvenile do 1 or more of the following, as applicable:

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 disposition.

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

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

8 (a) Pay an amount equal to the REASONABLY DETERMINED cost of
9 ~~actual~~ medical and related professional services and devices
10 ACTUALLY INCURRED AND REASONABLY EXPECTED TO BE INCURRED relating
11 to physical and psychological care.

12 (b) Pay an amount equal to the REASONABLY DETERMINED cost of
13 ~~actual~~ physical and occupational therapy and rehabilitation
14 ACTUALLY INCURRED AND REASONABLY EXPECTED TO BE INCURRED.

15 (c) Reimburse the victim or the victim's estate for
16 after-tax income loss suffered by the victim as a result of the
17 juvenile offense.

18 (d) Pay an amount equal to the REASONABLY DETERMINED cost of
19 psychological and medical treatment for members of the victim's
20 family ~~that has been~~ ACTUALLY incurred AND REASONABLY EXPECTED
21 TO BE INCURRED as a result of the juvenile offense.

22 (e) Pay an amount equal to the REASONABLY DETERMINED costs
23 of ~~actual~~ homemaking and child care expenses ACTUALLY incurred
24 AND REASONABLY EXPECTED TO BE INCURRED as a result of the juve-
25 nile offense OR, IF HOMEMAKING OR CHILD CARE IS PROVIDED WITHOUT
26 COMPENSATION BY A RELATIVE, FRIEND, OR ANY OTHER PERSON, AN
27 AMOUNT EQUAL TO THE COSTS THAT WOULD REASONABLY BE INCURRED AS A

1 RESULT OF THE JUVENILE OFFENSE FOR THAT HOME MAKING AND CHILD
2 CARE, BASED ON THE RATES IN THE AREA FOR COMPARABLE SERVICES.

3 (F) ~~-(5) If a juvenile 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~~ PAY an amount equal to the
6 cost of actual funeral and related services.

7 (G) IF THE DECEASED VICTIM COULD BE CLAIMED AS A DEPENDENT
8 BY HIS OR HER PARENT OR GUARDIAN ON THE PARENT'S OR GUARDIAN'S
9 FEDERAL, STATE, OR LOCAL INCOME TAX RETURNS, PAY AN AMOUNT EQUAL
10 TO THE LOSS OF THE TAX DEDUCTION OR TAX CREDIT. THE AMOUNT OF
11 REIMBURSEMENT SHALL BE ESTIMATED FOR EACH YEAR THE VICTIM COULD
12 REASONABLY BE CLAIMED AS A DEPENDENT.

13 (5) IF A JUVENILE OFFENSE RESULTING IN BODILY INJURY ALSO
14 RESULTS IN THE DEATH OF A VICTIM OR SERIOUS IMPAIRMENT OF A BODY
15 FUNCTION OF A VICTIM, THE COURT MAY ORDER UP TO 3 TIMES THE
16 AMOUNT OF RESTITUTION OTHERWISE ALLOWED UNDER THIS SECTION. AS
17 USED IN THIS SUBSECTION, "SERIOUS IMPAIRMENT OF A BODY FUNCTION
18 OF A VICTIM" INCLUDES, BUT IS NOT LIMITED TO, 1 OR MORE OF THE
19 FOLLOWING:

20 (A) LOSS OF A LIMB OR USE OF A LIMB.

21 (B) LOSS OF A HAND OR FOOT OR USE OF A HAND OR FOOT.

22 (C) LOSS OF AN EYE OR USE OF AN EYE OR EAR.

23 (D) LOSS OR SUBSTANTIAL IMPAIRMENT OF A BODILY FUNCTION.

24 (E) SERIOUS VISIBLE DISFIGUREMENT.

25 (F) A COMATOSE STATE THAT LASTS FOR MORE THAN 3 DAYS.

26 (G) MEASURABLE BRAIN DAMAGE OR MENTAL IMPAIRMENT.

1 (H) A SKULL FRACTURE OR OTHER SERIOUS BONE FRACTURE.

2 (I) SUBDURAL HEMORRHAGE OR SUBDURAL HEMATOMA.

3 (J) LOSS OF A BODY ORGAN.

4 (6) If the victim or victim's estate consents, the order of
5 restitution may require that the juvenile make restitution in
6 services in lieu of money.

7 (7) If the victim is deceased, the court shall order that
8 the restitution be made to the victim's estate.

9 (8) The court shall order restitution to the crime victims
10 ~~compensation board~~ SERVICES COMMISSION or to any individuals,
11 partnerships, corporations, associations, governmental entities,
12 or any other legal entities that have compensated the victim or
13 victim's estate for a loss incurred by the victim to the extent
14 of the compensation paid for that loss. The court shall also
15 order restitution, for the costs of services provided, to persons
16 or entities that have provided services to the victim as a result
17 of the juvenile offense. Services that are subject to restitu-
18 tion under this subsection include, but are not limited to, shel-
19 ter, food, clothing, and transportation. However, an order of
20 restitution shall require that all restitution to a victim or
21 victim's estate under the order be made before any restitution to
22 any other person or entity under that order is made. The court
23 shall not order restitution to be paid to a victim or victim's
24 estate if the victim or victim's estate has received or is to
25 receive compensation for that loss, and the court shall state on
26 the record with specificity the reasons for its actions. ~~If an~~
27 ~~entity entitled to restitution under this subsection for~~

~~compensating the victim or the victim's estate cannot or refuses
to be reimbursed for that compensation, the restitution paid for
that entity shall be deposited by the state treasurer in the
crime victim's rights fund created under section 4 of Act No. 196
of the Public Acts of 1989, being section 780.904 of the Michigan
Compiled Laws, or its successor fund.~~

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

(10) If not otherwise provided by the court under this subsection, restitution shall be made immediately. However, the court may require that the juvenile make restitution under this section within a specified period or in specified installments.

(11) If the juvenile is placed on probation, any restitution ordered under this section shall be a condition of that probation. The court may revoke probation if the juvenile fails to comply with the order and if the juvenile has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the juvenile's employment status, earning ability, and financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay.

1 (12) A juvenile who is required to pay restitution and who
2 is not in willful default of the payment of the restitution may
3 at any time petition the court to modify the method of payment.
4 If the court determines that payment under the order will impose
5 a manifest hardship on the juvenile or his or her immediate
6 family, AND IF THE COURT ALSO DETERMINES THAT MODIFYING THE
7 METHOD OF PAYMENT WILL NOT IMPOSE A MANIFEST HARDSHIP ON THE
8 VICTIM, the court may modify the method of payment.

9 (13) An order of restitution entered under this section
10 remains effective until it is satisfied in full. An order of
11 restitution is a judgment and lien against all property of the
12 individual ordered to pay restitution for the amount specified in
13 the order of restitution. The lien may be recorded as provided
14 by law. An order of restitution may be enforced by the prosecut-
15 ing attorney, a victim, a victim's estate, or any other person or
16 entity named in the order to receive the restitution in the same
17 manner as a judgment in a civil action or a lien.

18 (14) Notwithstanding any other provision of this section, a
19 juvenile shall not be detained OR IMPRISONED for a violation of
20 probation ~~—~~ OR PAROLE or otherwise ~~—~~ for failure to pay res-
21 titution as ordered under this section unless the court deter-
22 mines that the juvenile has the resources to pay the ordered res-
23 titution and has not made a good faith effort to do so.

24 (15) If the court determines that the juvenile is or will be
25 unable to pay all of the restitution ordered, after notice to the
26 juvenile's parent OR PARENTS and an opportunity for the parent OR
27 PARENTS to be heard, the court may order the parent or parents

1 having supervisory responsibility for the juvenile at the time of
2 the acts upon which an order of restitution is based to pay any
3 portion of the restitution ordered that is outstanding. An order
4 under this subsection does not relieve the juvenile of his or her
5 obligation to pay restitution, but the amount owed by the juve-
6 nile shall be offset by any amount paid by his or her parent. As
7 used in this subsection, "parent" does not include a foster
8 parent.

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

17 (17) A parent who has been ordered to pay restitution under
18 subsection (15) may petition the court for a modification of the
19 amount of restitution owed by the parent or for a cancellation of
20 any unpaid portion of the parent's obligation. The court shall
21 cancel all or part of the parent's obligation due if the court
22 determines that payment of the amount due will impose a manifest
23 hardship on the parent AND IF THE COURT ALSO DETERMINES THAT MOD-
24 IFYING THE METHOD OF PAYMENT WILL NOT IMPOSE A MANIFEST HARDSHIP
25 ON THE VICTIM.

26 (18) In each case in which payment of restitution is ordered
27 as a condition of probation, the COURT MAY ORDER ANY EMPLOYED

1 DEFENDANT TO EXECUTE A WAGE ASSIGNMENT TO PAY THE RESTITUTION.
2 THE juvenile caseworker or probation officer assigned to the case
3 shall review the case not less than twice yearly to ensure that
4 restitution is being paid as ordered. IF THE RESTITUTION WAS
5 ORDERED TO BE MADE WITHIN A SPECIFIC PERIOD OF TIME, THE PROBA-
6 TION OFFICER ASSIGNED TO THE CASE SHALL REVIEW THE CASE AT THE
7 END OF THE SPECIFIC PERIOD OF TIME TO DETERMINE IF THE RESTITU-
8 TION HAS BEEN PAID IN FULL. The final review shall be conducted
9 not less than 60 days before the ~~expiration of the~~ probationary
10 period EXPIRES. If the juvenile caseworker or probation officer
11 determines AT ANY REVIEW THAT the restitution is not being paid
12 as ordered, the juvenile caseworker or probation officer shall
13 file a written report of the violation with the court on a form
14 prescribed by the state court administrative office OR SHALL
15 PETITION THE COURT FOR A PROBATION VIOLATION. The report OR
16 PETITION shall include a statement of the amount of the arrearage
17 and any reasons for the arrearage ~~that are~~ known by the juve-
18 nile caseworker or probation officer. The juvenile caseworker or
19 probation officer shall immediately provide a copy of the report
20 OR PETITION to the prosecuting attorney. If a PETITION OR motion
21 is filed or other proceedings are initiated to enforce payment of
22 restitution and the court determines that restitution is not
23 being paid or has not been paid as ordered by the court, the
24 court shall promptly take action necessary to compel compliance.

25 (19) If the court determines that an individual who is
26 ordered to pay restitution under this section is remanded to the
27 jurisdiction of the department of corrections, the court shall

1 provide a copy of the order of restitution to the department of
2 corrections when the court determines that the individual is
3 remanded to the department's jurisdiction.

4 (20) THE COURT SHALL NOT IMPOSE A FEE ON A VICTIM, VICTIM'S
5 ESTATE, OR PROSECUTING ATTORNEY FOR ENFORCING AN ORDER OF
6 RESTITUTION.

7 (21) IF A PERSON OR ENTITY ENTITLED TO RESTITUTION CANNOT BE
8 LOCATED OR REFUSES TO CLAIM THAT RESTITUTION WITHIN 2 YEARS AFTER
9 THE DATE ON WHICH HE OR SHE COULD HAVE CLAIMED THE RESTITUTION,
10 THE RESTITUTION PAID TO THAT PERSON OR ENTITY SHALL BE DEPOSITED
11 IN THE CRIME VICTIM'S RIGHTS FUND CREATED UNDER SECTION 4 OF 1989
12 PA 196, MCL 780.904, OR ITS SUCCESSOR FUND. HOWEVER, A PERSON OR
13 ENTITY ENTITLED TO THAT RESTITUTION MAY CLAIM THAT RESTITUTION AT
14 ANY TIME BY APPLYING TO THE COURT THAT ORIGINALLY ORDERED AND
15 COLLECTED IT. THE COURT SHALL NOTIFY THE CRIME VICTIM SERVICES
16 COMMISSION OF THE APPLICATION AND THE COMMISSION SHALL APPROVE A
17 REDUCTION IN THE COURT'S REVENUE TRANSMITTAL TO THE CRIME
18 VICTIM'S RIGHTS FUND EQUAL TO THE RESTITUTION OWED TO THE PERSON
19 OR ENTITY. THE COURT SHALL USE THE REDUCTION TO REIMBURSE THAT
20 RESTITUTION TO THE PERSON OR ENTITY.