

HOUSE BILL No. 5866

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

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 1a of chapter IX (MCL 769.1a), as amended by
1998 PA 231.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

Sec. 1a. (1) As used in this section, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a felony, misdemeanor, or ordinance violation. For purposes of subsections (2), (3), (6), (8), (9), and (13), victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of a felony, misdemeanor, or ordinance violation.

(2) Except as provided in subsection (8), when sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate.

(3) If a felony, misdemeanor, or ordinance violation results in damage to or loss or destruction of property of a victim of the felony, misdemeanor, or ordinance violation or results in the seizure or impoundment of property of a victim of the felony, misdemeanor, or ordinance violation, the order of restitution may require that the defendant do 1 or more of the following, as applicable:

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

(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraph (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:

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

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

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

(4) If a felony, misdemeanor, or ordinance violation results in physical or psychological injury to a victim, the order of

1 restitution may require that the defendant do 1 or more of the
2 following, as applicable:

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

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

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

13 (d) Pay an amount equal to the REASONABLY DETERMINED cost of
14 psychological and medical treatment for members of the victim's
15 family ~~that has been~~ ACTUALLY incurred AND REASONABLY EXPECTED
16 TO BE INCURRED as a result of the felony, misdemeanor, or ordi-
17 nance violation.

18 (e) Pay an amount equal to the REASONABLY DETERMINED cost of
19 ~~actual~~ homemaking and child care expenses ACTUALLY incurred AND
20 REASONABLY EXPECTED TO BE INCURRED as a result of the felony,
21 misdemeanor, or ordinance violation OR, IF HOMEMAKING OR CHILD
22 CARE IS PROVIDED WITHOUT COMPENSATION BY A RELATIVE, FRIEND, OR
23 ANY OTHER PERSON, AN AMOUNT EQUAL TO THE COSTS THAT WOULD REASON-
24 ABLY BE INCURRED AS A RESULT OF THE FELONY, MISDEMEANOR, OR ORDI-
25 NANCE VIOLATION FOR THAT HOMEMAKING AND CHILD CARE, BASED ON THE
26 RATES IN THE AREA FOR COMPARABLE SERVICES.

1 (F) ~~(5) If a felony, misdemeanor, or ordinance violation~~
2 ~~resulting in bodily injury also results in the death of a victim,~~
3 ~~the order of restitution may require that the defendant pay~~ PAY
4 an amount equal to the cost of actual funeral and related
5 services.

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

12 (5) IF A FELONY, MISDEMEANOR, OR ORDINANCE VIOLATION RESULT-
13 ING IN BODILY INJURY ALSO RESULTS IN THE DEATH OF A VICTIM OR
14 SERIOUS IMPAIRMENT OF A BODY FUNCTION OF A VICTIM, THE COURT MAY
15 ORDER UP TO 3 TIMES THE AMOUNT OF RESTITUTION OTHERWISE ALLOWED
16 UNDER THIS SECTION. AS USED IN THIS SUBSECTION, SERIOUS IMPAIR-
17 MENT OF A BODY FUNCTION OF A VICTIM INCLUDES, BUT IS NOT LIMITED
18 TO, 1 OR MORE OF THE FOLLOWING:

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

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

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

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

23 (E) SERIOUS VISIBLE DISFIGUREMENT.

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

25 (G) MEASURABLE BRAIN DAMAGE OR MENTAL IMPAIRMENT.

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

1 (I) SUBDURAL HEMORRHAGE OR SUBDURAL HEMATOMA.

2 (J) LOSS OF A BODY ORGAN.

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

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

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

~~1 cannot or refuses to be reimbursed for that compensation, the~~
~~2 restitution paid for that entity shall be deposited by the state~~
~~3 treasurer in the crime victim's rights fund created under~~
~~4 section 4 of 1989 PA 196, MCL 780.904, or its successor fund.~~

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

12 (10) If not otherwise provided by the court under this sub-
13 section, restitution shall be made immediately. However, the
14 court may require that the defendant make restitution under this
15 section within a specified period or in specified installments.

16 (11) If the defendant is placed on probation or paroled or
17 the court imposes a conditional sentence under section 3 of this
18 chapter, any restitution ordered under this section shall be a
19 condition of that probation, parole, or sentence. The court may
20 revoke probation or impose imprisonment under the conditional
21 sentence and the parole board may revoke parole if the defendant
22 fails to comply with the order and if the defendant has not made
23 a good faith effort to comply with the order. In determining
24 whether to revoke probation or parole or impose imprisonment, the
25 court or parole board shall consider the defendant's employment
26 status, earning ability, and financial resources, the willfulness
27 of the defendant's failure to pay, and any other special

1 circumstances that may have a bearing on the defendant's ability
2 to pay.

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

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

21 (14) Notwithstanding any other provision of this section, a
22 defendant shall not be imprisoned, jailed, or incarcerated for a
23 violation of probation or parole or otherwise for failure to pay
24 restitution as ordered under this section unless the court or
25 parole board determines that the defendant has the resources to
26 pay the ordered restitution and has not made a good faith effort
27 to do so.

1 (15) IF THE COURT DETERMINES THAT A JUVENILE IS OR WILL BE
2 UNABLE TO PAY ALL OF THE RESTITUTION ORDERED, AFTER NOTICE TO THE
3 JUVENILE'S PARENT OR PARENTS AND AN OPPORTUNITY FOR THE PARENT OR
4 PARENTS TO BE HEARD, THE COURT MAY ORDER THE PARENT OR PARENTS
5 HAVING SUPERVISORY RESPONSIBILITY FOR THE JUVENILE AT THE TIME OF
6 THE ACTS UPON WHICH AN ORDER OF RESTITUTION IS BASED TO PAY ANY
7 PORTION OF THE RESTITUTION ORDERED THAT IS OUTSTANDING. AN ORDER
8 UNDER THIS SUBSECTION DOES NOT RELIEVE THE JUVENILE OF HIS OR HER
9 OBLIGATION TO PAY RESTITUTION AS ORDERED, BUT THE AMOUNT OWED BY
10 THE JUVENILE SHALL BE OFFSET BY ANY AMOUNT PAID BY HIS OR HER
11 PARENT OR PARENTS. AS USED IN THIS SUBSECTION:

12 (A) "JUVENILE" MEANS A PERSON WITHIN THE COURT'S JURISDIC-
13 TION UNDER SECTION 2D OR 4 OF CHAPTER XIIA OF THE PROBATE CODE OF
14 1939, 1939 PA 288, MCL 712A.2D AND 712A.4.

15 (B) "PARENT" DOES NOT INCLUDE A FOSTER PARENT.

16 (16) IF THE COURT ORDERS A PARENT TO PAY RESTITUTION UNDER
17 SUBSECTION (15), THE COURT SHALL TAKE INTO ACCOUNT THE PARENT'S
18 FINANCIAL RESOURCES AND THE BURDEN THAT THE PAYMENT OF RESTITU-
19 TION WILL IMPOSE, WITH DUE REGARD TO ANY OTHER MORAL OR LEGAL
20 FINANCIAL OBLIGATIONS THE PARENT MAY HAVE. IF A PARENT IS
21 REQUIRED TO PAY RESTITUTION UNDER SUBSECTION (15), THE COURT
22 SHALL PROVIDE FOR PAYMENT TO BE MADE IN SPECIFIED INSTALLMENTS
23 AND WITHIN A SPECIFIED PERIOD OF TIME.

24 (17) A PARENT WHO HAS BEEN ORDERED TO PAY RESTITUTION UNDER
25 SUBSECTION (15) MAY PETITION THE COURT FOR A MODIFICATION OF THE
26 AMOUNT OF RESTITUTION OWED BY THE PARENT OR FOR A CANCELLATION OF
27 ANY UNPAID PORTION OF THE PARENT'S OBLIGATION. THE COURT SHALL

1 CANCEL ALL OR PART OF THE PARENT'S OBLIGATION DUE IF THE COURT
2 DETERMINES THAT PAYMENT OF THE AMOUNT DUE WILL IMPOSE A MANIFEST
3 HARDSHIP ON THE PARENT AND IF THE COURT ALSO DETERMINES THAT MOD-
4 IFYING THE METHOD OF PAYMENT WILL NOT IMPOSE A MANIFEST HARDSHIP
5 ON THE VICTIM.

6 (18) ~~-(15)-~~ In each case in which payment of restitution is
7 ordered as a condition of probation, the COURT MAY ORDER ANY
8 EMPLOYED DEFENDANT TO EXECUTE A WAGE ASSIGNMENT TO PAY THE
9 RESTITUTION. THE probation officer assigned to the case shall
10 review the case not less than twice yearly to ensure that resti-
11 tution is being paid as ordered. IF THE RESTITUTION WAS ORDERED
12 TO BE MADE WITHIN A SPECIFIC PERIOD OF TIME, THE PROBATION OFFI-
13 CER ASSIGNED TO THE CASE SHALL REVIEW THE CASE AT THE END OF THE
14 SPECIFIC PERIOD OF TIME TO DETERMINE IF THE RESTITUTION HAS BEEN
15 PAID IN FULL. The final review shall be conducted not less than
16 60 days before the probationary period expires. If the probation
17 officer determines AT ANY REVIEW that restitution is not being
18 paid as ordered, the probation officer shall file a written
19 report of the violation with the court on a form prescribed by
20 the state court administrative office OR SHALL PETITION THE COURT
21 FOR A PROBATION VIOLATION. The report OR PETITION shall include
22 a statement of the amount of the arrearage and any reasons for
23 the arrearage known by the probation officer. The probation
24 officer shall immediately provide a copy of the report OR
25 PETITION to the prosecuting attorney. If a PETITION OR motion is
26 filed or other proceedings are initiated to enforce payment of
27 restitution and the court determines that restitution is not

1 being paid or has not been paid as ordered by the court, the
2 court shall promptly take action necessary to compel compliance.

3 (19) ~~-(16)-~~ If a defendant who is ordered to pay restitution
4 under this section is remanded to the jurisdiction of the depart-
5 ment of corrections, the court shall provide a copy of the order
6 of restitution to the department of corrections when the
7 defendant is ordered remanded to the department's jurisdiction.

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

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