

SUBSTITUTE FOR  
HOUSE BILL NO. 4736

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  
2009 PA 27, and by adding section 30 to chapter IV.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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CHAPTER IV

SEC. 30. (1) TO FACILITATE COMPLIANCE WITH SECTIONS 11 AND 13  
OF THE IDENTITY THEFT PROTECTION ACT, 2004 PA 452, MCL 445.71 AND  
445.73, AND 15 USC 1681G, A BONA FIDE VICTIM OF IDENTITY THEFT IS  
ENTITLED TO FILE A POLICE REPORT WITH A LAW ENFORCEMENT AGENCY IN A  
JURISDICTION WHERE THE ALLEGED VIOLATION OF IDENTITY THEFT MAY BE  
PROSECUTED AS PROVIDED UNDER SECTION 10C OF CHAPTER II, AND TO  
OBTAIN A COPY OF THAT REPORT FROM THAT LAW ENFORCEMENT AGENCY.

(2) THE DEPARTMENT OF STATE POLICE SHALL DEVELOP AND MAKE  
AVAILABLE TO LAW ENFORCEMENT AGENCIES AND VICTIMS OF IDENTITY THEFT

1 A STANDARD IDENTITY THEFT INCIDENT REPORT FORM.

2 (3) AS USED IN THIS SECTION, "IDENTITY THEFT" MEANS THAT TERM  
3 AS DEFINED IN SECTION 3 OF THE IDENTITY THEFT PROTECTION ACT, 2004  
4 PA 453, MCL 445.63.

5 CHAPTER IX

6 Sec. 1a. (1) As used in this section:

7 (a) "Crime victim services commission" means that term as  
8 described in section 2 of 1976 PA 223, MCL 18.352.

9 (b) "Victim" means an individual who suffers direct or  
10 threatened physical, financial, or emotional harm as a result of  
11 the commission of a felony, misdemeanor, or ordinance violation.  
12 For purposes of subsections (2), (3), (6), ~~(8)~~, (9), (10), and ~~(13)~~  
13 (14), victim includes a sole proprietorship, partnership,  
14 corporation, association, governmental entity, or any other legal  
15 entity that suffers direct physical or financial harm as a result  
16 of a felony, misdemeanor, or ordinance violation.

17 (2) Except as provided in subsection ~~(8)~~—(9), when sentencing  
18 a defendant convicted of a felony, misdemeanor, or ordinance  
19 violation, the court shall order, in addition to or in lieu of any  
20 other penalty authorized by law or in addition to any other penalty  
21 required by law, that the defendant make full restitution to any  
22 victim of the defendant's course of conduct that gives rise to the  
23 conviction or to the victim's estate.

24 (3) If a felony, misdemeanor, or ordinance violation results  
25 in damage to or loss or destruction of property of a victim of the  
26 felony, misdemeanor, or ordinance violation or results in the  
27 seizure or impoundment of property of a victim of the felony,

1 misdemeanor, or ordinance violation, the order of restitution may  
2 require that the defendant do 1 or more of the following, as  
3 applicable:

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

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

11 (i) The fair market value of the property on the date of the  
12 damage, loss, or destruction. However, if the fair market value of  
13 the property cannot be determined or is impractical to ascertain,  
14 then the replacement value of the property shall be utilized in  
15 lieu of the fair market value.

16 (ii) The fair market value of the property on the date of  
17 sentencing. However, if the fair market value of the property  
18 cannot be determined or is impractical to ascertain, then the  
19 replacement value of the property shall be utilized in lieu of the  
20 fair market value.

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

22 (4) If a felony, misdemeanor, or ordinance violation results  
23 in physical or psychological injury to a victim, the order of  
24 restitution may require that the defendant do 1 or more of the  
25 following, as applicable:

26 (a) Pay an amount equal to the cost of actual medical and  
27 related professional services and devices relating to physical and

1 psychological care.

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

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

7 (d) Pay an amount equal to the cost of psychological and  
8 medical treatment for members of the victim's family that has been  
9 incurred as a result of the felony, misdemeanor, or ordinance  
10 violation.

11 (e) Pay an amount equal to the cost of actual homemaking and  
12 child care expenses incurred as a result of the felony,  
13 misdemeanor, or ordinance violation.

14 (5) If a felony, misdemeanor, or ordinance violation resulting  
15 in bodily injury also results in the death of a victim, the order  
16 of restitution may require that the defendant pay an amount equal  
17 to the cost of actual funeral and related services.

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

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

23 (8) IF THE VICTIM IS THE VICTIM OF IDENTITY THEFT AS THAT TERM  
24 IS DEFINED IN SECTION 3 OF THE IDENTITY THEFT PROTECTION ACT, 2004  
25 PA 452, MCL 445.63, THEN THE COURT SHALL ORDER RESTITUTION TO  
26 COMPENSATE THE VICTIM IN FULL FOR THE WORK DONE BY THE VICTIM OR  
27 THE VICTIM'S ATTORNEY, OR BOTH, TO RECTIFY THE VICTIM'S FINANCIAL

1 RECORDS AND VITAL RECORDS AND TO AMELIORATE THE EFFECTS OF THE  
2 IDENTITY THEFT ON THE VICTIM'S FINANCIAL AFFAIRS, INCLUDING, BUT  
3 NOT LIMITED TO, HIS OR HER CREDIT HISTORY, CREDIT RATING, OR CREDIT  
4 SCORE.

5 (9) ~~(8)~~—The court shall order restitution to the crime victim  
6 services commission or to any individuals, partnerships,  
7 corporations, associations, governmental entities, or other legal  
8 entities that have compensated the victim or the victim's estate  
9 for a loss incurred by the victim to the extent of the compensation  
10 paid for that loss. The court shall also order restitution for the  
11 costs of services provided to persons or entities that have  
12 provided services to the victim as a result of the felony,  
13 misdemeanor, or ordinance violation. Services that are subject to  
14 restitution under this subsection include, but are not limited to,  
15 shelter, food, clothing, and transportation. However, an order of  
16 restitution shall require that all restitution to a victim or a  
17 victim's estate under the order be made before any restitution to  
18 any other person or entity under that order is made. The court  
19 shall not order restitution to be paid to a victim or victim's  
20 estate if the victim or victim's estate has received or is to  
21 receive compensation for that loss, and the court shall state on  
22 the record with specificity the reasons for its action. If an  
23 entity entitled to restitution under this subsection for  
24 compensating the victim or the victim's estate cannot or refuses to  
25 be reimbursed for that compensation, the restitution paid for that  
26 entity shall be deposited by the state treasurer in the crime  
27 victim's rights fund created under section 4 of 1989 PA 196, MCL

1 780.904, or its successor fund.

2 (10) ~~(9)~~—Any amount paid to a victim or a victim's estate  
3 under an order of restitution shall be set off against any amount  
4 later recovered as compensatory damages by the victim or the  
5 victim's estate in any federal or state civil proceeding and shall  
6 reduce the amount payable to a victim or a victim's estate by an  
7 award from the crime victim services commission made after an order  
8 of restitution under this section.

9 (11) ~~(10)~~—If not otherwise provided by the court under this  
10 subsection, restitution shall be made immediately. However, the  
11 court may require that the defendant make restitution under this  
12 section within a specified period or in specified installments.

13 (12) ~~(11)~~—If the defendant is placed on probation or paroled  
14 or the court imposes a conditional sentence under section 3 of this  
15 chapter, any restitution ordered under this section shall be a  
16 condition of that probation, parole, or sentence. The court may  
17 revoke probation or impose imprisonment under the conditional  
18 sentence and the parole board may revoke parole if the defendant  
19 fails to comply with the order and if the defendant has not made a  
20 good faith effort to comply with the order. In determining whether  
21 to revoke probation or parole or impose imprisonment, the court or  
22 parole board shall consider the defendant's employment status,  
23 earning ability, and financial resources, the willfulness of the  
24 defendant's failure to pay, and any other special circumstances  
25 that may have a bearing on the defendant's ability to pay.

26 (13) ~~(12)~~—A defendant who is required to pay restitution and  
27 who is not in willful default of the payment of the restitution may

1 at any time petition the sentencing judge or his or her successor  
2 to modify the method of payment. If the court determines that  
3 payment under the order will impose a manifest hardship on the  
4 defendant or his or her immediate family, the court may modify the  
5 method of payment.

6 (14) ~~(13)~~—An order of restitution entered under this section  
7 remains effective until it is satisfied in full. An order of  
8 restitution is a judgment and lien against all property of the  
9 defendant for the amount specified in the order of restitution. The  
10 lien may be recorded as provided by law. An order of restitution  
11 may be enforced by the prosecuting attorney, a victim, a victim's  
12 estate, or any other person or entity named in the order to receive  
13 the restitution in the same manner as a judgment in a civil action  
14 or a lien.

15 (15) ~~(14)~~—Notwithstanding any other provision of this section,  
16 a defendant shall not be imprisoned, jailed, or incarcerated for a  
17 violation of probation or parole or otherwise for failure to pay  
18 restitution as ordered under this section unless the court or  
19 parole board determines that the defendant has the resources to pay  
20 the ordered restitution and has not made a good faith effort to do  
21 so.

22 (16) ~~(15)~~—In each case in which payment of restitution is  
23 ordered as a condition of probation, the probation officer assigned  
24 to the case shall review the case not less than twice yearly to  
25 ensure that restitution is being paid as ordered. The final review  
26 shall be conducted not less than 60 days before the probationary  
27 period expires. If the probation officer determines that

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

12 (17) ~~(16)~~—If a defendant who is ordered to pay restitution  
13 under this section is remanded to the jurisdiction of the  
14 department of corrections, the court shall provide a copy of the  
15 order of restitution to the department of corrections when the  
16 defendant is ordered remanded to the department's jurisdiction.  
[Enacting section 1. This amendatory act takes effect January 1,  
2010.]

17 Enacting section [2]. This amendatory act does not take effect  
18 unless all of the following bills of the 95th Legislature are  
19 enacted into law:

20 (a) House Bill No. 4737.

21 (b) House Bill No. 4738.