

# SENATE BILL No. 146

January 29, 2009, Introduced by Senators CROPSEY, BARCIA, GARCIA, ANDERSON, KAHN, BIRKHOLZ, HARDIMAN, ALLEN, KUIPERS, GLEASON and BROWN and referred to the Committee on Judiciary.

A bill to amend 1985 PA 87, entitled  
"William Van Regenmorter crime victim's rights act,"  
by amending sections 2, 16, 31, 44, 61, and 76 (MCL 780.752,  
780.766, 780.781, 780.794, 780.811, and 780.826), sections 2, 16,  
44, and 76 as amended by 2005 PA 184 and sections 31 and 61 as  
amended by 2006 PA 461.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2. (1) Except as otherwise defined in this article, as  
2       used in this article:

3       (a) "County juvenile agency" means that term as defined in  
4       section 2 of the county juvenile agency act, 1998 PA 518, MCL  
5       45.622.

6       (b) "Crime" means a violation of a penal law of this state for  
7       which the offender, upon conviction, may be punished by

1 imprisonment for more than 1 year or an offense expressly  
2 designated by law as a felony.

3 (C) "CRIME VICTIM SERVICES COMMISSION" MEANS THAT TERM AS  
4 DESCRIBED IN SECTION 2 OF 1976 PA 223, MCL 18.352.

5 (D) ~~(e)~~—"Defendant" means a person charged with, convicted of,  
6 or found not guilty by reason of insanity of committing a crime  
7 against a victim.

8 (E) ~~(d)~~—"Facility", as used in sections 6, 13a, 19a, and 20  
9 only, and not with reference to a juvenile facility, means that  
10 term as defined in section 100b of the mental health code, 1974 PA  
11 258, MCL 330.1100b.

12 (F) ~~(e)~~—"Final disposition" means the ultimate termination of  
13 the criminal prosecution of a defendant including, but not limited  
14 to, dismissal, acquittal, or imposition of sentence by the court.

15 (G) ~~(f)~~—"Juvenile" means a person within the jurisdiction of  
16 the circuit court under section 606 of the revised judicature act  
17 of 1961, 1961 PA 236, MCL 600.606.

18 (H) ~~(g)~~—"Juvenile facility" means a county facility,  
19 institution operated as an agency of the county or the family  
20 division of circuit court, or an institution or agency described in  
21 the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to  
22 803.309, to which a juvenile has been committed or in which a  
23 juvenile is detained.

24 (I) ~~(h)~~—"Hospital" means that term as defined in section 100b  
25 of the mental health code, 1974 PA 258, MCL 330.1100b.

26 (J) ~~(i)~~—"Person" means an individual, organization,  
27 partnership, corporation, or governmental entity.

1           **(K)** ~~(j)~~—"Prisoner" means a person who has been convicted and  
2 sentenced to imprisonment or placement in a juvenile facility for  
3 having committed a crime or an act that would be a crime if  
4 committed by an adult against a victim.

5           **(I)** ~~(k)~~—"Prosecuting attorney" means the prosecuting attorney  
6 for a county, an assistant prosecuting attorney for a county, the  
7 attorney general, the deputy attorney general, an assistant  
8 attorney general, or a special prosecuting attorney.

9           **(M)** ~~(l)~~—"Victim" means any of the following:

10           (i) An individual who suffers direct or threatened physical,  
11 financial, or emotional harm as a result of the commission of a  
12 crime, except as provided in subparagraph (ii), (iii), or (iv).

13           (ii) The following individuals other than the defendant if the  
14 victim is deceased:

15           (A) The spouse of the deceased victim.

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

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

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

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

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

27           (iii) A parent, guardian, or custodian of a victim who is less

1 than 18 years of age and who is neither the defendant nor  
2 incarcerated, if the parent, guardian, or custodian so chooses.

3 (iv) A parent, guardian, or custodian of a victim who is  
4 mentally or emotionally unable to participate in the legal process  
5 if he or she is neither the defendant nor incarcerated.

6 (2) If a victim as defined in subsection ~~(1) (I) (i)~~ **(1) (M) (i)** is  
7 physically or emotionally unable to exercise the privileges and  
8 rights under this article, the victim may designate his or her  
9 spouse, child 18 years of age or older, parent, sibling,  
10 grandparent, or any other person 18 years of age or older who is  
11 neither the defendant nor incarcerated to act in his or her place  
12 while the physical or emotional disability continues. The victim  
13 shall provide the prosecuting attorney with the name of the person  
14 who is to act in his or her place. During the physical or emotional  
15 disability, notices to be provided under this article to the victim  
16 shall continue to be sent only to the victim.

17 (3) An individual who is charged with a crime arising out of  
18 the same transaction from which the charge against the defendant  
19 arose is not eligible to exercise the privileges and rights  
20 established for victims under this article.

21 (4) An individual who is incarcerated is not eligible to  
22 exercise the privileges and rights established for victims under  
23 this article except that he or she may submit a written statement  
24 to the court for consideration at sentencing.

25 Sec. 16. (1) As used in this section only, "victim" means an  
26 individual who suffers direct or threatened physical, financial, or  
27 emotional harm as a result of the commission of a crime. As used in

1 subsections (2), (3), (6), (8), (9), and (13) only, victim includes  
2 a sole proprietorship, partnership, corporation, association,  
3 governmental entity, or any other legal entity that suffers direct  
4 physical or financial harm as a result of a crime.

5 (2) Except as provided in subsection (8), when sentencing a  
6 defendant convicted of a crime, the court shall order, in addition  
7 to or in lieu of any other penalty authorized by law or in addition  
8 to any other penalty required by law, that the defendant make full  
9 restitution to any victim of the defendant's course of conduct that  
10 gives rise to the conviction or to the victim's estate. For an  
11 offense that is resolved by assignment of the defendant to youthful  
12 trainee status, by a delayed sentence or deferred judgment of  
13 guilt, or in another way that is not an acquittal or unconditional  
14 dismissal, the court shall order the restitution required under  
15 this section.

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

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

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

1           (i) The **FAIR MARKET** value of the property on the date of the  
2 damage, loss, or destruction. **HOWEVER, IF THE FAIR MARKET VALUE OF**  
3 **THE PROPERTY CANNOT BE DETERMINED OR IS IMPRACTICAL TO ASCERTAIN,**  
4 **THEN THE REPLACEMENT VALUE OF THE PROPERTY SHALL BE UTILIZED IN**  
5 **LIEU OF THE FAIR MARKET VALUE.**

6           (ii) The **FAIR MARKET** value of the property on the date of  
7 sentencing. **HOWEVER, IF THE FAIR MARKET VALUE OF THE PROPERTY**  
8 **CANNOT BE DETERMINED OR IS IMPRACTICAL TO ASCERTAIN, THEN THE**  
9 **REPLACEMENT VALUE OF THE PROPERTY SHALL BE UTILIZED IN LIEU OF THE**  
10 **FAIR MARKET VALUE.**

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

12           (4) If a crime results in physical or psychological injury to  
13 a victim, the order of restitution shall require that the defendant  
14 do 1 or more of the following, as applicable:

15           (a) Pay an amount equal to the reasonably determined cost of  
16 medical and related professional services and devices actually  
17 incurred and reasonably expected to be incurred relating to  
18 physical and psychological care.

19           (b) Pay an amount equal to the reasonably determined cost of  
20 physical and occupational therapy and rehabilitation actually  
21 incurred and reasonably expected to be incurred.

22           (c) Reimburse the victim or the victim's estate for after-tax  
23 income loss suffered by the victim as a result of the crime.

24           (d) Pay an amount equal to the reasonably determined cost of  
25 psychological and medical treatment for members of the victim's  
26 family actually incurred and reasonably expected to be incurred as  
27 a result of the crime.

1 (e) Pay an amount equal to the reasonably determined costs of  
2 homemaking and child care expenses actually incurred and reasonably  
3 expected to be incurred as a result of the crime or, if homemaking  
4 or child care is provided without compensation by a relative,  
5 friend, or any other person, an amount equal to the costs that  
6 would reasonably be incurred as a result of the crime for that  
7 homemaking and child care, based on the rates in the area for  
8 comparable services.

9 (f) Pay an amount equal to the cost of actual funeral and  
10 related services.

11 (g) If the deceased victim could be claimed as a dependent by  
12 his or her parent or guardian on the parent's or guardian's  
13 federal, state, or local income tax returns, pay an amount equal to  
14 the loss of the tax deduction or tax credit. The amount of  
15 reimbursement shall be estimated for each year the victim could  
16 reasonably be claimed as a dependent.

17 (h) Pay an amount equal to income actually lost by the spouse,  
18 parent, sibling, child, or grandparent of the victim because the  
19 family member left his or her employment, temporarily or  
20 permanently, to care for the victim because of the injury.

21 (5) If a crime resulting in bodily injury also results in the  
22 death of a victim or serious impairment of a body function of a  
23 victim, the court may order up to 3 times the amount of restitution  
24 otherwise allowed under this section. As used in this subsection,  
25 "serious impairment of a body function of a victim" includes, but  
26 is not limited to, 1 or more of the following:

27 (a) Loss of a limb or use of a limb.

1 (b) Loss of a hand or foot or use of a hand or foot.

2 (c) Loss of an eye or use of an eye or ear.

3 (d) Loss or substantial impairment of a bodily function.

4 (e) Serious visible disfigurement.

5 (f) A comatose state that lasts for more than 3 days.

6 (g) Measurable brain damage or mental impairment.

7 (h) A skull fracture or other serious bone fracture.

8 (i) Subdural hemorrhage or subdural hematoma.

9 (j) Loss of a body organ.

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

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

15 (8) The court shall order restitution to the crime victim  
16 services commission or to any individuals, partnerships,  
17 corporations, associations, governmental entities, or other legal  
18 entities that have compensated the victim or the victim's estate  
19 for a loss incurred by the victim to the extent of the compensation  
20 paid for that loss. The court shall also order restitution for the  
21 costs of services provided to persons or entities that have  
22 provided services to the victim as a result of the crime. Services  
23 that are subject to restitution under this subsection include, but  
24 are not limited to, shelter, food, clothing, and transportation.  
25 However, an order of restitution shall require that all restitution  
26 to a victim or victim's estate under the order be made before any  
27 restitution to any other person or entity under that order is made.



1 The court shall not order restitution to be paid to a victim or  
2 victim's estate if the victim or victim's estate has received or is  
3 to receive compensation for that loss, and the court shall state on  
4 the record with specificity the reasons for its action.

5 (9) Any amount paid to a victim or victim's estate under an  
6 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  
13 subsection, 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 the  
17 court imposes a conditional sentence as provided in section 3 of  
18 chapter IX of the code of criminal procedure, 1927 PA 175, MCL  
19 769.3, any restitution ordered under this section shall be a  
20 condition of that probation, parole, or sentence. The court may  
21 revoke probation or impose imprisonment under the conditional  
22 sentence and the parole board may revoke parole if the defendant  
23 fails to comply with the order and if the defendant has not made a  
24 good faith effort to comply with the order. In determining whether  
25 to revoke probation or parole or impose imprisonment, the court or  
26 parole board shall consider the defendant's employment status,  
27 earning ability, and financial resources, the willfulness of the

1 defendant's failure to pay, and any other special circumstances  
2 that may have a bearing on the defendant's ability to pay.

3 (12) Subject to subsection (18), a defendant who is required  
4 to pay restitution and who is not in willful default of the payment  
5 of the restitution may at any time petition the sentencing judge or  
6 his or her successor to modify the method of payment. If the court  
7 determines that payment under the order will impose a manifest  
8 hardship on the defendant or his or her immediate family, and if  
9 the court also determines that modifying the method of payment will  
10 not impose a manifest hardship on the victim, the court may modify  
11 the method 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. The  
16 lien may be recorded as provided by law. An order of restitution  
17 may be enforced by the prosecuting attorney, a victim, a victim's  
18 estate, or any other person or entity named in the order to receive  
19 the restitution in the same manner as a judgment in a civil action  
20 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 pay  
26 the ordered restitution and has not made a good faith effort to do  
27 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. As used in this subsection:

12           (a) "Juvenile" means a person within the court's jurisdiction  
13 under section 2d or 4 of chapter XIIA of the probate code of 1939,  
14 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 restitution  
19 will impose, with due regard to any other moral or legal financial  
20 obligations the parent may have. If a parent is required to pay  
21 restitution under subsection (15), the court shall provide for  
22 payment to be made in specified installments and within a specified  
23 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  
4 modifying the method of payment will not impose a manifest hardship  
5 on the victim.

6 (18) In each case in which payment of restitution is ordered  
7 as a condition of probation, the court shall order any employed  
8 defendant to make regularly scheduled restitution payments. If the  
9 defendant misses 2 or more regularly scheduled payments, the court  
10 shall order the defendant to execute a wage assignment to pay the  
11 restitution. The probation officer assigned to the case shall  
12 review the case not less than twice yearly to ensure that  
13 restitution is being paid as ordered. If the restitution was  
14 ordered to be made within a specific period of time, the probation  
15 officer assigned to the case shall review the case at the end of  
16 the specific period of time to determine if the restitution has  
17 been paid in full. The final review shall be conducted not less  
18 than 60 days before the probationary period expires. If the  
19 probation officer determines at any review that restitution is not  
20 being paid as ordered, the probation officer shall file a written  
21 report of the violation with the court on a form prescribed by the  
22 state court administrative office or shall petition the court for a  
23 probation violation. The report or petition shall include a  
24 statement of the amount of the arrearage and any reasons for the  
25 arrearage known by the probation officer. The probation officer  
26 shall immediately provide a copy of the report or petition to the  
27 prosecuting attorney. If a petition or motion is filed or other

1 proceedings are initiated to enforce payment of restitution and the  
2 court determines that restitution is not being paid or has not been  
3 paid as ordered by the court, the court shall promptly take action  
4 necessary to compel compliance.

5 (19) If a defendant who is ordered to pay restitution under  
6 this section is remanded to the jurisdiction of the department of  
7 corrections, the court shall provide a copy of the order of  
8 restitution to the department of corrections when the defendant is  
9 remanded to the department's jurisdiction.

10 (20) The court shall not impose a fee on a victim, victim's  
11 estate, or prosecuting attorney for enforcing an order of  
12 restitution.

13 (21) If a person or entity entitled to restitution under this  
14 section cannot be located, refuses to claim the restitution within  
15 2 years after the date on which he or she could have claimed the  
16 restitution, or refuses to accept the restitution, the restitution  
17 to which that person or entity is entitled shall be deposited in  
18 the crime victim's rights fund created under section 4 of 1989 PA  
19 196, MCL 780.904, or its successor fund. However, a person or  
20 entity entitled to that restitution may claim that restitution any  
21 time by applying to the court that originally ordered and collected  
22 it. The court shall notify the crime victim services commission of  
23 the application and the commission shall approve a reduction in the  
24 court's revenue transmittal to the crime victim's rights fund equal  
25 to the restitution owed to the person or entity. The court shall  
26 use the reduction to reimburse that restitution to the person or  
27 entity.

1           (22) The court may amend an order of restitution entered under  
2 this section on a motion by the prosecuting attorney, the victim,  
3 or the defendant based upon new information related to the injury,  
4 damages, or loss for which the restitution was ordered.

5           (23) A court that receives notice that a defendant who has an  
6 obligation to pay restitution under this section has declared  
7 bankruptcy shall forward a copy of that notice to the prosecuting  
8 attorney. The prosecuting attorney shall forward the notice to the  
9 victim at the victim's last known address.

10          (24) If the victim is a minor, the order of restitution shall  
11 require the defendant to pay to a parent of the victim an amount  
12 that is determined to be reasonable for any of the following that  
13 are actually incurred or reasonably expected to be incurred by the  
14 parent as a result of the crime:

15           (a) Homemaking and child care expenses.

16           (b) Income loss not ordered to be paid under subsection  
17 (4) (h) .

18           (c) Mileage.

19           (d) Lodging or housing.

20           (e) Meals.

21           (f) Any other cost incurred in exercising the rights of the  
22 victim or a parent under this act.

23          Sec. 31. (1) Except as otherwise defined in this article, as  
24 used in this article:

25           (a) "County juvenile agency" means that term as defined in  
26 section 2 of the county juvenile agency act, 1998 PA 518, MCL  
27 45.622.

1 (b) "Court" means the family division of circuit court.

2 (C) "CRIME VICTIM SERVICES COMMISSION" MEANS THAT TERM AS  
3 DESCRIBED IN SECTION 2 OF 1976 PA 223, MCL 18.352.

4 (D) ~~(e)~~—"Designated case" means a case designated as a case in  
5 which the juvenile is to be tried in the same manner as an adult  
6 under section 2d of chapter XIIIA of the probate code of 1939, 1939  
7 PA 288, MCL 712A.2d.

8 (E) ~~(d)~~—"Juvenile" means an individual alleged or found to be  
9 within the court's jurisdiction under section 2(a)(1) of chapter  
10 XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, for an  
11 offense, including, but not limited to, an individual in a  
12 designated case.

13 (F) ~~(e)~~—"Juvenile facility" means a county facility, an  
14 institution operated as an agency of the county or the court, or an  
15 institution or agency described in the youth rehabilitation  
16 services act, 1974 PA 150, MCL 803.301 to 803.309, to which a  
17 juvenile has been committed or in which a juvenile is detained.

18 (G) ~~(f)~~—"Offense" means 1 or more of the following:

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

23 (ii) A violation of section 81 (assault and battery, including  
24 domestic violence), 81a (assault; infliction of serious injury,  
25 including aggravated domestic violence), 115 (breaking and entering  
26 or illegal entry), 136b(6) (child abuse in the fourth degree), 145  
27 (contributing to the neglect or delinquency of a minor), 145d

1 (using the internet or a computer to make a prohibited  
2 communication), 233 (intentionally aiming a firearm without  
3 malice), 234 (discharge of a firearm intentionally aimed at a  
4 person), 235 (discharge of an intentionally aimed firearm resulting  
5 in injury), 335a (indecent exposure), or 411h (stalking) of the  
6 Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.115,  
7 750.136b, 750.145, 750.145d, 750.233, 750.234, 750.235, 750.335a,  
8 and 750.411h.

9 (iii) A violation of section 601b(2) (injuring a worker in a  
10 work zone) or 617a (leaving the scene of a personal injury  
11 accident) of the Michigan vehicle code, 1949 PA 300, MCL 257.601b  
12 and 257.617a, or a violation of section 625 (operating a vehicle  
13 while under the influence of or impaired by intoxicating liquor or  
14 a controlled substance, or with unlawful blood alcohol content) of  
15 that act, MCL 257.625, if the violation involves an accident  
16 resulting in damage to another individual's property or physical  
17 injury or death to another individual.

18 (iv) Selling or furnishing alcoholic liquor to an individual  
19 less than 21 years of age in violation of section 33 of the former  
20 1933 (Ex Sess) PA 8, or section 701 of the Michigan liquor control  
21 code of 1998, 1998 PA 58, MCL 436.1701, if the violation results in  
22 physical injury or death to any individual.

23 (v) A violation of section 80176(1) or (3) (operating a vessel  
24 while under the influence of or impaired by intoxicating liquor or  
25 a controlled substance, or with unlawful blood alcohol content) of  
26 the natural resources and environmental protection act, 1994 PA  
27 451, MCL 324.80176, if the violation involves an accident resulting



1 in damage to another individual's property or physical injury or  
2 death to any individual.

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

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

8 (H) ~~(g)~~—"Person" means an individual, organization,  
9 partnership, corporation, or governmental entity.

10 (I) ~~(h)~~—"Prosecuting attorney" means the prosecuting attorney  
11 for a county, an assistant prosecuting attorney for a county, the  
12 attorney general, the deputy attorney general, an assistant  
13 attorney general, a special prosecuting attorney, or, in connection  
14 with the prosecution of an ordinance violation, an attorney for the  
15 political subdivision that enacted the ordinance upon which the  
16 violation is based.

17 (J) ~~(i)~~—"Victim" means any of the following:

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

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

23 (A) The spouse of the deceased victim.

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

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

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

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

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

8 (iii) A parent, guardian, or custodian of a victim who is less  
9 than 18 years of age and who is neither the defendant nor  
10 incarcerated, if the parent, guardian, or custodian so chooses.

11 (iv) A parent, guardian, or custodian of a victim who is  
12 mentally or emotionally unable to participate in the legal process  
13 if he or she is neither the defendant nor incarcerated.

14 (2) If a victim as defined in subsection ~~(1)(i)(i)~~ **(1)(J)(i)** is  
15 physically or emotionally unable to exercise the privileges and  
16 rights under this article, the victim may designate his or her  
17 spouse, child 18 years of age or older, parent, sibling,  
18 grandparent, or any other person 18 years of age or older who is  
19 neither the defendant nor incarcerated to act in his or her place  
20 while the physical or emotional disability continues. The victim  
21 shall provide the prosecuting attorney with the name of the person  
22 who is to act in his or her place. During the physical or emotional  
23 disability, notices to be provided under this article to the victim  
24 shall continue to be sent only to the victim.

25 (3) An individual who is charged with an offense arising out  
26 of the same transaction from which the charge against the defendant  
27 arose is not eligible to exercise the privileges and rights

1 established for victims under this article.

2 Sec. 44. (1) As used in this section only:

3 (a) "Offense" means a violation of a penal law of this state  
4 or a violation of an ordinance of a local unit of government of  
5 this state punishable by imprisonment or by a fine that is not a  
6 civil fine.

7 (b) "Victim" means an individual who suffers direct or  
8 threatened physical, financial, or emotional harm as a result of  
9 the commission of an offense. As used in subsections (2), (3), (6),  
10 (8), (9), and (13) only, victim includes a sole proprietorship,  
11 partnership, corporation, association, governmental entity, or any  
12 other legal entity that suffers direct physical or financial harm  
13 as a result of an offense.

14 (2) Except as provided in subsection (8), at the dispositional  
15 hearing or sentencing for an offense, the court shall order, in  
16 addition to or in lieu of any other disposition or penalty  
17 authorized by law, that the juvenile make full restitution to any  
18 victim of the juvenile's course of conduct that gives rise to the  
19 disposition or conviction or to the victim's estate. For an offense  
20 that is resolved informally by means of a consent calendar  
21 diversion or by another informal method that does not result in a  
22 dispositional hearing, by assignment to youthful trainee status, by  
23 a delayed sentence or deferred judgment of guilt, or in another way  
24 that is not an acquittal or unconditional dismissal, the court  
25 shall order the restitution required under this section.

26 (3) If an offense results in damage to or loss or destruction  
27 of property of a victim of the offense or results in the seizure or

1 impoundment of property of a victim of the offense, the order of  
2 restitution shall require that the juvenile do 1 or more of the  
3 following, as 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 disposition. **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 costs of the seizure or impoundment, or both.

22 (4) If an offense results in physical or psychological injury  
23 to a victim, the order of restitution shall require that the  
24 juvenile do 1 or more of the following, as applicable:

25 (a) Pay an amount equal to the reasonably determined cost of  
26 medical and related professional services and devices actually  
27 incurred and reasonably expected to be incurred relating to

1 physical and psychological care.

2 (b) Pay an amount equal to the reasonably determined cost of  
3 physical and occupational therapy and rehabilitation actually  
4 incurred and reasonably expected to be incurred.

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

7 (d) Pay an amount equal to the reasonably determined cost of  
8 psychological and medical treatment for members of the victim's  
9 family actually incurred or reasonably expected to be incurred as a  
10 result of the offense.

11 (e) Pay an amount equal to the reasonably determined costs of  
12 homemaking and child care expenses actually incurred or reasonably  
13 expected to be incurred as a result of the offense or, if  
14 homemaking or child care is provided without compensation by a  
15 relative, friend, or any other person, an amount equal to the costs  
16 that would reasonably be incurred as a result of the offense for  
17 that homemaking and child care, based on the rates in the area for  
18 comparable services.

19 (f) Pay an amount equal to the cost of actual funeral and  
20 related services.

21 (g) If the deceased victim could be claimed as a dependent by  
22 his or her parent or guardian on the parent's or guardian's  
23 federal, state, or local income tax returns, pay an amount equal to  
24 the loss of the tax deduction or tax credit. The amount of  
25 reimbursement shall be estimated for each year the victim could  
26 reasonably be claimed as a dependent.

27 (h) Pay an amount equal to income actually lost by the spouse,

1 parent, sibling, child, or grandparent of the victim because the  
2 family member left his or her employment, temporarily or  
3 permanently, to care for the victim because of the injury.

4 (5) If an offense resulting in bodily injury also results in  
5 the death of a victim or serious impairment of a body function of a  
6 victim, the court may order up to 3 times the amount of restitution  
7 otherwise allowed under this section. As used in this subsection,  
8 "serious impairment of a body function of a victim" includes, but  
9 is not limited to, 1 or more of the following:

10 (a) Loss of a limb or use of a limb.

11 (b) Loss of a hand or foot or use of a hand or foot.

12 (c) Loss of an eye or use of an eye or ear.

13 (d) Loss or substantial impairment of a bodily function.

14 (e) Serious visible disfigurement.

15 (f) A comatose state that lasts for more than 3 days.

16 (g) Measurable brain damage or mental impairment.

17 (h) A skull fracture or other serious bone fracture.

18 (i) Subdural hemorrhage or subdural hematoma.

19 (j) Loss of a body organ.

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

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

25 (8) The court shall order restitution to the crime victim  
26 services commission or to any individuals, partnerships,  
27 corporations, associations, governmental entities, or other legal

1 entities that have compensated the victim or the victim's estate  
2 for a loss incurred by the victim to the extent of the compensation  
3 paid for that loss. The court shall also order restitution for the  
4 costs of services provided to persons or entities that have  
5 provided services to the victim as a result of the offense.  
6 Services that are subject to restitution under this subsection  
7 include, but are not limited to, shelter, food, clothing, and  
8 transportation. However, an order of restitution shall require that  
9 all restitution to a victim or victim's estate under the order be  
10 made before any restitution to any other person or entity under  
11 that order is made. The court shall not order restitution to be  
12 paid to a victim or victim's estate if the victim or victim's  
13 estate has received or is to receive compensation for that loss,  
14 and the court shall state on the record with specificity the  
15 reasons for its action.

16 (9) Any amount paid to a victim or victim's estate under an  
17 order of restitution shall be set off against any amount later  
18 recovered as compensatory damages by the victim or the victim's  
19 estate in any federal or state civil proceeding and shall reduce  
20 the amount payable to a victim or a victim's estate by an award  
21 from the crime victim services commission made after an order of  
22 restitution under this section.

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

27 (11) If the juvenile is placed on probation, any restitution

1 ordered under this section shall be a condition of that probation.  
2 The court may revoke probation if the juvenile fails to comply with  
3 the order and if the juvenile has not made a good faith effort to  
4 comply with the order. In determining whether to revoke probation,  
5 the court shall consider the juvenile's employment status, earning  
6 ability, and financial resources, the willfulness of the juvenile's  
7 failure to pay, and any other special circumstances that may have a  
8 bearing on the juvenile's ability to pay.

9 (12) Subject to subsection (18), a juvenile who is required to  
10 pay restitution and who is not in willful default of the payment of  
11 the restitution may at any time petition the court to modify the  
12 method of payment. If the court determines that payment under the  
13 order will impose a manifest hardship on the juvenile or his or her  
14 immediate family, and if the court also determines that modifying  
15 the method of payment will not impose a manifest hardship on the  
16 victim, the court may modify the method of payment.

17 (13) An order of restitution entered under this section  
18 remains effective until it is satisfied in full. An order of  
19 restitution is a judgment and lien against all property of the  
20 individual ordered to pay restitution for the amount specified in  
21 the order of restitution. The lien may be recorded as provided by  
22 law. An order of restitution may be enforced by the prosecuting  
23 attorney, a victim, a victim's estate, or any other person or  
24 entity named in the order to receive the restitution in the same  
25 manner as a judgment in a civil action or a lien.

26 (14) Notwithstanding any other provision of this section, a  
27 juvenile shall not be detained or imprisoned for a violation of



1 probation or parole or otherwise for failure to pay restitution as  
2 ordered under this section unless the court determines that the  
3 juvenile has the resources to pay the ordered restitution and has  
4 not made a good faith effort to do so.

5 (15) If the court determines that the juvenile is or will be  
6 unable to pay all of the restitution ordered, after notice to the  
7 juvenile's parent or parents and an opportunity for the parent or  
8 parents to be heard, the court may order the parent or parents  
9 having supervisory responsibility for the juvenile at the time of  
10 the acts upon which an order of restitution is based to pay any  
11 portion of the restitution ordered that is outstanding. An order  
12 under this subsection does not relieve the juvenile of his or her  
13 obligation to pay restitution as ordered, but the amount owed by  
14 the juvenile shall be offset by any amount paid by his or her  
15 parent. As used in this subsection, "parent" does not include a  
16 foster parent.

17 (16) If the court orders a parent to pay restitution under  
18 subsection (15), the court shall take into account the parent's  
19 financial resources and the burden that the payment of restitution  
20 will impose, with due regard to any other moral or legal financial  
21 obligations the parent may have. If a parent is required to pay  
22 restitution under subsection (15), the court shall provide for  
23 payment to be made in specified installments and within a specified  
24 period of time.

25 (17) A parent who has been ordered to pay restitution under  
26 subsection (15) may petition the court for a modification of the  
27 amount of restitution owed by the parent or for a cancellation of

1 any unpaid portion of the parent's obligation. The court shall  
2 cancel all or part of the parent's obligation due if the court  
3 determines that payment of the amount due will impose a manifest  
4 hardship on the parent and if the court also determines that  
5 modifying the method of payment will not impose a manifest hardship  
6 on the victim.

7 (18) In each case in which payment of restitution is ordered  
8 as a condition of probation, the court shall order any employed  
9 juvenile to make regularly scheduled restitution payments. If the  
10 juvenile misses 2 or more regularly scheduled payments, the court  
11 shall order the juvenile to execute a wage assignment to pay the  
12 restitution. The juvenile caseworker or probation officer assigned  
13 to the case shall review the case not less than twice yearly to  
14 ensure that restitution is being paid as ordered. If the  
15 restitution was ordered to be made within a specific period of  
16 time, the juvenile caseworker or probation officer assigned to the  
17 case shall review the case at the end of the specific period of  
18 time to determine if the restitution has been paid in full. The  
19 final review shall be conducted not less than 60 days before the  
20 probationary period expires. If the juvenile caseworker or  
21 probation officer determines at any review the restitution is not  
22 being paid as ordered, the juvenile caseworker or probation officer  
23 shall file a written report of the violation with the court on a  
24 form prescribed by the state court administrative office or shall  
25 petition the court for a probation violation. The report or  
26 petition shall include a statement of the amount of the arrearage,  
27 and any reasons for the arrearage known by the juvenile caseworker

1 or probation officer. The juvenile caseworker or probation officer  
2 shall immediately provide a copy of the report or petition to the  
3 prosecuting attorney. If a petition or motion is filed or other  
4 proceedings are initiated to enforce payment of restitution and the  
5 court determines that restitution is not being paid or has not been  
6 paid as ordered by the court, the court shall promptly take action  
7 necessary to compel compliance.

8 (19) If the court determines that an individual who is ordered  
9 to pay restitution under this section is remanded to the  
10 jurisdiction of the department of corrections, the court shall  
11 provide a copy of the order of restitution to the department of  
12 corrections when the court determines that the individual is  
13 remanded to the department's jurisdiction.

14 (20) The court shall not impose a fee on a victim, victim's  
15 estate, or prosecuting attorney for enforcing an order of  
16 restitution.

17 (21) If a person or entity entitled to restitution under this  
18 section cannot be located, refuses to claim the restitution within  
19 2 years after the date on which he or she could have claimed the  
20 restitution, or refuses to accept the restitution, the restitution  
21 to which that person or entity is entitled shall be deposited in  
22 the crime victim's rights fund created under section 4 of 1989 PA  
23 196, MCL 780.904, or its successor fund. However, a person or  
24 entity entitled to that restitution may claim that restitution any  
25 time by applying to the court that originally ordered and collected  
26 it. The court shall notify the crime victim services commission of  
27 the application and the commission shall approve a reduction in the

1 court's revenue transmittal to the crime victim's rights fund equal  
2 to the restitution owed to the person or entity. The court shall  
3 use the reduction to reimburse that restitution to the person or  
4 entity.

5 (22) The court may amend an order of restitution entered under  
6 this section on a motion by the prosecuting attorney, the victim,  
7 or the defendant based upon new information related to the injury,  
8 damages, or loss for which the restitution was ordered.

9 (23) A court that receives notice that a defendant who has an  
10 obligation to pay restitution under this section has declared  
11 bankruptcy shall forward a copy of that notice to the prosecuting  
12 attorney. The prosecuting attorney shall forward the notice to the  
13 victim at the victim's last known address.

14 (24) If the victim is a minor, the order of restitution shall  
15 require the defendant to pay to a parent of the victim an amount  
16 that is determined to be reasonable for any of the following that  
17 are actually incurred or reasonably expected to be incurred by the  
18 parent as a result of the crime:

19 (a) Homemaking and child care expenses.

20 (b) Income loss not ordered to be paid under subsection  
21 (4) (h) .

22 (c) Mileage.

23 (d) Lodging or housing.

24 (e) Meals.

25 (f) Any other cost incurred in exercising the rights of the  
26 victim or a parent under this act.

27 Sec. 61. (1) Except as otherwise defined in this article, as

1 used in this article:

2 (a) "Serious misdemeanor" means 1 or more of the following:

3 (i) A violation of section 81 of the Michigan penal code, 1931  
4 PA 328, MCL 750.81, assault and battery, including domestic  
5 violence.

6 (ii) A violation of section 81a of the Michigan penal code,  
7 1931 PA 328, MCL 750.81a, assault; infliction of serious injury,  
8 including aggravated domestic violence.

9 (iii) A violation of section 115 of the Michigan penal code,  
10 1931 PA 328, MCL 750.115, breaking and entering or illegal entry.

11 (iv) A violation of section 136b(6) of the Michigan penal code,  
12 1931 PA 328, MCL 750.136b, child abuse in the fourth degree.

13 (v) A violation of section 145 of the Michigan penal code,  
14 1931 PA 328, MCL 750.145, contributing to the neglect or  
15 delinquency of a minor.

16 (vi) A misdemeanor violation of section 145d of the Michigan  
17 penal code, 1931 PA 328, MCL 750.145d, using the internet or a  
18 computer to make a prohibited communication.

19 (vii) A violation of section 233 of the Michigan penal code,  
20 1931 PA 238, MCL 750.233, intentionally aiming a firearm without  
21 malice.

22 (viii) A violation of section 234 of the Michigan penal code,  
23 1931 PA 328, MCL 750.234, discharge of a firearm intentionally  
24 aimed at a person.

25 (ix) A violation of section 235 of the Michigan penal code,  
26 1931 PA 328, MCL 750.235, discharge of an intentionally aimed  
27 firearm resulting in injury.

1           (x) A violation of section 335a of the Michigan penal code,  
2 1931 PA 328, MCL 750.335a, indecent exposure.

3           (xi) A violation of section 411h of the Michigan penal code,  
4 1931 PA 328, MCL 750.411h, stalking.

5           (xii) A violation of section 601b(2) of the Michigan vehicle  
6 code, 1949 PA 300, MCL 257.601b, injuring a worker in a work zone.

7           (xiii) A violation of section 617a of the Michigan vehicle code,  
8 1949 PA 300, MCL 257.617a, leaving the scene of a personal injury  
9 accident.

10          (xiv) A violation of section 625 of the Michigan vehicle code,  
11 1949 PA 300, MCL 257.625, operating a vehicle while under the  
12 influence of or impaired by intoxicating liquor or a controlled  
13 substance, or with an unlawful blood alcohol content, if the  
14 violation involves an accident resulting in damage to another  
15 individual's property or physical injury or death to another  
16 individual.

17          (xv) Selling or furnishing alcoholic liquor to an individual  
18 less than 21 years of age in violation of section 701 of the  
19 Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701, if  
20 the violation results in physical injury or death to any  
21 individual.

22          (xvi) A violation of section 80176(1) or (3) of the natural  
23 resources and environmental protection act, 1994 PA 451, MCL  
24 324.80176, operating a vessel while under the influence of or  
25 impaired by intoxicating liquor or a controlled substance, or with  
26 an unlawful blood alcohol content, if the violation involves an  
27 accident resulting in damage to another individual's property or

1 physical injury or death to any individual.

2 (xvii) A violation of a local ordinance substantially  
3 corresponding to a violation enumerated in subparagraphs (i) to  
4 (xvi) .

5 (xviii) A violation charged as a crime or serious misdemeanor  
6 enumerated in subparagraphs (i) to (xvii) but subsequently reduced to  
7 or pleaded to as a misdemeanor. As used in this subparagraph,  
8 "crime" means that term as defined in section 2.

9 (B) "CRIME VICTIM SERVICES COMMISSION" MEANS THAT TERM AS  
10 DESCRIBED IN SECTION 2 OF 1976 PA 223, MCL 18.352.

11 (C) ~~(b)~~—"Defendant" means a person charged with or convicted  
12 of having committed a serious misdemeanor against a victim.

13 (D) ~~(e)~~—"Final disposition" means the ultimate termination of  
14 the criminal prosecution of a defendant including, but not limited  
15 to, dismissal, acquittal, or imposition of a sentence by the court.

16 (E) ~~(d)~~—"Person" means an individual, organization,  
17 partnership, corporation, or governmental entity.

18 (F) ~~(e)~~—"Prisoner" means a person who has been convicted and  
19 sentenced to imprisonment for having committed a serious  
20 misdemeanor against a victim.

21 (G) ~~(f)~~—"Prosecuting attorney" means the prosecuting attorney  
22 for a county, an assistant prosecuting attorney for a county, the  
23 attorney general, the deputy attorney general, an assistant  
24 attorney general, a special prosecuting attorney, or, in connection  
25 with the prosecution of an ordinance violation, an attorney for the  
26 political subdivision that enacted the ordinance upon which the  
27 violation is based.

1           (H) ~~(g)~~—"Victim" means any of the following:

2           (i) An individual who suffers direct or threatened physical,  
3 financial, or emotional harm as a result of the commission of a  
4 serious misdemeanor, except as provided in subparagraph (ii), (iii),  
5 or (iv).

6           (ii) The following individuals other than the defendant if the  
7 victim is deceased:

8           (A) The spouse of the deceased victim.

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

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

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

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

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

20           (iii) A parent, guardian, or custodian of a victim who is less  
21 than 18 years of age and who is neither the defendant nor  
22 incarcerated, if the parent, guardian, or custodian so chooses.

23           (iv) A parent, guardian, or custodian of a victim who is so  
24 mentally incapacitated that he or she cannot meaningfully  
25 understand or participate in the legal process if he or she is not  
26 the defendant and is not incarcerated.

27           (2) If a victim as defined in subsection ~~(1)(g)(i)~~ (1) (H) (i) is



1 physically or emotionally unable to exercise the privileges and  
2 rights under this article, the victim may designate his or her  
3 spouse, child 18 years of age or older, parent, sibling, or  
4 grandparent or any other person 18 years of age or older who is  
5 neither the defendant nor incarcerated to act in his or her place  
6 while the physical or emotional disability continues. The victim  
7 shall provide the prosecuting attorney with the name of the person  
8 who is to act in place of the victim. During the physical or  
9 emotional disability, notices to be provided under this article to  
10 the victim shall continue to be sent only to the victim.

11 (3) An individual who is charged with a serious misdemeanor, a  
12 crime as defined in section 2, or an offense as defined in section  
13 31 arising out of the same transaction from which the charge  
14 against the defendant arose is not eligible to exercise the  
15 privileges and rights established for victims under this article.

16 (4) An individual who is incarcerated is not eligible to  
17 exercise the privileges and rights established for victims under  
18 this article except that he or she may submit a written statement  
19 to the court for consideration at sentencing.

20 Sec. 76. (1) As used in this section only:

21 (a) "Misdemeanor" means a violation of a law of this state or  
22 a local ordinance that is punishable by imprisonment for not more  
23 than 1 year or a fine that is not a civil fine, but that is not a  
24 felony.

25 (b) "Victim" means an individual who suffers direct or  
26 threatened physical, financial, or emotional harm as a result of  
27 the commission of a misdemeanor. As used in subsections (2), (3),

1 (6), (8), (9), and (13) only, victim includes a sole  
2 proprietorship, partnership, corporation, association, governmental  
3 entity, or any other legal entity that suffers direct physical or  
4 financial harm as a result of a misdemeanor.

5 (2) Except as provided in subsection (8), when sentencing a  
6 defendant convicted of a misdemeanor, the court shall order, in  
7 addition to or in lieu of any other penalty authorized by law or in  
8 addition to any other penalty required by law, that the defendant  
9 make full restitution to any victim of the defendant's course of  
10 conduct that gives rise to the conviction or to the victim's  
11 estate. For an offense that is resolved by assignment of the  
12 defendant to youthful trainee status, by a delayed sentence or  
13 deferred judgment of guilt, or in another way that is not an  
14 acquittal or unconditional dismissal, the court shall order the  
15 restitution required under this section.

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

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

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

1           (i) The **FAIR MARKET** value of the property on the date of the  
2 damage, loss, or destruction. **HOWEVER, IF THE FAIR MARKET VALUE OF**  
3 **THE PROPERTY CANNOT BE DETERMINED OR IS IMPRACTICAL TO ASCERTAIN,**  
4 **THEN THE REPLACEMENT VALUE OF THE PROPERTY SHALL BE UTILIZED IN**  
5 **LIEU OF THE FAIR MARKET VALUE.**

6           (ii) The **FAIR MARKET** value of the property on the date of  
7 sentencing. **HOWEVER, IF THE FAIR MARKET VALUE OF THE PROPERTY**  
8 **CANNOT BE DETERMINED OR IS IMPRACTICAL TO ASCERTAIN, THEN THE**  
9 **REPLACEMENT VALUE OF THE PROPERTY SHALL BE UTILIZED IN LIEU OF THE**  
10 **FAIR MARKET VALUE.**

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

12           (4) If a misdemeanor results in physical or psychological  
13 injury to a victim, the order of restitution shall require that the  
14 defendant do 1 or more of the following, as applicable:

15           (a) Pay an amount equal to the reasonably determined cost of  
16 medical and related professional services and devices actually  
17 incurred and reasonably expected to be incurred relating to  
18 physical and psychological care.

19           (b) Pay an amount equal to the reasonably determined cost of  
20 physical and occupational therapy and rehabilitation actually  
21 incurred and reasonably expected to be incurred.

22           (c) Reimburse the victim or the victim's estate for after-tax  
23 income loss suffered by the victim as a result of the misdemeanor.

24           (d) Pay an amount equal to the reasonably determined cost of  
25 psychological and medical treatment for members of the victim's  
26 family actually incurred and reasonably expected to be incurred as  
27 a result of the misdemeanor.

1           (e) Pay an amount equal to the reasonably determined costs of  
2 homemaking and child care expenses actually incurred and reasonably  
3 expected to be incurred as a result of the misdemeanor or, if  
4 homemaking or child care is provided without compensation by a  
5 relative, friend, or any other person, an amount equal to the costs  
6 that would reasonably be incurred as a result of the misdemeanor  
7 for that homemaking and child care, based on the rates in the area  
8 for comparable services.

9           (f) Pay an amount equal to the cost of actual funeral and  
10 related services.

11           (g) If the deceased victim could be claimed as a dependent by  
12 his or her parent or guardian on the parent's or guardian's  
13 federal, state, or local income tax returns, pay an amount equal to  
14 the loss of the tax deduction or tax credit. The amount of  
15 reimbursement shall be estimated for each year the victim could  
16 reasonably be claimed as a dependent.

17           (h) Pay an amount equal to income actually lost by the spouse,  
18 parent, sibling, child, or grandparent of the victim because the  
19 family member left his or her employment, temporarily or  
20 permanently, to care for the victim because of the injury.

21           (5) If a crime resulting in bodily injury also results in the  
22 death of a victim or serious impairment of a body function of a  
23 victim, the court may order up to 3 times the amount of restitution  
24 otherwise allowed under this section. As used in this subsection,  
25 "serious impairment of a body function of a victim" includes, but  
26 is not limited to, 1 or more of the following:

27           (a) Loss of a limb or use of a limb.

- 1 (b) Loss of a hand or foot or use of a hand or foot.
- 2 (c) Loss of an eye or use of an eye or ear.
- 3 (d) Loss or substantial impairment of a bodily function.
- 4 (e) Serious visible disfigurement.
- 5 (f) A comatose state that lasts for more than 3 days.
- 6 (g) Measurable brain damage or mental impairment.
- 7 (h) A skull fracture or other serious bone fracture.
- 8 (i) Subdural hemorrhage or subdural hematoma.
- 9 (j) Loss of a body organ.

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

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

15 (8) The court shall order restitution to the crime victim  
16 services commission or to any individuals, partnerships,  
17 corporations, associations, governmental entities, or other legal  
18 entities that have compensated the victim or the victim's estate  
19 for a loss incurred by the victim to the extent of the compensation  
20 paid for that loss. The court shall also order restitution for the  
21 costs of services provided to persons or entities that have  
22 provided services to the victim as a result of the misdemeanor.  
23 Services that are subject to restitution under this subsection  
24 include, but are not limited to, shelter, food, clothing, and  
25 transportation. However, an order of restitution shall require that  
26 all restitution to a victim or victim's estate under the order be  
27 made before any restitution to any other person or entity under

1 that order is made. The court shall not order restitution to be  
2 paid to a victim or victim's estate if the victim or victim's  
3 estate has received or is to receive compensation for that loss,  
4 and the court shall state on the record with specificity the  
5 reasons for its action.

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

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

17 (11) If the defendant is placed on probation or the court  
18 imposes a conditional sentence as provided in section 3 of chapter  
19 IX of the code of criminal procedure, 1927 PA 175, MCL 769.3, any  
20 restitution ordered under this section shall be a condition of that  
21 probation or sentence. The court may revoke probation or impose  
22 imprisonment under the conditional sentence if the defendant fails  
23 to comply with the order and if the defendant has not made a good  
24 faith effort to comply with the order. In determining whether to  
25 revoke probation or impose imprisonment, the court shall consider  
26 the defendant's employment status, earning ability, and financial  
27 resources, the willfulness of the defendant's failure to pay, and

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

3 (12) Subject to subsection (15), a defendant who is required  
4 to pay restitution and who is not in willful default of the payment  
5 of the restitution may at any time petition the sentencing judge or  
6 his or her successor to modify the method of payment. If the court  
7 determines that payment under the order will impose a manifest  
8 hardship on the defendant or his or her immediate family, and if  
9 the court also determines that modifying the method of payment will  
10 not impose a manifest hardship on the victim, the court may modify  
11 the method 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. The  
16 lien may be recorded as provided by law. An order of restitution  
17 may be enforced by the prosecuting attorney, a victim, a victim's  
18 estate, or any other person or entity named in the order to receive  
19 restitution in the same manner as a judgment in a civil action or a  
20 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 otherwise for failure to pay restitution  
24 as ordered under this section unless the court determines that the  
25 defendant has the resources to pay the ordered restitution and has  
26 not made a good faith effort to do so.

27 (15) In each case in which payment of restitution is ordered

1 as a condition of probation, the court shall order any employed  
2 defendant to make regularly scheduled restitution payments. If the  
3 defendant misses 2 or more regularly scheduled payments, the court  
4 shall order the defendant to execute a wage assignment to pay the  
5 restitution. The probation officer assigned to the case shall  
6 review the case not less than twice yearly to ensure that  
7 restitution is being paid as ordered. If the restitution was  
8 ordered to be made within a specific period of time, the probation  
9 officer assigned to the case shall review the case at the end of  
10 the specific period of time to determine if the restitution has  
11 been paid in full. The final review shall be conducted not less  
12 than 60 days before the probationary period expires. If the  
13 probation officer determines at any review that restitution is not  
14 being paid as ordered, the probation officer shall file a written  
15 report of the violation with the court on a form prescribed by the  
16 state court administrative office or shall petition the court for a  
17 probation violation. The report or petition shall include a  
18 statement of the amount of the arrearage and any reasons for the  
19 arrearage known by the probation officer. The probation officer  
20 shall immediately provide a copy of the report or petition to the  
21 prosecuting attorney. If a petition or motion is filed or other  
22 proceedings are initiated to enforce payment of restitution and the  
23 court determines that restitution is not being paid or has not been  
24 paid as ordered by the court, the court shall promptly take action  
25 necessary to compel compliance.

26 (16) If the court determines that a defendant who is ordered  
27 to pay restitution under this section is remanded to the



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

5 (17) The court shall not impose a fee on a victim, victim's  
6 estate, or prosecuting attorney for enforcing an order of  
7 restitution.

8 (18) If a person or entity entitled to restitution under this  
9 section cannot be located, refuses to claim the restitution within  
10 2 years after the date on which he or she could have claimed the  
11 restitution, or refuses to accept the restitution, the restitution  
12 to which that person or entity is entitled shall be deposited in  
13 the crime victim's rights fund created under section 4 of 1989 PA  
14 196, MCL 780.904, or its successor fund. However, a person or  
15 entity entitled to that restitution may claim that restitution any  
16 time by applying to the court that originally ordered and collected  
17 it. The court shall notify the crime victim services commission of  
18 the application and the commission shall approve a reduction in the  
19 court's revenue transmittal to the crime victim's rights fund equal  
20 to the restitution owed to the person or entity. The court shall  
21 use the reduction to reimburse that restitution to the person or  
22 entity.

23 (19) The court may amend an order of restitution entered under  
24 this section on a motion by the prosecuting attorney, the victim,  
25 or the defendant based upon new information related to the injury,  
26 damages, or loss for which the restitution was ordered.

27 (20) A court that receives notice that a defendant who has an

Senate Bill No. 146 as amended April 30, 2009

1 obligation to pay restitution under this section has declared  
2 bankruptcy shall forward a copy of that notice to the prosecuting  
3 attorney. The prosecuting attorney shall forward the notice to the  
4 victim at the victim's last known address.

5 (21) If the victim is a minor, the order of restitution shall  
6 require the defendant pay to a parent of the victim an amount that  
7 is determined to be reasonable for any of the following that are  
8 actually incurred or reasonably expected to be incurred by the  
9 parent as a result of the crime:

10 (a) Homemaking and child care expenses.

11 (b) Income loss not ordered to be paid under subsection  
12 (4) (h) .

13 (c) Mileage.

14 (d) Lodging or housing.

15 (e) Meals.

16 (f) Any other cost incurred in exercising the rights of the  
17 victim or a parent under this act.

[Enacting section 1. This amendatory act takes effect July 1, 2009,  
and applies only to crimes committed on and after that date.]

18 Enacting section [2.] This amendatory act does not take effect  
19 unless Senate Bill No. 145

20 of the 95th Legislature is enacted into law.