

HOUSE BILL No. 4636

April 30, 2013, Introduced by Reps. Leonard, Kelly, Outman, Schor, Lund, MacGregor, Lori, Rendon, Johnson, Zemke, Faris, Dianda, Kivela, Foster, Kesto, Cotter, Haveman, Heise, Daley, Knezek, Schmidt, Ananich, Graves and Lauwers 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 16, 44, and 76 (MCL 780.766, 780.794, and
780.826), as amended by 2009 PA 28.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16. (1) As used in this section only, "victim" means an
2 individual who suffers direct or threatened physical, financial, or
3 emotional harm as a result of the commission of a crime. As used in
4 subsections (2), (3), (6), (8), (9), and (13) only, victim includes
5 a sole proprietorship, partnership, corporation, association,
6 governmental entity, or any other legal entity that suffers direct
7 physical or financial harm as a result of a crime.

8 (2) Except as provided in subsection (8), when sentencing a
9 defendant convicted of a crime, the court shall order, in addition

1 to or in lieu of any other penalty authorized by law or in addition
2 to any other penalty required by law, that the defendant make full
3 restitution to any victim of the defendant's course of conduct that
4 gives rise to the conviction or to the victim's estate. For an
5 offense that is resolved by assignment of the defendant to youthful
6 trainee status, by a delayed sentence or deferred judgment of
7 guilt, or in another way that is not an acquittal or unconditional
8 dismissal, the court shall order the restitution required under
9 this section.

10 (3) If a crime results in damage to or loss or destruction of
11 property of a victim of the crime or results in the seizure or
12 impoundment of property of a victim of the crime, the order of
13 restitution shall require that the defendant do 1 or more of the
14 following, as applicable:

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

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

22 (i) The fair market value of the property on the date of the
23 damage, loss, or destruction. However, if the fair market value of
24 the property cannot be determined or is impractical to ascertain,
25 then the replacement value of the property shall be utilized in
26 lieu of the fair market value.

27 (ii) The fair market value of the property on the date of

1 sentencing. However, if the fair market value of the property
2 cannot be determined or is impractical to ascertain, then the
3 replacement value of the property shall be utilized in lieu of the
4 fair market value.

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

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

9 (a) Pay an amount equal to the reasonably determined cost of
10 medical and related professional services and devices actually
11 incurred and reasonably expected to be incurred relating to
12 physical and psychological care.

13 (b) Pay an amount equal to the reasonably determined cost of
14 physical and occupational therapy and rehabilitation actually
15 incurred and reasonably expected to be incurred.

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

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

22 (e) Pay an amount equal to the reasonably determined costs of
23 homemaking and child care expenses actually incurred and reasonably
24 expected to be incurred as a result of the crime or, if homemaking
25 or child care is provided without compensation by a relative,
26 friend, or any other person, an amount equal to the costs that
27 would reasonably be incurred as a result of the crime for that

1 homemaking and child care, based on the rates in the area for
2 comparable services.

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

5 (g) If the deceased victim could be claimed as a dependent by
6 his or her parent or guardian on the parent's or guardian's
7 federal, state, or local income tax returns, pay an amount equal to
8 the loss of the tax deduction or tax credit. The amount of
9 reimbursement shall be estimated for each year the victim could
10 reasonably be claimed as a dependent.

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

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

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

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

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

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

25 (e) Serious visible disfigurement.

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

27 (g) Measurable brain damage or mental impairment.

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

2 (i) Subdural hemorrhage or subdural hematoma.

3 (j) Loss of a body organ.

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

7 (7) If the victim is deceased **OR DIES**, the court shall order
8 that the restitution **OR REMAINING RESTITUTION** be made to **[THOSE ENTITLED**
TO INHERIT FROM] the
9 victim's estate.

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

27 (9) Any amount paid to a victim or victim's estate under an

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

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

11 (11) If the defendant is placed on probation or paroled or the
12 court imposes a conditional sentence as provided in section 3 of
13 chapter IX of the code of criminal procedure, 1927 PA 175, MCL
14 769.3, any restitution ordered under this section shall be a
15 condition of that probation, parole, or sentence. The court may
16 revoke probation or impose imprisonment under the conditional
17 sentence and the parole board may revoke parole if the defendant
18 fails to comply with the order and if the defendant has not made a
19 good faith effort to comply with the order. In determining whether
20 to revoke probation or parole or impose imprisonment, the court or
21 parole board shall consider the defendant's employment status,
22 earning ability, and financial resources, the willfulness of the
23 defendant's failure to pay, and any other special circumstances
24 that may have a bearing on the defendant's ability to pay.

25 (12) Subject to subsection (18), a defendant who is required
26 to pay restitution and who is not in willful default of the payment
27 of the restitution may at any time petition the sentencing judge or

1 his or her successor to modify the method of payment. If the court
2 determines that payment under the order will impose a manifest
3 hardship on the defendant or his or her immediate family, and if
4 the court also determines that modifying the method of payment will
5 not impose a manifest hardship on the victim, the court may modify
6 the method of payment.

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

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

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

1 the acts upon which an order of restitution is based to pay any
2 portion of the restitution ordered that is outstanding. An order
3 under this subsection does not relieve the juvenile of his or her
4 obligation to pay restitution as ordered, but the amount owed by
5 the juvenile shall be offset by any amount paid by his or her
6 parent. As used in this subsection:

7 (a) "Juvenile" means a person within the court's jurisdiction
8 under section 2d or 4 of chapter XIIA of the probate code of 1939,
9 1939 PA 288, MCL 712A.2d and 712A.4.

10 (b) "Parent" does not include a foster parent.

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

19 (17) A parent who has been ordered to pay restitution under
20 subsection (15) may petition the court for a modification of the
21 amount of restitution owed by the parent or for a cancellation of
22 any unpaid portion of the parent's obligation. The court shall
23 cancel all or part of the parent's obligation due if the court
24 determines that payment of the amount due will impose a manifest
25 hardship on the parent and if the court also determines that
26 modifying the method of payment will not impose a manifest hardship
27 on the victim.

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

27 (19) If a defendant who is ordered to pay restitution under

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

5 (20) 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 (21) 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 (22) 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 (23) A court that receives notice that a defendant who has an

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 (24) If the victim is a minor, the order of restitution shall
6 require the defendant to pay to a parent of the victim an amount
7 that is determined to be reasonable for any of the following that
8 are 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.

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

19 (a) "Offense" means a violation of a penal law of this state
20 or a violation of an ordinance of a local unit of government of
21 this state punishable by imprisonment or by a fine that is not a
22 civil fine.

23 (b) "Victim" means an individual who suffers direct or
24 threatened physical, financial, or emotional harm as a result of
25 the commission of an offense. As used in subsections (2), (3), (6),
26 (8), (9), and (13) only, victim includes a sole proprietorship,
27 partnership, corporation, association, governmental entity, or any

1 other legal entity that suffers direct physical or financial harm
2 as a result of an offense.

3 (2) Except as provided in subsection (8), at the dispositional
4 hearing or sentencing for an offense, the court shall order, in
5 addition to or in lieu of any other disposition or penalty
6 authorized by law, that the juvenile make full restitution to any
7 victim of the juvenile's course of conduct that gives rise to the
8 disposition or conviction or to the victim's estate. For an offense
9 that is resolved informally by means of a consent calendar
10 diversion or by another informal method that does not result in a
11 dispositional hearing, by assignment to youthful trainee status, by
12 a delayed sentence or deferred judgment of guilt, or in another way
13 that is not an acquittal or unconditional dismissal, the court
14 shall order the restitution required under this section.

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

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

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

27 (i) The fair market value of the property on the date of the

1 damage, loss, or destruction. However, if the fair market value of
2 the property cannot be determined or is impractical to ascertain,
3 then the replacement value of the property shall be utilized in
4 lieu of the fair market value.

5 (ii) The fair market value of the property on the date of
6 disposition. However, if the fair market value of the property
7 cannot be determined or is impractical to ascertain, then the
8 replacement value of the property shall be utilized in lieu of the
9 fair market value.

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

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

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

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

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

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

27 (e) Pay an amount equal to the reasonably determined costs of

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

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

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

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

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

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

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

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

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

3 (e) Serious visible disfigurement.

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

5 (g) Measurable brain damage or mental impairment.

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

7 (i) Subdural hemorrhage or subdural hematoma.

8 (j) Loss of a body organ.

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

12 (7) If the victim is deceased **OR DIES**, the court shall order
13 that the restitution **OR REMAINING RESTITUTION** be made to **[THOSE ENTITLED**
14 **TO INHERIT FROM]** 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 offense.
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 juvenile make restitution under this
16 section within a specified period or in specified installments.

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

26 (12) Subject to subsection (18), a juvenile who is required to
27 pay restitution and who is not in willful default of the payment of

1 the restitution may at any time petition the court to modify the
2 method of payment. If the court determines that payment under the
3 order will impose a manifest hardship on the juvenile or his or her
4 immediate family, and if the court also determines that modifying
5 the method of payment will not impose a manifest hardship on the
6 victim, the court may modify the method of payment.

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

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

22 (15) If the court determines that the juvenile is or will be
23 unable to pay all of the restitution ordered, after notice to the
24 juvenile's parent or parents and an opportunity for the parent or
25 parents to be heard, the court may order the parent or parents
26 having supervisory responsibility for the juvenile at the time of
27 the acts upon which an order of restitution is based to pay any

1 portion of the restitution ordered that is outstanding. An order
2 under this subsection does not relieve the juvenile of his or her
3 obligation to pay restitution as ordered, but the amount owed by
4 the juvenile shall be offset by any amount paid by his or her
5 parent. As used in this subsection, "parent" does not include a
6 foster parent.

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

15 (17) A parent who has been ordered to pay restitution under
16 subsection (15) may petition the court for a modification of the
17 amount of restitution owed by the parent or for a cancellation of
18 any unpaid portion of the parent's obligation. The court shall
19 cancel all or part of the parent's obligation due if the court
20 determines that payment of the amount due will impose a manifest
21 hardship on the parent and if the court also determines that
22 modifying the method of payment will not impose a manifest hardship
23 on the victim.

24 (18) In each case in which payment of restitution is ordered
25 as a condition of probation, the court shall order any employed
26 juvenile to make regularly scheduled restitution payments. If the
27 juvenile misses 2 or more regularly scheduled payments, the court

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

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

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

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

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

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

26 (23) A court that receives notice that a defendant who has an
27 obligation to pay restitution under this section has declared

1 bankruptcy shall forward a copy of that notice to the prosecuting
2 attorney. The prosecuting attorney shall forward the notice to the
3 victim at the victim's last known address.

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

9 (a) Homemaking and child care expenses.

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

12 (c) Mileage.

13 (d) Lodging or housing.

14 (e) Meals.

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

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

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

22 (b) "Victim" means an individual who suffers direct or
23 threatened physical, financial, or emotional harm as a result of
24 the commission of a misdemeanor. As used in subsections (2), (3),
25 (6), (8), (9), and (13) only, victim includes a sole
26 proprietorship, partnership, corporation, association, governmental
27 entity, or any other legal entity that suffers direct physical or

1 financial harm as a result of a misdemeanor.

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

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

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

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

25 (i) The fair market value of the property on the date of the
26 damage, loss, or destruction. However, if the fair market value of
27 the property cannot be determined or is impractical to ascertain,

1 then the replacement value of the property shall be utilized in
2 lieu of the fair market value.

3 (ii) The fair market value of the property on the date of
4 sentencing. However, if the fair market value of the property
5 cannot be determined or is impractical to ascertain, then the
6 replacement value of the property shall be utilized in lieu of the
7 fair market value.

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

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

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

16 (b) Pay an amount equal to the reasonably determined cost of
17 physical and occupational therapy and rehabilitation actually
18 incurred and reasonably expected to be incurred.

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

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

25 (e) Pay an amount equal to the reasonably determined costs of
26 homemaking and child care expenses actually incurred and reasonably
27 expected to be incurred as a result of the misdemeanor or, if

1 homemaking or child care is provided without compensation by a
2 relative, friend, or any other person, an amount equal to the costs
3 that would reasonably be incurred as a result of the misdemeanor
4 for that homemaking and child care, based on the rates in the area
5 for comparable services.

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

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

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

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

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

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

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

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

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1 (e) Serious visible disfigurement.

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

3 (g) Measurable brain damage or mental impairment.

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

5 (i) Subdural hemorrhage or subdural hematoma.

6 (j) Loss of a body organ.

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

10 (7) If the victim is deceased **OR DIES**, the court shall order
11 that the restitution **OR REMAINING RESTITUTION** be made to **[THOSE ENTITLED**
12 **TO INHERIT FROM]** the
13 victim's estate.

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

1 estate has received or is to receive compensation for that loss,
2 and the court shall state on the record with specificity the
3 reasons for its action.

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

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

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

1 (12) Subject to subsection (15), a defendant who is required
2 to pay restitution and who is not in willful default of the payment
3 of the restitution may at any time petition the sentencing judge or
4 his or her successor to modify the method of payment. If the court
5 determines that payment under the order will impose a manifest
6 hardship on the defendant or his or her immediate family, and if
7 the court also determines that modifying the method of payment will
8 not impose a manifest hardship on the victim, the court may modify
9 the method of payment.

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

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

25 (15) In each case in which payment of restitution is ordered
26 as a condition of probation, the court shall order any employed
27 defendant to make regularly scheduled restitution payments. If the

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

24 (16) If the court determines that a defendant who is ordered
25 to pay restitution under this section is remanded to the
26 jurisdiction of the department of corrections, the court shall
27 provide a copy of the order of restitution to the department of

1 corrections when the court determines that the defendant is
2 remanded to the department's jurisdiction.

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

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

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

25 (20) A court that receives notice that a defendant who has an
26 obligation to pay restitution under this section has declared
27 bankruptcy shall forward a copy of that notice to the prosecuting

1 attorney. The prosecuting attorney shall forward the notice to the
2 victim at the victim's last known address.

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

8 (a) Homemaking and child care expenses.

9 (b) Income loss not ordered to be paid under subsection
10 (4) (h) .

11 (c) Mileage.

12 (d) Lodging or housing.

13 (e) Meals.

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