

SENATE BILL No. 987

June 11, 2014, Introduced by Senators PAPPAGEORGE, NOFS, COLBECK, ROBERTSON, CASWELL, HUNE and MARLEAU 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 44 and 45 (MCL 780.794 and 780.795), section 44 as amended by 2013 PA 139 and section 45 as amended by 1996 PA 562.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

6 (b) "Victim" means an individual who suffers direct or
7 threatened physical, financial, or emotional harm as a result of

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

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

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

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

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

1 the date the property is returned, of that property or any part of
2 the property that is returned:

3 (i) The fair market value of the property on the date of the
4 damage, loss, or destruction. ~~However, if~~ **IF** the fair market value
5 of the property cannot be determined or is impractical to
6 ascertain, ~~then~~ the replacement value of the property shall be
7 utilized in lieu of the fair market value.

8 (ii) The fair market value of the property on the date of
9 disposition. ~~However, if~~ **IF** the fair market value of the property
10 cannot be determined or is impractical to ascertain, ~~then~~ the
11 replacement value of the property shall be utilized in lieu of the
12 fair market value.

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

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

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

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

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

26 (d) Pay an amount equal to the reasonably determined cost of
27 psychological and medical treatment for members of the victim's

1 family actually incurred or reasonably expected to be incurred as a
2 result of the offense.

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

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

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

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

23 (5) If an offense resulting in bodily injury also results in
24 the death of a victim or serious impairment of a body function of a
25 victim, the court may order up to 3 times the amount of restitution
26 otherwise allowed under this section. As used in this subsection,
27 "serious impairment of a body function of a victim" includes, but

1 is not limited to, 1 or more of the following:

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

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

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

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

6 (e) Serious visible disfigurement.

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

8 (g) Measurable brain damage or mental impairment.

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

10 (i) Subdural hemorrhage or subdural hematoma.

11 (j) Loss of a body organ.

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

15 (7) If the victim is deceased or dies, the court shall order
16 that the restitution or remaining restitution be made to those
17 entitled to inherit from the victim's estate.

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

1 transportation. ~~However, an~~ **AN** order of restitution shall require
2 that all restitution to a victim or victim's estate under the order
3 be made before any restitution to any other person or entity under
4 that order is made. The court shall not order restitution to be
5 paid to a victim or victim's estate if the victim or victim's
6 estate has received or is to receive compensation for that loss,
7 and the court shall state on the record with specificity the
8 reasons for its action.

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

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

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

1 bearing on the juvenile's ability to pay.

2 (12) Subject to subsection (18), a juvenile who is required to
3 pay restitution and who is not in willful default of the payment of
4 the restitution may at any time petition the court to modify the
5 method of payment. If the court determines that payment under the
6 order will impose a manifest hardship on the juvenile or his or her
7 immediate family, and if the court also determines that modifying
8 the method of payment will not impose a manifest hardship on the
9 victim, the court may modify 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 individual ordered to pay restitution for the amount specified in
14 the order of restitution. The lien may be recorded as provided by
15 law. An order of restitution may be enforced by the prosecuting
16 attorney, a victim, a victim's estate, or any other person or
17 entity named in the order to receive the restitution in the same
18 manner as a judgment in a civil action or a lien.

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

25 (15) ~~IF~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF**
26 the court determines that the juvenile is or will be unable to pay
27 all of the restitution ordered, after notice to the juvenile's

1 parent or parents and an opportunity for the parent or parents to
2 be heard, the court may order the parent or parents having
3 supervisory responsibility for the juvenile at the time of the acts
4 upon which an order of restitution is based to pay any portion of
5 the restitution ordered that is outstanding. **THE COURT SHALL NOT**
6 **ORDER THE JUVENILE'S PARENT, OR IF THE PARENT IS MARRIED, THE**
7 **PARENT'S SPOUSE WITH WHOM THE PARENT RESIDES, TO PAY RESTITUTION**
8 **UNDER THIS SECTION IF THAT PARENT WAS THE VICTIM OF THE JUVENILE**
9 **OFFENSE FOR WHICH RESTITUTION IS ORDERED.** An order under this
10 subsection does not relieve the juvenile of his or her obligation
11 to pay restitution as ordered, but the amount owed by the juvenile
12 shall be offset by any amount paid by his or her parent. As used in
13 this subsection, "parent" does not include a foster parent.

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

22 (17) A parent who has been ordered to pay restitution under
23 subsection (15) may petition the court for a modification of the
24 amount of restitution owed by the parent or for a cancellation of
25 any unpaid portion of the parent's obligation. The court shall
26 cancel all or part of the parent's obligation due if the court
27 determines that payment of the amount due will impose a manifest

1 hardship on the parent and if the court also determines that
2 modifying the method of payment will not impose a manifest hardship
3 on the victim.

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

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

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

1 entity.

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

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

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

16 (a) Homemaking and child care expenses.

17 (b) Income loss not ordered to be paid under subsection

18 (4) (h).

19 (c) Mileage.

20 (d) Lodging or housing.

21 (e) Meals.

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

24 Sec. 45. (1) In determining the amount of restitution to order
25 under section 44, the court shall consider the amount of the loss
26 sustained by any victim as a result of the offense. In determining
27 whether to order the juvenile's supervisory parent to pay

1 restitution under section 44(15), the court shall consider the
2 financial resources of the juvenile's supervisory parent and the
3 other factors specified in section 44(16). **THE COURT SHALL NOT**
4 **ORDER THE JUVENILE'S PARENT, OR IF THE PARENT IS MARRIED, THE**
5 **PARENT'S SPOUSE WITH WHOM THE PARENT RESIDES, TO PAY RESTITUTION**
6 **UNDER THIS SECTION IF THAT PARENT WAS THE VICTIM OF THE JUVENILE**
7 **OFFENSE FOR WHICH RESTITUTION IS ORDERED.**

8 (2) The court may order the person preparing a report for the
9 purpose of disposition to obtain information pertaining to the
10 factors set forth in subsection (1). That person shall include the
11 information collected in the disposition report or in a separate
12 report, as the court directs.

13 (3) The court shall disclose to the juvenile, the juvenile's
14 supervisory parent, and the prosecuting attorney all portions of
15 the disposition or other report pertaining to the matters described
16 in subsection (1).

17 (4) Any dispute as to the proper amount or type of restitution
18 shall be resolved by the court by a preponderance of the evidence.
19 The burden of demonstrating the amount of the loss sustained by a
20 victim as a result of the offense shall be on the prosecuting
21 attorney. The burden of demonstrating the financial resources of
22 the juvenile's supervisory parent and the other factors specified
23 in section 44(16) shall be on the supervisory parent.

24 Enacting section 1. This amendatory act is retroactive and
25 applies to orders of restitution entered before the effective date
26 of this amendatory act.