

HOUSE BILL No. 5006

September 26, 2017, Introduced by Reps. Kesto, Sheppard, Hoitenga and Iden and referred to the Committee on Law and Justice.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 30 and 31 of chapter XIIA (MCL 712A.30 and
712A.31), as amended by 1996 PA 561.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 30. (1) For purposes of this section and section 31:

(a) "Juvenile offense" means a violation by a juvenile of a
penal law of this state or a violation by a juvenile of an
ordinance of a local unit of government of this state punishable by
imprisonment or by a fine that is not a civil fine.

(b) "Victim" means an individual who suffers direct or
threatened physical, financial, or emotional harm as a result of
the commission of a juvenile offense. For purposes of subsections

1 (2), (3), (6), (8), (9), **(10)**, and ~~(13)~~, ~~(14)~~, victim includes a
2 sole proprietorship, partnership, corporation, association,
3 governmental entity, or other legal entity that suffers direct
4 physical or financial harm as a result of the commission of a
5 juvenile offense.

6 (2) Except as provided in subsection ~~(8)~~, ~~(9)~~, at the
7 dispositional hearing for a juvenile offense, the court shall
8 order, in addition to or in lieu of any other disposition
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 to the victim's estate.

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

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

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

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

26 (ii) The value of the property on the date of disposition.

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

1 (4) If a juvenile offense results in physical or psychological
2 injury to a victim, the order of restitution may require that the
3 juvenile do 1 or more of the following, as applicable:

4 (a) Pay an amount equal to the cost of actual medical and
5 related professional services and devices relating to physical and
6 psychological care.

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

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

12 (d) Pay an amount equal to the cost of psychological and
13 medical treatment for members of the victim's family that has been
14 incurred as a result of the juvenile offense.

15 (e) Pay an amount equal to the costs of actual homemaking and
16 child care expenses incurred as a result of the juvenile offense.

17 (5) If a juvenile offense resulting in bodily injury also
18 results in the death of a victim, the order of restitution may
19 require that the juvenile pay an amount equal to the cost of actual
20 funeral and related services.

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

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

26 **(8) IF THE JUVENILE OFFENSE FOR WHICH RESTITUTION IS ORDERED**
27 **UNDER THIS SECTION WAS A VIOLATION OF SECTION 356(1) (H) THAT**

1 RESULTED IN A LOSS OF RENTAL INCOME TO THE VICTIM BECAUSE THE
2 VIOLATION RENDERED THE RENTAL PROPERTY OWNED BY THE VICTIM
3 UNINHABITABLE OR UNFIT FOR ITS INTENDED PURPOSE, THE COURT SHALL
4 REQUIRE THAT THE DEFENDANT PAY AN AMOUNT EQUAL TO ANY LOSS OF
5 RENTAL INCOME SUSTAINED BY THE VICTIM.

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

1 created under section 4 of ~~Act No. 196 of the Public Acts of 1989,~~
2 ~~being section 1989 PA 196, MCL 780.904, of the Michigan Compiled~~
3 ~~Laws,~~ or its successor fund.

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

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

15 (12) ~~(11)~~ If the juvenile is placed on probation, any
16 restitution ordered under this section ~~shall~~ **MUST** be a condition of
17 that probation. The court may revoke probation if the juvenile
18 fails to comply with the order and if the juvenile has not made a
19 good faith effort to comply with the order. In determining whether
20 to revoke probation, the court shall consider the juvenile's
21 employment status, earning ability, and financial resources, the
22 willfulness of the juvenile's failure to pay, and any other special
23 circumstances that may have a bearing on the juvenile's ability to
24 pay.

25 (13) ~~(12)~~ A juvenile who is required to pay restitution and
26 who is not in willful default of the payment of the restitution may
27 at any time petition the court to modify the method of payment. If

1 the court determines that payment under the order will impose a
2 manifest hardship on the juvenile or his or her immediate family,
3 the court may modify the method of payment.

4 **(14)** ~~(13)~~—An order of restitution entered under this section
5 ~~remains~~**IS** effective until it is satisfied in full. An order of
6 restitution is a judgment and lien against all property of the
7 individual ordered to pay restitution for the amount specified in
8 the order of restitution. The lien may be recorded as provided by
9 law. An order of restitution may be enforced by the prosecuting
10 attorney, a victim, a victim's estate, or any other person or
11 entity named in the order to receive the restitution in the same
12 manner as a judgment in a civil action or a lien.

13 **(15)** ~~(14)~~—Notwithstanding any other provision of this section,
14 a juvenile ~~shall~~**MUST** not be detained for a violation of probation,
15 or otherwise, for failure to pay restitution as ordered under this
16 section unless the court determines that the juvenile has the
17 resources to pay the ordered restitution and has not made a good
18 faith effort to do so.

19 **(16)** ~~(15)~~—If the court determines that the juvenile is or will
20 be unable to pay all of the restitution ordered, after notice to
21 the juvenile's parent and an opportunity for the parent to be
22 heard, the court may order the parent or parents having supervisory
23 responsibility for the juvenile at the time of the acts upon which
24 an order of restitution is based to pay any portion of the
25 restitution ordered that is outstanding. An order under this
26 subsection does not relieve the juvenile of his or her obligation
27 to pay restitution, but the amount owed by the juvenile ~~shall~~**MUST**

1 be offset by any amount paid by his or her parent. As used in this
2 subsection, "parent" does not include a foster parent.

3 **(17)** ~~(16)~~—If the court orders a parent to pay restitution
4 under subsection ~~(15)~~, **(16)**, the court shall take into account the
5 financial resources of the parent and the burden that the payment
6 of restitution will impose, with due regard to any other moral or
7 legal financial obligations that the parent may have. If a parent
8 is required to pay restitution under subsection ~~(15)~~, **(16)**, the
9 court shall provide for payment to be made in specified
10 installments and within a specified period of time.

11 **(18)** ~~(17)~~—A parent who has been ordered to pay restitution
12 under subsection ~~(15)~~ **(16)** may petition the court for a
13 modification of the amount of restitution owed by the parent or for
14 a cancellation of any unpaid portion of the parent's obligation.
15 The court shall cancel all or part of the parent's obligation due
16 if the court determines that payment of the amount due will impose
17 a manifest hardship on the parent.

18 **(19)** ~~(18)~~—In each case in which payment of restitution is
19 ordered as a condition of probation, the juvenile caseworker or
20 probation officer assigned to the case shall review the case not
21 less than twice yearly to ensure that restitution is being paid as
22 ordered. The final review ~~shall~~ **MUST** be conducted not less than 60
23 days before the expiration of the probationary period. If the
24 juvenile caseworker or probation officer determines the restitution
25 is not being paid as ordered, the juvenile caseworker or probation
26 officer shall file a written report of the violation with the court
27 on a form prescribed by the state court administrative office. The

1 report ~~shall~~**MUST** include a statement of the amount of the
2 arrearage and any reasons for the arrearage that are known by the
3 juvenile caseworker or probation officer. The juvenile caseworker
4 or probation officer shall immediately provide a copy of the report
5 to the prosecuting attorney. If a motion is filed or other
6 proceedings are initiated to enforce payment of restitution and the
7 court determines that restitution is not being paid or has not been
8 paid as ordered by the court, the court shall promptly take action
9 necessary to compel compliance.

10 **(20)** ~~(19)~~ If the court determines that an individual who is
11 ordered to pay restitution under this section is remanded to the
12 jurisdiction of the department of corrections, the court shall
13 provide a copy of the order of restitution to the department of
14 corrections when the court determines that the individual is
15 remanded to the department's jurisdiction.

16 Sec. 31. (1) In determining the amount of restitution to order
17 under section 30 of this chapter, the court shall consider the
18 amount of the loss sustained by any victim as a result of the
19 juvenile offense. In determining whether to order the juvenile's
20 supervisory parent to pay restitution under section ~~30(15)~~**30(16)**
21 of this chapter, the court shall consider the financial resources
22 of the juvenile's supervisory parent and the other factors
23 specified in section ~~30(16)~~**30(17)** of this chapter.

24 (2) The court may order the person preparing a report for the
25 purpose of disposition to obtain information pertaining to the
26 factors set forth in subsection (1). That person shall include the
27 information collected in the disposition report or in a separate

1 report, as the court directs.

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

6 (4) Any dispute as to the proper amount or type of restitution
7 ~~shall~~**MUST** be resolved by the court by a preponderance of the
8 evidence. The burden of demonstrating the amount of the loss
9 sustained by a victim as a result of the juvenile offense ~~shall be~~
10 **IS** on the prosecuting attorney. The burden of demonstrating the
11 financial resources of the juvenile's supervisory parent and the
12 other factors specified in section ~~30(16)~~**30(17)** of this chapter
13 ~~shall be~~**IS** on the supervisory parent.

14 Enacting section 1. This amendatory act takes effect 90 days
15 after the date it is enacted into law.

16 Enacting section 2. This amendatory act does not take effect
17 unless Senate Bill No.____ or House Bill No. 5008 (request no.
18 03521'17) of the 99th Legislature is enacted into law.