

HOUSE BILL No. 5007

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

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 1a of chapter IX (MCL 769.1a), as amended by 2009 PA 27.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER IX

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

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

(b) "Victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a felony, misdemeanor, or ordinance violation. For purposes of subsections (2), (3), ~~(6), (8), (9), and (13)~~, **(4)**, **(7)**, **(9)**, **(10)**, **AND (14)**, victim includes a sole proprietorship,

1 partnership, corporation, association, governmental entity, or any
2 other legal entity that suffers direct physical or financial harm
3 as a result of a felony, misdemeanor, or ordinance violation.

4 (2) Except as provided in subsection ~~(8)~~, **(9)**, when sentencing
5 a defendant convicted of a felony, misdemeanor, or ordinance
6 violation, the court shall order, in addition to or in lieu of any
7 other penalty authorized by law or in addition to any other penalty
8 required by law, that the defendant make full restitution to any
9 victim of the defendant's course of conduct that gives rise to the
10 conviction or to the victim's estate.

11 (3) If a felony, misdemeanor, or ordinance violation results
12 in damage to or loss or destruction of property of a victim of the
13 felony, misdemeanor, or ordinance violation or results in the
14 seizure or impoundment of property of a victim of the felony,
15 misdemeanor, or ordinance violation, the order of restitution may
16 require that the defendant do 1 or more of the following, as
17 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
23 of the date the property is returned, of that property or any part
24 of 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 ~~shall~~ **MUST** be utilized
2 in 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 ~~shall~~ **MUST** be utilized in lieu of
7 the fair market value.

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

9 **(4) IF A FELONY OR MISDEMEANOR VIOLATION OF SECTION 356(1) (H)**
10 **OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.356, RESULTS IN A**
11 **LOSS OF RENTAL INCOME TO THE VICTIM BECAUSE THE VIOLATION RENDERED**
12 **RENTAL PROPERTY OWNED BY THE VICTIM UNINHABITABLE OR UNFIT FOR ITS**
13 **INTENDED PURPOSE, THE COURT SHALL REQUIRE THAT THE DEFENDANT PAY AN**
14 **AMOUNT EQUAL TO ANY LOSS OF RENTAL INCOME SUSTAINED BY THE VICTIM.**

15 **(5) ~~(4)~~**—If a felony, misdemeanor, or ordinance violation
16 results in physical or psychological injury to a victim, the order
17 of restitution may require that the defendant do 1 or more of the
18 following, as applicable:

19 (a) Pay an amount equal to the cost of actual medical and
20 related professional services and devices relating to physical and
21 psychological care.

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

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 felony,
26 misdemeanor, or ordinance violation.

27 (d) Pay an amount equal to the cost of psychological and

1 medical treatment for members of the victim's family that has been
2 incurred as a result of the felony, misdemeanor, or ordinance
3 violation.

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

7 (6) ~~(5)~~—If a felony, misdemeanor, or ordinance violation
8 resulting in bodily injury also results in the death of a victim,
9 the order of restitution may require that the defendant pay an
10 amount equal to the cost of actual funeral and related services.

11 (7) ~~(6)~~—If the victim or the victim's estate consents, the
12 order of restitution may require that the defendant make
13 restitution in services in lieu of money.

14 (8) ~~(7)~~—If the victim is deceased, the court shall order that
15 the restitution be made to the victim's estate.

16 (9) ~~(8)~~—The court shall order restitution to the crime victim
17 services commission or to any individuals, partnerships,
18 corporations, associations, governmental entities, or other legal
19 entities that have compensated the victim or the victim's estate
20 for a loss incurred by the victim to the extent of the compensation
21 paid for that loss. The court shall also order restitution for the
22 costs of services provided to persons or entities that have
23 provided services to the victim as a result of the felony,
24 misdemeanor, or ordinance violation. Services that are subject to
25 restitution under this subsection include, but are not limited to,
26 shelter, food, clothing, and transportation. However, an order of
27 restitution ~~shall~~ **MUST** require that all restitution to a victim or

1 a victim's estate under the order be made before any restitution to
2 any other person or entity under that order is made. The court
3 shall not order restitution to be paid to a victim or victim's
4 estate if the victim or victim's estate has received or is to
5 receive compensation for that loss, and the court shall state on
6 the record with specificity the reasons for its action. If an
7 entity entitled to restitution under this subsection for
8 compensating the victim or the victim's estate cannot or refuses to
9 be reimbursed for that compensation, the restitution paid for that
10 entity ~~shall~~**MUST** be deposited by the state treasurer in the crime
11 victim's rights fund created under section 4 of 1989 PA 196, MCL
12 780.904, or its successor fund.

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

20 (11) ~~(10)~~If not otherwise provided by the court under this
21 subsection, restitution ~~shall~~**MUST** be made immediately. However,
22 the court may require that the defendant make restitution under
23 this section within a specified period or in specified
24 installments.

25 (12) ~~(11)~~If the defendant is placed on probation or paroled
26 or the court imposes a conditional sentence under section 3 of this
27 chapter, any restitution ordered under this section ~~shall~~**MUST** be a

1 condition of that probation, parole, or sentence. The court may
2 revoke probation or impose imprisonment under the conditional
3 sentence and the parole board may revoke parole if the defendant
4 fails to comply with the order and if the defendant has not made a
5 good faith effort to comply with the order. In determining whether
6 to revoke probation or parole or impose imprisonment, the court or
7 parole board shall consider the defendant's employment status,
8 earning ability, and financial resources, the willfulness of the
9 defendant's failure to pay, and any other special circumstances
10 that may have a bearing on the defendant's ability to pay.

11 **(13)** ~~(12)~~—A defendant who is required to pay restitution and
12 who is not in willful default of the payment of the restitution may
13 at any time petition the sentencing judge or his or her successor
14 to modify the method of payment. If the court determines that
15 payment under the order will impose a manifest hardship on the
16 defendant or his or her immediate family, the court may modify the
17 method of payment.

18 **(14)** ~~(13)~~—An order of restitution entered under this section
19 ~~remains~~ **IS** effective until it is satisfied in full. An order of
20 restitution is a judgment and lien against all property of the
21 defendant for the amount specified in the order of restitution. The
22 lien may be recorded as provided by law. An order of restitution
23 may be enforced by the prosecuting attorney, a victim, a victim's
24 estate, or any other person or entity named in the order to receive
25 the restitution in the same manner as a judgment in a civil action
26 or a lien.

27 **(15)** ~~(14)~~—Notwithstanding any other provision of this section,

1 a defendant ~~shall~~**MUST** not be imprisoned, jailed, or incarcerated
2 for a violation of probation or parole or otherwise for failure to
3 pay restitution as ordered under this section unless the court or
4 parole board determines that the defendant has the resources to pay
5 the ordered restitution and has not made a good faith effort to do
6 so.

7 **(16)** ~~(15)~~—In each case in which payment of restitution is
8 ordered as a condition of probation, the probation officer assigned
9 to the case shall review the case not less than twice yearly to
10 ensure that restitution is being paid as ordered. The final review
11 ~~shall~~**MUST** be conducted not less than 60 days before the
12 probationary period expires. If the probation officer determines
13 that restitution is not being paid as ordered, the probation
14 officer shall file a written report of the violation with the court
15 on a form prescribed by the state court administrative office. The
16 report ~~shall~~**MUST** include a statement of the amount of the
17 arrearage and any reasons for the arrearage known by the probation
18 officer. The probation officer shall immediately provide a copy of
19 the report to the prosecuting attorney. If a motion is filed or
20 other proceedings are initiated to enforce payment of restitution
21 and the court determines that restitution is not being paid or has
22 not been paid as ordered by the court, the court shall promptly
23 take action necessary to compel compliance.

24 **(17)** ~~(16)~~—If a defendant who is ordered to pay restitution
25 under this section is remanded to the jurisdiction of the
26 department of corrections, the court shall provide a copy of the
27 order of restitution to the department of corrections when the

1 defendant is ordered remanded to the department's jurisdiction.

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

4 Enacting section 2. This amendatory act does not take effect
5 unless Senate Bill No. ____ or House Bill No. 5008 (request no.
6 03521'17) of the 99th Legislature is enacted into law.