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**STATE OF MICHIGAN  
84TH LEGISLATURE  
REGULAR SESSION OF 1988**

Introduced by Reps. Van Regenmorter, Gubow, Stabenow, Willis Bullard, Gire, Martin, Stacey, Ciaramitaro, DeBeaussaert, Krause, Randall, Oxender, Farhat, Varga, Mathieu, Nye, Sparks, Miller, Walberg, Ouwinga, Allen, Dunaskiss, Perry Bullard, Bender, Power, Strand, Spaniola, Hertel, Smith, Bennane, Emmons, Fitzgerald, Honigman, Law, Sikkema, Bankes, Middaugh, Connors, Wartner, Stopezynski, Keith, Gagliardi, Clack, Jonker, Niederstadt, Leland, Hickner and Munsell

## **ENROLLED HOUSE BILL No. 4857**

AN ACT to amend sections 2, 5, 6, 16, 19, 23, 24, and 25 of Act No. 87 of the Public Acts of 1985, entitled "An act to establish the rights of victims of crime; to provide for certain procedures; to establish certain immunities and duties; to limit convicted criminals from deriving profit under certain circumstances; to prohibit certain conduct of employers or employers' agents toward victims; and to provide for penalties and remedies," section 16 as amended by Act No. 234 of the Public Acts of 1986, being sections 780.752, 780.755, 780.756, 780.766, 780.769, 780.773, 780.774, and 780.775 of the Michigan Compiled Laws; and to add section 18a and article 3.

*The People of the State of Michigan enact:*

Section 1. Sections 2, 5, 6, 16, 19, 23, 24, and 25 of Act No. 87 of the Public Acts of 1985, section 16 as amended by Act No. 234 of the Public Acts of 1986, being sections 780.752, 780.755, 780.756, 780.766, 780.769, 780.773, 780.774, and 780.775 of the Michigan Compiled Laws, are amended and section 18a and article 3 are added to read as follows:

### **ARTICLE 1**

Sec. 2. (1) As used in this article:

- (a) "Crime" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year, or an offense expressly designated by law to be a felony.
- (b) "Defendant" means a person charged with or convicted of having committed a crime against a victim.
- (c) "Final disposition" means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal, or imposition of sentence by the court.
- (d) "Person" means an individual, organization, partnership, corporation, or governmental entity.
- (e) "Prisoner" means a person who has been convicted and sentenced to imprisonment for having committed a crime against a victim.
- (f) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, and a special prosecuting attorney.
- (g) "Victim", except for purposes of section 16, means any of the following:
  - (i) An individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime, except as provided in subparagraph (ii), (iii), or (iv).

(ii) The following relations of a deceased victim if the relation is not the defendant:

(A) The spouse.

(B) A child 15 years of age or older if subparagraph (A) does not apply.

(C) A parent if subparagraphs (A) and (B) do not apply.

(D) A sibling if subparagraphs (A) to (C) do not apply.

(E) A grandparent if subparagraphs (A) to (D) do not apply.

(iii) A parent, guardian, or custodian of a victim who is less than 18 years of age if the parent, guardian, or custodian so chooses.

(iv) A parent, guardian, or custodian of a victim who is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process.

(2) If a victim as defined in subsection (1)(g)(i) is physically unable to exercise the privileges and rights under this article, the victim may designate his or her spouse or a child 15 years of age or older, parent, sibling, or grandparent of the victim to act in place of the victim during the duration of the physical disability. During the physical disability, notices to be provided under this article to the victim shall continue to be sent only to the victim.

Sec. 5. (1) Not later than 24 hours after the arraignment of the defendant for a crime, the law enforcement agency having responsibility for investigating the crime shall give to the victim notice of the availability of pretrial release for the defendant, the phone number of the sheriff, and notice that the victim may contact the sheriff to determine whether the defendant has been released from custody.

(2) Based upon the victim's affidavit asserting acts or threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family, the prosecuting attorney may move that the bond or personal recognizance of a defendant be revoked.

Sec. 6. (1) Not later than 7 days after the arraignment of the defendant for a crime, but not less than 24 hours before a preliminary examination, the prosecuting attorney shall give to each victim a written notice in plain English of each of the following:

(a) A brief statement of the procedural steps in the processing of a criminal case.

(b) The rights and procedures under this article.

(c) Details and eligibility requirements under Act No. 223 of the Public Acts of 1976, being sections 18.351 to 18.368 of the Michigan Compiled Laws.

(d) Suggested procedures if the victim is subjected to threats or intimidation.

(e) The person to contact for further information.

(2) If requested by the victim, the prosecuting attorney shall give to the victim notice of any scheduled court proceedings and notice of any changes in that schedule.

(3) The prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of a crime, including the victim's views about dismissal, plea or sentence negotiations, and pretrial diversion programs.

(4) A victim who receives a notice under subsection (1) and who chooses to receive any other notice or notices under this article shall keep the following persons informed of the victim's current address and phone number:

(a) The prosecuting attorney, until final disposition or completion of the appellate process, whichever occurs later.

(b) The department of corrections or the sheriff as directed by the prosecuting attorney if the defendant is imprisoned.

Sec. 16. (1) For purposes of this section only, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime; and for purposes of subsections (2), (3), (4), (7), (9), (10), (11), and (15), "victim" includes a sole proprietorship, partnership, or corporation.

(2) The court, when sentencing a defendant convicted of a crime, may order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make restitution to any victim of the defendant's course of conduct which gives rise to the conviction, or to the victim's estate.

(3) If the court does not order restitution, or orders only partial restitution under this section, the court shall state on the record the reasons for that action.

(4) If a crime results in damage to or loss or destruction of property of a victim of the offense, the order of restitution may require that the defendant do either of the following:

- (a) Return the property to the owner of the property or to a person designated by the owner.
- (b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraphs (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:
- (i) The value of the property on the date of the damage, loss, or destruction.
  - (ii) The value of the property on the date of sentencing.
- (5) If a crime results in physical or psychological injury to a victim, the order of restitution may require that the defendant do 1 or more of the following, as applicable:
- (a) Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.
  - (b) Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation.
  - (c) Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the offense.
  - (d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family which has been incurred as a result of the offense.
- (6) If a crime resulting in bodily injury also results in the death of a victim, the order of restitution may require that the defendant pay an amount equal to the cost of actual funeral and related services.
- (7) Instead of restitution under subsections (4) to (6), if the victim or victim's estate consents, the order of restitution may require that the defendant make restitution in services in lieu of money, or make restitution to a person designated by the victim or victim's estate if that person provided services to the victim as a result of the crime.
- (8) If the court orders restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.
- (9) Any order of restitution shall be as fair as possible to the victim or victim's estate without unduly complicating or prolonging the sentencing process.
- (10) The court shall not order restitution with respect to a loss for which the victim or victim's estate has received or is to receive compensation, including insurance, except that the court may, in the interest of justice, order restitution to the crime victims compensation board or to any individuals, organizations, partnerships, corporations, or governmental entities that have compensated the victim or victim's estate for such a loss to the extent of the compensation paid. An order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person under that order is made.
- (11) Any amount paid to a victim or victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victims compensation board made after an order of restitution under this section.
- (12) If not otherwise provided by the court under this subsection, restitution shall be made immediately. However, the court may require that the defendant make restitution under this section within a specified period or in specified installments. The end of the period or the last installment shall not be later than the following:
- (a) The end of the period of probation, if probation is ordered.
  - (b) Two years after the end of imprisonment or discharge from parole, whichever occurs later, if the court does not order probation.
  - (c) Three years after the date of sentencing in any other case.
- (13) If the defendant is placed on probation or paroled, any restitution ordered under this section shall be a condition of that probation or parole. The court may revoke probation and the parole board may revoke parole if the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole, the court or parole board shall consider the defendant's employment status, earning ability, financial resources, and the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.
- (14) A defendant who is required to pay restitution and who is not in willful default of the payment of the restitution, at any time, may petition the sentencing judge or his or her successor for a cancellation of any unpaid portion of restitution. If it appears to the satisfaction of the court that payment of the amount due will impose a manifest hardship on the defendant or his or her immediate family, the court may cancel all or part of the amount due in restitution or modify the method of payment.
- (15) An order of restitution may be enforced by the prosecuting attorney or a victim or victim's estate named in the order to receive the restitution in the same manner as a judgment in a civil action.

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

Sec. 18a. (1) Upon the request of the victim, the prosecuting attorney shall notify the victim of the following:

- (a) That the defendant has filed an appeal of his or her conviction.
- (b) A brief explanation in plain English of the appeal process, including the possible dispositions.
- (c) Whether the defendant has been released on bail or other recognizance pending the disposition of the appeal.
- (d) The time and place of any appellate court proceedings and any changes in the time or place of those proceedings.
- (e) The result of the appeal.

(2) In the event the defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim shall have the same rights previously requested during the proceedings which led to the appeal.

Sec. 19. (1) Upon the written request of a victim of a crime, the sheriff or the department of corrections shall mail to the victim the following, as applicable, about a prisoner who has been sentenced to imprisonment under the jurisdiction of the sheriff or the department for commission of that crime:

(a) Within 30 days after the request, notice of the sheriff's calculation of the earliest release date of the prisoner, or the department's calculation of the earliest parole eligibility date of the prisoner, with all potential good time or disciplinary credits considered if the sentence of imprisonment exceeds 90 days. The victim may request 1-time only notice of the calculation described in this subdivision.

(b) Notice of the transfer or pending transfer of the prisoner to a minimum security facility and the address of that facility.

(c) Notice of the release or pending release of the prisoner in a community residential program, under extended furlough, or any other transfer of a prisoner to community status.

(d) Notice of any reduction in the minimum sentence resulting under the prison overcrowding emergency powers act, Act No. 519 of the Public Acts of 1980, being sections 800.71 to 800.79 of the Michigan Compiled Laws.

(e) Notice of the escape of the person accused, convicted, or imprisoned for committing a crime against the victim, as provided in section 20.

(f) Notice of the victim's right to address or submit a written statement for consideration by a parole board member or a member of any other panel having authority over the prisoner's release on parole, as provided in section 21.

(g) Notice of the decision of the parole board, or any other panel having authority over the prisoner's release on parole, after a parole review, as provided in section 21(3).

(h) Notice of the release of a prisoner 90 days before the date of the prisoner's discharge from prison where practical, unless the notice has been otherwise provided under this article.

(i) Notice of a public hearing pursuant to section 44 of Act No. 232 of the Public Acts of 1953, being section 791.244 of the Michigan Compiled Laws, regarding a reprieve, commutation, or pardon of the prisoner's sentence by the governor.

(j) Notice that a reprieve, commutation, or pardon has been granted.

(2) A victim's address and telephone number maintained by a sheriff or the department of corrections pursuant to a request for notice under subsection (1) shall be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

Sec. 23. Nothing in this article shall be construed as creating a cause of action for money damages against the state, a county, a municipality or any of their agencies, or instrumentalities, or employees.

Sec. 24. The failure to provide a right, privilege, or notice to a victim under this article shall not be grounds for the defendant to seek to have the conviction or sentence set aside.

Sec. 25. (1) This article shall take effect October 9, 1985.

(2) This article shall apply only to crimes committed on or after October 9, 1985.

### ARTICLE 3

Sec. 61. (1) As used in this article:

(a) "Serious misdemeanor" means 1 of the following misdemeanors:

(i) A violation of section 81 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.81 of the Michigan Compiled Laws, assault and battery.

(ii) A violation of section 81a of Act No. 328 of the Public Acts of 1931, being section 750.81a of the Michigan Compiled Laws, assault; infliction of serious injury.

(iii) A violation of section 115 of Act No. 328 of the Public Acts of 1931, being section 750.115 of the Michigan Compiled Laws, breaking and entering or illegal entry.

(iv) A violation of section 145a of Act No. 328 of the Public Acts of 1931, being section 750.145a of the Michigan Compiled Laws, enticing a child for immoral purposes.

(v) A violation of section 234 of Act No. 328 of the Public Acts of 1931, being section 750.234 of the Michigan Compiled Laws, discharge of a firearm intentionally aimed at a person.

(vi) A violation of section 235 of Act No. 328 of the Public Acts of 1931, being section 750.235 of the Michigan Compiled Laws, discharge of an intentionally aimed firearm resulting in injury.

(vii) A violation of section 617a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.617a of the Michigan Compiled Laws, leaving the scene of a personal injury accident.

(viii) A violation of section 625 or 625b of Act No. 300 of the Public Acts of 1949, being sections 257.625 and 257.625b of the Michigan Compiled Laws, operating a vehicle while under the influence of or impaired by alcohol or a controlled substance, if the violation involves an accident resulting in injury to another's person.

(ix) A violation of a local ordinance substantially corresponding to a violation enumerated in subparagraphs (i) to (viii).

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

(c) "Final disposition" means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal, or imposition of a sentence by the court.

(d) "Person" means an individual, organization, partnership, corporation, or governmental entity.

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

(f) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, and in connection with the prosecution of an ordinance violation, an attorney for the political subdivision that enacted the ordinance upon which the violation is based.

(g) "Victim", except for purposes of section 76, means any of the following:

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

(ii) The following relations of a deceased victim if the relation is not the defendant:

(A) The spouse.

(B) A child 15 years of age or older if subparagraph (A) does not apply.

(C) A parent if subparagraphs (A) and (B) do not apply.

(D) A sibling if subparagraphs (A) to (C) do not apply.

(E) A grandparent if subparagraphs (A) to (D) do not apply.

(iii) A parent, guardian, or custodian of a victim who is less than 18 years of age if the parent, guardian, or custodian so chooses.

(iv) A parent, guardian, or custodian of a victim who is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process.

(2) If a victim as defined in subsection (1)(g)(i) is physically unable to exercise the privileges and rights under this article, the victim may designate his or her spouse or a child 15 years of age or older, parent, sibling, or grandparent of the victim to act in place of the victim during the duration of the physical disability. The victim shall inform the prosecuting attorney of who is to act in place of the victim. During the physical disability, notices to be provided under this article to the victim shall continue to be sent only to the victim.

(3) An individual who is charged with a serious misdemeanor or a crime as defined in article 1 arising out of the same transaction from which the charge against the defendant arose is not eligible to exercise the privileges and rights established for victims under this article.

Sec. 62. A law enforcement officer investigating a serious misdemeanor involving a victim shall include with the complaint, appearance ticket, or traffic citation filed with the court a separate written statement including the name, address, and phone number of each victim. This separate statement shall not be a matter of public record.

Sec. 63. Within 24 hours after the initial contact between the victim of a reported serious misdemeanor and the law enforcement agency having the responsibility for investigating that serious misdemeanor, that agency shall give to the victim the following information:

(a) The availability of emergency and medical services, if applicable.

(b) The availability of victim's compensation benefits and the address of the crime victims compensation board.

(c) The address and phone number of the prosecuting attorney whom the victim should contact to obtain information about victim's rights.

(d) The following statement:

"If within 6 months, you are not notified of an arrest in your case, you may call [the law enforcement agency's telephone number] for the status of the case."

Sec. 64. (1) The law enforcement agency having responsibility for investigating a reported serious misdemeanor shall promptly return to the victim property belonging to that victim which is taken in the course of the investigation, except as provided in subsections (2) to (4).

(2) The agency shall not return property which is contraband.

(3) The agency shall not return property if the ownership of the property is disputed until the dispute is resolved.

(4) The agency shall retain as evidence any weapon used in the commission of the serious misdemeanor and any other evidence if the prosecuting attorney certifies that there is a need to retain that evidence in lieu of a photograph or other means of memorializing its possession by the agency.

Sec. 65. (1) Not later than 72 hours after the arrest of the defendant for a serious misdemeanor, the law enforcement agency having responsibility for investigating the serious misdemeanor shall give to the victim notice of the availability of pretrial release for the defendant, the phone number of the sheriff, and notice that the victim may contact the sheriff to determine whether the defendant has been released from custody.

(2) If the victim submits an affidavit asserting acts or threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family, the prosecuting attorney, based on the victim's affidavit, may move that the bond or personal recognizance of a defendant be revoked.

Sec. 66. (1) If a plea of guilty or nolo contendere is accepted by the court at the time of the arraignment of the defendant for a serious misdemeanor, the court shall notify the prosecuting attorney of the plea and the date of sentencing within 48 hours after the arraignment. If no guilty or nolo contendere plea is accepted at the arraignment and further proceedings will be scheduled, the court shall also notify the prosecuting attorney within 48 hours after the arraignment. A notice to the prosecuting attorney under this subsection shall include the name, address, and phone number of the victim. Within 48 hours after receiving this notice, the prosecuting attorney shall give to each victim a written notice in plain English of each of the following:

(a) A brief statement of the procedural steps in the processing of a misdemeanor case, including pretrial conferences.

(b) The rights and procedures under this article.

(c) Details and eligibility requirements under Act No. 223 of the Public Acts of 1976, being sections 18.351 to 18.368 of the Michigan Compiled Laws.

(d) Suggested procedures if the victim is subjected to threats or intimidation.

(e) The person to contact for further information.

(2) If requested by the victim, the prosecuting attorney shall give to the victim notice of any scheduled court proceedings and notice of any changes in that schedule.

(3) If the defendant has not already entered a plea of guilty or nolo contendere at the arraignment, the prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the serious misdemeanor, including the victim's views about dismissal, plea or sentence negotiations, and pretrial diversion programs.

(4) If the case against the defendant is dismissed at any time, the prosecuting attorney shall notify the victim of the dismissal within 48 hours.

(5) A victim who receives a notice under subsection (1) or (2) and who chooses to receive any other notice or notices under this article shall keep the following persons informed of the victim's current address and phone number:

(a) The prosecuting attorney, until final disposition or completion of the appellate process, whichever occurs later.

(b) The sheriff, if the defendant is imprisoned for more than 92 days.

Sec. 67. The court shall provide a waiting area for the victim separate from the defendant, defendant's relatives, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victim's contact with defendant, defendant's relatives, and defense witnesses during court proceedings.

Sec. 68. Based upon the victim's reasonable apprehension of acts or threats of physical violence or intimidation by the defendant or at defendant's direction against the victim or the victim's immediate family, the prosecuting attorney may move that the victim or any other witness not be compelled to testify at pretrial proceedings or at trial for purposes of identifying the victim as to the victim's address, place of employment, or other personal identification without the victim's consent. A hearing on the motion shall be in camera.

Sec. 69. An expedited trial may be scheduled for any case in which the victim is averred by the prosecuting attorney to be a child.

Sec. 70. Upon request of the victim, the prosecuting attorney shall confer with the victim prior to the trial of the defendant.

Sec. 71. The victim has the right to be present throughout the entire trial of the defendant, unless the victim is going to be called as a witness. If the victim is going to be called as a witness, the court may, for good cause shown, order the victim to be sequestered until the victim first testifies.

Sec. 72. An employer or the employer's agent, who threatens to discharge or discipline or who discharges, disciplines, or causes to be discharged from employment or to be disciplined a victim because that victim is subpoenaed or requested by the prosecuting attorney to attend court for the purpose of giving testimony, is guilty of a misdemeanor and may be punished for contempt of court.

Sec. 73. (1) The prosecuting attorney, upon and in accordance with the request of the victim, shall give to the victim notice of the following:

(a) The defendant's conviction.

(b) The offenses for which the defendant was convicted.

(c) If a presentence investigation report is to be prepared, the victim's right to make a written or oral impact statement for use in the preparation of the presentence investigation report concerning the defendant.

(d) The address and telephone number of the probation office which is to prepare the presentence investigation report.

(e) That a presentence investigation report and any statement of the victim included in the report will be made available to the defendant unless exempted from disclosure by the court.

(f) The victim's right to make an impact statement at sentencing.

(g) The time and place of the sentencing proceeding.

(2) The notice given by the prosecuting attorney to the victim must be given by any means reasonably calculated to give prompt actual notice.

(3) A notice given under subsection (1) shall inform the victim that his or her impact statement may include but shall not be limited to the following:

(a) An explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim.

(b) An explanation of the extent of any economic loss or property damage suffered by the victim.

(c) An opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for loss or damage.

(d) The victim's recommendation for an appropriate sentence.

Sec. 74. If a presentence investigation report concerning the defendant is prepared, the victim has the right to submit or make a written or oral impact statement to the probation officer for use by that officer in preparing the report pursuant to section 14 of chapter XI of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 771.14 of the Michigan Compiled Laws. A victim's written statement shall, upon the victim's request, be included in the presentence investigation report.

Sec. 75. If no presentence report is prepared, the court shall notify the prosecuting attorney of the date and time of sentencing at least 10 days prior to the sentencing. The victim shall have the right to submit a written impact statement and shall have the right to appear and make an oral impact statement at the sentencing of the defendant. The court shall consider the victim's statement in imposing sentence on the defendant.

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

(a) "Victim" means an individual who suffers actual financial loss or expense as a result of the commission of a misdemeanor, and for purposes of subsections (2), (3), (4), (6), (8), (9), and (10), victim includes a sole proprietorship, partnership, or corporation.

(b) "Misdemeanor" means a violation of a law of this state, or of a local ordinance substantially corresponding to a law of this state, that is punishable by imprisonment for not more than 1 year or by a fine that is not a civil fine, but is not a felony.

(2) The court, when sentencing a defendant convicted of a misdemeanor, may order, in addition to or in lieu of any other penalty authorized by law, or in addition to any other penalty required by law, that the defendant make restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate.

(3) If the court does not order restitution, or orders only partial restitution under this section, the court shall state on the record the reasons for that action.

(4) If a misdemeanor results in damage to or loss or destruction of property of a victim of the offense, the order of restitution may require that the defendant do either of the following:

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

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

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

(ii) The value of the property on the date of sentencing.

(5) If a misdemeanor results in physical injury to a victim, the order of restitution may require that the defendant do 1 or more of the following, as applicable:

(a) Pay an amount equal to the cost of the victim's actual medical and related professional services and devices relating to the physical care.

(b) Pay an amount equal to the cost of the victim's actual physical and occupational therapy and rehabilitation.

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

(6) Instead of restitution under subsections (4) and (5), if the victim or victim's estate consents, the order of restitution may require that the defendant make restitution in services in lieu of money, or make restitution to a person designated by the victim or victim's estate if that person provided services to the victim as a result of the misdemeanor.

(7) If the court orders restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

(8) Any order of restitution shall be as fair as possible to the victim or victim's estate without unduly complicating or prolonging the sentencing process.

(9) The court shall not order restitution with respect to a loss for which the victim or victim's estate has received or is to receive compensation, including insurance, except that the court may, in the interest of justice, order restitution to the crime victims compensation board or to any individuals, organizations, partnerships, corporations, or governmental entities that have compensated the victim or victim's estate for such a loss to the extent of the compensation paid. An order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person under that order is made.

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



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

(12) In determining the amount of restitution, the court shall consider the defendant's earning ability, financial resources, and any other special circumstances that may have a bearing on the defendant's ability to pay.

Sec. 77. Upon the request of a victim, the prosecuting attorney shall, within 30 days after the final disposition of the case, notify the victim in writing of the final disposition of the case.

Sec. 78. (1) Upon the request of the victim, the prosecuting attorney shall notify the victim of the following:

- (a) That the defendant has filed an appeal of his or her conviction.
- (b) A brief explanation in plain English of the appeal process, including the possible dispositions.
- (c) Whether the defendant has been released on bail or other recognizance pending the disposition of the appeal.
- (d) The time and place of any appellate court proceedings and any changes in the time or place of those proceedings.
- (e) The result of the appeal.

(2) In the event the defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim shall have the same rights previously requested during the proceedings which led to the appeal.

Sec. 79. (1) Upon the written request of the victim, the sheriff shall notify the victim of the earliest possible release date of the defendant if the defendant is sentenced to more than 92 days' imprisonment.

(2) The victim's written request for notice under this section shall include the victim's address.

Sec. 80. A victim's address and telephone number maintained by a court or a sheriff pursuant to this article is exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

Sec. 81. (1) A person convicted of a serious misdemeanor shall not derive any profit from the sale of his or her recollections, thoughts, and feelings with regard to the offense committed by that person until the victim receives any restitution or compensation ordered for him or her against the defendant and expenses of incarceration are recovered as provided in subsection (3) and until the escrow account created under subsection (2) is terminated under subsection (4).

(2) Upon the conviction of a defendant for a serious misdemeanor involving a victim, and after notice to any interested party, an attorney for the county in which the conviction occurred or the attorney general may petition the court in which the conviction occurred to order that defendant forfeit all or any part of proceeds received or to be received by the defendant, or the defendant's representatives or assignees, from contracts relating to the depiction of the crime or the defendant's recollections, thoughts, or feelings about the crime, in books, magazines, media entertainment, or live entertainment. The proceeds shall be held in escrow for a period of not more than 5 years.

(3) During the existence of the escrow account, proceeds in the account shall be distributed in the following priority for the following purposes:

- (a) To satisfy an order of restitution entered under section 76.
- (b) To satisfy any civil judgment in favor of the victim against that defendant.
- (c) To satisfy any reimbursement ordered under the prisoner reimbursement to the county act, Act No. 118 of the Public Acts of 1984, being sections 801.81 to 801.93 of the Michigan Compiled Laws, or ordered under the state correctional facility reimbursement act, Act No. 253 of the Public Acts of 1935, being sections 800.401 to 800.406 of the Michigan Compiled Laws.

(4) Fifty percent of the balance remaining in the escrow account at the end of the escrow period shall be payable to the defendant and the remaining 50% of the balance shall be payable to the state general fund for use of the crime victims compensation board to pay compensation claims.

Sec. 82. Nothing in this article shall be construed as creating a cause of action for money damages against the state, a county, a municipality or any of their agencies, instrumentalities, or employees.

Sec. 83. The failure to provide a right, privilege, or notice to a victim under this article shall not be grounds for the defendant to seek to have the conviction or sentence set aside.

Sec. 84. (1) This article shall take effect June 1, 1988.

(2) This article shall apply only to misdemeanors committed on or after June 1, 1988.

Section 2. This amendatory act shall take effect June 1, 1988.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.