



HOUSE BILL No. 5665

June 22 1994 Introduced by Reps Martin Porreca Pitoniak Willard Stille Voorhees Weeks and LeTarte and referred to the Committee on Judiciary

A bill to amend sections 16, 44, and 76 of Act No 87 of the Public Acts of 1985, entitled as amended "Crime victim's rights act," as amended by Act No 341 of the Public Acts of 1993, being sections 780 766, 780 794, and 780 826 of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 16, 44, and 76 of Act No 87 of the
2 Public Acts of 1985, as amended by Act No 341 of the Public Acts
3 of 1993, being sections 780 766, 780 794, and 780 826 of the
4 Michigan Compiled Laws, are amended to read as follows

5 Sec 16 (1) For purposes of this section only, "victim"
6 means an individual who suffers direct or threatened physical,
7 financial, or emotional harm as a result of the commission of a
8 crime For purposes of subsections (2), (3), (4), (7) (9)

1 (10), (11), and (16), victim includes a sole proprietorship
2 partnership, corporation, association, governmental entity, or
3 any other legal entity that suffers direct physical or financial
4 harm as a result of a crime

5 (2) Except as provided in this section and section 17, the
6 court, when sentencing a defendant convicted of a crime, shall
7 order, in addition to or in lieu of any other penalty authorized
8 by law or in addition to any other penalty required by law, that
9 the defendant make full or partial restitution to any victim of
10 the defendant's course of conduct that gives rise to the convic-
11 tion, or to the victim's estate

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

15 (4) If a crime results in damage to or loss or destruction
16 of property of a victim of the ~~offense~~ CRIME, or results in the
17 seizure or impoundment of property of a victim of the ~~offense~~
18 CRIME, the order of restitution may require that the defendant do
19 1 or more of the following

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
24 the greater of subparagraph (1) or (11), less the value, deter-
25 mined as of the date the property is returned, of that property
26 or any part of the property that is returned

1 (1) The value of the property on the date of the damage
2 loss, or destruction

3 (2) The value of the property on the date of sentencing

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

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

8 (a) Pay an amount equal to the cost of actual medical and
9 related professional services and devices relating to physical
10 and psychological care

11 (b) Pay an amount equal to the cost of actual physical and
12 occupational therapy and rehabilitation

13 (c) Reimburse the victim or the victim's estate for
14 after-tax income loss suffered by the victim as a result of the
15 ~~offense~~ CRIME

16 (d) Pay an amount equal to the cost of psychological and
17 medical treatment for members of the victim's family that has
18 been incurred as a result of the ~~offense~~ CRIME

19 (e) Pay an amount equal to the costs of actual homemaking
20 and child care expenses incurred as a result of the ~~offense~~
21 CRIME

22 (6) If a crime resulting in bodily injury also results in
23 the death of a victim, the order of restitution may require that
24 the defendant pay an amount equal to the cost of actual funeral
25 and related services

26 (7) Instead of restitution under subsections (4) to (6), if
27 the victim or victim's estate consents, the order of restitution

1 may require that the defendant make restitution in services in
2 lieu of money, or make restitution to a person designated by the
3 victim or victim's estate if that person provided services to the
4 victim as a result of the crime AS USED IN THIS SUBSECTION AND
5 SUBSECTION (16), "PERSON" INCLUDES, BUT IS NOT LIMITED TO, A
6 SHELTER PROGRAM FOR VICTIMS OF DOMESTIC VIOLENCE AND THEIR DEPENDENT
7 CHILDREN ESTABLISHED UNDER ACT NO 389 OF THE PUBLIC ACTS OF
8 1978, BEING SECTIONS 400 1501 TO 400 1510 OF THE MICHIGAN
9 COMPILED LAWS, OR SIMILAR COMMUNITY SERVICE PROGRAM

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

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

16 (10) Except as otherwise provided in this section and
17 section 17 the court shall order restitution to the crime victims
18 compensation board or to any individuals, partnerships corporations,
19 associations, governmental entities, or ~~any~~ other
20 legal entities that have compensated the victim or THE victim's
21 estate for a loss incurred by the victim to the extent of the
22 compensation paid for that loss However an order of restitution
23 shall require that all restitution to a victim or victim's
24 estate under the order be made before any restitution to any
25 other person under that order is made The court shall not order
26 restitution to be paid to a victim or victim's estate if the

1 victim or victim's estate has received or is to receive
2 compensation for that loss

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

10 (12) If not otherwise provided by the court under this sub-
11 section, restitution shall be made immediately. However, the
12 court may require that the defendant make restitution under this
13 section within a specified period or in specified installments
14 The end of the period or the last installment shall not be later
15 than the following

16 (a) The end of the period of probation, if probation is
17 ordered

18 (b) Two years after the end of imprisonment or discharge
19 from parole, whichever occurs later, if the court does not order
20 probation but imposes a term of imprisonment

21 (c) Three years after the date of sentencing in any other
22 case

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

1 (14) If the defendant is placed on probation or paroled, any
2 restitution ordered under this section shall be a condition of
3 that probation or parole. The court may revoke probation and the
4 parole board may revoke parole if the defendant fails to comply
5 with the order and if the defendant has not made a good faith
6 effort to comply with the order. In determining whether to
7 revoke probation or parole, the court or parole board shall con-
8 sider the defendant's employment status, earning ability, finan-
9 cial resources, the willfulness of the defendant's failure to
10 pay, and any other special circumstances that may have a bearing
11 on the defendant's ability to pay.

12 (15) A defendant who is required to pay restitution and who
13 is not in willful default of the payment of the restitution may
14 at any time petition the sentencing judge or his or her successor
15 for a cancellation of any unpaid portion of restitution. If it
16 appears to the satisfaction of the court that payment of the
17 amount due will impose a manifest hardship on the defendant or
18 his or her immediate family, the court may cancel all or part of
19 the amount due in restitution or modify the method of payment.

20 (16) An order of restitution ~~to a victim or victim's~~
21 ~~estate~~ may be enforced by the prosecuting attorney, ~~or~~ a
22 victim, ~~or~~ A victim's estate, OR ANY OTHER PERSON named in the
23 order to receive the restitution in the same manner as a judgment
24 in a civil action.

25 (17) Notwithstanding any other provision of this section, a
26 defendant shall not be imprisoned, jailed, or incarcerated for a
27 violation of probation or parole or otherwise, for failure to

1 pay restitution as ordered under this section unless the court or
2 parole board determines that the defendant has the resources to
3 pay the ordered restitution and has not made a good faith effort
4 to do so

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

23 Sec 44 (1) For purposes of this section only

24 (a) "Offense means a violation of a penal law of this state
25 or a violation of an ordinance of a local unit of government of
26 this state punishable by imprisonment or by a fine that is not a
27 civil fine

1 (b) Victim means an individual who suffers direct or
2 threatened physical, financial, or emotional harm as a result of
3 the commission of an offense For purposes of subsections (2),
4 (3), (4), (7), (9), (10), (11), and (15), victim includes a sole
5 proprietorship, partnership, corporation, association, governmen-
6 tal entity, or ANY other legal entity that suffers direct phys-
7 cal or financial harm as a result of ~~the commission of~~ an
8 offense

9 (2) Except as provided in this section and section 45, the
10 court at the dispositional hearing for ~~a juvenile~~ AN offense
11 shall order, in addition to or in lieu of any other disposition
12 authorized by law, that the juvenile make full or partial resti-
13 tution to any victim of the juvenile s course of conduct that
14 gives rise to the disposition or to the victim s estate

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

18 (4) If ~~a juvenile~~ AN offense results in damage to or loss
19 or destruction of property of a victim of the offense or results
20 in the seizure or impoundment of property of a victim of the
21 offense, the order of restitution may require that the juvenile
22 do 1 or more of the following

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
27 the greater of subparagraph (1) or (11) less the value,

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

3 (1) The value of the property on the date of the damage,
4 loss, or destruction

5 (11) The value of the property on the date of disposition

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

7 (5) If ~~a juvenile~~ AN offense results in physical or psy-
8 chological injury to a victim, the order of restitution may
9 require that the juvenile do 1 or more of the following, as
10 applicable

11 (a) Pay an amount equal to the cost of actual medical and
12 related professional services and devices relating to physical
13 and psychological care

14 (b) Pay an amount equal to the cost of actual physical and
15 occupational therapy and rehabilitation

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

19 (d) Pay an amount equal to the cost of psychological and
20 medical treatment for members of the victim's family that has
21 been incurred as a result of the offense

22 (e) Pay an amount equal the costs of actual homemaking and
23 child care expenses incurred as a result of the offense

24 (6) If ~~a juvenile~~ AN offense resulting in bodily injury
25 also results in the death of a victim, the order of restitution
26 may require that the juvenile pay an amount equal to the cost of
27 actual funeral and related services

1 (7) Instead of restitution under subsections (4) to (6), if
2 the victim or victim's estate consents, the order of restitution
3 may require that the juvenile make restitution in services in
4 lieu of money, or make restitution to a person designated by the
5 victim or victim's estate if that person provided services to the
6 victim as a result of the offense AS USED IN THIS SUBSECTION
7 AND SUBSECTION (15), "PERSON" INCLUDES A SHELTER PROGRAM FOR VIC-
8 TIMS OF DOMESTIC VIOLENCE AND THEIR DEPENDENT CHILDREN ESTAB-
9 LISHED UNDER ACT NO 389 OF THE PUBLIC ACTS OF 1978, BEING
10 SECTIONS 400 1501 TO 400 1510 OF THE MICHIGAN COMPILED LAWS, OR
11 SIMILAR COMMUNITY SERVICE PROGRAM

12 (8) If the court orders restitution under this section, the
13 court shall if the victim is deceased order that the restitu-
14 tion be made to the victim's estate

15 (9) Any order of restitution shall be as fair as possible to
16 the victim or victim's estate without unduly complicating or pro-
17 longing the disposition process

18 (10) Except as otherwise provided in this section and
19 section 45 the court shall order restitution to the crime vic-
20 tims compensation board or to any individuals, partnerships, cor-
21 porations, associations, governmental entities or ~~any~~ other
22 legal entities that have compensated the victim or THE victim's
23 estate for a loss incurred by the victim to the extent of the
24 compensation paid for that loss However, an order of restitu-
25 tion shall require that all restitution to a victim or victim's
26 estate under the order be made before any restitution to any
27 other person under that order is made The court shall not order

1 restitution to be paid to a victim or victim's estate if the
2 victim or victim's estate has received or is to receive compensa-
3 tion for that loss

4 (11) 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 victims compensation board made after an order of
10 restitution under this section

11 (12) If not otherwise provided by the court under this sub-
12 section, restitution shall be made immediately. However, the
13 court may require that the juvenile make restitution under this
14 section within a specified period or in specified installments.
15 The end of the period or the last installment shall not be later
16 than the following

17 (a) The end of the period of probation if probation is
18 ordered

19 (b) If the juvenile is made a state ward when the depart-
20 ment of social services jurisdiction over the juvenile expires

21 (c) If the juvenile is made a ward of the court, when the
22 court's jurisdiction over the juvenile expires

23 (d) Three years after the date of disposition or when the
24 court's jurisdiction over the juvenile expires, whichever is
25 later

26 (13) If the juvenile is placed on probation, any restitution
27 ordered under this section shall be a condition of that

1 probation The court may revoke probation if the juvenile fails
2 to comply with the order and if the juvenile has not made a good
3 faith effort to comply with the order In determining whether to
4 revoke probation, the court shall consider the juvenile's employ-
5 ment status, earning ability, financial resources, the willful-
6 ness of the juvenile's failure to pay, and any other special cir-
7 cumstances that may have a bearing on the juvenile s ability to
8 pay

9 (14) A juvenile who is required to pay restitution and who
10 is not in willful default of the payment of the restitution may
11 at any time petition the court for a cancellation of any unpaid
12 portion of restitution If it appears to the satisfaction of the
13 court that payment of the amount due will impose a manifest hard-
14 ship on the juvenile or his or her immediate family, the court
15 may cancel all or part of the amount due in restitution or modify
16 the method of payment

17 (15) An order of restitution may be enforced by the prose-
18 cuting attorney, ~~or~~ a victim, ~~or~~ A victim's estate, OR ANY
19 OTHER PERSON named in the order to receive the restitution in the
20 same manner as a judgment in a civil action

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

1 (17) If the court determines that the juvenile is or will be
2 unable to pay all of the restitution ordered, after notice to the
3 juvenile's parent OR PARENTS and an opportunity for the parent OR
4 PARENTS to be heard, the court may order the parent or parents
5 having supervisory responsibility for the juvenile at the time of
6 the acts upon which an order of restitution is based to pay not
7 more than \$5,000 00 of the restitution ordered As used in this
8 subsection, 'parent" does not include a foster parent

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

17 (19) A parent who has been ordered to pay restitution under
18 subsection (17) may petition the court for a modification of the
19 amount of restitution owed or for a cancellation of any unpaid
20 portion of the restitution The court shall cancel all or part
21 of the amount of restitution due, if it appears to the satisfac-
22 tion of the court that payment of the amount due will impose a
23 manifest hardship on the parent

24 (20) In each case in which payment of restitution is ordered
25 as a condition of probation, the juvenile caseworker or probation
26 officer assigned to the case shall review the case not less than
27 twice yearly to ensure that restitution is being paid as

1 ordered The final review shall be conducted not less than 60
2 days before the expiration of the probationary period If the
3 juvenile caseworker or probation officer determines the restitu-
4 tion is not being paid as ordered, the juvenile caseworker or
5 probation officer shall file a written report of the violation
6 with the court on a form prescribed by the state court adminis-
7 trative office The report shall include a statement of the
8 amount of the arrearage, and any reasons for the arrearage that
9 are known by the juvenile caseworker or probation officer The
10 juvenile caseworker or probation officer shall immediately pro-
11 vide a copy of the report to the prosecuting attorney If a
12 motion is filed or other proceedings are initiated to enforce
13 payment of restitution and the court determines that restitution
14 is not being paid or has not been paid as ordered by the court,
15 the court shall promptly take action necessary to compel
16 compliance

17 (21) A court shall not order a juvenile to pay restitution
18 under this section in an amount that exceeds 30% of the
19 juvenile's net income per pay period from the juvenile's paid
20 employment

21 Sec 76 (1) As used in this section

22 (a) "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 For purposes of subsections
25 (2), (3), (4), (7), (9), (10), (11), and (15), victim includes a
26 sole proprietorship, partnership, corporation, association,

1 governmental entity, or any other legal entity that suffers
2 direct physical or financial harm as a result of a misdemeanor

3 (b) "Misdemeanor" means a violation of a law of this state,
4 or of a local ordinance, that is punishable by imprisonment for
5 not more than 1 year or by a fine that is not a civil fine, but
6 is not a felony

7 (2) Except as provided in this section, the court, when sen-
8 tencing a defendant convicted of a misdemeanor, shall order, in
9 addition to or in lieu of any other penalty authorized by law ~~—~~
10 or in addition to any other penalty required by law, that the
11 defendant make full or partial restitution to any victim of the
12 defendant's course of conduct that gives rise to the conviction,
13 or to the victim's estate

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

17 (4) If a misdemeanor results in damage to or loss or
18 destruction of property of a victim of the ~~—offense—~~ MISDEMEANOR,
19 or results in the seizure or impoundment of property of a victim
20 of the ~~—offense—~~ MISDEMEANOR, the order of restitution may
21 require that the defendant do 1 or more of the following

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

24 (b) If return of the property under subdivision (a) is
25 impossible, impractical, or inadequate, pay an amount equal to
26 the greater of subparagraph (1) or (11), less the value,

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

3 (1) The value of the property on the date of the damage,
4 loss, or destruction

5 (11) The value of the property on the date of sentencing

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

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

10 (a) Pay an amount equal to the cost of ~~the victim's~~ actual
11 medical and related professional services and devices relating to
12 physical ~~or~~ AND psychological care

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

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

18 (d) Pay an amount equal to the cost of psychological and
19 medical treatment for members of the victim s family that has
20 been incurred as a result of the ~~offense~~ MISDEMEANOR

21 (e) Pay an amount equal to the costs of actual homemaking
22 and child care expenses incurred as a result of the ~~offense~~
23 MISDEMEANOR

24 (6) If a misdemeanor resulting in bodily injury also results
25 in the death of a victim, the order of restitution may require
26 that the defendant pay an amount equal to the cost of actual
27 funeral and related services

1 (7) Instead of restitution under subsections (4) to (6) if
2 the victim or victim's estate consents, the order of restitution
3 may require that the defendant make restitution in services in
4 lieu of money, or make restitution to a person designated by the
5 victim or victim's estate if that person provided services to the
6 victim as a result of the misdemeanor AS USED IN THIS SUBSEC-
7 TION AND SUBSECTION (15), "PERSON" INCLUDES A SHELTER PROGRAM FOR
8 VICTIMS OF DOMESTIC VIOLENCE AND THEIR DEPENDENT CHILDREN ESTAB-
9 LISHED UNDER ACT NO 389 OF THE PUBLIC ACTS OF 1978, BEING
10 SECTIONS 400 1501 TO 400 1510 OF THE MICHIGAN COMPILED LAWS, OR
11 SIMILAR COMMUNITY SERVICE PROGRAM

12 (8) If the court orders restitution under this section, the
13 court shall, if the victim is deceased, order that the restitu-
14 tion be made to the victim's estate

15 (9) Any order of restitution shall be as fair as possible to
16 the victim or victim's estate without unduly complicating or pro-
17 longing the sentencing process

18 (10) Except as otherwise provided in this section, the court
19 shall order restitution to the crime victims compensation board
20 or to any individuals, partnerships corporations, associations,
21 governmental entities, or ~~any~~ other legal entities that have
22 compensated the victim or THE victim's estate for a loss incurred
23 by the victim to the extent of the compensation paid for that
24 loss However, an order of restitution shall require that all
25 restitution to a victim or victim's estate under the order be
26 made before any restitution to any other person under that order
27 is made The court shall not order restitution to be paid to a

1 victim or victim's estate if the victim or victim's estate has
2 received or is to receive compensation for that loss

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

10 (12) If not otherwise provided by the court under this sub-
11 section, restitution shall be made immediately. However, the
12 court may require that the defendant make restitution under this
13 section within a specified period or in specified installments.
14 The end of the period or the last installment shall not be later
15 than the following

16 (a) The end of the period of probation, if probation is
17 ordered

18 (b) Two years after the end of imprisonment, if the court
19 does not order probation but imposes a term of imprisonment

20 (c) Three years after the date of sentencing in any other
21 case

22 (13) If the defendant is placed on probation, any restitu-
23 tion ordered under this section shall be a condition of that
24 probation. The court may revoke probation if the defendant fails
25 to comply with the order and if the defendant has not made a good
26 faith effort to comply with the order. In determining whether to
27 revoke probation, the court shall consider the defendant's

1 employment status, earning ability, financial resources, the
2 willfulness of the defendant s failure to pay, and any other spe-
3 cial circumstances that may have a bearing on the defendant s
4 ability to pay

5 (14) A defendant who is required to pay restitution and who
6 is not in willful default of the payment of the restitution may
7 at any time petition the sentencing judge or his or her successor
8 for a cancellation of any unpaid portion of restitution If it
9 appears to the satisfaction of the court that payment of the
10 amount due will impose a manifest hardship on the defendant or
11 his or her immediate family, the court may cancel all or part of
12 the amount due in restitution or modify the method of payment

13 (15) An order of restitution may be enforced by the prose-
14 cuting attorney, ~~or~~ a victim, ~~or~~ A victim's estate, OR ANY
15 OTHER PERSON named in the order to receive restitution in the
16 same manner as a judgment in a civil action

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

23 (17) In each case in which payment of restitution is ordered
24 as a condition of probation, the probation officer assigned to
25 the case shall review the case not less than twice yearly to
26 ensure that restitution is being paid as ordered The final
27 review shall be conducted not less than 60 days before the

1 expiration of the probationary period If the probation officer
2 determines that restitution is not being paid as ordered, the
3 probation officer shall file a written report of the violation
4 with the court on a form prescribed by the state court adminis-
5 trative office The report shall include a statement of the
6 amount of the arrearage, and any reasons for the arrearage that
7 are known by the probation officer The probation officer shall
8 immediately provide a copy of the report to the prosecuting
9 attorney If a motion is filed or other proceedings are initi-
10 ated to enforce payment of restitution and the court determines
11 that restitution is not being paid or has not been paid as
12 ordered by the court, the court shall promptly take action neces-
13 sary to compel compliance

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