

SENATE BILL NO. 781

October 30, 1997, Introduced by Senators VAN REGENMORTER,
CHERRY, DINGELL, BYRUM, YOUNG, NORTH, MC MANUS, STEIL
and SHUGARS and referred to the Committee on Judiciary.

A bill to amend 1985 PA 87, entitled
"Crime victim's rights act,"
by amending sections 16 and 76 (MCL 780.766 and 780.826), as
amended by 1996 PA 562.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16. (1) For purposes of this section only, "victim"
2 means an individual who suffers direct or threatened physical,
3 financial, or emotional harm as a result of the commission of a
4 crime. For purposes of subsections (2), (3), (6), (8), (9), and
5 (13), victim includes a sole proprietorship, partnership, corpo-
6 ration, association, governmental entity, or any other legal
7 entity that suffers direct physical or financial harm as a result
8 of a crime.

9 (2) Except as provided in subsection (8), when sentencing a
10 defendant convicted of a crime, the court shall order, in

1 addition to or in lieu of any other penalty authorized by law or
2 in addition to any other penalty required by law, that the
3 defendant make full restitution to any victim of the defendant's
4 course of conduct that gives rise to the conviction or to the
5 victim's estate.

6 (3) If a crime results in damage to or loss or destruction
7 of property of a victim of the crime — or results in the sei-
8 zure or impoundment of property of a victim of the crime, the
9 order of restitution may require that the defendant do 1 or more
10 of the following, as applicable:

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

13 (b) If return of the property under subdivision (a) is
14 impossible, impractical, or inadequate, pay an amount equal to
15 the greater of subparagraph (i) or (ii), less the value, deter-
16 mined as of the date the property is returned, of that property
17 or any part of the property that is returned:

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

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

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

22 (4) If a crime results in physical or psychological injury
23 to a victim, the order of restitution may require that the
24 defendant do 1 or more of the following, as applicable:

25 (a) Pay an amount equal to the cost of actual medical and
26 related professional services and devices relating to physical
27 and psychological care.

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

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

6 (d) Pay an amount equal to the cost of psychological and
7 medical treatment for members of the victim's family that has
8 been incurred as a result of the crime.

9 (e) Pay an amount equal to the costs of actual homemaking
10 and child care expenses incurred as a result of the crime.

11 (5) If a crime resulting in bodily injury also results in
12 the death of a victim, the order of restitution may require that
13 the defendant pay an amount equal to the cost of actual funeral
14 and related services.

15 (6) If the victim or victim's estate consents, the order of
16 restitution may require that the defendant make restitution in
17 services in lieu of money.

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

20 (8) The court shall order restitution to the crime ~~victims~~
21 ~~compensation board~~ VICTIM SERVICES COMMISSION or to any individ-
22 uals, partnerships, corporations, associations, governmental
23 entities, or other legal entities that have compensated the
24 victim or the victim's estate for a loss incurred by the victim
25 to the extent of the compensation paid for that loss. The court
26 shall also order restitution for the costs of services provided
27 to persons or entities that have provided services to the victim

1 as a result of the crime. Services that are subject to
2 restitution under this subsection include, but are not limited
3 to, shelter, food, clothing, and transportation. However, an
4 order of restitution shall require that all restitution to a
5 victim or victim's estate under the order be made before any res-
6 titution to any other person or entity under that order is made.
7 The court shall not order restitution to be paid to a victim or
8 victim's estate if the victim or victim's estate has received or
9 is to receive compensation for that loss, and the court shall
10 state on the record with specificity the reasons for its action.
11 If an entity entitled to restitution under this subsection for
12 compensating the victim or the victim's estate cannot or refuses
13 to be reimbursed for that compensation, the restitution paid for
14 that entity shall be deposited BY THE STATE TREASURER in the
15 crime victim's rights ~~assessment~~ fund CREATED UNDER SECTION 4
16 OF 1989 PA 196, MCL 780.904, or its successor fund.

17 (9) Any amount paid to a victim or victim's estate under an
18 order of restitution shall be set off against any amount later
19 recovered as compensatory damages by the victim or the victim's
20 estate in any federal or state civil proceeding and shall reduce
21 the amount payable to a victim or a victim's estate by an award
22 from the crime ~~victims compensation board~~ VICTIM SERVICES
23 COMMISSION made after an order of restitution under this
24 section.

25 (10) If not otherwise provided by the court under this sub-
26 section, restitution shall be made immediately. However, the

1 court may require that the defendant make restitution under this
2 section within a specified period or in specified installments.

3 (11) If the defendant is placed on probation or paroled OR
4 THE COURT IMPOSES A CONDITIONAL SENTENCE AS PROVIDED IN SECTION 3
5 OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL
6 769.3, any restitution ordered under this section shall be a con-
7 dition of that probation, ~~or~~ parole, OR SENTENCE. The court
8 may revoke probation OR IMPOSE IMPRISONMENT UNDER THE CONDITIONAL
9 SENTENCE and the parole board may revoke parole if the defendant
10 fails to comply with the order and if the defendant has not made
11 a good faith effort to comply with the order. In determining
12 whether to revoke probation or parole OR IMPOSE IMPRISONMENT, the
13 court or parole board shall consider the defendant's employment
14 status, earning ability, AND financial resources, the willfulness
15 of the defendant's failure to pay, and any other special circum-
16 stances that may have a bearing on the defendant's ability to
17 pay.

18 (12) A defendant who is required to pay restitution and who
19 is not in willful default of the payment of the restitution may
20 at any time petition the sentencing judge or his or her successor
21 to modify the method of payment. If the court determines that
22 payment under the order will impose a manifest hardship on the
23 defendant or his or her immediate family, the court may modify
24 the method of payment.

25 (13) An order of restitution entered under this section
26 remains effective until it is satisfied in full. An order of
27 restitution is a judgment and lien against all property of the

1 defendant for the amount specified in the order of restitution.
2 The lien may be recorded as provided by law. An order of resti-
3 tution may be enforced by the prosecuting attorney, a victim, a
4 victim's estate, or any other person or entity named in the order
5 to receive the restitution in the same manner as a judgment in a
6 civil action or a lien.

7 (14) Notwithstanding any other provision of this section, a
8 defendant shall not be imprisoned, jailed, or incarcerated for a
9 violation of probation or parole ~~—~~ or otherwise ~~—~~ for failure
10 to pay restitution as ordered under this section unless the court
11 or parole board determines that the defendant has the resources
12 to pay the ordered restitution and has not made a good faith
13 effort to do so.

14 (15) In each case in which payment of restitution is ordered
15 as a condition of probation, the probation officer assigned to
16 the case shall review the case not less than twice yearly to
17 ensure that restitution is being paid as ordered. The final
18 review shall be conducted not less than 60 days before the
19 ~~expiration of the~~ probationary period EXPIRES. If the proba-
20 tion officer determines that restitution is not being paid as
21 ordered, the probation officer shall file a written report of the
22 violation with the court on a form prescribed by the state court
23 administrative office. The report shall include a statement of
24 the amount of the arrearage ~~—~~ and any reasons for the arrearage
25 ~~that are~~ known by the probation officer. The probation officer
26 shall immediately provide a copy of the report to the prosecuting
27 attorney. If a motion is filed or other proceedings are

1 initiated to enforce payment of restitution and the court
2 determines that restitution is not being paid or has not been
3 paid as ordered by the court, the court shall promptly take
4 action necessary to compel compliance.

5 (16) If a defendant who is ordered to pay restitution under
6 this section is remanded to the jurisdiction of the department of
7 corrections, the court shall provide a copy of the order of res-
8 titution to the department of corrections when the defendant is
9 remanded to the department's jurisdiction.

10 Sec. 76. (1) ~~As used in~~ FOR PURPOSES OF this section
11 ONLY:

12 (a) "Misdemeanor" means a violation of a law of this state
13 ~~—, or of~~ a local ordinance ~~—~~ that is punishable by imprison-
14 ment for not more than 1 year or a fine that is not a civil fine,
15 but that is not a felony.

16 (b) "Victim" means an individual who suffers direct or
17 threatened physical, financial, or emotional harm as a result of
18 the commission of a misdemeanor. For purposes of subsections
19 (2), (3), (6), (8), (9), and (13), victim includes a sole propri-
20 etorship, partnership, corporation, association, governmental
21 entity, or any other legal entity that suffers direct physical or
22 financial harm as a result of a misdemeanor.

23 (2) Except as provided in subsection (8), when sentencing a
24 defendant convicted of a misdemeanor, the court shall order, in
25 addition to or in lieu of any other penalty authorized by law or
26 in addition to any other penalty required by law, that the
27 defendant make full restitution to any victim of the defendant's

1 course of conduct that gives rise to the conviction or to the
2 victim's estate.

3 (3) If a misdemeanor results in damage to or loss or
4 destruction of property of a victim of the misdemeanor ~~—~~ or
5 results in the seizure or impoundment of property of a victim of
6 the misdemeanor, the order of restitution may require that the
7 defendant do 1 or more of the following, as applicable:

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

10 (b) If return of the property under subdivision (a) is
11 impossible, impractical, or inadequate, pay an amount equal to
12 the greater of subparagraph (i) or (ii), less the value, deter-
13 mined as of the date the property is returned, of that property
14 or any part of the property that is returned:

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

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

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

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

22 (a) Pay an amount equal to the cost of actual medical and
23 related professional services and devices relating to physical
24 and psychological care.

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

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

4 (d) Pay an amount equal to the cost of psychological and
5 medical treatment for members of the victim's family that has
6 been incurred as a result of the misdemeanor.

7 (e) Pay an amount equal to the costs of actual homemaking
8 and child care expenses incurred as a result of the misdemeanor.

9 (5) If a misdemeanor resulting in bodily injury also results
10 in the death of a victim, the order of restitution may require
11 that the defendant pay an amount equal to the cost of actual
12 funeral and related services.

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

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

18 (8) The court shall order restitution to the crime ~~victims~~
19 ~~compensation board~~ VICTIM SERVICES COMMISSION or to any individ-
20 uals, partnerships, corporations, associations, governmental
21 entities, or other legal entities that have compensated the
22 victim or the victim's estate for a loss incurred by the victim
23 to the extent of the compensation paid for that loss. The court
24 shall also order restitution for the costs of services provided
25 to persons or entities that have provided services to the victim
26 as a result of the misdemeanor. Services that are subject to
27 restitution under this subsection include, but are not limited

1 to, shelter, food, clothing, and transportation. However, an
2 order of restitution shall require that all restitution to a
3 victim or victim's estate under the order be made before any res-
4 titution to any other person or entity under that order is made.
5 The court shall not order restitution to be paid to a victim or
6 victim's estate if the victim or victim's estate has received or
7 is to receive compensation for that loss, and the court shall
8 state on the record with specificity the reasons for its action.
9 If an entity entitled to restitution under this subsection for
10 compensating the victim or the victim's estate cannot or refuses
11 to be reimbursed for that compensation, the restitution paid for
12 that entity shall be deposited BY THE STATE TREASURER in the
13 crime victim's rights ~~assessment~~ fund CREATED UNDER SECTION 4
14 OF 1989 PA 196, MCL 780.904, or its successor fund.

15 (9) Any amount paid to a victim or victim's estate under an
16 order of restitution shall be set off against any amount later
17 recovered as compensatory damages by the victim or the victim's
18 estate in any federal or state civil proceeding and shall reduce
19 the amount payable to a victim or a victim's estate by an award
20 from the crime ~~victims compensation board~~ VICTIM SERVICES
21 COMMISSION made after an order of restitution under this
22 section.

23 (10) If not otherwise provided by the court under this sub-
24 section, restitution shall be made immediately. However, the
25 court may require that the defendant make restitution under this
26 section within a specified period or in specified installments.

1 (11) If the defendant is placed on probation OR THE COURT
2 IMPOSES A CONDITIONAL SENTENCE AS PROVIDED IN SECTION 3 OF
3 CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL
4 769.3, any restitution ordered under this section shall be a con-
5 dition of that probation OR SENTENCE. The court may revoke pro-
6 bation OR IMPOSE IMPRISONMENT UNDER THE CONDITIONAL SENTENCE if
7 the defendant fails to comply with the order and if the defendant
8 has not made a good faith effort to comply with the order. In
9 determining whether to revoke probation OR IMPOSE IMPRISONMENT,
10 the court shall consider the defendant's employment status, earn-
11 ing ability, AND financial resources, the willfulness of the
12 defendant's failure to pay, and any other special circumstances
13 that may have a bearing on the defendant's ability to pay.

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

21 (13) An order of restitution entered under this section
22 remains effective until it is satisfied in full. An order of
23 restitution is a judgment and lien against all property of the
24 defendant for the amount specified in the order of restitution.
25 The lien may be recorded as provided by law. An order of resti-
26 tution may be enforced by the prosecuting attorney, a victim, a
27 victim's estate, or any other person or entity named in the order

1 to receive restitution in the same manner as a judgment in a
2 civil action or a lien.

3 (14) Notwithstanding any other provision of this section, a
4 defendant shall not be imprisoned, jailed, or incarcerated for a
5 violation of probation ~~—~~ or otherwise ~~—~~ for failure to pay
6 restitution as ordered under this section unless the court deter-
7 mines that the defendant has the resources to pay the ordered
8 restitution and has not made a good faith effort to do so.

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

1 (16) If the court determines that a defendant who is ordered
2 to pay restitution under this section is remanded to the
3 jurisdiction of the department of corrections, the court shall
4 provide a copy of the order of restitution to the department of
5 corrections when the court determines that the defendant is
6 remanded to the department's jurisdiction.

7 Enacting section 1. This amendatory act does not take
8 effect unless Senate Bill No. 780
9 of the 89th Legislature is enacted into
10 law.