

HOUSE BILL No. 5331

October 30, 1997, Introduced by Reps. Bankes, Law, Leland, Hale and Kelly and referred to the Committee on Appropriations.

A bill to amend 1985 PA 87, entitled
"Crime victim's rights act,"
by amending sections 2, 6, 13a, 20a, 31, 36, 41a, and 48 (MCL
780.752, 780.756, 780.763a, 780.770a, 780.781, 780.786, 780.791a,
and 780.798), sections 2, 6, and 36 as amended and sections 13a,
20a, and 41a as added by 1993 PA 341, section 31 as amended by
1996 PA 82, and section 48 as amended by 1996 PA 105.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (A) "COUNTY JUVENILE AGENCY" MEANS THAT TERM AS DEFINED IN
3 SECTION 2 OF THE COUNTY JUVENILE AGENCY ACT.

4 (B) ~~—(a)—~~ "Crime" means a violation of a penal law of this
5 state for which the offender, upon conviction, may be punished by
6 imprisonment for more than 1 year ~~—~~, or an offense expressly
7 designated by law ~~to be~~ AS a felony.

1 (C) ~~-(b)-~~ "Defendant" means a person charged with or
2 convicted of ~~having committed~~ COMMITTING a crime against a
3 victim.

4 (D) ~~-(e)-~~ "Final disposition" means the ultimate termination
5 of the criminal prosecution of a defendant including, but not
6 limited to, dismissal, acquittal, or imposition of sentence by
7 the court.

8 (E) ~~-(d)-~~ "Juvenile" means a person within the jurisdiction
9 of the circuit court under section 606 of the revised judicature
10 act of 1961, ~~Act No. 236 of the Public Acts of 1961, being sec-~~
11 ~~tion 600.606 of the Michigan Compiled Laws~~ 1961 PA 236, MCL
12 600.606, or ~~within the jurisdiction of~~ the recorder's court of
13 the city of Detroit under section 10a(1)(c) of ~~Act No. 369 of~~
14 ~~the Public Acts of 1919, being section 725.10a of the Michigan~~
15 ~~Compiled Laws~~ 1919 PA 369, MCL 725.10A.

16 (F) ~~-(e)-~~ "Juvenile facility" means a county facility,
17 institution operated as an agency of the county or the ~~juvenile-~~
18 FAMILY division of ~~the probate~~ CIRCUIT court, or ~~a state~~ AN
19 institution or agency described in the youth rehabilitation serv-
20 ices act, ~~Act No. 150 of the Public Acts of 1974, being sections~~
21 ~~803.301 to 803.309 of the Michigan Compiled Laws~~ 1974 PA 150,
22 MCL 803.301 TO 803.309, to which a juvenile has been committed or
23 in which a juvenile is detained.

24 (G) ~~-(f)-~~ "Person" means an individual, organization, part-
25 nership, corporation, or governmental entity.

26 (H) ~~-(g)-~~ "Prisoner" means a person who has been convicted
27 and sentenced to imprisonment or placement in a juvenile facility

1 for having committed a crime or an act that would be a crime if
2 committed by an adult against a victim.

3 (I) ~~-(h)-~~ "Prosecuting attorney" means the prosecuting
4 attorney for a county, an assistant prosecuting attorney for a
5 county, the attorney general, the deputy attorney general, an
6 assistant attorney general, or a special prosecuting attorney.

7 (J) ~~-(i)-~~ "Victim", except as otherwise defined in this
8 article, means any of the following:

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

12 (ii) The following individuals other than the defendant if
13 the victim is deceased:

14 (A) The spouse of the deceased victim.

15 (B) A child of the deceased victim if the child is 18 years
16 of age or older and sub-subparagraph (A) does not apply.

17 (C) A parent of a deceased victim if sub-subparagraphs (A)
18 and (B) do not apply.

19 (D) The guardian or custodian of a child of a deceased
20 victim if the child is less than 18 years of age and
21 sub-subparagraphs (A) to (C) do not apply.

22 (E) A sibling of the deceased victim if sub-subparagraphs
23 (A) to (D) do not apply.

24 (F) A grandparent of the deceased victim if
25 sub-subparagraphs (A) to (E) do not apply.

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

4 (iv) A parent, guardian, or custodian of a victim who is
5 mentally or emotionally unable to participate in the legal
6 process.

7 (2) If a victim as defined in subsection (1)(i)(i) is physi-
8 cally or emotionally unable to exercise the privileges and rights
9 under this article, the victim may designate his or her spouse,
10 ~~or a~~ child 18 years of age or older, parent, sibling, or grand-
11 parent ~~of the victim~~ to act in HIS OR HER place ~~of the victim~~
12 ~~during the duration of~~ WHILE the physical or emotional disabil-
13 ity CONTINUES. The victim shall provide the prosecuting attorney
14 with the name of the person who is to act in HIS OR HER place.
15 ~~of the victim.~~ During the physical or emotional disability,
16 notices to be provided under this article to the victim shall
17 continue to be sent only to the victim.

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

23 (a) A brief statement of the procedural steps in the pro-
24 cessing of a criminal case.

25 (b) A specific list of the rights and procedures under this
26 article.

1 (c) Details and eligibility requirements under ~~Act No. 223~~
2 ~~of the Public Acts of 1976, being sections 18.351 to 18.368 of~~
3 ~~the Michigan Compiled Laws~~ 1976 PA 223, MCL 18.351 TO 18.368.

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

6 (e) The person to contact for further information.

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

10 (3) Before finalizing any negotiation that may result in a
11 dismissal, plea or sentence bargain, or pretrial diversion, the
12 prosecuting attorney shall offer the victim the opportunity to
13 consult with the prosecuting attorney to obtain the VICTIM'S
14 views ~~of the victim~~ about the disposition of the prosecution
15 for the crime, including the victim's views about dismissal, plea
16 or sentence negotiations, and pretrial diversion programs.

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

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

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

1 (c) The ~~department of social services~~ FAMILY INDEPENDENCE
2 AGENCY OR COUNTY JUVENILE AGENCY AS THE PROSECUTING ATTORNEY
3 DIRECTS if the defendant is held in a juvenile facility.

4 Sec. 13a. When a defendant is sentenced to a term of
5 imprisonment or ordered to be placed in a juvenile facility, the
6 prosecuting attorney shall provide the victim with a form the
7 victim may submit to receive the notices provided for under
8 section 19 or 20a. The form shall include the address of the
9 department of corrections, the sheriff, ~~or the department of~~
10 ~~social services~~ THE FAMILY INDEPENDENCE AGENCY, OR THE COUNTY
11 JUVENILE AGENCY, as applicable, to which the form may be sent.

12 Sec. 20a. (1) Upon A VICTIM'S written request, ~~of a victim~~
13 ~~of a crime,~~ the ~~department of social services~~ FAMILY INDEPEN-
14 DENCE AGENCY OR COUNTY JUVENILE AGENCY, AS APPLICABLE, shall make
15 a good faith effort to notify the victim before either of the
16 following occurs:

17 (a) A juvenile is dismissed from court jurisdiction or dis-
18 charged from ~~the department of social services jurisdiction~~
19 COMMITMENT TO THE FAMILY INDEPENDENCE AGENCY OR COUNTY JUVENILE
20 AGENCY.

21 (b) A juvenile is transferred from a secure juvenile facil-
22 ity to a nonsecure juvenile facility.

23 (2) If the ~~department of social services~~ FAMILY INDEPEN-
24 DENCE AGENCY OR COUNTY JUVENILE AGENCY is not successful in noti-
25 fying the victim before an event described in subsection ~~(1)(a)~~
26 ~~or (b)~~ (1) occurs, ~~the department of social services~~ IT shall
27 notify the victim as soon as possible after ~~the occurrence of~~

1 ~~the~~ THAT event ~~described in subsection (1)(a) or (b)~~ OCCURS by
2 any means reasonably calculated to give prompt actual notice.

3 (3) Upon the victim's written request, the ~~department of~~
4 ~~social services~~ FAMILY INDEPENDENCE AGENCY OR COUNTY JUVENILE
5 AGENCY, AS APPLICABLE, shall give to the victim notice of a
6 juvenile's escape. A victim who requests notice of an escape
7 shall be given immediate notice of the escape by any means rea-
8 sonably calculated to give prompt actual notice. If the escape
9 occurs before the juvenile is delivered to the ~~department of~~
10 ~~social services~~ FAMILY INDEPENDENCE AGENCY OR COUNTY JUVENILE
11 AGENCY, the agency in charge of the juvenile's detention shall
12 give notice of the escape to the ~~department of social services~~
13 FAMILY INDEPENDENCE AGENCY OR COUNTY JUVENILE AGENCY, which shall
14 then give notice of the escape to the victim who requested
15 notice.

16 Sec. 31. (1) As used in this article:

17 (A) "COUNTY JUVENILE AGENCY" MEANS THAT TERM AS DEFINED IN
18 SECTION 2 OF THE COUNTY JUVENILE AGENCY ACT.

19 (B) ~~-(a)-~~ "Court" means the juvenile division of the probate
20 court.

21 (C) ~~-(b)-~~ "Juvenile" means ~~a child~~ AN INDIVIDUAL alleged
22 or found to be within the COURT'S jurisdiction ~~of the juvenile~~
23 ~~division of the probate court pursuant to~~ UNDER section 2(a)(1)
24 of chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
25 ~~section 712A.2 of the Michigan Compiled Laws~~ 1939 PA 288, MCL
26 712A.2, for an offense.

1 (D) ~~-(e)-~~ "Juvenile facility" means a county facility, an
2 institution operated as an agency of the county or the ~~-juvenile~~
3 ~~division of the probate court, or -a state-~~ AN institution or
4 agency described in the youth rehabilitation services act, ~~-Act~~
5 ~~No. 150 of the Public Acts of 1974, being sections 803.301 to~~
6 ~~803.309 of the Michigan Compiled Laws-~~ 1974 PA 150, MCL 803.301
7 TO 803.309, to which a juvenile has been committed or in which a
8 juvenile is detained.

9 (E) ~~-(d)-~~ "Offense" means 1 or more of the following:

10 (i) A violation of a penal law of this state for which a
11 juvenile offender, if convicted as an adult, may be punished by
12 imprisonment for more than 1 year ~~—~~ or an offense expressly
13 designated by law ~~to be-~~ AS a felony.

14 (ii) A violation of section 81, 81a, 115, 136b(5), 145a,
15 234, 235, 335a, or 411h of the Michigan penal code, ~~-Act No. 328~~
16 ~~of the Public Acts of 1931, being sections-~~ 1931 PA 328, MCL
17 750.81, 750.81a, 750.115, 750.136b, 750.145a, 750.234, 750.235,
18 750.335a, and 750.411h. ~~of the Michigan Compiled Laws.-~~

19 (iii) A violation of section 617a of the Michigan vehicle
20 code, ~~-Act No. 300 of the Public Acts of 1949, being section~~
21 ~~257.617a of the Michigan Compiled Laws-~~ 1949 PA 300, MCL
22 257.617A, or a violation of section 625 of ~~-Act No. 300 of the~~
23 ~~Public Acts of 1949, being section 257.625 of the Michigan~~
24 ~~Compiled Laws-~~ THAT ACT, MCL 257.625, if the violation involves
25 an accident resulting in damage to another individual's property
26 or physical injury or death to another individual.

1 (iv) Selling or furnishing alcoholic liquor to an individual
2 less than 21 years of age in violation of section 33 of the
3 Michigan liquor control act, ~~Act No. 8 of the Extra Session of~~
4 ~~the Public Acts of 1933, being section 436.33 of the Michigan~~
5 ~~Compiled Laws~~ 1933 (EX SESS) PA 8, MCL 436.33, if the violation
6 results in physical injury or death to any individual.

7 (v) A violation of section ~~80176 of part 801 (marine~~
8 ~~safety)~~ 80176(1) OR (3) of the natural resources and environmen-
9 tal protection act, ~~Act No. 451 of the Public Acts of 1994,~~
10 ~~being section 324.80176 of the Michigan Compiled Laws, operating~~
11 ~~a vessel while under the influence of or impaired by intoxicating~~
12 ~~liquor or a controlled substance, or with an unlawful blood alco-~~
13 ~~hol content~~ 1994 PA 451, MCL 324.80176, if the violation
14 involves an accident resulting in damage to another individual's
15 property or physical injury or death to any individual.

16 (vi) A violation of a local ordinance substantially corre-
17 sponding to a ~~violation~~ LAW enumerated in subparagraphs (i) to
18 (v).

19 (vii) A violation described in subparagraphs (i) to (vi)
20 that is subsequently reduced to a violation not included in sub-
21 paragraphs (i) to (vi).

22 (F) ~~(e)~~ "Person" means an individual, organization, part-
23 nership, corporation, or governmental entity.

24 (G) ~~(f)~~ "Prosecuting attorney" means the prosecuting
25 attorney for a county, an assistant prosecuting attorney for a
26 county, the attorney general, the deputy attorney general, an
27 assistant attorney general, a special prosecuting attorney, or in

1 connection with the prosecution of an ordinance violation, an
2 attorney for the political subdivision that enacted the ordinance
3 upon which the violation is based.

4 (H) ~~(g)~~ "Victim", except as otherwise defined in this
5 article, means any of the following:

6 (i) A person who suffers direct or threatened physical,
7 financial, or emotional harm as a result of the commission of an
8 offense, except as provided in subparagraph (ii), (iii), or
9 (iv).

10 (ii) The following individuals other than the juvenile
11 ~~offender~~ if the victim is deceased:

12 (A) The spouse of the deceased victim.

13 (B) A child of the deceased victim if the child is 18 years
14 of age or older and sub-subparagraph (A) does not apply.

15 (C) A parent of a deceased victim if sub-subparagraphs (A)
16 and (B) do not apply.

17 (D) The guardian or custodian of a child of a deceased
18 victim if the child is less than 18 years of age and
19 sub-subparagraphs (A) to (C) do not apply.

20 (E) A sibling of the deceased victim if sub-subparagraphs
21 (A) to (D) do not apply.

22 (F) A grandparent of the deceased victim if
23 sub-subparagraphs (A) to (E) do not apply.

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

1 (iv) A parent, guardian, or custodian of a victim who is
2 mentally or emotionally unable to participate in the legal
3 process.

4 (2) If a victim as defined in subsection (1)(g)(i) is physi-
5 cally or emotionally unable to exercise the privileges and rights
6 under this article, the victim may designate his or her spouse,
7 ~~or a~~ child 18 years of age or older, parent, sibling, or grand-
8 parent ~~of the victim~~ to act in HIS OR HER place ~~of the victim~~
9 ~~during the duration of~~ WHILE the physical or emotional disabil-
10 ity CONTINUES. The victim shall provide the prosecuting attorney
11 with the name of the person who is to act in HIS OR HER place.
12 ~~of the victim.~~ During the physical or emotional disability,
13 notices to be provided under this article to the victim shall
14 continue to be sent only to the victim.

15 Sec. 36. (1) Within 72 hours after the prosecuting attorney
16 files or submits a petition seeking to invoke the court's juris-
17 diction for ~~a juvenile~~ AN offense, the prosecuting attorney, or
18 ~~—~~ THE COURT pursuant to an agreement under section 48a, ~~the~~
19 ~~court~~ shall give to each victim a written notice in plain
20 English of each of the following:

21 (a) A brief statement of the procedural steps in the pro-
22 cessing of a juvenile offense case, including the fact that a
23 juvenile may be waived to the court of general criminal
24 jurisdiction.

25 (b) A specific list of the rights and procedures under this
26 article.

1 (c) Details and eligibility requirements under ~~Act No. 223~~
2 ~~of the Public Acts of 1976, being sections 18.351 to 18.368 of~~
3 ~~the Michigan Compiled Laws~~ 1976 PA 223, MCL 18.351 TO 18.368.

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

6 (e) The person to contact for further information.

7 (2) If ~~requested by~~ the victim REQUESTS, the prosecuting
8 attorney, or ~~—~~ THE COURT pursuant to an agreement under
9 section 48a, ~~the court~~ shall give ~~to~~ the victim notice of any
10 scheduled court proceedings and ~~notice of~~ any changes in that
11 schedule.

12 (3) If the juvenile has not already entered a plea of admis-
13 sion or no contest to the original charge at the preliminary
14 hearing, the prosecuting attorney shall offer the victim the
15 opportunity to consult with the prosecuting attorney to obtain
16 the victim's views about the disposition of the offense, includ-
17 ing the victim's views about dismissal, waiver, and pretrial
18 diversion programs, before finalizing any agreement to reduce the
19 original charge.

20 (4) Before placing a juvenile in a pretrial diversion pro-
21 gram for committing a violation that if committed by an adult
22 would be a crime or a serious misdemeanor, the court shall
23 ~~provide~~ GIVE the victim ~~with~~ an opportunity to be heard
24 regarding that placement. The victim has the right to make a
25 statement at the hearing ~~—~~ OR submit a written statement, or
26 both. As used in this subsection:

1 (a) "Crime" means that term as defined in section 2.

2 (b) "Serious misdemeanor" means that term as defined in
3 section 61.

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

8 (a) The prosecuting attorney, or the court if ~~the prosecut-~~
9 ~~ing attorney and the court have entered into~~ an agreement under
10 section 48a EXISTS.

11 (b) If the juvenile is made a PUBLIC ward, ~~of the state,~~
12 ~~the department of social services~~ THE FAMILY INDEPENDENCE AGENCY
13 OR COUNTY JUVENILE AGENCY, AS APPLICABLE.

14 Sec. 41a. When a juvenile is ordered to be placed in a
15 juvenile facility, the prosecuting attorney, or ~~—~~ THE COURT
16 pursuant to an agreement under section 48a, ~~the court,~~ shall
17 provide the victim with a form the victim may submit to receive
18 the notices from the ~~department of social services~~ FAMILY INDE-
19 PENDENCE AGENCY OR COUNTY JUVENILE AGENCY, AS APPLICABLE, pro-
20 vided for under section 48. The form shall include the address
21 of the ~~department of social services~~ FAMILY INDEPENDENCE AGENCY
22 OR COUNTY JUVENILE AGENCY to which the form may be sent.

23 Sec. 48. (1) Upon THE VICTIM'S written request, the court
24 or the ~~department of social services~~ FAMILY INDEPENDENCE AGENCY
25 OR COUNTY JUVENILE AGENCY, AS APPLICABLE, shall make a good faith
26 effort to notify the victim before any of the following occurs:

1 (a) The juvenile is dismissed from court jurisdiction or
2 discharged from ~~the department of social services jurisdiction~~
3 COMMITMENT TO THE FAMILY INDEPENDENCE AGENCY OR COUNTY JUVENILE
4 AGENCY.

5 (b) The juvenile is transferred from a secure juvenile
6 facility to a nonsecure juvenile facility.

7 (c) The juvenile has his or her name legally changed while
8 under the COURT'S jurisdiction ~~of the probate court~~ or within 2
9 years ~~of~~ AFTER discharge from the COURT'S jurisdiction. ~~of the~~
10 ~~probate court.~~

11 (2) If the court, ~~or department of social services~~ FAMILY
12 INDEPENDENCE AGENCY, OR COUNTY JUVENILE AGENCY is not successful
13 in notifying the victim before an event described in
14 subsection (1)(a), (b), or (c) occurs, ~~the court or department~~
15 ~~of social services~~ IT shall notify the victim as soon as possi-
16 ble after ~~the occurrence of the~~ THAT event ~~described in~~
17 ~~subsection (1)(a), (b), or (c)~~ OCCURS.

18 (3) Upon the victim's written request, the ~~department of~~
19 ~~social services~~ FAMILY INDEPENDENCE AGENCY, COUNTY JUVENILE
20 AGENCY, or ~~the~~ court shall give to the victim notice of a
21 juvenile's escape from a secure detention or treatment facility.
22 A victim who requests notice of an escape shall be given immedi-
23 ate notice of the escape by any means reasonably calculated to
24 give prompt actual notice.

25 (4) Upon the victim's request, the prosecuting attorney
26 shall give the victim notice of a review hearing conducted under
27 section 18 of chapter XIIA of ~~Act No. 288 of the Public Acts of~~

~~1 1939, being section 712A.18 of the Michigan Compiled Laws 1939~~
 2 PA 288, MCL 712A.18. The victim has the right to make a state-
 3 ment at the hearing ~~—~~ OR submit a written statement for use at
 4 the hearing, or both.

5 Enacting section 1. This amendatory act does not take
 6 effect unless the United States department of health and human
 7 services grants part 3 of the family independence agency's waiver
 8 filed under the child welfare demonstration project to permit a
 9 transfer of title IV-E funding from the state to 1 or more coun-
 10 ties and the family independence agency files with the secretary
 11 of state a certification that the necessary waiver was granted.

12 Enacting section 2. This amendatory act does not take
 13 effect unless all of the following bills of the 89th Legislature
 14 are enacted into law:

15 (a) Senate Bill No. _____ or House Bill No. _____
 16 (request no. 03597'97 *).

17 (b) Senate Bill No. _____ or House Bill No. _____
 18 (request no. 03598'97 *).

19 (c) Senate Bill No. _____ or House Bill No. _____
 20 (request no. 03598'97 a *).

21 (d) Senate Bill No. _____ or House Bill No. _____
 22 (request no. 03598'97 b *).

23 (e) Senate Bill No. _____ or House Bill No. _____
 24 (request no. 03599'97 *).

25 (f) Senate Bill No. _____ or House Bill No. _____
 26 (request no. 03644'97 *).

1 (g) Senate Bill No. _____ or House Bill No. _____

2 (request no. 03917'97 *).