

HOUSE BILL No. 4798

June 3, 2003, Introduced by Reps. Murphy, Condino, McConico, Paletko, Dennis, Kolb, Williams, Plakas, Minore, Clack, Jamnick, Hunter, Whitmer, Anderson, Reeves, Sak, Byrum, Bieda, Tobocman, Cheeks and Hardman and referred to the Committee on Criminal Justice.

A bill to amend 1985 PA 87, entitled "Crime victim's rights act," by amending sections 2, 15, 31, 43, 61, and 75 (MCL 780.752, 780.765, 780.781, 780.793, 780.811, and 780.825), as amended by 2000 PA 503.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) Except as otherwise defined in this article, as
2 used in this article:

3 (a) "County juvenile agency" means that term as defined in
4 section 2 of the county juvenile agency act, 1998 PA 518,
5 MCL 45.622.

6 (b) "Crime" means a violation of a penal law of this state
7 for which the offender, upon conviction, may be punished by
8 imprisonment for more than 1 year or an offense expressly
9 designated by law as a felony.

1 (c) "Defendant" means a person charged with or convicted of
2 committing a crime against a victim.

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

7 (e) "Juvenile" means a person within the jurisdiction of the
8 circuit court under section 606 of the revised judicature act of
9 1961, 1961 PA 236, MCL 600.606.

10 (f) "Juvenile facility" means a county facility, institution
11 operated as an agency of the county or the family division of
12 circuit court, or an institution or agency described in the youth
13 rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309,
14 to which a juvenile has been committed or in which a juvenile is
15 detained.

16 (g) "Neighborhood association" means either of the
17 following:

18 (i) A neighborhood organization as that term is defined in
19 section 5 of the neighborhood assistance and participation act,
20 1980 PA 56, MCL 125.805.

21 (ii) A nongovernmental association or organization that
22 serves an area with geographically definable boundaries and that
23 has as its primary purpose the reduction of crime in that area.

24 (h) ~~(g)~~ "Person" means an individual, organization,
25 partnership, corporation, or governmental entity.

26 (i) ~~(h)~~ "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 **(j)** ~~-(i)-~~ "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 **(k)** ~~-(j)-~~ "Victim" means any of the following:

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

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

13 (A) The spouse of the deceased victim.

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

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

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

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

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

25 (iii) A parent, guardian, or custodian of a victim who is
26 less than 18 years of age and who is neither the defendant nor
27 incarcerated, if the parent, guardian, or custodian 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 if he or she is neither the defendant nor incarcerated.

4 (2) If a victim as defined in subsection ~~-(1)(j)(i)~~
5 **(1)(k)(i)** is physically or emotionally unable to exercise the
6 privileges and rights under this article, the victim may
7 designate his or her spouse, child 18 years of age or older,
8 parent, sibling, grandparent, or any other person 18 years of age
9 or older who is neither the defendant nor incarcerated to act in
10 his or her place while the physical or emotional disability
11 continues. The victim shall provide the prosecuting attorney
12 with the name of the person who is to act in his or her place.
13 During the physical or emotional disability, notices to be
14 provided under this article to the victim shall continue to be
15 sent only to the victim.

16 (3) An individual who is charged with a crime arising out of
17 the same transaction from which the charge against the defendant
18 arose is not eligible to exercise the privileges and rights
19 established for victims under this article.

20 (4) An individual who is incarcerated is not eligible to
21 exercise the privileges and rights established for victims under
22 this article except that he or she may submit a written statement
23 to the court for consideration at sentencing.

24 Sec. 15. **(1)** The victim has the right to appear and make an
25 oral impact statement at the sentencing of the defendant. If the
26 victim is physically or emotionally unable to make the oral
27 impact statement, the victim may designate any other person 18

1 years of age or older who is neither the defendant nor
2 incarcerated to make the statement on his or her behalf. The
3 other person need not be an attorney.

4 **(2) A neighborhood association whose boundaries include the**
5 **victim's residence has the right to appear and make an oral**
6 **impact statement at the sentencing of the defendant. Any member**
7 **of the neighborhood association may make the oral impact**
8 **statement on behalf of the neighborhood association.**

9 Sec. 31. (1) Except as otherwise defined in this article,
10 as used in this article:

11 (a) "County juvenile agency" means that term as defined in
12 section 2 of the county juvenile agency act, 1998 PA 518,
13 MCL 45.622.

14 (b) "Court" means the family division of circuit court.

15 (c) "Designated case" means a case designated as a case in
16 which the juvenile is to be tried in the same manner as an adult
17 under section 2d of chapter XIIA of the probate code of 1939,
18 1939 PA 288, MCL 712A.2d.

19 (d) "Juvenile" means an individual alleged or found to be
20 within the court's jurisdiction under section 2(a)(1) of chapter
21 XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, for an
22 offense, including, but not limited to, an individual in a
23 designated case.

24 (e) "Juvenile facility" means a county facility, an
25 institution operated as an agency of the county or the court, or
26 an institution or agency described in the youth rehabilitation
27 services act, 1974 PA 150, MCL 803.301 to 803.309, to which a

1 juvenile has been committed or in which a juvenile is detained.

2 (f) "Neighborhood association" means either of the
3 following:

4 (i) A neighborhood organization as that term is defined in
5 section 5 of the neighborhood assistance and participation act,
6 1980 PA 56, MCL 125.805.

7 (ii) A nongovernmental association or organization that
8 serves an area with geographically definable boundaries and that
9 has as its primary purpose the reduction of crime in that area.

10 (g) ~~(f)~~ "Offense" means 1 or more of the following:

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

15 (ii) A violation of section 81 (assault and battery,
16 including domestic violence), 81a (assault; infliction of serious
17 injury, including aggravated domestic violence), 115 (breaking
18 and entering or illegal entry), 136b(5) (child abuse in the
19 ~~fourth~~ **third** degree), 145a (enticing a child for immoral
20 purposes), 234 (discharge of a firearm intentionally aimed at a
21 person), 235 (discharge of an intentionally aimed firearm
22 resulting in injury), 335a (indecent exposure), or 411h
23 (stalking) of the Michigan penal code, 1931 PA 328, MCL 750.81,
24 750.81a, 750.115, 750.136b, 750.145a, 750.234, 750.235, 750.335a,
25 and 750.411h.

26 (iii) A violation of section 617a (leaving the scene of a
27 personal injury accident) of the Michigan vehicle code, 1949

1 PA 300, MCL 257.617a, or a violation of section 625 (operating a
2 vehicle while under the influence of or impaired by intoxicating
3 liquor or a controlled substance, or with unlawful blood alcohol
4 content) of that act, MCL 257.625, if the violation involves an
5 accident resulting in damage to another individual's property or
6 physical injury or death to another individual.

7 (iv) Selling or furnishing alcoholic liquor to an individual
8 less than 21 years of age in violation of section 33 of the
9 former 1933 (Ex Sess) PA 8, or section 701 of the Michigan liquor
10 control code of 1998, 1998 PA 58, MCL 436.1701, if the violation
11 results in physical injury or death to any individual.

12 (v) A violation of section 80176(1) or (3) (operating a
13 vessel while under the influence of or impaired by intoxicating
14 liquor or a controlled substance, or with unlawful blood alcohol
15 content) of the natural resources and environmental protection
16 act, 1994 PA 451, MCL 324.80176, if the violation involves an
17 accident resulting in damage to another individual's property or
18 physical injury or death to any individual.

19 (vi) A violation of a local ordinance substantially
20 corresponding to a law enumerated in subparagraphs (i) to (v).

21 (vii) A violation described in subparagraphs (i) to (vi) that
22 is subsequently reduced to a violation not included in
23 subparagraphs (i) to (vi).

24 (h) ~~(g)~~ "Person" means an individual, organization,
25 partnership, corporation, or governmental entity.

26 (i) ~~(h)~~ "Prosecuting attorney" means the prosecuting
27 attorney for a county, an assistant prosecuting attorney for a

1 county, the attorney general, the deputy attorney general, an
2 assistant attorney general, a special prosecuting attorney, or in
3 connection with the prosecution of an ordinance violation, an
4 attorney for the political subdivision that enacted the ordinance
5 upon which the violation is based.

6 (j) ~~(i)~~ "Victim" means any of the following:

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

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

13 (A) The spouse of the deceased victim.

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

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

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

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

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

25 (iii) A parent, guardian, or custodian of a victim who is
26 less than 18 years of age and who is neither the defendant nor
27 incarcerated, if the parent, guardian, or custodian 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 if he or she is neither the defendant nor incarcerated.

4 (2) If a victim as defined in subsection ~~-(1)(h)(i)~~
5 **(1)(j)(i)** is physically or emotionally unable to exercise the
6 privileges and rights under this article, the victim may
7 designate his or her spouse, child 18 years of age or older,
8 parent, sibling, grandparent, or any other person 18 years of age
9 or older who is neither the defendant nor incarcerated to act in
10 his or her place while the physical or emotional disability
11 continues. The victim shall provide the prosecuting attorney
12 with the name of the person who is to act in his or her place.
13 During the physical or emotional disability, notices to be
14 provided under this article to the victim shall continue to be
15 sent only to the victim.

16 (3) An individual who is charged with an offense arising out
17 of the same transaction from which the charge against the
18 defendant arose is not eligible to exercise the privileges and
19 rights established for victims under this article.

20 Sec. 43. (1) The victim has the right to appear and make an
21 oral impact statement at the juvenile's disposition or
22 sentencing. If the victim is physically or emotionally unable to
23 make the oral impact statement, the victim may designate any
24 other person 18 years of age or older who is neither the
25 defendant nor incarcerated to make the statement on his or her
26 behalf. The other person need not be an attorney.

27 (2) Upon request, the victim shall be notified by the

1 prosecuting attorney, or, pursuant to an agreement under
2 section 48a, the court of the disposition of the juvenile's
3 offense not more than 30 days after the disposition is made.

4 **(3) A neighborhood association whose boundaries include the**
5 **victim's residence has the right to appear and make an oral**
6 **impact statement at the disposition of the juvenile. Any member**
7 **of the neighborhood association may make the oral impact**
8 **statement on behalf of the neighborhood association.**

9 Sec. 61. (1) Except as otherwise defined in this article,
10 as used in this article:

11 (a) "Serious misdemeanor" means 1 or more of the following:

12 (i) A violation of section 81 of the Michigan penal code,
13 1931 PA 328, MCL 750.81, assault and battery, including domestic
14 violence.

15 (ii) A violation of section 81a of the Michigan penal code,
16 1931 PA 328, MCL 750.81a, assault; infliction of serious injury,
17 including aggravated domestic violence.

18 (iii) A violation of section 115 of the Michigan penal code,
19 1931 PA 328, MCL 750.115, breaking and entering or illegal
20 entry.

21 (iv) A violation of section 136b(6) of the Michigan penal
22 code, 1931 PA 328, MCL 750.136b, child abuse in the fourth
23 degree.

24 (v) A violation of section 145a of the Michigan penal code,
25 1931 PA 328, MCL 750.145a, enticing a child for immoral
26 purposes.

27 (vi) A violation of section 234 of the Michigan penal code,

1 1931 PA 328, MCL 750.234, discharge of a firearm intentionally
2 aimed at a person.

3 (vii) A violation of section 235 of the Michigan penal code,
4 1931 PA 328, MCL 750.235, discharge of an intentionally aimed
5 firearm resulting in injury.

6 (viii) A violation of section 335a of the Michigan penal
7 code, 1931 PA 328, MCL 750.335a, indecent exposure.

8 (ix) A violation of section 617a of the Michigan vehicle
9 code, 1949 PA 300, MCL 257.617a, leaving the scene of a personal
10 injury accident.

11 (x) A violation of section 625 of the Michigan vehicle code,
12 1949 PA 300, MCL 257.625, operating a vehicle while under the
13 influence of or impaired by intoxicating liquor or a controlled
14 substance, or with an unlawful blood alcohol content, if the
15 violation involves an accident resulting in damage to another
16 individual's property or physical injury or death to another
17 individual.

18 (xi) Selling or furnishing alcoholic liquor to an individual
19 less than 21 years of age in violation of section 701 of the
20 Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701,
21 if the violation results in physical injury or death to any
22 individual.

23 (xii) A violation of section 411h of the Michigan penal code,
24 1931 PA 328, MCL 750.411h, stalking.

25 (xiii) A violation of section 80176(1) or (3) of the natural
26 resources and environmental protection act, 1994 PA 451,
27 MCL 324.80176, operating a vessel while under the influence of or

1 impaired by intoxicating liquor or a controlled substance, or
2 with an unlawful blood alcohol content, if the violation involves
3 an accident resulting in damage to another individual's property
4 or physical injury or death to any individual.

5 (xiv) A violation of a local ordinance substantially
6 corresponding to a violation enumerated in subparagraphs (i) to
7 (xiii).

8 (xv) A violation charged as a crime or serious misdemeanor
9 enumerated in subparagraphs (i) to (xiv) but subsequently reduced
10 to or pleaded to as a misdemeanor. As used in this subparagraph,
11 "crime" means that term as defined in section 2.

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

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

18 (d) "Neighborhood association" means either of the
19 following:

20 (i) A neighborhood organization as that term is defined in
21 section 5 of the neighborhood assistance and participation act,
22 1980 PA 56, MCL 125.805.

23 (ii) A nongovernmental association or organization that
24 serves an area with geographically definable boundaries and that
25 has as its primary purpose the reduction of crime in that area.

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

1 **(f)** ~~-(e)-~~ "Prisoner" means a person who has been convicted
2 and sentenced to imprisonment for having committed a serious
3 misdemeanor against a victim.

4 **(g)** ~~-(f)-~~ "Prosecuting attorney" means the prosecuting
5 attorney for a county, an assistant prosecuting attorney for a
6 county, the attorney general, the deputy attorney general, an
7 assistant attorney general, a special prosecuting attorney, or,
8 in connection with the prosecution of an ordinance violation, an
9 attorney for the political subdivision that enacted the ordinance
10 upon which the violation is based.

11 **(h)** ~~-(g)-~~ "Victim" means any of the following:

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

16 (ii) The following individuals other than the defendant if
17 the victim is deceased:

18 (A) The spouse of the deceased victim.

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

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

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

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

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

3 (iii) A parent, guardian, or custodian of a victim who is
4 less than 18 years of age and who is neither the defendant nor
5 incarcerated, if the parent, guardian, or custodian so chooses.

6 (iv) A parent, guardian, or custodian of a victim who is so
7 mentally incapacitated that he or she cannot meaningfully
8 understand or participate in the legal process if he or she is
9 not the defendant and is not incarcerated.

10 (2) If a victim as defined in subsection ~~(1)(g)(i)~~
11 **(1)(h)(i)** is physically or emotionally unable to exercise the
12 privileges and rights under this article, the victim may
13 designate his or her spouse, child 18 years of age or older,
14 parent, sibling, or grandparent or any other person 18 years of
15 age or older who is neither the defendant nor incarcerated to act
16 in his or her place while the physical or emotional disability
17 continues. The victim shall provide the prosecuting attorney
18 with the name of the person who is to act in place of the
19 victim. During the physical or emotional disability, notices to
20 be provided under this article to the victim shall continue to be
21 sent only to the victim.

22 (3) An individual who is charged with a serious misdemeanor,
23 a crime as defined in section 2, or an offense as defined in
24 section 31 arising out of the same transaction from which the
25 charge against the defendant arose is not eligible to exercise
26 the privileges and rights established for victims under this
27 article.

1 (4) An individual who is incarcerated is not eligible to
2 exercise the privileges and rights established for victims under
3 this article except that he or she may submit a written statement
4 to the court for consideration at sentencing.

5 Sec. 75. **(1)** If no presentence report is prepared, the
6 court shall notify the prosecuting attorney of the date and time
7 of sentencing at least 10 days prior to the sentencing. The
8 victim has the right to submit a written impact statement and has
9 the right to appear and make an oral impact statement at the
10 sentencing of the defendant. If the victim is physically or
11 emotionally unable to make the oral impact statement, the victim
12 may designate any other person 18 years of age or older who is
13 neither the defendant nor incarcerated to make the statement on
14 his or her behalf. The other person need not be an attorney.
15 The court shall consider the victim's statement in imposing
16 sentence on the defendant.

17 **(2) A neighborhood association whose boundaries include the**
18 **victim's residence has the right to appear and make an oral**
19 **impact statement at the sentencing of the defendant. Any member**
20 **of the neighborhood association may make the oral impact**
21 **statement on behalf of the neighborhood association.**