

SUBSTITUTE FOR
HOUSE BILL NO. 4737

A bill to amend 1985 PA 87, entitled "William Van Regenmorter crime victim's rights act," by amending sections 4a, 16, 33b, 44, 64a, and 76 (MCL 780.754a, 780.766, 780.783b, 780.794, 780.814a, and 780.826), sections 4a, 33b, and 64a as added by 2004 PA 456 and sections 16, 44, and 76 as amended by 2009 PA 28.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4a. (1) To facilitate compliance with **SECTIONS 11 AND 13**
2 **OF THE IDENTITY THEFT PROTECTION ACT, 2004 PA 452, MCL 445.71 AND**
3 **445.73, AND** 15 USC 1681g, a bona fide victim of identity theft is
4 entitled to file a police report with a law enforcement agency in a
5 jurisdiction where the alleged violation of identity theft may be
6 prosecuted as provided under section 10c of chapter II of the code
7 of criminal procedure, 1927 PA 175, MCL 762.10c, and to obtain a
8 copy of that report from that law enforcement agency.

1 (2) As used in this section, "identity theft" means that term
2 as defined in section 3 of the identity theft protection act, **2004**
3 **PA 452, MCL 445.63.**

4 Sec. 16. (1) As used in this section only, "victim" means an
5 individual who suffers direct or threatened physical, financial, or
6 emotional harm as a result of the commission of a crime. As used in
7 subsections (2), (3), (6), ~~(8)~~, (9), (10), and ~~(13)~~-(14) only,
8 victim includes a sole proprietorship, partnership, corporation,
9 association, governmental entity, or any other legal entity that
10 suffers direct physical or financial harm as a result of a crime.

11 (2) Except as provided in subsection ~~(8)~~-(9), when sentencing
12 a defendant convicted of a crime, the court shall order, in
13 addition to or in lieu of any other penalty authorized by law or in
14 addition to any other penalty required by law, that the defendant
15 make full restitution to any victim of the defendant's course of
16 conduct that gives rise to the conviction or to the victim's
17 estate. For an offense that is resolved by assignment of the
18 defendant to youthful trainee status, by a delayed sentence or
19 deferred judgment of guilt, or in another way that is not an
20 acquittal or unconditional dismissal, the court shall order the
21 restitution required under this section.

22 (3) If a crime results in damage to or loss or destruction of
23 property of a victim of the crime or results in the seizure or
24 impoundment of property of a victim of the crime, the order of
25 restitution shall require that the defendant do 1 or more of the
26 following, as applicable:

27 (a) Return the property to the owner of the property or to a

1 person designated by the owner.

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

7 (i) The fair market value of the property on the date of the
8 damage, loss, or destruction. However, if the fair market value of
9 the property cannot be determined or is impractical to ascertain,
10 then the replacement value of the property shall be utilized in
11 lieu of the fair market value.

12 (ii) The fair market value of the property on the date of
13 sentencing. However, if the fair market value of the property
14 cannot be determined or is impractical to ascertain, then the
15 replacement value of the property shall be utilized in lieu of the
16 fair market value.

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

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

21 (a) Pay an amount equal to the reasonably determined cost of
22 medical and related professional services and devices actually
23 incurred and reasonably expected to be incurred relating to
24 physical and psychological care.

25 (b) Pay an amount equal to the reasonably determined cost of
26 physical and occupational therapy and rehabilitation actually
27 incurred and reasonably expected to be incurred.

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

3 (d) Pay an amount equal to the reasonably determined cost of
4 psychological and medical treatment for members of the victim's
5 family actually incurred and reasonably expected to be incurred as
6 a result of the crime.

7 (e) Pay an amount equal to the reasonably determined costs of
8 homemaking and child care expenses actually incurred and reasonably
9 expected to be incurred as a result of the crime or, if homemaking
10 or child care is provided without compensation by a relative,
11 friend, or any other person, an amount equal to the costs that
12 would reasonably be incurred as a result of the crime for that
13 homemaking and child care, based on the rates in the area for
14 comparable services.

15 (f) Pay an amount equal to the cost of actual funeral and
16 related services.

17 (g) If the deceased victim could be claimed as a dependent by
18 his or her parent or guardian on the parent's or guardian's
19 federal, state, or local income tax returns, pay an amount equal to
20 the loss of the tax deduction or tax credit. The amount of
21 reimbursement shall be estimated for each year the victim could
22 reasonably be claimed as a dependent.

23 (h) Pay an amount equal to income actually lost by the spouse,
24 parent, sibling, child, or grandparent of the victim because the
25 family member left his or her employment, temporarily or
26 permanently, to care for the victim because of the injury.

27 (5) If a crime resulting in bodily injury also results in the

1 death of a victim or serious impairment of a body function of a
2 victim, the court may order up to 3 times the amount of restitution
3 otherwise allowed under this section. As used in this subsection,
4 "serious impairment of a body function of a victim" includes, but
5 is not limited to, 1 or more of the following:

6 (a) Loss of a limb or use of a limb.

7 (b) Loss of a hand or foot or use of a hand or foot.

8 (c) Loss of an eye or use of an eye or ear.

9 (d) Loss or substantial impairment of a bodily function.

10 (e) Serious visible disfigurement.

11 (f) A comatose state that lasts for more than 3 days.

12 (g) Measurable brain damage or mental impairment.

13 (h) A skull fracture or other serious bone fracture.

14 (i) Subdural hemorrhage or subdural hematoma.

15 (j) Loss of a body organ.

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

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

21 (8) IF THE VICTIM IS THE VICTIM OF IDENTITY THEFT AS THAT TERM
22 IS DEFINED IN SECTION 3 OF THE IDENTITY THEFT PROTECTION ACT, 2004
23 PA 452, MCL 445.63, THEN THE COURT SHALL ORDER RESTITUTION TO
24 COMPENSATE THE VICTIM IN FULL FOR THE WORK DONE BY THE VICTIM OR
25 THE VICTIM'S ATTORNEY, OR BOTH, TO RECTIFY THE VICTIM'S FINANCIAL
26 RECORDS AND VITAL RECORDS AND TO AMELIORATE THE EFFECTS OF THE
27 IDENTITY THEFT ON THE VICTIM'S FINANCIAL AFFAIRS, INCLUDING, BUT

1 NOT LIMITED TO, CREDIT HISTORY, CREDIT RATING, OR CREDIT SCORE.

2 (9) ~~(8)~~—The court shall order restitution to the crime victim
3 services commission or to any individuals, partnerships,
4 corporations, associations, governmental entities, or other legal
5 entities that have compensated the victim or the victim's estate
6 for a loss incurred by the victim to the extent of the compensation
7 paid for that loss. The court shall also order restitution for the
8 costs of services provided to persons or entities that have
9 provided services to the victim as a result of the crime. Services
10 that are subject to restitution under this subsection include, but
11 are not limited to, shelter, food, clothing, and transportation.
12 However, an order of restitution shall require that all restitution
13 to a victim or victim's estate under the order be made before any
14 restitution to any other person or entity under that order is made.
15 The court shall not order restitution to be paid to a victim or
16 victim's estate if the victim or victim's estate has received or is
17 to receive compensation for that loss, and the court shall state on
18 the record with specificity the reasons for its action.

19 (10) ~~(9)~~—Any amount paid to a victim or victim's estate under
20 an order of restitution shall be set off against any amount later
21 recovered as compensatory damages by the victim or the victim's
22 estate in any federal or state civil proceeding and shall reduce
23 the amount payable to a victim or a victim's estate by an award
24 from the crime victim services commission made after an order of
25 restitution under this section.

26 (11) ~~(10)~~—If not otherwise provided by the court under this
27 subsection, 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 (12) ~~(11)~~—If the defendant is placed on probation or paroled
4 or the court imposes a conditional sentence as provided in section
5 3 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
7 condition of that probation, parole, or sentence. The court may
8 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 a
11 good faith effort to comply with the order. In determining whether
12 to revoke probation or parole or impose imprisonment, the court or
13 parole board shall consider the defendant's employment status,
14 earning ability, and financial resources, the willfulness of the
15 defendant's failure to pay, and any other special circumstances
16 that may have a bearing on the defendant's ability to pay.

17 (13) ~~(12)~~—Subject to subsection ~~(18)~~—(19), a defendant who is
18 required to pay restitution and who is not in willful default of
19 the payment of the restitution may at any time petition the
20 sentencing judge or his or her successor to modify the method of
21 payment. If the court determines that payment under the order will
22 impose a manifest hardship on the defendant or his or her immediate
23 family, and if the court also determines that modifying the method
24 of payment will not impose a manifest hardship on the victim, the
25 court may modify the method of payment.

26 (14) ~~(13)~~—An order of restitution entered under this section
27 remains effective until it is satisfied in full. An order of

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

8 (15) ~~(14)~~ Notwithstanding any other provision of this section,
9 a defendant shall not be imprisoned, jailed, or incarcerated for a
10 violation of probation or parole or otherwise for failure to pay
11 restitution as ordered under this section unless the court or
12 parole board determines that the defendant has the resources to pay
13 the ordered restitution and has not made a good faith effort to do
14 so.

15 (16) ~~(15)~~ If the court determines that a juvenile is or will
16 be unable to pay all of the restitution ordered, after notice to
17 the juvenile's parent or parents and an opportunity for the parent
18 or parents to be heard the court may order the parent or parents
19 having supervisory responsibility for the juvenile at the time of
20 the acts upon which an order of restitution is based to pay any
21 portion of the restitution ordered that is outstanding. An order
22 under this subsection does not relieve the juvenile of his or her
23 obligation to pay restitution as ordered, but the amount owed by
24 the juvenile shall be offset by any amount paid by his or her
25 parent. As used in this subsection:

26 (a) "Juvenile" means a person within the court's jurisdiction
27 under section 2d or 4 of chapter XIIIA of the probate code of 1939,

1 1939 PA 288, MCL 712A.2d and 712A.4.

2 (b) "Parent" does not include a foster parent.

3 (17) ~~(16)~~—If the court orders a parent to pay restitution
4 under subsection ~~(15)~~—(16), the court shall take into account the
5 parent's financial resources and the burden that the payment of
6 restitution will impose, with due regard to any other moral or
7 legal financial obligations the parent may have. If a parent is
8 required to pay restitution under subsection ~~(15)~~—(16), the court
9 shall provide for payment to be made in specified installments and
10 within a specified period of time.

11 (18) ~~(17)~~—A parent who has been ordered to pay restitution
12 under subsection ~~(15)~~—(16) may petition the court for a
13 modification of the amount of restitution owed by the parent or for
14 a cancellation of any unpaid portion of the parent's obligation.
15 The court shall cancel all or part of the parent's obligation due
16 if the court determines that payment of the amount due will impose
17 a manifest hardship on the parent and if the court also determines
18 that modifying the method of payment will not impose a manifest
19 hardship on the victim.

20 (19) ~~(18)~~—In each case in which payment of restitution is
21 ordered as a condition of probation, the court shall order any
22 employed defendant to make regularly scheduled restitution
23 payments. If the defendant misses 2 or more regularly scheduled
24 payments, the court shall order the defendant to execute a wage
25 assignment to pay the restitution. The probation officer assigned
26 to the case shall review the case not less than twice yearly to
27 ensure that restitution is being paid as ordered. If the

1 restitution was ordered to be made within a specific period of
2 time, the probation officer assigned to the case shall review the
3 case at the end of the specific period of time to determine if the
4 restitution has been paid in full. The final review shall be
5 conducted not less than 60 days before the probationary period
6 expires. If the probation officer determines at any review that
7 restitution is not being paid as ordered, the probation officer
8 shall file a written report of the violation with the court on a
9 form prescribed by the state court administrative office or shall
10 petition the court for a probation violation. The report or
11 petition shall include a statement of the amount of the arrearage
12 and any reasons for the arrearage known by the probation officer.
13 The probation officer shall immediately provide a copy of the
14 report or petition to the prosecuting attorney. If a petition or
15 motion is filed or other proceedings are initiated to enforce
16 payment of restitution and the court determines that restitution is
17 not being paid or has not been paid as ordered by the court, the
18 court shall promptly take action necessary to compel compliance.

19 (20) ~~(19)~~—If a defendant who is ordered to pay restitution
20 under this section is remanded to the jurisdiction of the
21 department of corrections, the court shall provide a copy of the
22 order of restitution to the department of corrections when the
23 defendant is remanded to the department's jurisdiction.

24 (21) ~~(20)~~—The court shall not impose a fee on a victim,
25 victim's estate, or prosecuting attorney for enforcing an order of
26 restitution.

27 (22) ~~(21)~~—If a person or entity entitled to restitution under

1 this section cannot be located, refuses to claim the restitution
2 within 2 years after the date on which he or she could have claimed
3 the restitution, or refuses to accept the restitution, the
4 restitution to which that person or entity is entitled shall be
5 deposited in the crime victim's rights fund created under section 4
6 of 1989 PA 196, MCL 780.904, or its successor fund. However, a
7 person or entity entitled to that restitution may claim that
8 restitution any time by applying to the court that originally
9 ordered and collected it. The court shall notify the crime victim
10 services commission of the application and the commission shall
11 approve a reduction in the court's revenue transmittal to the crime
12 victim's rights fund equal to the restitution owed to the person or
13 entity. The court shall use the reduction to reimburse that
14 restitution to the person or entity.

15 (23) ~~(22)~~—The court may amend an order of restitution entered
16 under this section on a motion by the prosecuting attorney, the
17 victim, or the defendant based upon new information related to the
18 injury, damages, or loss for which the restitution was ordered.

19 (24) ~~(23)~~—A court that receives notice that a defendant who
20 has an obligation to pay restitution under this section has
21 declared bankruptcy shall forward a copy of that notice to the
22 prosecuting attorney. The prosecuting attorney shall forward the
23 notice to the victim at the victim's last known address.

24 (25) ~~(24)~~—If the victim is a minor, the order of restitution
25 shall require the defendant to pay to a parent of the victim an
26 amount that is determined to be reasonable for any of the following
27 that are actually incurred or reasonably expected to be incurred by

1 the parent as a result of the crime:

2 (a) Homemaking and child care expenses.

3 (b) Income loss not ordered to be paid under subsection
4 (4) (h).

5 (c) Mileage.

6 (d) Lodging or housing.

7 (e) Meals.

8 (f) Any other cost incurred in exercising the rights of the
9 victim or a parent under this act.

10 Sec. 33b. (1) To facilitate compliance with **SECTIONS 11 AND 13**
11 **OF THE IDENTITY THEFT PROTECTION ACT, 2004 PA 452, MCL 445.71 AND**
12 **445.73, AND** 15 USC 1681g, a bona fide victim of identity theft is
13 entitled to file a police report with a law enforcement agency in a
14 jurisdiction where the alleged violation of identity theft may be
15 prosecuted as provided under section 10c of chapter II of the code
16 of criminal procedure, 1927 PA 175, MCL 762.10c, and to obtain a
17 copy of that report from that law enforcement agency.

18 (2) As used in this section, "identity theft" means that term
19 as defined in section 3 of the identity theft protection act, **2004**
20 **PA 452, 445.63.**

21 Sec. 44. (1) As used in this section only:

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

26 (b) "Victim" means an individual who suffers direct or
27 threatened physical, financial, or emotional harm as a result of

1 the commission of an offense. As used in subsections (2), (3), (6),
2 ~~(8)~~, (9), (10), and ~~(13)~~-(14) only, victim includes a sole
3 proprietorship, partnership, corporation, association, governmental
4 entity, or any other legal entity that suffers direct physical or
5 financial harm as a result of an offense.

6 (2) Except as provided in subsection ~~(8)~~-(9), at the
7 dispositional hearing or sentencing for an offense, the court shall
8 order, in addition to or in lieu of any other disposition or
9 penalty authorized by law, that the juvenile make full restitution
10 to any victim of the juvenile's course of conduct that gives rise
11 to the disposition or conviction or to the victim's estate. For an
12 offense that is resolved informally by means of a consent calendar
13 diversion or by another informal method that does not result in a
14 dispositional hearing, by assignment to youthful trainee status, by
15 a delayed sentence or deferred judgment of guilt, or in another way
16 that is not an acquittal or unconditional dismissal, the court
17 shall order the restitution required under this section.

18 (3) If an offense results in damage to or loss or destruction
19 of property of a victim of the offense or results in the seizure or
20 impoundment of property of a victim of the offense, the order of
21 restitution shall require that the juvenile do 1 or more of the
22 following, as applicable:

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 the
27 greater of subparagraph (i) or (ii), less the value, determined as of

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

3 (i) The fair market value of the property on the date of the
4 damage, loss, or destruction. However, if the fair market value of
5 the property cannot be determined or is impractical to ascertain,
6 then the replacement value of the property shall be utilized in
7 lieu of the fair market value.

8 (ii) The fair market value of the property on the date of
9 disposition. However, if the fair market value of the property
10 cannot be determined or is impractical to ascertain, then the
11 replacement value of the property shall be utilized in lieu of the
12 fair market value.

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

14 (4) If an offense results in physical or psychological injury
15 to a victim, the order of restitution shall require that the
16 juvenile do 1 or more of the following, as applicable:

17 (a) Pay an amount equal to the reasonably determined cost of
18 medical and related professional services and devices actually
19 incurred and reasonably expected to be incurred relating to
20 physical and psychological care.

21 (b) Pay an amount equal to the reasonably determined cost of
22 physical and occupational therapy and rehabilitation actually
23 incurred and reasonably expected to be incurred.

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

26 (d) Pay an amount equal to the reasonably determined cost of
27 psychological and medical treatment for members of the victim's

1 family actually incurred or reasonably expected to be incurred as a
2 result of the offense.

3 (e) Pay an amount equal to the reasonably determined costs of
4 homemaking and child care expenses actually incurred or reasonably
5 expected to be incurred as a result of the offense or, if
6 homemaking or child care is provided without compensation by a
7 relative, friend, or any other person, an amount equal to the costs
8 that would reasonably be incurred as a result of the offense for
9 that homemaking and child care, based on the rates in the area for
10 comparable services.

11 (f) Pay an amount equal to the cost of actual funeral and
12 related services.

13 (g) If the deceased victim could be claimed as a dependent by
14 his or her parent or guardian on the parent's or guardian's
15 federal, state, or local income tax returns, pay an amount equal to
16 the loss of the tax deduction or tax credit. The amount of
17 reimbursement shall be estimated for each year the victim could
18 reasonably be claimed as a dependent.

19 (h) Pay an amount equal to income actually lost by the spouse,
20 parent, sibling, child, or grandparent of the victim because the
21 family member left his or her employment, temporarily or
22 permanently, to care for the victim because of the injury.

23 (5) If an offense resulting in bodily injury also results in
24 the death of a victim or serious impairment of a body function of a
25 victim, the court may order up to 3 times the amount of restitution
26 otherwise allowed under this section. As used in this subsection,
27 "serious impairment of a body function of a victim" includes, but

1 is not limited to, 1 or more of the following:

2 (a) Loss of a limb or use of a limb.

3 (b) Loss of a hand or foot or use of a hand or foot.

4 (c) Loss of an eye or use of an eye or ear.

5 (d) Loss or substantial impairment of a bodily function.

6 (e) Serious visible disfigurement.

7 (f) A comatose state that lasts for more than 3 days.

8 (g) Measurable brain damage or mental impairment.

9 (h) A skull fracture or other serious bone fracture.

10 (i) Subdural hemorrhage or subdural hematoma.

11 (j) Loss of a body organ.

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

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

17 **(8) IF THE VICTIM IS THE VICTIM OF IDENTITY THEFT AS THAT TERM**
18 **IS DEFINED IN SECTION 3 OF THE IDENTITY THEFT PROTECTION ACT, 2004**
19 **PA 452, MCL 445.63, THEN THE COURT SHALL ORDER RESTITUTION TO**
20 **COMPENSATE THE VICTIM IN FULL FOR THE WORK DONE BY THE VICTIM OR**
21 **THE VICTIM'S ATTORNEY, OR BOTH, TO RECTIFY THE VICTIM'S FINANCIAL**
22 **RECORDS AND VITAL RECORDS AND TO AMELIORATE THE EFFECTS OF THE**
23 **IDENTITY THEFT ON THE VICTIM'S FINANCIAL AFFAIRS, INCLUDING, BUT**
24 **NOT LIMITED TO, CREDIT HISTORY, CREDIT RATING, OR CREDIT SCORE.**

25 (9) ~~(8)~~—The court shall order restitution to the crime victim
26 services commission or to any individuals, partnerships,
27 corporations, associations, governmental entities, or other legal

1 entities that have compensated the victim or the victim's estate
2 for a loss incurred by the victim to the extent of the compensation
3 paid for that loss. The court shall also order restitution for the
4 costs of services provided to persons or entities that have
5 provided services to the victim as a result of the offense.
6 Services that are subject to restitution under this subsection
7 include, but are not limited to, shelter, food, clothing, and
8 transportation. However, an order of restitution shall require that
9 all restitution to a victim or victim's estate under the order be
10 made before any restitution to any other person or entity under
11 that order is made. The court shall not order restitution to be
12 paid to a victim or victim's estate if the victim or victim's
13 estate has received or is to receive compensation for that loss,
14 and the court shall state on the record with specificity the
15 reasons for its action.

16 (10) ~~(9)~~—Any amount paid to a victim or victim's estate under
17 an order of restitution shall be set off against any amount later
18 recovered as compensatory damages by the victim or the victim's
19 estate in any federal or state civil proceeding and shall reduce
20 the amount payable to a victim or a victim's estate by an award
21 from the crime victim services commission made after an order of
22 restitution under this section.

23 (11) ~~(10)~~—If not otherwise provided by the court under this
24 subsection, restitution shall be made immediately. However, the
25 court may require that the juvenile make restitution under this
26 section within a specified period or in specified installments.

27 (12) ~~(11)~~—If the juvenile is placed on probation, any

1 restitution ordered under this section shall be a condition of that
2 probation. The court may revoke probation if the juvenile fails to
3 comply with the order and if the juvenile has not made a good faith
4 effort to comply with the order. In determining whether to revoke
5 probation, the court shall consider the juvenile's employment
6 status, earning ability, and financial resources, the willfulness
7 of the juvenile's failure to pay, and any other special
8 circumstances that may have a bearing on the juvenile's ability to
9 pay.

10 (13) ~~(12)~~—Subject to subsection ~~(18)~~—(19), a juvenile who is
11 required to pay restitution and who is not in willful default of
12 the payment of the restitution may at any time petition the court
13 to modify the method of payment. If the court determines that
14 payment under the order will impose a manifest hardship on the
15 juvenile or his or her immediate family, and if the court also
16 determines that modifying the method of payment will not impose a
17 manifest hardship on the victim, the court may modify the method of
18 payment.

19 (14) ~~(13)~~—An order of restitution entered under this section
20 remains effective until it is satisfied in full. An order of
21 restitution is a judgment and lien against all property of the
22 individual ordered to pay restitution for the amount specified in
23 the order of restitution. The lien may be recorded as provided by
24 law. An order of restitution may be enforced by the prosecuting
25 attorney, a victim, a victim's estate, or any other person or
26 entity named in the order to receive the restitution in the same
27 manner as a judgment in a civil action or a lien.

1 (15) ~~(14)~~ Notwithstanding any other provision of this section,
2 a juvenile shall not be detained or imprisoned for a violation of
3 probation or parole or otherwise for failure to pay restitution as
4 ordered under this section unless the court determines that the
5 juvenile has the resources to pay the ordered restitution and has
6 not made a good faith effort to do so.

7 (16) ~~(15)~~ If the court determines that the juvenile is or will
8 be unable to pay all of the restitution ordered, after notice to
9 the juvenile's parent or parents and an opportunity for the parent
10 or parents to be heard, the court may order the parent or parents
11 having supervisory responsibility for the juvenile at the time of
12 the acts upon which an order of restitution is based to pay any
13 portion of the restitution ordered that is outstanding. An order
14 under this subsection does not relieve the juvenile of his or her
15 obligation to pay restitution as ordered, but the amount owed by
16 the juvenile shall be offset by any amount paid by his or her
17 parent. As used in this subsection, "parent" does not include a
18 foster parent.

19 (17) ~~(16)~~ If the court orders a parent to pay restitution
20 under subsection ~~(15)~~ (16), the court shall take into account the
21 parent's financial resources and the burden that the payment of
22 restitution will impose, with due regard to any other moral or
23 legal financial obligations the parent may have. If a parent is
24 required to pay restitution under subsection ~~(15)~~ (16), the court
25 shall provide for payment to be made in specified installments and
26 within a specified period of time.

27 (18) ~~(17)~~ A parent who has been ordered to pay restitution

1 under subsection ~~(15)~~-(16) may petition the court for a
2 modification of the amount of restitution owed by the parent or for
3 a cancellation of any unpaid portion of the parent's obligation.
4 The court shall cancel all or part of the parent's obligation due
5 if the court determines that payment of the amount due will impose
6 a manifest hardship on the parent and if the court also determines
7 that modifying the method of payment will not impose a manifest
8 hardship on the victim.

9 (19) ~~(18)~~—In each case in which payment of restitution is
10 ordered as a condition of probation, the court shall order any
11 employed juvenile to make regularly scheduled restitution payments.
12 If the juvenile misses 2 or more regularly scheduled payments, the
13 court shall order the juvenile to execute a wage assignment to pay
14 the restitution. The juvenile caseworker or probation officer
15 assigned to the case shall review the case not less than twice
16 yearly to ensure that restitution is being paid as ordered. If the
17 restitution was ordered to be made within a specific period of
18 time, the juvenile caseworker or probation officer assigned to the
19 case shall review the case at the end of the specific period of
20 time to determine if the restitution has been paid in full. The
21 final review shall be conducted not less than 60 days before the
22 probationary period expires. If the juvenile caseworker or
23 probation officer determines at any review the restitution is not
24 being paid as ordered, the juvenile caseworker or probation officer
25 shall file a written report of the violation with the court on a
26 form prescribed by the state court administrative office or shall
27 petition the court for a probation violation. The report or

1 petition shall include a statement of the amount of the arrearage,
2 and any reasons for the arrearage known by the juvenile caseworker
3 or probation officer. The juvenile caseworker or probation officer
4 shall immediately provide a copy of the report or petition to the
5 prosecuting attorney. If a petition or motion is filed or other
6 proceedings are initiated to enforce payment of restitution and the
7 court determines that restitution is not being paid or has not been
8 paid as ordered by the court, the court shall promptly take action
9 necessary to compel compliance.

10 (20) ~~(19)~~—If the court determines that an individual who is
11 ordered to pay restitution under this section is remanded to the
12 jurisdiction of the department of corrections, the court shall
13 provide a copy of the order of restitution to the department of
14 corrections when the court determines that the individual is
15 remanded to the department's jurisdiction.

16 (21) ~~(20)~~—The court shall not impose a fee on a victim,
17 victim's estate, or prosecuting attorney for enforcing an order of
18 restitution.

19 (22) ~~(21)~~—If a person or entity entitled to restitution under
20 this section cannot be located, refuses to claim the restitution
21 within 2 years after the date on which he or she could have claimed
22 the restitution, or refuses to accept the restitution, the
23 restitution to which that person or entity is entitled shall be
24 deposited in the crime victim's rights fund created under section 4
25 of 1989 PA 196, MCL 780.904, or its successor fund. However, a
26 person or entity entitled to that restitution may claim that
27 restitution any time by applying to the court that originally

1 ordered and collected it. The court shall notify the crime victim
2 services commission of the application and the commission shall
3 approve a reduction in the court's revenue transmittal to the crime
4 victim's rights fund equal to the restitution owed to the person or
5 entity. The court shall use the reduction to reimburse that
6 restitution to the person or entity.

7 (23) ~~(22)~~—The court may amend an order of restitution entered
8 under this section on a motion by the prosecuting attorney, the
9 victim, or the defendant based upon new information related to the
10 injury, damages, or loss for which the restitution was ordered.

11 (24) ~~(23)~~—A court that receives notice that a defendant who
12 has an obligation to pay restitution under this section has
13 declared bankruptcy shall forward a copy of that notice to the
14 prosecuting attorney. The prosecuting attorney shall forward the
15 notice to the victim at the victim's last known address.

16 (25) ~~(24)~~—If the victim is a minor, the order of restitution
17 shall require the defendant to pay to a parent of the victim an
18 amount that is determined to be reasonable for any of the following
19 that are actually incurred or reasonably expected to be incurred by
20 the parent as a result of the crime:

21 (a) Homemaking and child care expenses.

22 (b) Income loss not ordered to be paid under subsection

23 (4) (h).

24 (c) Mileage.

25 (d) Lodging or housing.

26 (e) Meals.

27 (f) Any other cost incurred in exercising the rights of the

1 victim or a parent under this act.

2 Sec. 64a. (1) To facilitate compliance with **SECTIONS 11 AND 13**
3 **OF THE IDENTITY THEFT PROTECTION ACT, 2004 PA 452, MCL 445.71 AND**
4 **445.73, AND** 15 USC 1681g, a bona fide victim of identity theft is
5 entitled to file a police report with a law enforcement agency in a
6 jurisdiction where the alleged violation of identity theft may be
7 prosecuted as provided under section 10c of chapter II of the code
8 of criminal procedure, 1927 PA 175, MCL 762.10c, and to obtain a
9 copy of that report from that law enforcement agency.

10 (2) As used in this section, "identity theft" means that term
11 as defined in section 3 of the identity theft protection act, **2004**
12 **PA 452, MCL 445.63.**

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

14 (a) "Misdemeanor" means a violation of a law of this state or
15 a local ordinance that is punishable by imprisonment for not more
16 than 1 year or a fine that is not a civil fine, but that is not a
17 felony.

18 (b) "Victim" means an individual who suffers direct or
19 threatened physical, financial, or emotional harm as a result of
20 the commission of a misdemeanor. As used in subsections (2), (3),
21 (6), ~~(8)~~, (9), (10), and ~~(13)~~-(14) only, victim includes a sole
22 proprietorship, partnership, corporation, association, governmental
23 entity, or any other legal entity that suffers direct physical or
24 financial harm as a result of a misdemeanor.

25 (2) Except as provided in subsection ~~(8)~~-(9), when sentencing
26 a defendant convicted of a misdemeanor, the court shall order, in
27 addition to or in lieu of any other penalty authorized by law or in

1 addition to any other penalty required by law, that the defendant
2 make full restitution to any victim of the defendant's course of
3 conduct that gives rise to the conviction or to the victim's
4 estate. For an offense that is resolved by assignment of the
5 defendant to youthful trainee status, by a delayed sentence or
6 deferred judgment of guilt, or in another way that is not an
7 acquittal or unconditional dismissal, the court shall order the
8 restitution required under this section.

9 (3) If a misdemeanor results in damage to or loss or
10 destruction of property of a victim of the misdemeanor or results
11 in the seizure or impoundment of property of a victim of the
12 misdemeanor, the order of restitution shall require that the
13 defendant do 1 or more of the following, as applicable:

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

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

21 (i) The fair market value of the property on the date of the
22 damage, loss, or destruction. However, if the fair market value of
23 the property cannot be determined or is impractical to ascertain,
24 then the replacement value of the property shall be utilized in
25 lieu of the fair market value.

26 (ii) The fair market value of the property on the date of
27 sentencing. However, if the fair market value of the property

1 cannot be determined or is impractical to ascertain, then the
2 replacement value of the property shall be utilized in lieu of the
3 fair market value.

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

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

8 (a) Pay an amount equal to the reasonably determined cost of
9 medical and related professional services and devices actually
10 incurred and reasonably expected to be incurred relating to
11 physical and psychological care.

12 (b) Pay an amount equal to the reasonably determined cost of
13 physical and occupational therapy and rehabilitation actually
14 incurred and reasonably expected to be incurred.

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

17 (d) Pay an amount equal to the reasonably determined cost of
18 psychological and medical treatment for members of the victim's
19 family actually incurred and reasonably expected to be incurred as
20 a result of the misdemeanor.

21 (e) Pay an amount equal to the reasonably determined costs of
22 homemaking and child care expenses actually incurred and reasonably
23 expected to be incurred as a result of the misdemeanor or, if
24 homemaking or child care is provided without compensation by a
25 relative, friend, or any other person, an amount equal to the costs
26 that would reasonably be incurred as a result of the misdemeanor
27 for that homemaking and child care, based on the rates in the area

1 for comparable services.

2 (f) Pay an amount equal to the cost of actual funeral and
3 related services.

4 (g) If the deceased victim could be claimed as a dependent by
5 his or her parent or guardian on the parent's or guardian's
6 federal, state, or local income tax returns, pay an amount equal to
7 the loss of the tax deduction or tax credit. The amount of
8 reimbursement shall be estimated for each year the victim could
9 reasonably be claimed as a dependent.

10 (h) Pay an amount equal to income actually lost by the spouse,
11 parent, sibling, child, or grandparent of the victim because the
12 family member left his or her employment, temporarily or
13 permanently, to care for the victim because of the injury.

14 (5) If a crime resulting in bodily injury also results in the
15 death of a victim or serious impairment of a body function of a
16 victim, the court may order up to 3 times the amount of restitution
17 otherwise allowed under this section. As used in this subsection,
18 "serious impairment of a body function of a victim" includes, but
19 is not limited to, 1 or more of the following:

20 (a) Loss of a limb or use of a limb.

21 (b) Loss of a hand or foot or use of a hand or foot.

22 (c) Loss of an eye or use of an eye or ear.

23 (d) Loss or substantial impairment of a bodily function.

24 (e) Serious visible disfigurement.

25 (f) A comatose state that lasts for more than 3 days.

26 (g) Measurable brain damage or mental impairment.

27 (h) A skull fracture or other serious bone fracture.

1 (i) Subdural hemorrhage or subdural hematoma.

2 (j) Loss of a body organ.

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

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

8 (8) IF THE VICTIM IS THE VICTIM OF IDENTITY THEFT AS THAT TERM
9 IS DEFINED IN SECTION 3 OF THE IDENTITY THEFT PROTECTION ACT, 2004
10 PA 452, MCL 445.63, THEN THE COURT SHALL ORDER RESTITUTION TO
11 COMPENSATE THE VICTIM IN FULL FOR THE WORK DONE BY THE VICTIM OR
12 THE VICTIM'S ATTORNEY, OR BOTH, TO RECTIFY THE VICTIM'S FINANCIAL
13 RECORDS AND VITAL RECORDS AND TO AMELIORATE THE EFFECTS OF THE
14 IDENTITY THEFT ON THE VICTIM'S FINANCIAL AFFAIRS, INCLUDING, BUT
15 NOT LIMITED TO, CREDIT HISTORY, CREDIT RATING, OR CREDIT SCORE.

16 (9) ~~(8)~~—The court shall order restitution to the crime victim
17 services commission or to any individuals, partnerships,
18 corporations, associations, governmental entities, or other legal
19 entities that have compensated the victim or the victim's estate
20 for a loss incurred by the victim to the extent of the compensation
21 paid for that loss. The court shall also order restitution for the
22 costs of services provided to persons or entities that have
23 provided services to the victim as a result of the misdemeanor.
24 Services that are subject to restitution under this subsection
25 include, but are not limited to, shelter, food, clothing, and
26 transportation. However, an order of restitution shall require that
27 all restitution to a victim or victim's estate under the order be

1 made before any restitution to any other person or entity under
2 that order is made. The court shall not order restitution to be
3 paid to a victim or victim's estate if the victim or victim's
4 estate has received or is to receive compensation for that loss,
5 and the court shall state on the record with specificity the
6 reasons for its action.

7 (10) ~~(9)~~—Any amount paid to a victim or victim's estate under
8 an order of restitution shall be set off against any amount later
9 recovered as compensatory damages by the victim or the victim's
10 estate in any federal or state civil proceeding and shall reduce
11 the amount payable to a victim or a victim's estate by an award
12 from the crime victim services commission made after an order of
13 restitution under this section.

14 (11) ~~(10)~~—If not otherwise provided by the court under this
15 subsection, restitution shall be made immediately. However, the
16 court may require that the defendant make restitution under this
17 section within a specified period or in specified installments.

18 (12) ~~(11)~~—If the defendant is placed on probation or the court
19 imposes a conditional sentence as provided in section 3 of chapter
20 IX of the code of criminal procedure, 1927 PA 175, MCL 769.3, any
21 restitution ordered under this section shall be a condition of that
22 probation or sentence. The court may revoke probation or impose
23 imprisonment under the conditional sentence if the defendant fails
24 to comply with the order and if the defendant has not made a good
25 faith effort to comply with the order. In determining whether to
26 revoke probation or impose imprisonment, the court shall consider
27 the defendant's employment status, earning ability, and financial

1 resources, the willfulness of the defendant's failure to pay, and
2 any other special circumstances that may have a bearing on the
3 defendant's ability to pay.

4 (13) ~~(12)~~—Subject to subsection ~~(15)~~—(16), a defendant who is
5 required to pay restitution and who is not in willful default of
6 the payment of the restitution may at any time petition the
7 sentencing judge or his or her successor to modify the method of
8 payment. If the court determines that payment under the order will
9 impose a manifest hardship on the defendant or his or her immediate
10 family, and if the court also determines that modifying the method
11 of payment will not impose a manifest hardship on the victim, the
12 court may modify the method of payment.

13 (14) ~~(13)~~—An order of restitution entered under this section
14 remains effective until it is satisfied in full. An order of
15 restitution is a judgment and lien against all property of the
16 defendant for the amount specified in the order of restitution. The
17 lien may be recorded as provided by law. An order of restitution
18 may be enforced by the prosecuting attorney, a victim, a victim's
19 estate, or any other person or entity named in the order to receive
20 restitution in the same manner as a judgment in a civil action or a
21 lien.

22 (15) ~~(14)~~—Notwithstanding any other provision of this section,
23 a defendant shall not be imprisoned, jailed, or incarcerated for a
24 violation of probation or otherwise for failure to pay restitution
25 as ordered under this section unless the court determines that the
26 defendant has the resources to pay the ordered restitution and has
27 not made a good faith effort to do so.

1 (16) ~~(15)~~—In each case in which payment of restitution is
2 ordered as a condition of probation, the court shall order any
3 employed defendant to make regularly scheduled restitution
4 payments. If the defendant misses 2 or more regularly scheduled
5 payments, the court shall order the defendant to execute a wage
6 assignment to pay the restitution. The probation officer assigned
7 to the case shall review the case not less than twice yearly to
8 ensure that restitution is being paid as ordered. If the
9 restitution was ordered to be made within a specific period of
10 time, the probation officer assigned to the case shall review the
11 case at the end of the specific period of time to determine if the
12 restitution has been paid in full. The final review shall be
13 conducted not less than 60 days before the probationary period
14 expires. If the probation officer determines at any review that
15 restitution is not being paid as ordered, the probation officer
16 shall file a written report of the violation with the court on a
17 form prescribed by the state court administrative office or shall
18 petition the court for a probation violation. The report or
19 petition shall include a statement of the amount of the arrearage
20 and any reasons for the arrearage known by the probation officer.
21 The probation officer shall immediately provide a copy of the
22 report or petition to the prosecuting attorney. If a petition or
23 motion is filed or other proceedings are initiated to enforce
24 payment of restitution and the court determines that restitution is
25 not being paid or has not been paid as ordered by the court, the
26 court shall promptly take action necessary to compel compliance.

27 (17) ~~(16)~~—If the court determines that a defendant who is

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

6 (18) ~~(17)~~—The court shall not impose a fee on a victim,
7 victim's estate, or prosecuting attorney for enforcing an order of
8 restitution.

9 (19) ~~(18)~~—If a person or entity entitled to restitution under
10 this section cannot be located, refuses to claim the restitution
11 within 2 years after the date on which he or she could have claimed
12 the restitution, or refuses to accept the restitution, the
13 restitution to which that person or entity is entitled shall be
14 deposited in the crime victim's rights fund created under section 4
15 of 1989 PA 196, MCL 780.904, or its successor fund. However, a
16 person or entity entitled to that restitution may claim that
17 restitution any time by applying to the court that originally
18 ordered and collected it. The court shall notify the crime victim
19 services commission of the application and the commission shall
20 approve a reduction in the court's revenue transmittal to the crime
21 victim's rights fund equal to the restitution owed to the person or
22 entity. The court shall use the reduction to reimburse that
23 restitution to the person or entity.

24 (20) ~~(19)~~—The court may amend an order of restitution entered
25 under this section on a motion by the prosecuting attorney, the
26 victim, or the defendant based upon new information related to the
27 injury, damages, or loss for which the restitution was ordered.

House Bill No. 4737 (H-1) as amended September 9, 2009

1 (21) ~~(20)~~—A court that receives notice that a defendant who
2 has an obligation to pay restitution under this section has
3 declared bankruptcy shall forward a copy of that notice to the
4 prosecuting attorney. The prosecuting attorney shall forward the
5 notice to the victim at the victim's last known address.

6 (22) ~~(21)~~—If the victim is a minor, the order of restitution
7 shall require the defendant pay to a parent of the victim an amount
8 that is determined to be reasonable for any of the following that
9 are actually incurred or reasonably expected to be incurred by the
10 parent as a result of the crime:

11 (a) Homemaking and child care expenses.

12 (b) Income loss not ordered to be paid under subsection
13 (4) (h).

14 (c) Mileage.

15 (d) Lodging or housing.

16 (e) Meals.

17 (f) Any other cost incurred in exercising the rights of the
18 victim or a parent under this act.

[Enacting section 1. This amendatory act takes effect January 1,
2010.]

19 Enacting section [2]. This amendatory act does not take effect
20 unless all of the following bills of the 95th Legislature are
21 enacted into law:

22 (a) House Bill No. 4736.

23 (b) House Bill No. 4738.