



SENATE BILL No. 970

April 18, 1996, Introduced by Senators VAN REGENMORTER and CHERRY and referred to the Committee on Judiciary.

A bill to amend sections 16, 17, 18, 44, 45, 47, 76, and 81 of Act No. 87 of the Public Acts of 1985, entitled as amended "Crime victim's rights act," sections 16, 44, and 76 as amended by Act No. 121 of the Public Acts of 1996, section 45 as amended by Act No. 341 of the Public Acts of 1993, section 47 as added by Act No. 22 of the Public Acts of 1988, and section 81 as added by Act No. 21 of the Public Acts of 1988, being sections 780.766, 780.767, 780.768, 780.794, 780.795, 780.797, 780.826, and 780.831 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 16, 17, 18, 44, 45, 47, 76, and 81 of
2 Act No. 87 of the Public Acts of 1985, sections 16, 44, and 76 as
3 amended by Act No. 121 of the Public Acts of 1996, section 45 as
4 amended by Act No. 341 of the Public Acts of 1993, section 47 as

1 added by Act No. 22 of the Public Acts of 1988, and section 81 as
2 added by Act No. 21 of the Public Acts of 1988, being sections
3 780.766, 780.767, 780.768, 780.794, 780.795, 780.797, 780.826,
4 and 780.831 of the Michigan Compiled Laws, are amended to read as
5 follows:

6 Sec. 16. (1) For purposes of this section only, "victim"
7 means an individual who suffers direct or threatened physical,
8 financial, or emotional harm as a result of the commission of a
9 crime. For purposes of subsections (2), (3), ~~(4), (7),~~ (6),
10 (8), (9), ~~(10), (11),~~ and ~~(16)~~ (13), victim includes a sole
11 proprietorship, partnership, corporation, association, governmen-
12 tal entity, or any other legal entity that suffers direct physi-
13 cal or financial harm as a result of a crime.

14 (2) Except as provided in ~~this section and section 17,~~ the
15 ~~court,~~ SUBSECTION (8), when sentencing a defendant convicted of
16 a crime, THE COURT shall order, in addition to or in lieu of any
17 other penalty authorized by law or in addition to any other pen-
18 alty required by law, that the defendant make full ~~or partial~~
19 restitution to any victim of the defendant's course of conduct
20 that gives rise to the conviction ~~,~~ or to the victim's estate.

21 ~~(3) If the court does not order restitution, or orders only~~
22 ~~partial restitution under this section, the court shall state on~~
23 ~~the record the reasons for that action.~~

24 (3) ~~(4)~~ If a crime results in damage to or loss or
25 destruction of property of a victim of the crime, or results in
26 the seizure or impoundment of property of a victim of the crime,

1 the order of restitution may require that the defendant do 1 or
2 more of the following, AS APPLICABLE:

3 (a) Return the property to the owner of the property or to a
4 person designated by the owner.

5 (b) If return of the property under subdivision (a) is
6 impossible, impractical, or inadequate, pay an amount equal to
7 the greater of subparagraph (i) or (ii), less the value, deter-
8 mined as of the date the property is returned, of that property
9 or any part of the property that is returned:

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

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

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

14 (4) ~~(5)~~ If a crime results in physical or psychological
15 injury to a victim, the order of restitution may require that the
16 defendant do 1 or more of the following, as applicable:

17 (a) Pay an amount equal to the cost of actual medical and
18 related professional services and devices relating to physical
19 and psychological care.

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

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

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

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

3 (5) ~~(6)~~ If a crime resulting in bodily injury also results
4 in the death of a victim, the order of restitution may require
5 that the defendant pay an amount equal to the cost of actual
6 funeral and related services.

7 (6) ~~(7)~~ If the victim or victim's estate consents, the
8 order of restitution may require that the defendant make restitu-
9 tion in services in lieu of money.

10 (7) ~~(8) If the court orders restitution under this section,~~
11 ~~the court shall, if~~ IF the victim is deceased, THE COURT SHALL
12 order that the restitution be made to the victim's estate.

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

16 (8) ~~(10) Except as otherwise provided in this section and~~
17 ~~section 17, the~~ THE court shall order restitution to the crime
18 victims compensation board or to any individuals, partnerships,
19 corporations, associations, governmental entities, or other legal
20 entities that have compensated the victim or the victim's estate
21 for a loss incurred by the victim to the extent of the compensa-
22 tion paid for that loss. ~~Except as otherwise provided in this~~
23 ~~section and section 17, the~~ THE court shall also order restitu-
24 tion ~~—~~ for the costs of services provided ~~—~~ to persons or
25 entities that have provided services to the victim as a result of
26 the crime. Services that are subject to restitution under this
27 subsection include, but are not limited to, shelter, food,

1 clothing, and transportation. However, an order of restitution
2 shall require that all restitution to a victim or victim's estate
3 under the order be made before any restitution to any other
4 person or entity under that order is made. The court shall not
5 order restitution to be paid to a victim or victim's estate if
6 the victim or victim's estate has received or is to receive com-
7 pensation for that loss, AND THE COURT SHALL STATE ON THE RECORD
8 WITH SPECIFICITY THE REASONS FOR ITS ACTION.

9 (9) ~~(+1)~~ Any amount paid to a victim or victim's estate
10 under an order of restitution shall be set off against any amount
11 later recovered as compensatory damages by the victim or the
12 victim's estate in any federal or state civil proceeding and
13 shall reduce the amount payable to a victim or a victim's estate
14 by an award from the crime victims compensation board made after
15 an order of restitution under this section.

16 (10) ~~(+2)~~ If not otherwise provided by the court under
17 this subsection, restitution shall be made immediately. However,
18 the court may require that the defendant make restitution under
19 this section within a specified period or in specified
20 installments. ~~The end of the period or the last installment~~
21 ~~shall not be later than the following:~~

22 ~~(a) The end of the period of probation, if probation is~~
23 ~~ordered.~~

24 ~~(b) Two years after the end of imprisonment or discharge~~
25 ~~from parole, whichever occurs later, if the court does not order~~
26 ~~probation but imposes a term of imprisonment.~~

1 ~~(c) Three years after the date of sentencing in any other~~
2 ~~case.~~

3 ~~(13) In determining the amount of restitution, the court~~
4 ~~shall consider the defendant's earning ability, financial~~
5 ~~resources, and any other special circumstances that may have a~~
6 ~~bearing on the defendant's ability to pay.~~

7 (11) ~~(14)~~ If the defendant is placed on probation or
8 paroled, any restitution ordered under this section shall be a
9 condition of that probation or parole. The court may revoke pro-
10 bation and the parole board may revoke parole if the defendant
11 fails to comply with the order and if the defendant has not made
12 a good faith effort to comply with the order. In determining
13 whether to revoke probation or parole, the court or parole board
14 shall consider the defendant's employment status, earning abili-
15 ty, financial resources, the willfulness of the defendant's fail-
16 ure to pay, and any other special circumstances that may have a
17 bearing on the defendant's ability to pay.

18 (12) ~~(15)~~ A defendant who is required to pay restitution
19 and who is not in willful default of the payment of the restitu-
20 tion may at any time petition the sentencing judge or his or her
21 successor ~~for a cancellation of any unpaid portion of~~
22 ~~restitution~~ TO MODIFY THE METHOD OF PAYMENT. If ~~it appears to~~
23 ~~the satisfaction of~~ the court DETERMINES that payment ~~of the~~
24 ~~amount due~~ UNDER THE ORDER will impose a manifest hardship on
25 the defendant or his or her immediate family, the court may
26 ~~cancel all or part of the amount due in restitution or~~ modify
27 the method of payment.

1 (13) ~~(+6)~~ AN ORDER OF RESTITUTION ENTERED UNDER THIS
2 SECTION REMAINS EFFECTIVE UNTIL IT IS SATISFIED IN FULL. AN ORDER
3 OF RESTITUTION IS A JUDGMENT AND LIEN AGAINST ALL PROPERTY OF THE
4 DEFENDANT FOR THE AMOUNT SPECIFIED IN THE ORDER OF RESTITUTION.
5 THE LIEN MAY BE RECORDED AS PROVIDED BY LAW. An order of restitu-
6 tion may be enforced by the prosecuting attorney, a victim, a
7 victim's estate, or any other person or entity named in the order
8 to receive the restitution in the same manner as a judgment in a
9 civil action OR A LIEN.

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

17 (15) ~~(+8)~~ In each case in which payment of restitution is
18 ordered as a condition of probation, the probation officer
19 assigned to the case shall review the case not less than twice
20 yearly to ensure that restitution is being paid as ordered. The
21 final review shall be conducted not less than 60 days before the
22 expiration of the probationary period. If the probation officer
23 determines that restitution is not being paid as ordered, the
24 probation officer shall file a written report of the violation
25 with the court on a form prescribed by the state court adminis-
26 trative office. The report shall include a statement of the
27 amount of the arrearage, and any reasons for the arrearage that

1 are known by the probation officer. The probation officer shall
2 immediately provide a copy of the report to the prosecuting
3 attorney. If a motion is filed or other proceedings are initi-
4 ated to enforce payment of restitution and the court determines
5 that restitution is not being paid or has not been paid as
6 ordered by the court, the court shall promptly take action neces-
7 sary to compel compliance.

8 (16) IF A DEFENDANT WHO IS ORDERED TO PAY RESTITUTION UNDER
9 THIS SECTION IS REMANDED TO THE JURISDICTION OF THE DEPARTMENT OF
10 CORRECTIONS, THE COURT SHALL PROVIDE A COPY OF THE ORDER OF RES-
11 TITUTION TO THE DEPARTMENT OF CORRECTIONS WHEN THE DEFENDANT IS
12 REMANDED TO THE DEPARTMENT'S JURISDICTION.

13 Sec. 17. (1) ~~The court, in~~ IN determining ~~whether to~~
14 ~~order~~ THE AMOUNT OF restitution TO ORDER under section 16, ~~and~~
15 ~~the amount of that restitution,~~ THE COURT shall consider the
16 amount of the loss sustained by any victim as a result of the
17 offense. ~~, the financial resources and earning ability of the~~
18 ~~defendant, the financial needs of the defendant and the~~
19 ~~defendant's dependents, and such other factors as the court con-~~
20 ~~siders appropriate.~~

21 (2) The court may order the probation officer to obtain
22 information pertaining to the ~~factors set forth~~ AMOUNTS OF LOSS
23 DESCRIBED in subsection (1). The probation officer shall include
24 the information collected in the presentence investigation report
25 or in a separate report, as the court directs.

1 (3) The court shall disclose to both the defendant and the
2 prosecuting attorney all portions of the presentence or other
3 report pertaining to the matters described in subsection (1).

4 (4) Any dispute as to the proper amount or type of restitu-
5 tion shall be resolved by the court by a preponderance of the
6 evidence. The burden of demonstrating the ~~earning ability of~~
7 ~~the defendant and the~~ amount of the loss sustained by a victim
8 as a result of the offense shall be on the prosecuting attorney.
9 ~~The burden of demonstrating the financial resources of the~~
10 ~~defendant and the financial needs of the defendant and the~~
11 ~~defendant's dependents shall be on the defendant. The burden of~~
12 ~~demonstrating such other matters as the court deems appropriate~~
13 ~~shall be upon the party designated by the court as justice~~
14 ~~requires.~~

15 Sec. 18. (1) A person convicted of a crime shall not derive
16 any profit from the sale of his or her recollections, thoughts,
17 and feelings with regard to the offense committed by that person
18 until the victim receives any restitution or compensation ordered
19 for him or her against the defendant and expenses of incarcera-
20 tion are recovered as provided in subsection (3) and until the
21 escrow account created under subsection (2) is terminated under
22 subsection (4).

23 (2) Upon the conviction of a defendant for a crime involving
24 a victim, and after notice to any interested party, an attorney
25 for the county in which the conviction occurred or the attorney
26 general may petition the court in which the conviction occurred
27 to order that defendant forfeit all or any part of proceeds

1 received or to be received by the defendant, or the defendant's
2 representatives or assignees, from contracts relating to the
3 depiction of the crime or the defendant's recollections,
4 thoughts, or feelings about the crime, in books, magazines, media
5 entertainment, or live entertainment, AS PROVIDED IN THIS
6 SECTION. The proceeds shall be held in escrow for a period of
7 not more than 5 years.

8 (3) During the existence of the escrow account, proceeds in
9 the account shall be distributed in the following priority ~~for~~
10 TO SATISFY the following: ~~purposes:~~

11 (a) ~~To satisfy an~~ AN order of restitution entered under
12 sections 16 and 17.

13 (b) ~~To satisfy any~~ ANY civil judgment in favor of the
14 victim against that defendant.

15 (c) ~~To satisfy any~~ ANY reimbursement ordered under the
16 prisoner reimbursement to the county act, Act No. 118 of the
17 Public Acts of 1984, being sections 801.81 to 801.93 of the
18 Michigan Compiled Laws, or ordered under the state correctional
19 facility reimbursement act, Act No. 253 of the Public Acts of
20 1935, being sections 800.401 to 800.406 of the Michigan Compiled
21 Laws.

22 (4) ~~Fifty percent of the~~ THE balance remaining in the
23 escrow account at the end of the escrow period shall be ~~payable~~
24 ~~to the defendant and the remaining 50% of the balance shall be~~
25 ~~payable~~ PAID to the state general fund for use of the crime vic-
26 tims compensation board to pay compensation claims.

1 Sec. 44. (1) For purposes of this section only:

2 (a) "Offense" means a violation of a penal law of this state
3 or a violation of an ordinance of a local unit of government of
4 this state punishable by imprisonment or by a fine that is not a
5 civil fine.

6 (b) "Victim" means an individual who suffers direct or
7 threatened physical, financial, or emotional harm as a result of
8 the commission of an offense. For purposes of subsections (2),
9 (3), ~~(4), (7),~~ (6), (8), (9), ~~(10), (11),~~ and ~~(15)~~ (13),
10 victim includes a sole proprietorship, partnership, corporation,
11 association, governmental entity, or any other legal entity that
12 suffers direct physical or financial harm as a result of an
13 offense.

14 (2) Except as provided in ~~this section and section 45, the~~
15 ~~court,~~ SUBSECTION (8), at the dispositional hearing for an
16 offense, THE COURT shall order, in addition to or in lieu of any
17 other disposition authorized by law, that the juvenile make full
18 ~~or partial~~ restitution to any victim of the juvenile's course
19 of conduct that gives rise to the disposition ~~—~~ or to the
20 victim's estate.

21 ~~(3) If the court does not order restitution, or orders only~~
22 ~~partial restitution under this section, the court shall state on~~
23 ~~the record the reasons for that action.~~

24 (3) ~~(4)~~ If an offense results in damage to or loss or
25 destruction of property of a victim of the offense, or results in
26 the seizure or impoundment of property of a victim of the

1 offense, the order of restitution may require that the juvenile
2 do 1 or more of the following, AS APPLICABLE:

3 (a) Return the property to the owner of the property or to a
4 person designated by the owner.

5 (b) If return of the property under subdivision (a) is
6 impossible, impractical, or inadequate, pay an amount equal to
7 the greater of subparagraph (i) or (ii), less the value, deter-
8 mined as of the date the property is returned, of that property
9 or any part of the property that is returned:

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

12 (ii) The value of the property on the date of disposition.

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

14 (4) ~~(5)~~ If an offense results in physical or psychological
15 injury to a victim, the order of restitution may require that the
16 juvenile do 1 or more of the following, as applicable:

17 (a) Pay an amount equal to the cost of actual medical and
18 related professional services and devices relating to physical
19 and psychological care.

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

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

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

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

3 (5) ~~(6)~~ If an offense resulting in bodily injury also
4 results in the death of a victim, the order of restitution may
5 require that the juvenile pay an amount equal to the cost of
6 actual funeral and related services.

7 (6) ~~(7)~~ If the victim or victim's estate consents, the
8 order of restitution may require that the juvenile make restitu-
9 tion in services in lieu of money.

10 (7) ~~(8) If the court orders restitution under this section,~~
11 ~~the court shall, if~~ IF the victim is deceased, THE COURT SHALL
12 order that the restitution be made to the victim's estate.

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

16 (8) ~~(10) Except as otherwise provided in this section and~~
17 ~~section 45, the~~ THE court shall order restitution to the crime
18 victims compensation board or to any individuals, partnerships,
19 corporations, associations, governmental entities, or other legal
20 entities that have compensated the victim or the victim's estate
21 for a loss incurred by the victim to the extent of the compensa-
22 tion paid for that loss. ~~Except as otherwise provided in this~~
23 ~~section and section 45, the~~ THE court shall also order restitu-
24 tion ~~—~~ for the costs of services provided ~~—~~ to persons or
25 entities that have provided services to the victim as a result of
26 the offense. Services that are subject to restitution under this
27 subsection include, but are not limited to, shelter, food,

1 clothing, and transportation. However, an order of restitution
2 shall require that all restitution to a victim or victim's estate
3 under the order be made before any restitution to any other
4 person or entity under that order is made. The court shall not
5 order restitution to be paid to a victim or victim's estate if
6 the victim or victim's estate has received or is to receive com-
7 pensation for that loss, AND THE COURT SHALL STATE ON THE RECORD
8 WITH SPECIFICITY THE REASONS FOR ITS ACTION.

9 (9) ~~(+1)~~ Any amount paid to a victim or victim's estate
10 under an order of restitution shall be set off against any amount
11 later recovered as compensatory damages by the victim or the
12 victim's estate in any federal or state civil proceeding and
13 shall reduce the amount payable to a victim or a victim's estate
14 by an award from the crime victims compensation board made after
15 an order of restitution under this section.

16 (10) ~~(+2)~~ If not otherwise provided by the court under
17 this subsection, restitution shall be made immediately. However,
18 the court may require that the juvenile make restitution under
19 this section within a specified period or in specified
20 installments. ~~The end of the period or the last installment~~
21 ~~shall not be later than the following:~~

22 ~~(a) The end of the period of probation, if probation is~~
23 ~~ordered.~~

24 ~~(b) If the juvenile is made a state ward, when the depart-~~
25 ~~ment of social services' jurisdiction over the juvenile expires.~~

26 ~~(c) If the juvenile is made a ward of the court, when the~~
27 ~~court's jurisdiction over the juvenile expires.~~

1 ~~(d) Three years after the date of disposition or when the~~
2 ~~court's jurisdiction over the juvenile expires, whichever is~~
3 ~~later.~~

4 (11) ~~(+3)~~ If the juvenile is placed on probation, any res-
5 titution ordered under this section shall be a condition of that
6 probation. The court may revoke probation if the juvenile fails
7 to comply with the order and if the juvenile has not made a good
8 faith effort to comply with the order. In determining whether to
9 revoke probation, the court shall consider the juvenile's employ-
10 ment status, earning ability, financial resources, the willful-
11 ness of the juvenile's failure to pay, and any other special cir-
12 cumstances that may have a bearing on the juvenile's ability to
13 pay.

14 (12) ~~(+4)~~ A juvenile who is required to pay restitution
15 and who is not in willful default of the payment of the restitu-
16 tion may at any time petition the court ~~for a cancellation of~~
17 ~~any unpaid portion of restitution~~ TO MODIFY THE METHOD OF
18 PAYMENT. If ~~it appears to the satisfaction of~~ the court
19 DETERMINES that payment ~~of the amount due~~ UNDER THE ORDER will
20 impose a manifest hardship on the juvenile or his or her immedi-
21 ate family, the court may ~~cancel all or part of the amount due~~
22 ~~in restitution or~~ modify the method of payment.

23 (13) ~~(+5)~~ AN ORDER OF RESTITUTION ENTERED UNDER THIS SEC-
24 TION REMAINS EFFECTIVE UNTIL IT IS SATISFIED IN FULL. AN ORDER OF
25 RESTITUTION IS A JUDGMENT AND LIEN AGAINST ALL PROPERTY OF THE
26 INDIVIDUAL ORDERED TO PAY RESTITUTION FOR THE AMOUNT SPECIFIED IN
27 THE ORDER OF RESTITUTION. THE LIEN MAY BE RECORDED AS PROVIDED

1 BY LAW. An order of restitution may be enforced by the
2 prosecuting attorney, a victim, a victim's estate, or any other
3 person or entity named in the order to receive the restitution in
4 the same manner as a judgment in a civil action OR A LIEN.

5 (14) ~~(+16)~~ Notwithstanding any other provision of this sec-
6 tion, a juvenile shall not be detained for a violation of proba-
7 tion, or otherwise, for failure to pay restitution as ordered
8 under this section unless the court determines that the juvenile
9 has the resources to pay the ordered restitution and has not made
10 a good faith effort to do so.

11 (15) ~~(+17)~~ If the court determines that the juvenile is or
12 will be unable to pay all of the restitution ordered, after
13 notice to the juvenile's parent or parents and an opportunity for
14 the parent or parents to be heard, the court may order the parent
15 or parents having supervisory responsibility for the juvenile at
16 the time of the acts upon which an order of restitution is based
17 to pay ~~not more than \$5,000.00 of~~ ANY PORTION OF the restitu-
18 tion ordered THAT IS OUTSTANDING. AN ORDER UNDER THIS SUBSECTION
19 DOES NOT RELIEVE THE JUVENILE OF HIS OR HER OBLIGATION TO PAY
20 RESTITUTION AS ORDERED, BUT THE AMOUNT OWED BY THE JUVENILE SHALL
21 BE OFFSET BY ANY AMOUNT PAID BY HIS OR HER PARENT. As used in
22 this subsection, "parent" does not include a foster parent.

23 (16) ~~(+18)~~ If the court orders a parent to pay restitution
24 under subsection ~~(+17)~~ (15), the court shall take into account
25 the financial resources of the parent and the burden that the
26 payment of restitution will impose, with due regard to any other
27 moral or legal financial obligations that the parent may have.

1 If a parent is required to pay restitution under subsection
2 ~~(+7)~~ (15), the court shall provide for payment to be made in
3 specified installments and within a specified period of time.

4 (17) ~~(+9)~~ A parent who has been ordered to pay restitution
5 under subsection ~~(+7)~~ (15) may petition the court for a modifi-
6 cation of the amount of restitution owed or for a cancellation of
7 any unpaid portion of the restitution. The court shall cancel
8 all or part of the amount of restitution due ~~—~~ if ~~it appears~~
9 ~~to the satisfaction of~~ the court DETERMINES that payment of the
10 amount due will impose a manifest hardship on the parent.

11 (18) ~~(+20)~~ In each case in which payment of restitution is
12 ordered as a condition of probation, the juvenile caseworker or
13 probation officer assigned to the case shall review the case not
14 less than twice yearly to ensure that restitution is being paid
15 as ordered. The final review shall be conducted not less than 60
16 days before the expiration of the probationary period. If the
17 juvenile caseworker or probation officer determines the restitu-
18 tion is not being paid as ordered, the juvenile caseworker or
19 probation officer shall file a written report of the violation
20 with the court on a form prescribed by the state court adminis-
21 trative office. The report shall include a statement of the
22 amount of the arrearage, and any reasons for the arrearage that
23 are known by the juvenile caseworker or probation officer. The
24 juvenile caseworker or probation officer shall immediately pro-
25 vide a copy of the report to the prosecuting attorney. If a
26 motion is filed or other proceedings are initiated to enforce
27 payment of restitution and the court determines that restitution

1 is not being paid or has not been paid as ordered by the court,
2 the court shall promptly take action necessary to compel
3 compliance.

4 ~~(21) A court shall not order a juvenile to pay restitution~~
5 ~~under this section in an amount that exceeds 30% of the~~
6 ~~juvenile's net income per pay period from the juvenile's paid~~
7 ~~employment.~~

8 (19) IF THE COURT DETERMINES THAT AN INDIVIDUAL WHO IS
9 ORDERED TO PAY RESTITUTION UNDER THIS SECTION IS REMANDED TO THE
10 JURISDICTION OF THE DEPARTMENT OF CORRECTIONS, THE COURT SHALL
11 PROVIDE A COPY OF THE ORDER OF RESTITUTION TO THE DEPARTMENT OF
12 CORRECTIONS WHEN THE COURT DETERMINES THAT THE INDIVIDUAL IS
13 REMANDED TO THE DEPARTMENT'S JURISDICTION.

14 Sec. 45. (1) ~~The court, in~~ IN determining ~~whether to~~
15 ~~order~~ THE AMOUNT OF restitution TO ORDER under section 44, ~~and~~
16 ~~the amount of that restitution,~~ THE COURT shall consider the
17 amount of the loss sustained by any victim as a result of the
18 offense. ~~7~~ IN DETERMINING WHETHER TO ORDER THE JUVENILE'S
19 PARENT TO PAY RESTITUTION UNDER SECTION 44(15), THE COURT SHALL
20 CONSIDER the financial resources ~~and earning ability of the~~
21 ~~juvenile and his or her supervisory~~ OF THE JUVENILE'S parent ~~7~~
22 ~~the financial needs of the juvenile and the juvenile's depen-~~
23 ~~dents, and such~~ AND THE other factors ~~as the court considers~~
24 ~~appropriate~~ SPECIFIED IN SECTION 44(16).

25 (2) The court may order the person preparing a report for
26 the purpose of disposition to obtain information pertaining to
27 the factors set forth in subsection (1). That person shall

1 include the information collected in the disposition report or in
2 a separate report, as the court directs.

3 (3) The court shall disclose to the juvenile, the juvenile's
4 ~~supervisory~~ parent, and the prosecuting attorney all portions
5 of the disposition or other report pertaining to the matters
6 described in subsection (1).

7 (4) Any dispute as to the proper amount or type of restitu-
8 tion shall be resolved by the court by a preponderance of the
9 evidence. The burden of demonstrating the ~~earning ability of~~
10 ~~the juvenile and the~~ amount of the loss sustained by a victim as
11 a result of the offense shall be on the prosecuting attorney.
12 The burden of demonstrating the financial resources of the
13 ~~juvenile and his or her supervisory~~ JUVENILE'S parent AND THE
14 OTHER FACTORS SPECIFIED IN SECTION 44(16) shall be on the
15 ~~juvenile and his or her supervisory~~ parent. ~~and the burden of~~
16 ~~demonstrating the financial needs of the juvenile and the~~
17 ~~juvenile's dependents shall be on the juvenile. The burden of~~
18 ~~demonstrating such other matters as the court considers appropri-~~
19 ~~ate shall be upon the party designated by the court as justice~~
20 ~~requires.~~

21 Sec. 47. (1) A juvenile adjudicated for an offense shall
22 not derive any profit from the sale of his or her recollections,
23 thoughts, and feelings with regard to the offense committed by
24 that juvenile until the victim receives any restitution or com-
25 pensation ordered for him or her against the juvenile and
26 expenses of ~~incarceration~~ DETENTION are recovered as provided

1 in subsection (3) and until the escrow account created under
2 subsection (2) is terminated under subsection (4).

3 (2) Upon the disposition of a juvenile offense involving a
4 victim, and after notice to any interested party, an attorney for
5 the county in which the disposition occurred or the attorney gen-
6 eral may petition the court in which the disposition occurred to
7 order that juvenile forfeit all or any part of proceeds received
8 or to be received by the juvenile, or the juvenile's representa-
9 tives or assignees, from contracts relating to the depiction of
10 the offense or the juvenile's recollections, thoughts, or feel-
11 ings about the offense, in books, magazines, media entertainment,
12 or live entertainment, AS PROVIDED IN THIS SECTION. The proceeds
13 shall be held in escrow for a period of not more than 5 years.

14 (3) During the existence of the escrow account, proceeds in
15 the account shall be distributed in the following priority ~~for~~
16 TO SATISFY the following: ~~purposes:~~

17 (a) ~~To satisfy an~~ AN order of restitution entered under
18 sections 44 and 45.

19 (b) ~~To satisfy any~~ ANY civil judgment in favor of the
20 victim against that juvenile.

21 (c) ~~To satisfy any~~ ANY reimbursement FOR DETENTION ordered
22 under section 18 of chapter XIIA of Act No. 288 of the Public
23 Acts of 1939, being section 712A.18 of the Michigan Compiled
24 Laws.

25 (4) ~~Fifty percent of the~~ THE balance remaining in the
26 escrow account at the end of the escrow period shall be ~~payable~~
27 ~~to the juvenile and the remaining 50% of the balance shall be~~

1 ~~payable~~ PAID to the state general fund for use of the crime
2 victims compensation board to pay compensation claims.

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

4 (A) "MISDEMEANOR" MEANS A VIOLATION OF A LAW OF THIS STATE,
5 OR OF A LOCAL ORDINANCE, THAT IS PUNISHABLE BY IMPRISONMENT FOR
6 NOT MORE THAN 1 YEAR OR A FINE THAT IS NOT A CIVIL FINE, BUT THAT
7 IS NOT A FELONY.

8 (B) ~~(a)~~ "Victim" means an individual who suffers direct or
9 threatened physical, financial, or emotional harm as a result of
10 the commission of a misdemeanor. For purposes of subsections
11 (2), (3), ~~(4), (7),~~ (6), (8), (9), ~~(10), (11),~~ and ~~(15)~~
12 (13), victim includes a sole proprietorship, partnership, corpo-
13 ration, association, governmental entity, or any other legal
14 entity that suffers direct physical or financial harm as a result
15 of a misdemeanor.

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

20 (2) Except as provided in ~~this section, the court,~~
21 SUBSECTION (8), when sentencing a defendant convicted of a misde-
22 meanor, THE COURT shall order, in addition to or in lieu of any
23 other penalty authorized by law or in addition to any other pen-
24 alty required by law, that the defendant make full ~~or partial~~
25 restitution to any victim of the defendant's course of conduct
26 that gives rise to the conviction ~~—~~ or to the victim's estate.

1 ~~(3) If the court does not order restitution, or orders only~~
2 ~~partial restitution under this section, the court shall state on~~
3 ~~the record the reasons for that action.~~

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

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

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

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

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

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

20 (4) ~~(5)~~ If a misdemeanor results in physical or psycholog-
21 ical injury to a victim, the order of restitution may require
22 that the defendant do 1 or more of the following, as applicable:

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

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

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

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

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

9 (5) ~~(6)~~ If a misdemeanor resulting in bodily injury also
10 results in the death of a victim, the order of restitution may
11 require that the defendant pay an amount equal to the cost of
12 actual funeral and related services.

13 (6) ~~(7)~~ If the victim or victim's estate consents, the
14 order of restitution may require that the defendant make restitu-
15 tion in services in lieu of money.

16 (7) ~~(8) If the court orders restitution under this section,~~
17 ~~the court shall, if~~ IF the victim is deceased, THE COURT SHALL
18 order that the restitution be made to the victim's estate.

19 ~~(9) Any order of restitution shall be as fair as possible~~
20 ~~to the victim or victim's estate without unduly complicating or~~
21 ~~prolonging the sentencing process.~~

22 (8) ~~(10) Except as otherwise provided in this section, the~~
23 THE court shall order restitution to the crime victims compensa-
24 tion board or to any individuals, partnerships, corporations,
25 associations, governmental entities, or other legal entities that
26 have compensated the victim or the victim's estate for a loss
27 incurred by the victim to the extent of the compensation paid for

1 that loss. ~~Except as otherwise provided in this section, the~~
2 THE court shall also order restitution ~~—~~ for the costs of serv-
3 ices provided ~~—~~ to persons or entities that have provided serv-
4 ices to the victim as a result of the misdemeanor. Services that
5 are subject to restitution under this subsection include, but are
6 not limited to, shelter, food, clothing, and transportation.
7 However, an order of restitution shall require that all restitu-
8 tion to a victim or victim's estate under the order be made
9 before any restitution to any other person or entity under that
10 order is made. The court shall not order restitution to be paid
11 to a victim or victim's estate if the victim or victim's estate
12 has received or is to receive compensation for that loss, AND THE
13 COURT SHALL STATE ON THE RECORD WITH SPECIFICITY THE REASONS FOR
14 ITS ACTION.

15 (9) ~~(11)~~ Any amount paid to a victim or victim's estate
16 under an order of restitution shall be set off against any amount
17 later recovered as compensatory damages by the victim or the
18 victim's estate in any federal or state civil proceeding and
19 shall reduce the amount payable to a victim or a victim's estate
20 by an award from the crime victims compensation board made after
21 an order of restitution under this section.

22 (10) ~~(12)~~ If not otherwise provided by the court under
23 this subsection, restitution shall be made immediately. However,
24 the court may require that the defendant make restitution under
25 this section within a specified period or in specified
26 installments. ~~The end of the period or the last installment~~
27 ~~shall not be later than the following:~~

1 ~~(a) The end of the period of probation, if probation is~~
2 ~~ordered.~~

3 ~~(b) Two years after the end of imprisonment, if the court~~
4 ~~does not order probation but imposes a term of imprisonment.~~

5 ~~(c) Three years after the date of sentencing in any other~~
6 ~~case.~~

7 (11) ~~(+3)~~ If the defendant is placed on probation, any
8 restitution ordered under this section shall be a condition of
9 that probation. The court may revoke probation if the defendant
10 fails to comply with the order and if the defendant has not made
11 a good faith effort to comply with the order. In determining
12 whether to revoke probation, the court shall consider the
13 defendant's employment status, earning ability, financial
14 resources, the willfulness of the defendant's failure to pay, and
15 any other special circumstances that may have a bearing on the
16 defendant's ability to pay.

17 (12) ~~(+4)~~ A defendant who is required to pay restitution
18 and who is not in willful default of the payment of the restitu-
19 tion may at any time petition the sentencing judge or his or her
20 successor ~~for a cancellation of any unpaid portion of~~
21 ~~restitution~~ TO MODIFY THE METHOD OF PAYMENT. If ~~it appears to~~
22 ~~the satisfaction of~~ the court DETERMINES that payment ~~of the~~
23 ~~amount due~~ UNDER THE ORDER will impose a manifest hardship on
24 the defendant or his or her immediate family, the court may
25 ~~cancel all or part of the amount due in restitution or~~ modify
26 the method of payment.

1 (13) ~~(+5)~~ AN ORDER OF RESTITUTION ENTERED UNDER THIS
2 SECTION REMAINS EFFECTIVE UNTIL IT IS SATISFIED IN FULL. AN ORDER
3 OF RESTITUTION IS A JUDGMENT AND LIEN AGAINST ALL PROPERTY OF THE
4 DEFENDANT FOR THE AMOUNT SPECIFIED IN THE ORDER OF RESTITUTION.
5 THE LIEN MAY BE RECORDED AS PROVIDED BY LAW. An order of restitu-
6 tion may be enforced by the prosecuting attorney, a victim, a
7 victim's estate, or any other person or entity named in the order
8 to receive restitution in the same manner as a judgment in a
9 civil action OR A LIEN.

10 (14) ~~(+6)~~ Notwithstanding any other provision of this sec-
11 tion, a defendant shall not be imprisoned, jailed, or incarcer-
12 ated for a violation of probation, or otherwise, for failure to
13 pay restitution as ordered under this section unless the court
14 determines that the defendant has the resources to pay the
15 ordered restitution and has not made a good faith effort to do
16 so.

17 (15) ~~(+7)~~ In each case in which payment of restitution is
18 ordered as a condition of probation, the probation officer
19 assigned to the case shall review the case not less than twice
20 yearly to ensure that restitution is being paid as ordered. The
21 final review shall be conducted not less than 60 days before the
22 expiration of the probationary period. If the probation officer
23 determines that restitution is not being paid as ordered, the
24 probation officer shall file a written report of the violation
25 with the court on a form prescribed by the state court adminis-
26 trative office. The report shall include a statement of the
27 amount of the arrearage, and any reasons for the arrearage that

1 are known by the probation officer. The probation officer shall
2 immediately provide a copy of the report to the prosecuting
3 attorney. If a motion is filed or other proceedings are initi-
4 ated to enforce payment of restitution and the court determines
5 that restitution is not being paid or has not been paid as
6 ordered by the court, the court shall promptly take action neces-
7 sary to compel compliance.

8 ~~(18) In determining the amount of restitution, the court~~
9 ~~shall consider the defendant's earning ability, financial~~
10 ~~resources, and any other special circumstances that may have a~~
11 ~~bearing on the defendant's ability to pay.~~

12 (16) IF THE COURT DETERMINES THAT A DEFENDANT WHO IS ORDERED
13 TO PAY RESTITUTION UNDER THIS SECTION IS REMANDED TO THE JURIS-
14 DICTION OF THE DEPARTMENT OF CORRECTIONS, THE COURT SHALL PROVIDE
15 A COPY OF THE ORDER OF RESTITUTION TO THE DEPARTMENT OF CORREC-
16 TIONS WHEN THE COURT DETERMINES THAT THE DEFENDANT IS REMANDED TO
17 THE DEPARTMENT'S JURISDICTION.

18 Sec. 81. (1) A person convicted of a serious misdemeanor
19 shall not derive any profit from the sale of his or her recollec-
20 tions, thoughts, and feelings with regard to the offense commit-
21 ted by that person until the victim receives any restitution or
22 compensation ordered for him or her against the defendant and
23 expenses of incarceration are recovered as provided in subsection
24 (3) and until the escrow account created under subsection (2) is
25 terminated under subsection (4).

26 (2) Upon the conviction of a defendant for a serious
27 misdemeanor involving a victim, and after notice to any

1 interested party, an attorney for the county in which the
2 conviction occurred or the attorney general may petition the
3 court in which the conviction occurred to order that defendant
4 forfeit all or any part of proceeds received or to be received by
5 the defendant, or the defendant's representatives or assignees,
6 from contracts relating to the depiction of the crime or the
7 defendant's recollections, thoughts, or feelings about the crime,
8 in books, magazines, media entertainment, or live entertainment,
9 AS PROVIDED IN THIS SECTION. The proceeds shall be held in
10 escrow for a period of not more than 5 years.

11 (3) During the existence of the escrow account, proceeds in
12 the account shall be distributed in the following priority ~~for~~
13 TO SATISFY the following: ~~purposes:~~

14 (a) ~~To satisfy an~~ AN order of restitution entered under
15 section 76.

16 (b) ~~To satisfy any~~ ANY civil judgment in favor of the
17 victim against that defendant.

18 (c) ~~To satisfy any~~ ANY reimbursement ordered under the
19 prisoner reimbursement to the county act, Act No. 118 of the
20 Public Acts of 1984, being sections 801.81 to 801.93 of the
21 Michigan Compiled Laws, or ordered under the state correctional
22 facility reimbursement act, Act No. 253 of the Public Acts of
23 1935, being sections 800.401 to 800.406 of the Michigan Compiled
24 Laws.

25 (4) ~~Fifty percent of the~~ THE balance remaining in the
26 escrow account at the end of the escrow period shall be ~~payable~~
27 ~~to the defendant and the remaining 50% of the balance shall be~~

1 ~~payable~~ PAID to the state general fund for use of the crime
2 victims compensation board to pay compensation claims.

3 Section 2. This amendatory act shall not take effect unless
4 Senate Bill No. 929 of the 88th Legislature is enacted into law.