

# HOUSE BILL No. 4736

March 31, 2009, Introduced by Reps. Stamas, Bolger, Sheltroun, Leland, Melton, Durhal, Meadows and Dean and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 1a of chapter IX (MCL 769.1a), as amended by 1998 PA 231, and by adding section 30 to chapter IV.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IV

SEC. 30. (1) TO FACILITATE COMPLIANCE WITH SECTIONS 11 AND 13 OF THE IDENTITY THEFT PROTECTION ACT, 2004 PA 452, MCL 445.71 AND 445.73, AND 15 USC 1681G, A BONA FIDE VICTIM OF IDENTITY THEFT IS ENTITLED TO FILE A POLICE REPORT WITH A LAW ENFORCEMENT AGENCY IN A JURISDICTION WHERE THE ALLEGED VIOLATION OF IDENTITY THEFT MAY BE PROSECUTED AS PROVIDED UNDER SECTION 10C OF CHAPTER II, AND TO OBTAIN A COPY OF THAT REPORT FROM THAT LAW ENFORCEMENT AGENCY.

(2) THE DEPARTMENT OF STATE POLICE SHALL DEVELOP AND MAKE

1 AVAILABLE TO LAW ENFORCEMENT AGENCIES AND VICTIMS OF IDENTITY THEFT  
2 A STANDARD IDENTITY THEFT INCIDENT REPORT FORM.

3 (3) AS USED IN THIS SECTION, "IDENTITY THEFT" MEANS THAT TERM  
4 AS DEFINED IN SECTION 3 OF THE IDENTITY THEFT PROTECTION ACT, 2004  
5 PA 453, MCL 445.63.

6 CHAPTER IX

7 Sec. 1a. (1) As used in this section, "victim" means an  
8 individual who suffers direct or threatened physical, financial, or  
9 emotional harm as a result of the commission of a felony,  
10 misdemeanor, or ordinance violation. For purposes of subsections  
11 (2), (3), (6), ~~(8)~~, (9), (10), and ~~(13)~~—(14), victim includes a  
12 sole proprietorship, partnership, corporation, association,  
13 governmental entity, or any other legal entity that suffers direct  
14 physical or financial harm as a result of a felony, misdemeanor, or  
15 ordinance violation.

16 (2) Except as provided in subsection ~~(8)~~—(9), when sentencing  
17 a defendant convicted of a felony, misdemeanor, or ordinance  
18 violation, the court shall order, in addition to or in lieu of any  
19 other penalty authorized by law or in addition to any other penalty  
20 required by law, that the defendant make full restitution to any  
21 victim of the defendant's course of conduct that gives rise to the  
22 conviction or to the victim's estate.

23 (3) If a felony, misdemeanor, or ordinance violation results  
24 in damage to or loss or destruction of property of a victim of the  
25 felony, misdemeanor, or ordinance violation or results in the  
26 seizure or impoundment of property of a victim of the felony,  
27 misdemeanor, or ordinance violation, the order of restitution may

1 require that the defendant do 1 or more of the following, as  
2 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 the  
7 greater of subparagraph (i) or (ii), less the value, determined as of  
8 the date the property is returned, of that property or any part of  
9 the property that is returned:

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

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

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

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

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

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

23 (c) Reimburse the victim or the victim's estate for after-tax  
24 income loss suffered by the victim as a result of the felony,  
25 misdemeanor, or ordinance violation.

26 (d) Pay an amount equal to the cost of psychological and  
27 medical treatment for members of the victim's family that has been

1 incurred as a result of the felony, misdemeanor, or ordinance  
2 violation.

3 (e) Pay an amount equal to the cost of actual homemaking and  
4 child care expenses incurred as a result of the felony,  
5 misdemeanor, or ordinance violation.

6 (5) If a felony, misdemeanor, or ordinance violation resulting  
7 in bodily injury also results in the death of a victim, the order  
8 of restitution may require that the defendant pay an amount equal  
9 to the cost of actual funeral and related services.

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

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

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

24 (9) ~~(8)~~—The court shall order restitution to the crime victim  
25 services commission or to any individuals, partnerships,  
26 corporations, associations, governmental entities, or other legal  
27 entities that have compensated the victim or the victim's estate

1 for a loss incurred by the victim to the extent of the compensation  
2 paid for that loss. The court shall also order restitution for the  
3 costs of services provided to persons or entities that have  
4 provided services to the victim as a result of the felony,  
5 misdemeanor, or ordinance violation. Services that are subject to  
6 restitution under this subsection include, but are not limited to,  
7 shelter, food, clothing, and transportation. However, an order of  
8 restitution shall require that all restitution to a victim or a  
9 victim's estate under the order be made before any restitution to  
10 any other person or entity under that order is made. The court  
11 shall not order restitution to be paid to a victim or victim's  
12 estate if the victim or victim's estate has received or is to  
13 receive compensation for that loss, and the court shall state on  
14 the record with specificity the reasons for its action. If an  
15 entity entitled to restitution under this subsection for  
16 compensating the victim or the victim's estate cannot or refuses to  
17 be reimbursed for that compensation, the restitution paid for that  
18 entity shall be deposited by the state treasurer in the crime  
19 victim's rights fund created under section 4 of 1989 PA 196, MCL  
20 780.904, or its successor fund.

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

1           (11) ~~(10)~~—If not otherwise provided by the court under this  
2 subsection, restitution shall be made immediately. However, the  
3 court may require that the defendant make restitution under this  
4 section within a specified period or in specified installments.

5           (12) ~~(11)~~—If the defendant is placed on probation or paroled  
6 or the court imposes a conditional sentence under section 3 of this  
7 chapter, any restitution ordered under this section shall be a  
8 condition of that probation, parole, or sentence. The court may  
9 revoke probation or impose imprisonment under the conditional  
10 sentence and the parole board may revoke parole if the defendant  
11 fails to comply with the order and if the defendant has not made a  
12 good faith effort to comply with the order. In determining whether  
13 to revoke probation or parole or impose imprisonment, the court or  
14 parole board shall consider the defendant's employment status,  
15 earning ability, and financial resources, the willfulness of the  
16 defendant's failure to pay, and any other special circumstances  
17 that may have a bearing on the defendant's ability to pay.

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

25           (14) ~~(13)~~—An order of restitution entered under this section  
26 remains effective until it is satisfied in full. An order of  
27 restitution is a judgment and lien against all property of the

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

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

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

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

4 (17) ~~(16)~~—If a defendant who is ordered to pay restitution  
5 under this section is remanded to the jurisdiction of the  
6 department of corrections, the court shall provide a copy of the  
7 order of restitution to the department of corrections when the  
8 defendant is ordered remanded to the department's jurisdiction.

9 Enacting section 1. This amendatory act does not take effect  
10 unless all of the following bills of the 95th Legislature are  
11 enacted into law:

12 (a) Senate Bill No. \_\_\_\_ or House Bill No. 4737 (request no.  
13 01595'09 a).

14 (b) Senate Bill No. \_\_\_\_ or House Bill No. 4738 (request no.  
15 01595'09 b).