

# HOUSE BILL No. 5481

February 4, 1992, Introduced by Rep. Perry Bullard and referred to the Committee on Judiciary.

A bill to amend sections 16, 44, and 76 of Act No. 87 of the Public Acts of 1985, entitled as amended "Crime victim's rights act,"

section 16 as amended and section 76 as added by Act No. 21 of the Public Acts of 1988 and section 44 as added by Act No. 22 of the Public Acts of 1988, being sections 780.766, 780.794, and 780.826 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Section 1. Sections 16, 44, and 76 of Act No. 87 of the  
2 Public Acts of 1985, section 16 as amended and section 76 as  
3 added by Act No. 21 of the Public Acts of 1988 and section 44 as  
4 added by Act No. 22 of the Public Acts of 1988, being sections  
5 780.766, 780.794, and 780.826 of the Michigan Compiled Laws, are  
6 amended to read as follows:

1       Sec. 16. (1) For purposes of this section only, "victim"  
2 means an individual who suffers direct or threatened physical,  
3 financial, or emotional harm as a result of the commission of a  
4 crime. ~~—, and for~~ FOR purposes of subsections (2), (3), (4),  
5 (7), (9), (10), (11), and (15), "victim" includes a sole proprie-  
6 torship, partnership, ~~—or—~~ corporation, ASSOCIATION, OR GOVERN-  
7 MENTAL ENTITY THAT SUFFERS DIRECT OR THREATENED PHYSICAL OR  
8 FINANCIAL HARM AS A RESULT OF THE COMMISSION OF A CRIME.

9       (2) The court, when sentencing a defendant convicted of a  
10 crime, may order, in addition to or in lieu of any other penalty  
11 authorized by law or in addition to any other penalty required by  
12 law, that the defendant make restitution to any victim of the  
13 defendant's course of conduct ~~—which—~~ THAT gives rise to the con-  
14 viction, or to the victim's estate.

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

18       (4) If a crime results in damage to or loss or destruction  
19 of property of a victim of the offense, the order of restitution  
20 may require that the defendant do either of the following:

21       (a) Return the property to the owner of the property or to a  
22 person designated by the owner.

23       (b) If return of the property under subdivision (a) is  
24 impossible, impractical, or inadequate, pay an amount equal to  
25 the greater of ~~—subparagraphs—~~ SUBPARAGRAPH (i) or (ii), less the  
26 value, determined as of the date the property is returned, of  
27 that property or any part of the property that is returned:

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

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

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

7       (a) Pay an amount equal to the cost of actual medical and  
8 related professional services and devices relating to physical  
9 and psychological care.

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

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

15       (d) Pay an amount equal to the cost of psychological and  
16 medical treatment for members of the victim's family ~~which~~ THAT  
17 has been incurred as a result of the offense.

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

22       (7) Instead of restitution under subsections (4) to (6), if  
23 the victim or victim's estate consents, the order of restitution  
24 may require that the defendant make restitution in services in  
25 lieu of money, or make restitution to a person designated by the  
26 victim or victim's estate if that person provided services to the  
27 victim as a result of the crime.

1       (8) If the court orders restitution under this section, the  
2 court shall, if the victim is deceased, order that the restitu-  
3 tion be made to the victim's estate.

4       (9) Any order of restitution shall be as fair as possible to  
5 the victim or victim's estate without unduly complicating or pro-  
6 longing the sentencing process.

7       (10) The court shall not order restitution with respect to a  
8 loss for which the victim or victim's estate has received or is  
9 to receive compensation, including insurance, except that the  
10 court may, in the interest of justice, order restitution to the  
11 crime victims compensation board or to any individuals, organi-  
12 zations, partnerships, corporations, or governmental entities  
13 that have compensated the victim or victim's estate for such a  
14 loss to the extent of the compensation paid. An order of resti-  
15 tution shall require that all restitution to a victim or victim's  
16 estate under the order be made before any restitution to any  
17 other person under that order is made.

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

25       (12) If not otherwise provided by the court under this sub-  
26 section, restitution shall be made immediately. However, the  
27 court may require that the defendant make restitution under this

1 section within a specified period or in specified installments.  
2 The end of the period or the last installment shall not be later  
3 than the following:

4 (a) The end of the period of probation, if probation is  
5 ordered.

6 (b) Two years after the end of imprisonment or discharge  
7 from parole, whichever occurs later, if the court does not order  
8 probation.

9 (c) Three years after the date of sentencing in any other  
10 case.

11 (13) If the defendant is placed on probation or paroled, any  
12 restitution ordered under this section ~~shall be~~ IS a condition  
13 of that probation or parole. The court may revoke probation and  
14 the parole board may revoke parole if the defendant fails to  
15 comply with the order and if the defendant has not made a good  
16 faith effort to comply with the order. In determining whether to  
17 revoke probation or parole, the court or parole board shall con-  
18 sider the defendant's employment status, earning ability, finan-  
19 cial resources, ~~and~~ the willfulness of the defendant's failure  
20 to pay, and any other special circumstances that may have a bear-  
21 ing on the defendant's ability to pay.

22 (14) A defendant who is required to pay restitution and who  
23 is not in willful default of the payment of the restitution ~~at~~  
24 ~~any time,~~ may AT ANY TIME petition the sentencing judge or his  
25 or her successor for a cancellation of any unpaid portion of  
26 restitution. If it appears to the satisfaction of the court that  
27 payment of the amount due will impose a manifest hardship on the

1 defendant or his or her immediate family, the court may cancel  
2 all or part of the amount due in restitution or modify the method  
3 of payment.

4 (15) An order of restitution may be enforced by the prose-  
5 cuting attorney or a victim or victim's estate named in the order  
6 to receive the restitution in the same manner as a judgment in a  
7 civil action.

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

15 Sec. 44. (1) For purposes of this section only, "victim"  
16 means an individual who suffers direct or threatened physical,  
17 financial, or emotional harm as a result of the commission of an  
18 offense. ~~—and for~~ FOR purposes of subsections (2), (4), (7),  
19 (9), (10), (11), and (15), "victim" includes a sole proprietor-  
20 ship, partnership, ~~or~~ corporation, ASSOCIATION, OR GOVERNMENTAL  
21 ENTITY THAT SUFFERS DIRECT OR THREATENED PHYSICAL OR FINANCIAL  
22 HARM AS A RESULT OF THE COMMISSION OF AN OFFENSE.

23 (2) The court, at the dispositional hearing for a juvenile  
24 offense, may order, in addition to or in lieu of any other dispo-  
25 sition authorized by law, that the juvenile make restitution to  
26 any victim or victim's estate of the juvenile's course of conduct  
27 ~~—which~~ THAT gives rise to the disposition.

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 (4) If a juvenile offense results in damage to or loss or  
5 destruction of property of a victim of the offense, the order of  
6 restitution may require that the juvenile do either of the  
7 following:

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

10 (b) If return of the property under subdivision (a) is  
11 impossible, impractical, or inadequate, pay an amount equal to  
12 the greater of ~~subparagraphs~~ SUBPARAGRAPH (i) or (ii), less the  
13 value, determined as of the date the property is returned, of  
14 that property or any part of the property that is returned:

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

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

18 (5) If a juvenile offense results in physical or psychologi-  
19 cal injury to a victim, the order of restitution may require that  
20 the juvenile do 1 or more of the following, as applicable:

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

24 (b) Pay an amount equal to the cost of actual physical and  
25 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 offense.

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

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

11 (7) Instead of restitution under subsections (4) to (6), if  
12 the victim or victim's estate consents, the order of restitution  
13 may require that the juvenile make restitution in services in  
14 lieu of money, or make restitution to a person designated by the  
15 victim or victim's estate if that person provided services to the  
16 victim as a result of the offense.

17 (8) If the court orders restitution under this section, the  
18 court shall, if the victim is deceased, order that the restitu-  
19 tion be made to the victim's estate.

20 (9) Any order of restitution shall be as fair as possible to  
21 the victim or victim's estate without unduly complicating or pro-  
22 longing the disposition process.

23 (10) The court shall not order restitution with respect to a  
24 loss for which the victim or victim's estate has received or is  
25 to receive compensation, including insurance, except that the  
26 court may, in the interest of justice, order restitution to the  
27 crime victims compensation board or to any individuals,



1 organizations, partnerships, corporations, or governmental  
2 entities that have compensated the victim or victim's estate for  
3 such a loss to the extent of the compensation paid. An order of  
4 restitution shall require that all restitution to a victim or  
5 victim's estate under the order be made before any restitution to  
6 any other person under that order is made.

7 (11) Any amount paid to a victim or victim's estate under an  
8 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 victims compensation board made after an order of  
13 restitution under this section.

14 (12) If not otherwise provided by the court under this sub-  
15 section, restitution shall be made immediately. However, the  
16 court may require that the juvenile make restitution under this  
17 section within a specified period or in specified installments.  
18 The end of the period or the last installment shall not be later  
19 than the following:

20 (a) The end of the period of probation, if probation is  
21 ordered.

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

24 (c) If the juvenile is made a ward of the court, when the  
25 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 (13) If the juvenile is placed on probation, any restitution  
5 ordered under this section ~~shall be~~ IS 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, ~~and~~ the  
11 willfulness of the juvenile's failure to pay, and any other spe-  
12 cial circumstances that may have a bearing on the juvenile's  
13 ability to pay.

14 (14) A juvenile who is required to pay restitution and who  
15 is not in willful default of the payment of the restitution ~~at~~  
16 ~~any time,~~ may AT ANY TIME petition the court for a cancellation  
17 of any unpaid portion of restitution. If it appears to the sat-  
18 isfaction of the court that payment of the amount due will impose  
19 a manifest hardship on the juvenile or his or her immediate  
20 family, the court may cancel all or part of the amount due in  
21 restitution or modify the method of payment.

22 (15) An order of restitution may be enforced by the prose-  
23 cuting attorney or a victim or victim's estate named in the order  
24 to receive the restitution in the same manner as a judgment in a  
25 civil action.

26 (16) Notwithstanding any other provision of this section, a  
27 juvenile shall not be detained for a violation of probation, or

1 otherwise, for failure to pay restitution as ordered under this  
2 section unless the court determines that the juvenile has the  
3 resources to pay the ordered restitution and has not made a good  
4 faith effort to do so.

5 (17) If the juvenile is unable to pay all of the restitution  
6 ordered, after notice to the juvenile's custodial parent and an  
7 opportunity for the parent to be heard, the court may order the  
8 custodial parent to pay all or part of the unpaid portion of the  
9 restitution ordered. The amount of restitution the parent is  
10 ordered to pay under this subsection shall not exceed \$2,500.00.

11 (18) If the court orders the custodial parent to pay resti-  
12 tution under subsection (17), the court shall take into account  
13 the financial resources of the parent and the burden that the  
14 payment of restitution will impose, with due regard to any other  
15 moral or legal financial obligations that the parent may have.  
16 If a parent is required to pay restitution under subsection (17),  
17 the court shall provide for payment to be made in specified  
18 installments and within a specified period of time.

19 (19) A parent who has been ordered to pay restitution under  
20 subsection (17) may petition the court for a modification of the  
21 amount of restitution owed or for a cancellation of any unpaid  
22 portion of the restitution. The court shall cancel all or part  
23 of the amount of restitution due, if it appears to the satisfac-  
24 tion of the court that payment of the amount due will impose a  
25 manifest hardship on the parent.

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

1 (a) "Victim" means an individual who suffers actual  
2 financial loss or expense as a result of the commission of a  
3 misdemeanor. ~~, and for~~ FOR purposes of subsections (2), (3),  
4 (4), (6), (8), (9), and (10), victim includes a sole proprietor-  
5 ship, partnership, ~~or~~ corporation, ASSOCIATION, OR GOVERNMENTAL  
6 ENTITY THAT SUFFERS ACTUAL FINANCIAL LOSS OR EXPENSE AS A RESULT  
7 OF THE COMMISSION OF A MISDEMEANOR.

8 (b) "Misdemeanor" means a violation of a law of this state,  
9 or of a local ordinance substantially corresponding to a law of  
10 this state, that is punishable by imprisonment for not more than  
11 1 year or by a fine that is not a civil fine, but is not a  
12 felony.

13 (2) The court, when sentencing a defendant convicted of a  
14 misdemeanor, may order, in addition to or in lieu of any other  
15 penalty authorized by law, or in addition to any other penalty  
16 required by law, that the defendant make restitution to any  
17 victim of the defendant's course of conduct that gives rise to  
18 the conviction or to the victim's estate.

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

22 (4) If a misdemeanor results in damage to or loss or  
23 destruction of property of a victim of the offense, the order of  
24 restitution may require that the defendant do either of the  
25 following:

26 (a) Return the property to the owner of the property or to a  
27 person designated by the owner.

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

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

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

9 (5) If a misdemeanor results in physical injury to a victim,  
10 the order of restitution may require that the defendant do 1 or  
11 more of the following, as applicable:

12 (a) Pay an amount equal to the cost of the victim's actual  
13 medical and related professional services and devices relating to  
14 the physical care.

15 (b) Pay an amount equal to the cost of the victim's actual  
16 physical and occupational therapy and rehabilitation.

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

20 (6) Instead of restitution under subsections (4) and (5), if  
21 the victim or victim's estate consents, the order of restitution  
22 may require that the defendant make restitution in services in  
23 lieu of money, or make restitution to a person designated by the  
24 victim or victim's estate if that person provided services to the  
25 victim as a result of the misdemeanor.

1       (7) If the court orders restitution under this section, the  
2 court shall, if the victim is deceased, order that the  
3 restitution be made to the victim's estate.

4       (8) Any order of restitution shall be as fair as possible to  
5 the victim or victim's estate without unduly complicating or pro-  
6 longing the sentencing process.

7       (9) The court shall not order restitution with respect to a  
8 loss for which the victim or victim's estate has received or is  
9 to receive compensation, including insurance, except that the  
10 court may, in the interest of justice, order restitution to the  
11 crime victims compensation board or to any individuals, organi-  
12 zations, partnerships, corporations, or governmental entities  
13 that have compensated the victim or victim's estate for such a  
14 loss to the extent of the compensation paid. An order of resti-  
15 tution shall require that all restitution to a victim or victim's  
16 estate under the order be made before any restitution to any  
17 other person under that order is made.

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

25       (11) If not otherwise provided by the court under this sub-  
26 section, 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) 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 Section 2. This amendatory act shall not take effect unless  
8 Senate Bill No. \_\_\_\_ or House Bill No. 5482 (request  
9 no. 04693'91 a) of the 86th Legislature is enacted into law.