

Act No. 122
Public Acts of 1996
Approved by the Governor
March 4, 1996
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Ryan and Bush

Reps. Cherry, Crissman, Cropsey, Curtis, DeMars, Dobb, Freeman, Galloway, Geiger, Gernaat, Gilmer, Gire, Gnodtke, Goschka, Green, Hammerstrom, Hanley, Hill, Horton, Jersevic, Kaza, Kukuk, Law, Llewellyn, Lowe, McBryde, Murphy, Olshove, Oxender, Perricone, Randall, Rhead, Rocca, Sikkema, Voorhees, Walberg, Wallace, Weeks, Wetters and Whyman named co-sponsors

ENROLLED HOUSE BILL No. 4510

AN ACT to amend section 1a of chapter IX of Act No. 175 of the Public Acts of 1927, entitled as amended "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," as amended by Act No. 343 of the Public Acts of 1993, being section 769.1a of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 1a of chapter IX of Act No. 175 of the Public Acts of 1927, as amended by Act No. 343 of the Public Acts of 1993, being section 769.1a of the Michigan Compiled Laws, is amended to read as follows:

CHAPTER IX

Sec. 1a. (1) As used in this section, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a felony, misdemeanor, or ordinance violation. For purposes of subsections (2), (3), (4), (7), (9), (10), (11), and (16), victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of a felony, misdemeanor, or ordinance violation.

(2) Except as provided in this section, the court, when sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full or partial restitution to any victim of the defendant's course of conduct that gives rise to the conviction, or to the victim's estate.

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

(4) If a felony, misdemeanor, or ordinance violation results in damage to or loss or destruction of property of a victim of the felony, misdemeanor, or ordinance violation or results in the seizure or impoundment of property of a victim of the felony, misdemeanor, or ordinance violation, the order of restitution may require that the defendant do 1 or more of the following:

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

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

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

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

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

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

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

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

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

(d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the felony, misdemeanor, or ordinance violation.

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

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

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

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

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

(10) Except as otherwise provided in this section, the court shall order restitution to the crime victims compensation board or to any individuals, partnerships, corporations, associations, governmental entities, or other legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. Except as otherwise provided in this section, the court shall also order restitution, for the costs of services provided, to persons or entities that have provided services to the victim as a result of the felony, misdemeanor, or ordinance violation. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation. However, an order of restitution shall require that all restitution to a victim or a victim's estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss.

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

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

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

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

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

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

(14) If the defendant is placed on probation or paroled, any restitution ordered under this section shall be a condition of that probation or parole. The court may revoke probation and the parole board may revoke parole if the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole, the court or parole board shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

(15) A defendant who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the sentencing judge or his or her successor for a cancellation of any unpaid portion of restitution. If it appears to the satisfaction of the court that payment of the amount due will impose a manifest hardship on the defendant or his or her immediate family, the court may cancel all or part of the amount due in restitution or modify the method of payment.

(16) An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action.

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

(18) In each case in which payment of restitution is ordered as a condition of probation, the probation officer assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review shall be conducted not less than 60 days before the expiration of the probationary period. If the probation officer determines that restitution is not being paid as ordered, the probation officer shall file a written report of the violation with the court on a form prescribed by the state court administrative office. The report shall include a statement of the amount of the arrearage, and any reasons for the arrearage that are known by the probation officer. The probation officer shall immediately provide a copy of the report to the prosecuting attorney. If a motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance.

Section 2. This amendatory act shall take effect May 1, 1996.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.