



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bills 145 and 146 (as enacted)  
Sponsor: Senator Jim Barcia (S.B. 145)  
Senator Alan L. Cropsy (S.B. 146)  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACTS 27 & 28 of 2009**

Date Completed: 8-19-09

**RATIONALE**

Both the Michigan Constitution and statutory law recognize the rights and needs of crime victims. In 1985, legislation enacted the Crime Victim's Rights Act and amended the Code of Criminal Procedure to provide for a victim's participation in the criminal justice process, and to allow a sentencing court to order restitution to a victim or a victim's estate. Subsequent legislation made restitution mandatory. Article I, Section 24 of the Michigan Constitution, added in 1989, also spells out the rights of crime victims, including the right to restitution. Under the statutes, reimbursement may cover such costs as medical and psychological expenses, funeral expenses, homemaking and child care expenses, and lost income. If a victim's property was lost, damaged, or destroyed and cannot be returned, the restitution order may require the defendant to pay an amount equal to the value of the property on the date of sentencing or the date of the loss, damage, or destruction. In some cases, however, the value of property cannot be determined. Since the purpose of restitution is to make the victim whole, it was suggested that the amount of restitution for property should be based on its fair market value but, if that value is impossible or impractical to determine, it should be based on replacement value.

**CONTENT**

**Senate Bills 145 and 146 amended the Code of Criminal Procedure and the Crime Victim's Rights Act, respectively, to refer to the fair market value of damaged, lost, or destroyed property**

**subject to a restitution order, and require the replacement value of the property to used if the fair market value cannot be determined or ascertained.**

The Code of Criminal Procedure requires a court, when sentencing a defendant for a felony, misdemeanor, or ordinance violation, to order the defendant to make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate. Likewise, under the Crime Victim's Rights Act, when a court sentences a defendant for a crime that is punishable by more than one year's imprisonment or that is expressly designated as a felony, provides a disposition for a juvenile for an offense that would be a crime if committed by an adult, or sentences a defendant for a misdemeanor punishable by imprisonment for not more than one year or a fine that is not a civil fine, the court must order the defendant or juvenile to make full restitution to any victim of the defendant's or juvenile's course of conduct that gives rise to the conviction or disposition or to the victim's estate.

Under both statutes, if a violation results in damage to or loss or destruction of a victim's property, or results in the seizure or impoundment of a victim's property, and return of the property is impossible, impractical, or inadequate, the order of restitution may require the defendant or juvenile to pay an amount equal to the greater of the following, less the value of the property or any part of it that is returned:

-- The value of the property on the date of the damage, loss, or destruction.

-- The value of the property on the date of sentencing.

The bills refer to the fair market value of the property on those dates. If the fair market value of the property cannot be determined or is impractical to ascertain, then the replacement value of the property must be used in lieu of the fair market value.

The bills took effect on July 1, 2009, and apply only to crimes committed on or after that date.

The bills were tie-barred to each other.

MCL 769.1a (S.B. 145)  
780.752 et al. (S.B. 146)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Restitution is designed to make a crime victim whole; that is, to put the victim in the position he or she would have been in if the crime had not been committed. When property is lost, damaged, or destroyed, restitution may be ordered to compensate the victim for the value of the property. If the property has no ascertainable value, however, the amount of restitution might be in dispute. For example, in a case described to the Senate Judiciary Committee, the defendant had broken windows in an old house, and the defense counsel questioned a restitution order for the cost of putting in new windows. The broken windows were decades old and it was not possible or practical to determine their fair market value.

The bills address this type of situation by requiring the amount of restitution for lost, damaged, or destroyed property to be based on fair market value *unless* that value cannot be determined or is impractical to ascertain, and, in that case, requiring restitution to be based on replacement value. These amendments bring clarity to the law and will help compensate crime

victims for property that is unlawfully taken from them.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.