

SENATE BILL No. 145

January 29, 2009, Introduced by Senators BARCIA, CROPSEY, GARCIA, ANDERSON, KAHN, BIRKHOLZ, HARDIMAN, ALLEN, KUIPERS, GLEASON and BROWN 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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

Sec. 1a. (1) As used in this section: ~~victim~~

(A) "CRIME VICTIM SERVICES COMMISSION" MEANS THAT TERM AS DESCRIBED IN SECTION 2 OF 1976 PA 223, MCL 18.352.

(B) "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), (6), (8), (9), and (13),

1 victim includes a sole proprietorship, partnership, corporation,
2 association, governmental entity, or any other legal entity that
3 suffers direct physical or financial harm as a result of a felony,
4 misdemeanor, or ordinance violation.

5 (2) Except as provided in subsection (8), when sentencing a
6 defendant convicted of a felony, misdemeanor, or ordinance
7 violation, the court shall order, in addition to or in lieu of any
8 other penalty authorized by law or in addition to any other penalty
9 required by law, that the defendant make full restitution to any
10 victim of the defendant's course of conduct that gives rise to the
11 conviction or to the victim's estate.

12 (3) If a felony, misdemeanor, or ordinance violation results
13 in damage to or loss or destruction of property of a victim of the
14 felony, misdemeanor, or ordinance violation or results in the
15 seizure or impoundment of property of a victim of the felony,
16 misdemeanor, or ordinance violation, the order of restitution may
17 require that the defendant do 1 or more of the following, as
18 applicable:

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

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

26 (i) The **FAIR MARKET** value of the property on the date of the
27 damage, loss, or destruction. **HOWEVER, IF THE FAIR MARKET VALUE OF**

1 THE PROPERTY CANNOT BE DETERMINED OR IS IMPRACTICAL TO ASCERTAIN,
2 THEN THE REPLACEMENT VALUE OF THE PROPERTY SHALL BE UTILIZED IN
3 LIEU OF THE FAIR MARKET VALUE.

4 (ii) The FAIR MARKET value of the property on the date of
5 sentencing. HOWEVER, IF THE FAIR MARKET VALUE OF THE PROPERTY
6 CANNOT BE DETERMINED OR IS IMPRACTICAL TO ASCERTAIN, THEN THE
7 REPLACEMENT VALUE OF THE PROPERTY SHALL BE UTILIZED IN LIEU OF THE
8 FAIR MARKET VALUE.

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

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

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

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

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

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

26 (e) Pay an amount equal to the cost of actual homemaking and
27 child care expenses incurred as a result of the felony,

1 misdemeanor, or ordinance violation.

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

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

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

11 (8) The court shall order restitution to the crime victim
12 services commission or to any individuals, partnerships,
13 corporations, associations, governmental entities, or other legal
14 entities that have compensated the victim or the victim's estate
15 for a loss incurred by the victim to the extent of the compensation
16 paid for that loss. The court shall also order restitution for the
17 costs of services provided to persons or entities that have
18 provided services to the victim as a result of the felony,
19 misdemeanor, or ordinance violation. Services that are subject to
20 restitution under this subsection include, but are not limited to,
21 shelter, food, clothing, and transportation. However, an order of
22 restitution shall require that all restitution to a victim or a
23 victim's estate under the order be made before any restitution to
24 any other person or entity under that order is made. The court
25 shall not order restitution to be paid to a victim or victim's
26 estate if the victim or victim's estate has received or is to
27 receive compensation for that loss, and the court shall state on

1 the record with specificity the reasons for its action. If an
2 entity entitled to restitution under this subsection for
3 compensating the victim or the victim's estate cannot or refuses to
4 be reimbursed for that compensation, the restitution paid for that
5 entity shall be deposited by the state treasurer in the crime
6 victim's rights fund created under section 4 of 1989 PA 196, MCL
7 780.904, or its successor fund.

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

15 (10) If not otherwise provided by the court under this
16 subsection, restitution shall be made immediately. However, the
17 court may require that the defendant make restitution under this
18 section within a specified period or in specified installments.

19 (11) If the defendant is placed on probation or paroled or the
20 court imposes a conditional sentence under section 3 of this
21 chapter, any restitution ordered under this section shall be a
22 condition of that probation, parole, or sentence. The court may
23 revoke probation or impose imprisonment under the conditional
24 sentence and the parole board may revoke parole if the defendant
25 fails to comply with the order and if the defendant has not made a
26 good faith effort to comply with the order. In determining whether
27 to revoke probation or parole or impose imprisonment, the court or

1 parole board shall consider the defendant's employment status,
2 earning ability, and financial resources, the willfulness of the
3 defendant's failure to pay, and any other special circumstances
4 that may have a bearing on the defendant's ability to pay.

5 (12) A defendant who is required to pay restitution and who is
6 not in willful default of the payment of the restitution may at any
7 time petition the sentencing judge or his or her successor to
8 modify the method of payment. If the court determines that payment
9 under the order will impose a manifest hardship on the defendant or
10 his or her immediate family, the court may modify the method of
11 payment.

12 (13) An order of restitution entered under this section
13 remains effective until it is satisfied in full. An order of
14 restitution is a judgment and lien against all property of the
15 defendant for the amount specified in the order of restitution. The
16 lien may be recorded as provided by law. An order of restitution
17 may be enforced by the prosecuting attorney, a victim, a victim's
18 estate, or any other person or entity named in the order to receive
19 the restitution in the same manner as a judgment in a civil action
20 or a lien.

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

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

18 (16) If a defendant who is ordered to pay restitution under
19 this section is remanded to the jurisdiction of the department of
20 corrections, the court shall provide a copy of the order of
21 restitution to the department of corrections when the defendant is
22 ordered remanded to the department's jurisdiction.

23 Enacting section 1. This amendatory act does not take effect
24 unless Senate Bill No 146

25 of the 95th Legislature is enacted into law.