

HOUSE BILL No. 4040

January 22, 2009, Introduced by Rep. Lori 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. 4041 (request no.
13 00331'09 a).

14 (b) Senate Bill No. ____ or House Bill No. 4042 (request no.
15 00331'09 b).