

HOUSE BILL No. 4041

January 22, 2009, Introduced by Rep. Lori and referred to the Committee on Judiciary.

A bill to amend 1985 PA 87, entitled
"William Van Regenmorter crime victim's rights act,"
by amending sections 4a, 16, 33b, 44, 64a, and 76 (MCL 780.754a,
780.766, 780.783b, 780.794, 780.814a, and 780.826), sections 4a,
33b, and 64a as added by 2004 PA 456 and sections 16, 44, and 76 as
amended by 2005 PA 184.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4a. (1) To facilitate compliance with **SECTIONS 11 AND 13**
2 **OF THE IDENTITY THEFT PROTECTION ACT, 2004 PA 452, MCL 445.71 AND**
3 **445.73, AND** 15 USC 1681g, a bona fide victim of identity theft is
4 entitled to file a police report with a law enforcement agency in a
5 jurisdiction where the alleged violation of identity theft may be
6 prosecuted as provided under section 10c of chapter II of the code
7 of criminal procedure, 1927 PA 175, MCL 762.10c, and to obtain a

1 copy of that report from that law enforcement agency.

2 (2) As used in this section, "identity theft" means that term
3 as defined in section 3 of the identity theft protection act, **2004**
4 **PA 452, MCL 445.63.**

5 Sec. 16. (1) As used in this section only, "victim" means an
6 individual who suffers direct or threatened physical, financial, or
7 emotional harm as a result of the commission of a crime. As used in
8 subsections (2), (3), (6), ~~(8)~~, (9), and ~~(13)~~ **(10), AND (14)** only,
9 victim includes a sole proprietorship, partnership, corporation,
10 association, governmental entity, or any other legal entity that
11 suffers direct physical or financial harm as a result of a crime.

12 (2) Except as provided in subsection ~~(8)~~ **(9)**, when sentencing
13 a defendant convicted of a crime, the court shall order, in
14 addition to or in lieu of any other penalty authorized by law or in
15 addition to any other penalty required by law, that the defendant
16 make full restitution to any victim of the defendant's course of
17 conduct that gives rise to the conviction or to the victim's
18 estate. For an offense that is resolved by assignment of the
19 defendant to youthful trainee status, by a delayed sentence or
20 deferred judgment of guilt, or in another way that is not an
21 acquittal or unconditional dismissal, the court shall order the
22 restitution required under this section.

23 (3) If a crime results in damage to or loss or destruction of
24 property of a victim of the crime or results in the seizure or
25 impoundment of property of a victim of the crime, the order of
26 restitution shall require that the defendant do 1 or more of the
27 following, as applicable:

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

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

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

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

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

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

15 (a) Pay an amount equal to the reasonably determined cost of
16 medical and related professional services and devices actually
17 incurred and reasonably expected to be incurred relating to
18 physical and psychological care.

19 (b) Pay an amount equal to the reasonably determined cost of
20 physical and occupational therapy and rehabilitation actually
21 incurred and reasonably expected to be incurred.

22 (c) Reimburse the victim or the victim's estate for after-tax
23 income loss suffered by the victim as a result of the crime.

24 (d) Pay an amount equal to the reasonably determined cost of
25 psychological and medical treatment for members of the victim's
26 family actually incurred and reasonably expected to be incurred as
27 a result of the crime.

1 (e) Pay an amount equal to the reasonably determined costs of
2 homemaking and child care expenses actually incurred and reasonably
3 expected to be incurred as a result of the crime or, if homemaking
4 or child care is provided without compensation by a relative,
5 friend, or any other person, an amount equal to the costs that
6 would reasonably be incurred as a result of the crime for that
7 homemaking and child care, based on the rates in the area for
8 comparable services.

9 (f) Pay an amount equal to the cost of actual funeral and
10 related services.

11 (g) If the deceased victim could be claimed as a dependent by
12 his or her parent or guardian on the parent's or guardian's
13 federal, state, or local income tax returns, pay an amount equal to
14 the loss of the tax deduction or tax credit. The amount of
15 reimbursement shall be estimated for each year the victim could
16 reasonably be claimed as a dependent.

17 (h) Pay an amount equal to income actually lost by the spouse,
18 parent, sibling, child, or grandparent of the victim because the
19 family member left his or her employment, temporarily or
20 permanently, to care for the victim because of the injury.

21 (5) If a crime resulting in bodily injury also results in the
22 death of a victim or serious impairment of a body function of a
23 victim, the court may order up to 3 times the amount of restitution
24 otherwise allowed under this section. As used in this subsection,
25 "serious impairment of a body function of a victim" includes, but
26 is not limited to, 1 or more of the following:

27 (a) Loss of a limb or use of a limb.

- 1 (b) Loss of a hand or foot or use of a hand or foot.
2 (c) Loss of an eye or use of an eye or ear.
3 (d) Loss or substantial impairment of a bodily function.
4 (e) Serious visible disfigurement.
5 (f) A comatose state that lasts for more than 3 days.
6 (g) Measurable brain damage or mental impairment.
7 (h) A skull fracture or other serious bone fracture.
8 (i) Subdural hemorrhage or subdural hematoma.
9 (j) Loss of a body organ.

10 (6) If the victim or victim's estate consents, the order of
11 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, CREDIT HISTORY, CREDIT RATING, OR CREDIT SCORE.**

23 (9) ~~(8)~~—The court shall order restitution to the crime victim
24 services commission or to any individuals, partnerships,
25 corporations, associations, governmental entities, or other legal
26 entities that have compensated the victim or the victim's estate
27 for a loss incurred by the victim to the extent of the compensation

1 paid for that loss. The court shall also order restitution for the
2 costs of services provided to persons or entities that have
3 provided services to the victim as a result of the crime. Services
4 that are subject to restitution under this subsection include, but
5 are not limited to, shelter, food, clothing, and transportation.
6 However, an order of restitution shall require that all restitution
7 to a victim or victim's estate under the order be made before any
8 restitution to any other person or entity under that order is made.
9 The court shall not order restitution to be paid to a victim or
10 victim's estate if the victim or victim's estate has received or is
11 to receive compensation for that loss, and the court shall state on
12 the record with specificity the reasons for its action.

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

20 (11) ~~(10)~~—If not otherwise provided by the court under this
21 subsection, restitution shall be made immediately. However, the
22 court may require that the defendant make restitution under this
23 section within a specified period or in specified installments.

24 (12) ~~(11)~~—If the defendant is placed on probation or paroled
25 or the court imposes a conditional sentence as provided in section
26 3 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL
27 769.3, any restitution ordered under this section shall be a

1 condition of that probation, parole, or sentence. The court may
2 revoke probation or impose imprisonment under the conditional
3 sentence and the parole board may revoke parole if the defendant
4 fails to comply with the order and if the defendant has not made a
5 good faith effort to comply with the order. In determining whether
6 to revoke probation or parole or impose imprisonment, the court or
7 parole board shall consider the defendant's employment status,
8 earning ability, and financial resources, the willfulness of the
9 defendant's failure to pay, and any other special circumstances
10 that may have a bearing on the defendant's ability to pay.

11 (13) ~~(12)~~—Subject to subsection ~~(18)~~—(19), a defendant who is
12 required to pay restitution and who is not in willful default of
13 the payment of the restitution may at any time petition the
14 sentencing judge or his or her successor to modify the method of
15 payment. If the court determines that payment under the order will
16 impose a manifest hardship on the defendant or his or her immediate
17 family, and if the court also determines that modifying the method
18 of payment will not impose a manifest hardship on the victim, the
19 court may modify the method of payment.

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

1 or a lien.

2 (15) ~~(14)~~—Notwithstanding any other provision of this section,
3 a defendant shall not be imprisoned, jailed, or incarcerated for a
4 violation of probation or parole or otherwise for failure to pay
5 restitution as ordered under this section unless the court or
6 parole board determines that the defendant has the resources to pay
7 the ordered restitution and has not made a good faith effort to do
8 so.

9 (16) ~~(15)~~—If the court determines that a juvenile is or will
10 be unable to pay all of the restitution ordered, after notice to
11 the juvenile's parent or parents and an opportunity for the parent
12 or parents to be heard the court may order the parent or parents
13 having supervisory responsibility for the juvenile at the time of
14 the acts upon which an order of restitution is based to pay any
15 portion of the restitution ordered that is outstanding. An order
16 under this subsection does not relieve the juvenile of his or her
17 obligation to pay restitution as ordered, but the amount owed by
18 the juvenile shall be offset by any amount paid by his or her
19 parent. As used in this subsection:

20 (a) "Juvenile" means a person within the court's jurisdiction
21 under section 2d or 4 of chapter XIIIA of the probate code of 1939,
22 1939 PA 288, MCL 712A.2d and 712A.4.

23 (b) "Parent" does not include a foster parent.

24 (17) ~~(16)~~—If the court orders a parent to pay restitution
25 under subsection ~~(15)~~—(16), the court shall take into account the
26 parent's financial resources and the burden that the payment of
27 restitution will impose, with due regard to any other moral or

1 legal financial obligations the parent may have. If a parent is
2 required to pay restitution under subsection ~~(15)~~-(16), the court
3 shall provide for payment to be made in specified installments and
4 within a specified period of time.

5 (18) ~~(17)~~-A parent who has been ordered to pay restitution
6 under subsection ~~(15)~~-(16) may petition the court for a
7 modification of the amount of restitution owed by the parent or for
8 a cancellation of any unpaid portion of the parent's obligation.
9 The court shall cancel all or part of the parent's obligation due
10 if the court determines that payment of the amount due will impose
11 a manifest hardship on the parent and if the court also determines
12 that modifying the method of payment will not impose a manifest
13 hardship on the victim.

14 (19) ~~(18)~~-In each case in which payment of restitution is
15 ordered as a condition of probation, the court shall order any
16 employed defendant to make regularly scheduled restitution
17 payments. If the defendant misses 2 or more regularly scheduled
18 payments, the court shall order the defendant to execute a wage
19 assignment to pay the restitution. The probation officer assigned
20 to the case shall review the case not less than twice yearly to
21 ensure that restitution is being paid as ordered. If the
22 restitution was ordered to be made within a specific period of
23 time, the probation officer assigned to the case shall review the
24 case at the end of the specific period of time to determine if the
25 restitution has been paid in full. The final review shall be
26 conducted not less than 60 days before the probationary period
27 expires. If the probation officer determines at any review that

1 restitution is not being paid as ordered, the probation officer
2 shall file a written report of the violation with the court on a
3 form prescribed by the state court administrative office or shall
4 petition the court for a probation violation. The report or
5 petition shall include a statement of the amount of the arrearage
6 and any reasons for the arrearage known by the probation officer.
7 The probation officer shall immediately provide a copy of the
8 report or petition to the prosecuting attorney. If a petition or
9 motion is filed or other proceedings are initiated to enforce
10 payment of restitution and the court determines that restitution is
11 not being paid or has not been paid as ordered by the court, the
12 court shall promptly take action necessary to compel compliance.

13 (20) ~~(19)~~—If a defendant who is ordered to pay restitution
14 under this section is remanded to the jurisdiction of the
15 department of corrections, the court shall provide a copy of the
16 order of restitution to the department of corrections when the
17 defendant is remanded to the department's jurisdiction.

18 (21) ~~(20)~~—The court shall not impose a fee on a victim,
19 victim's estate, or prosecuting attorney for enforcing an order of
20 restitution.

21 (22) ~~(21)~~—If a person or entity entitled to restitution under
22 this section cannot be located, refuses to claim the restitution
23 within 2 years after the date on which he or she could have claimed
24 the restitution, or refuses to accept the restitution, the
25 restitution to which that person or entity is entitled shall be
26 deposited in the crime victim's rights fund created under section 4
27 of 1989 PA 196, MCL 780.904, or its successor fund. However, a

1 person or entity entitled to that restitution may claim that
2 restitution any time by applying to the court that originally
3 ordered and collected it. The court shall notify the crime victim
4 services commission of the application and the commission shall
5 approve a reduction in the court's revenue transmittal to the crime
6 victim's rights fund equal to the restitution owed to the person or
7 entity. The court shall use the reduction to reimburse that
8 restitution to the person or entity.

9 (23) ~~(22)~~—The court may amend an order of restitution entered
10 under this section on a motion by the prosecuting attorney, the
11 victim, or the defendant based upon new information related to the
12 injury, damages, or loss for which the restitution was ordered.

13 (24) ~~(23)~~—A court that receives notice that a defendant who
14 has an obligation to pay restitution under this section has
15 declared bankruptcy shall forward a copy of that notice to the
16 prosecuting attorney. The prosecuting attorney shall forward the
17 notice to the victim at the victim's last known address.

18 (25) ~~(24)~~—If the victim is a minor, the order of restitution
19 shall require the defendant to pay to a parent of the victim an
20 amount that is determined to be reasonable for any of the following
21 that are actually incurred or reasonably expected to be incurred by
22 the parent as a result of the crime:

23 (a) Homemaking and child care expenses.

24 (b) Income loss not ordered to be paid under subsection

25 (4) (h) .

26 (c) Mileage.

27 (d) Lodging or housing.

1 (e) Meals.

2 (f) Any other cost incurred in exercising the rights of the
3 victim or a parent under this act.

4 Sec. 33b. (1) To facilitate compliance with **SECTIONS 11 AND 13**
5 **OF THE IDENTITY THEFT PROTECTION ACT, 2004 PA 452, MCL 445.71 AND**
6 **445.73, AND** 15 USC 1681g, a bona fide victim of identity theft is
7 entitled to file a police report with a law enforcement agency in a
8 jurisdiction where the alleged violation of identity theft may be
9 prosecuted as provided under section 10c of chapter II of the code
10 of criminal procedure, 1927 PA 175, MCL 762.10c, and to obtain a
11 copy of that report from that law enforcement agency.

12 (2) As used in this section, "identity theft" means that term
13 as defined in section 3 of the identity theft protection act, **2004**
14 **PA 452, 445.63.**

15 Sec. 44. (1) As used in this section only:

16 (a) "Offense" means a violation of a penal law of this state
17 or a violation of an ordinance of a local unit of government of
18 this state punishable by imprisonment or by a fine that is not a
19 civil fine.

20 (b) "Victim" means an individual who suffers direct or
21 threatened physical, financial, or emotional harm as a result of
22 the commission of an offense. As used in subsections (2), (3), (6),
23 ~~(8)~~, ~~(9)~~, and ~~(13)~~ **(10), AND (14)** only, victim includes a sole
24 proprietorship, partnership, corporation, association, governmental
25 entity, or any other legal entity that suffers direct physical or
26 financial harm as a result of an offense.

27 (2) Except as provided in subsection ~~(8)~~ **(9)**, at the

1 dispositional hearing or sentencing for an offense, the court shall
2 order, in addition to or in lieu of any other disposition or
3 penalty authorized by law, that the juvenile make full restitution
4 to any victim of the juvenile's course of conduct that gives rise
5 to the disposition or conviction or to the victim's estate. For an
6 offense that is resolved informally by means of a consent calendar
7 diversion or by another informal method that does not result in a
8 dispositional hearing, by assignment to youthful trainee status, by
9 a delayed sentence or deferred judgment of guilt, or in another way
10 that is not an acquittal or unconditional dismissal, the court
11 shall order the restitution required under this section.

12 (3) If an offense results in damage to or loss or destruction
13 of property of a victim of the offense or results in the seizure or
14 impoundment of property of a victim of the offense, the order of
15 restitution shall require that the juvenile do 1 or more of the
16 following, as applicable:

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

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

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

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

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

1 (4) If an offense results in physical or psychological injury
2 to a victim, the order of restitution shall require that the
3 juvenile do 1 or more of the following, as applicable:

4 (a) Pay an amount equal to the reasonably determined cost of
5 medical and related professional services and devices actually
6 incurred and reasonably expected to be incurred relating to
7 physical and psychological care.

8 (b) Pay an amount equal to the reasonably determined cost of
9 physical and occupational therapy and rehabilitation actually
10 incurred and reasonably expected to be incurred.

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

13 (d) Pay an amount equal to the reasonably determined cost of
14 psychological and medical treatment for members of the victim's
15 family actually incurred or reasonably expected to be incurred as a
16 result of the offense.

17 (e) Pay an amount equal to the reasonably determined costs of
18 homemaking and child care expenses actually incurred or reasonably
19 expected to be incurred as a result of the offense or, if
20 homemaking or child care is provided without compensation by a
21 relative, friend, or any other person, an amount equal to the costs
22 that would reasonably be incurred as a result of the offense for
23 that homemaking and child care, based on the rates in the area for
24 comparable services.

25 (f) Pay an amount equal to the cost of actual funeral and
26 related services.

27 (g) If the deceased victim could be claimed as a dependent by

1 his or her parent or guardian on the parent's or guardian's
2 federal, state, or local income tax returns, pay an amount equal to
3 the loss of the tax deduction or tax credit. The amount of
4 reimbursement shall be estimated for each year the victim could
5 reasonably be claimed as a dependent.

6 (h) Pay an amount equal to income actually lost by the spouse,
7 parent, sibling, child, or grandparent of the victim because the
8 family member left his or her employment, temporarily or
9 permanently, to care for the victim because of the injury.

10 (5) If an offense resulting in bodily injury also results in
11 the death of a victim or serious impairment of a body function of a
12 victim, the court may order up to 3 times the amount of restitution
13 otherwise allowed under this section. As used in this subsection,
14 "serious impairment of a body function of a victim" includes, but
15 is not limited to, 1 or more of the following:

- 16 (a) Loss of a limb or use of a limb.
17 (b) Loss of a hand or foot or use of a hand or foot.
18 (c) Loss of an eye or use of an eye or ear.
19 (d) Loss or substantial impairment of a bodily function.
20 (e) Serious visible disfigurement.
21 (f) A comatose state that lasts for more than 3 days.
22 (g) Measurable brain damage or mental impairment.
23 (h) A skull fracture or other serious bone fracture.
24 (i) Subdural hemorrhage or subdural hematoma.
25 (j) Loss of a body organ.

26 (6) If the victim or victim's estate consents, the order of
27 restitution may require that the juvenile make restitution in

1 services in lieu of money.

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

4 (8) IF THE VICTIM IS THE VICTIM OF IDENTITY THEFT AS THAT TERM
5 IS DEFINED IN SECTION 3 OF THE IDENTITY THEFT PROTECTION ACT, 2004
6 PA 452, MCL 445.63, THEN THE COURT SHALL ORDER RESTITUTION TO
7 COMPENSATE THE VICTIM IN FULL FOR THE WORK DONE BY THE VICTIM OR
8 THE VICTIM'S ATTORNEY, OR BOTH, TO RECTIFY THE VICTIM'S FINANCIAL
9 RECORDS AND VITAL RECORDS AND TO AMELIORATE THE EFFECTS OF THE
10 IDENTITY THEFT ON THE VICTIM'S FINANCIAL AFFAIRS, INCLUDING, BUT
11 NOT LIMITED TO, CREDIT HISTORY, CREDIT RATING, OR CREDIT SCORE.

12 (9) ~~(8)~~—The court shall order restitution to the crime victim
13 services commission or to any individuals, partnerships,
14 corporations, associations, governmental entities, or other legal
15 entities that have compensated the victim or the victim's estate
16 for a loss incurred by the victim to the extent of the compensation
17 paid for that loss. The court shall also order restitution for the
18 costs of services provided to persons or entities that have
19 provided services to the victim as a result of the offense.
20 Services that are subject to restitution under this subsection
21 include, but are not limited to, shelter, food, clothing, and
22 transportation. However, an order of restitution shall require that
23 all restitution to a victim or victim's estate under the order be
24 made before any restitution to any other person or entity under
25 that order is made. The court shall not order restitution to be
26 paid to a victim or victim's estate if the victim or victim's
27 estate has received or is to receive compensation for that loss,

1 and the court shall state on the record with specificity the
2 reasons for its action.

3 (10) ~~(9)~~—Any amount paid to a victim or victim's estate under
4 an order of restitution shall be set off against any amount later
5 recovered as compensatory damages by the victim or the victim's
6 estate in any federal or state civil proceeding and shall reduce
7 the amount payable to a victim or a victim's estate by an award
8 from the crime victim services commission made after an order of
9 restitution under this section.

10 (11) ~~(10)~~—If not otherwise provided by the court under this
11 subsection, restitution shall be made immediately. However, the
12 court may require that the juvenile make restitution under this
13 section within a specified period or in specified installments.

14 (12) ~~(11)~~—If the juvenile is placed on probation, any
15 restitution ordered under this section shall be a condition of that
16 probation. The court may revoke probation if the juvenile fails to
17 comply with the order and if the juvenile has not made a good faith
18 effort to comply with the order. In determining whether to revoke
19 probation, the court shall consider the juvenile's employment
20 status, earning ability, and financial resources, the willfulness
21 of the juvenile's failure to pay, and any other special
22 circumstances that may have a bearing on the juvenile's ability to
23 pay.

24 (13) ~~(12)~~—Subject to subsection ~~(18)~~—(19), a juvenile who is
25 required to pay restitution and who is not in willful default of
26 the payment of the restitution may at any time petition the court
27 to modify the method of payment. If the court determines that

1 payment under the order will impose a manifest hardship on the
2 juvenile or his or her immediate family, and if the court also
3 determines that modifying the method of payment will not impose a
4 manifest hardship on the victim, the court may modify the method of
5 payment.

6 (14) ~~(13)~~—An order of restitution entered under this section
7 remains effective until it is satisfied in full. An order of
8 restitution is a judgment and lien against all property of the
9 individual ordered to pay restitution for the amount specified in
10 the order of restitution. The lien may be recorded as provided by
11 law. An order of restitution may be enforced by the prosecuting
12 attorney, a victim, a victim's estate, or any other person or
13 entity named in the order to receive the restitution in the same
14 manner as a judgment in a civil action or a lien.

15 (15) ~~(14)~~—Notwithstanding any other provision of this section,
16 a juvenile shall not be detained or imprisoned for a violation of
17 probation or parole or otherwise for failure to pay restitution as
18 ordered under this section unless the court determines that the
19 juvenile has the resources to pay the ordered restitution and has
20 not made a good faith effort to do so.

21 (16) ~~(15)~~—If the court determines that the juvenile is or will
22 be unable to pay all of the restitution ordered, after notice to
23 the juvenile's parent or parents and an opportunity for the parent
24 or parents to be heard, the court may order the parent or parents
25 having supervisory responsibility for the juvenile at the time of
26 the acts upon which an order of restitution is based to pay any
27 portion of the restitution ordered that is outstanding. An order

1 under this subsection does not relieve the juvenile of his or her
2 obligation to pay restitution as ordered, but the amount owed by
3 the juvenile shall be offset by any amount paid by his or her
4 parent. As used in this subsection, "parent" does not include a
5 foster parent.

6 (17) ~~(16)~~—If the court orders a parent to pay restitution
7 under subsection ~~(15)~~—(16), the court shall take into account the
8 parent's financial resources and the burden that the payment of
9 restitution will impose, with due regard to any other moral or
10 legal financial obligations the parent may have. If a parent is
11 required to pay restitution under subsection ~~(15)~~—(16), the court
12 shall provide for payment to be made in specified installments and
13 within a specified period of time.

14 (18) ~~(17)~~—A parent who has been ordered to pay restitution
15 under subsection ~~(15)~~—(16) may petition the court for a
16 modification of the amount of restitution owed by the parent or for
17 a cancellation of any unpaid portion of the parent's obligation.
18 The court shall cancel all or part of the parent's obligation due
19 if the court determines that payment of the amount due will impose
20 a manifest hardship on the parent and if the court also determines
21 that modifying the method of payment will not impose a manifest
22 hardship on the victim.

23 (19) ~~(18)~~—In each case in which payment of restitution is
24 ordered as a condition of probation, the court shall order any
25 employed juvenile to make regularly scheduled restitution payments.
26 If the juvenile misses 2 or more regularly scheduled payments, the
27 court shall order the juvenile to execute a wage assignment to pay

1 the restitution. The juvenile caseworker or probation officer
2 assigned to the case shall review the case not less than twice
3 yearly to ensure that restitution is being paid as ordered. If the
4 restitution was ordered to be made within a specific period of
5 time, the juvenile caseworker or probation officer assigned to the
6 case shall review the case at the end of the specific period of
7 time to determine if the restitution has been paid in full. The
8 final review shall be conducted not less than 60 days before the
9 probationary period expires. If the juvenile caseworker or
10 probation officer determines at any review the restitution is not
11 being paid as ordered, the juvenile caseworker or probation officer
12 shall file a written report of the violation with the court on a
13 form prescribed by the state court administrative office or shall
14 petition the court for a probation violation. The report or
15 petition shall include a statement of the amount of the arrearage,
16 and any reasons for the arrearage known by the juvenile caseworker
17 or probation officer. The juvenile caseworker or probation officer
18 shall immediately provide a copy of the report or petition to the
19 prosecuting attorney. If a petition or motion is filed or other
20 proceedings are initiated to enforce payment of restitution and the
21 court determines that restitution is not being paid or has not been
22 paid as ordered by the court, the court shall promptly take action
23 necessary to compel compliance.

24 (20) ~~(19)~~—If the court determines that an individual who is
25 ordered to pay restitution under this section is remanded to the
26 jurisdiction of the department of corrections, the court shall
27 provide a copy of the order of restitution to the department of

1 corrections when the court determines that the individual is
2 remanded to the department's jurisdiction.

3 (21) ~~(20)~~—The court shall not impose a fee on a victim,
4 victim's estate, or prosecuting attorney for enforcing an order of
5 restitution.

6 (22) ~~(21)~~—If a person or entity entitled to restitution under
7 this section cannot be located, refuses to claim the restitution
8 within 2 years after the date on which he or she could have claimed
9 the restitution, or refuses to accept the restitution, the
10 restitution to which that person or entity is entitled shall be
11 deposited in the crime victim's rights fund created under section 4
12 of 1989 PA 196, MCL 780.904, or its successor fund. However, a
13 person or entity entitled to that restitution may claim that
14 restitution any time by applying to the court that originally
15 ordered and collected it. The court shall notify the crime victim
16 services commission of the application and the commission shall
17 approve a reduction in the court's revenue transmittal to the crime
18 victim's rights fund equal to the restitution owed to the person or
19 entity. The court shall use the reduction to reimburse that
20 restitution to the person or entity.

21 (23) ~~(22)~~—The court may amend an order of restitution entered
22 under this section on a motion by the prosecuting attorney, the
23 victim, or the defendant based upon new information related to the
24 injury, damages, or loss for which the restitution was ordered.

25 (24) ~~(23)~~—A court that receives notice that a defendant who
26 has an obligation to pay restitution under this section has
27 declared bankruptcy shall forward a copy of that notice to the

1 prosecuting attorney. The prosecuting attorney shall forward the
2 notice to the victim at the victim's last known address.

3 (25) ~~(24)~~—If the victim is a minor, the order of restitution
4 shall require the defendant to pay to a parent of the victim an
5 amount that is determined to be reasonable for any of the following
6 that are actually incurred or reasonably expected to be incurred by
7 the parent as a result of the crime:

8 (a) Homemaking and child care expenses.

9 (b) Income loss not ordered to be paid under subsection
10 (4) (h).

11 (c) Mileage.

12 (d) Lodging or housing.

13 (e) Meals.

14 (f) Any other cost incurred in exercising the rights of the
15 victim or a parent under this act.

16 Sec. 64a. (1) To facilitate compliance with **SECTIONS 11 AND 13**
17 **OF THE IDENTITY THEFT PROTECTION ACT, 2004 PA 452, MCL 445.71 AND**
18 **445.73, AND** 15 USC 1681g, a bona fide victim of identity theft is
19 entitled to file a police report with a law enforcement agency in a
20 jurisdiction where the alleged violation of identity theft may be
21 prosecuted as provided under section 10c of chapter II of the code
22 of criminal procedure, 1927 PA 175, MCL 762.10c, and to obtain a
23 copy of that report from that law enforcement agency.

24 (2) As used in this section, "identity theft" means that term
25 as defined in section 3 of the identity theft protection act, **2004**
26 **PA 452, MCL 445.63.**

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

1 (a) "Misdemeanor" means a violation of a law of this state or
2 a local ordinance that is punishable by imprisonment for not more
3 than 1 year or a fine that is not a civil fine, but that is not a
4 felony.

5 (b) "Victim" means an individual who suffers direct or
6 threatened physical, financial, or emotional harm as a result of
7 the commission of a misdemeanor. As used in subsections (2), (3),
8 (6), ~~(8)~~, (9), and ~~(13)~~ **(10)**, **AND (14)** only, victim includes a sole
9 proprietorship, partnership, corporation, association, governmental
10 entity, or any other legal entity that suffers direct physical or
11 financial harm as a result of a misdemeanor.

12 (2) Except as provided in subsection ~~(8)~~ **(9)**, when sentencing
13 a defendant convicted of a misdemeanor, the court shall order, in
14 addition to or in lieu of any other penalty authorized by law or in
15 addition to any other penalty required by law, that the defendant
16 make full restitution to any victim of the defendant's course of
17 conduct that gives rise to the conviction or to the victim's
18 estate. For an offense that is resolved by assignment of the
19 defendant to youthful trainee status, by a delayed sentence or
20 deferred judgment of guilt, or in another way that is not an
21 acquittal or unconditional dismissal, the court shall order the
22 restitution required under this section.

23 (3) If a misdemeanor results in damage to or loss or
24 destruction of property of a victim of the misdemeanor or results
25 in the seizure or impoundment of property of a victim of the
26 misdemeanor, the order of restitution shall require that the
27 defendant do 1 or more of the following, as applicable:

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

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

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

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

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

12 (4) If a misdemeanor results in physical or psychological
13 injury to a victim, the order of restitution shall require that the
14 defendant do 1 or more of the following, as applicable:

15 (a) Pay an amount equal to the reasonably determined cost of
16 medical and related professional services and devices actually
17 incurred and reasonably expected to be incurred relating to
18 physical and psychological care.

19 (b) Pay an amount equal to the reasonably determined cost of
20 physical and occupational therapy and rehabilitation actually
21 incurred and reasonably expected to be incurred.

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

24 (d) Pay an amount equal to the reasonably determined cost of
25 psychological and medical treatment for members of the victim's
26 family actually incurred and reasonably expected to be incurred as
27 a result of the misdemeanor.

1 (e) Pay an amount equal to the reasonably determined costs of
2 homemaking and child care expenses actually incurred and reasonably
3 expected to be incurred as a result of the misdemeanor or, if
4 homemaking or child care is provided without compensation by a
5 relative, friend, or any other person, an amount equal to the costs
6 that would reasonably be incurred as a result of the misdemeanor
7 for that homemaking and child care, based on the rates in the area
8 for comparable services.

9 (f) Pay an amount equal to the cost of actual funeral and
10 related services.

11 (g) If the deceased victim could be claimed as a dependent by
12 his or her parent or guardian on the parent's or guardian's
13 federal, state, or local income tax returns, pay an amount equal to
14 the loss of the tax deduction or tax credit. The amount of
15 reimbursement shall be estimated for each year the victim could
16 reasonably be claimed as a dependent.

17 (h) Pay an amount equal to income actually lost by the spouse,
18 parent, sibling, child, or grandparent of the victim because the
19 family member left his or her employment, temporarily or
20 permanently, to care for the victim because of the injury.

21 (5) If a crime resulting in bodily injury also results in the
22 death of a victim or serious impairment of a body function of a
23 victim, the court may order up to 3 times the amount of restitution
24 otherwise allowed under this section. As used in this subsection,
25 "serious impairment of a body function of a victim" includes, but
26 is not limited to, 1 or more of the following:

27 (a) Loss of a limb or use of a limb.

- 1 (b) Loss of a hand or foot or use of a hand or foot.
2 (c) Loss of an eye or use of an eye or ear.
3 (d) Loss or substantial impairment of a bodily function.
4 (e) Serious visible disfigurement.
5 (f) A comatose state that lasts for more than 3 days.
6 (g) Measurable brain damage or mental impairment.
7 (h) A skull fracture or other serious bone fracture.
8 (i) Subdural hemorrhage or subdural hematoma.
9 (j) Loss of a body organ.

10 (6) If the victim or victim's estate consents, the order of
11 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, CREDIT HISTORY, CREDIT RATING, OR CREDIT SCORE.**

23 (9) ~~(8)~~—The court shall order restitution to the crime victim
24 services commission or to any individuals, partnerships,
25 corporations, associations, governmental entities, or other legal
26 entities that have compensated the victim or the victim's estate
27 for a loss incurred by the victim to the extent of the compensation

1 paid for that loss. The court shall also order restitution for the
2 costs of services provided to persons or entities that have
3 provided services to the victim as a result of the misdemeanor.
4 Services that are subject to restitution under this subsection
5 include, but are not limited to, shelter, food, clothing, and
6 transportation. However, an order of restitution shall require that
7 all restitution to a victim or victim's estate under the order be
8 made before any restitution to any other person or entity under
9 that order is made. The court shall not order restitution to be
10 paid to a victim or victim's estate if the victim or victim's
11 estate has received or is to receive compensation for that loss,
12 and the court shall state on the record with specificity the
13 reasons for its action.

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

21 (11) ~~(10)~~—If not otherwise provided by the court under this
22 subsection, restitution shall be made immediately. However, the
23 court may require that the defendant make restitution under this
24 section within a specified period or in specified installments.

25 (12) ~~(11)~~—If the defendant is placed on probation or the court
26 imposes a conditional sentence as provided in section 3 of chapter
27 IX of the code of criminal procedure, 1927 PA 175, MCL 769.3, any

1 restitution ordered under this section shall be a condition of that
2 probation or sentence. The court may revoke probation or impose
3 imprisonment under the conditional sentence if the defendant fails
4 to comply with the order and if the defendant has not made a good
5 faith effort to comply with the order. In determining whether to
6 revoke probation or impose imprisonment, the court shall consider
7 the defendant's employment status, earning ability, and financial
8 resources, the willfulness of the defendant's failure to pay, and
9 any other special circumstances that may have a bearing on the
10 defendant's ability to pay.

11 (13) ~~(12)~~ Subject to subsection ~~(15)~~ **(16)**, a defendant who is
12 required to pay restitution and who is not in willful default of
13 the payment of the restitution may at any time petition the
14 sentencing judge or his or her successor to modify the method of
15 payment. If the court determines that payment under the order will
16 impose a manifest hardship on the defendant or his or her immediate
17 family, and if the court also determines that modifying the method
18 of payment will not impose a manifest hardship on the victim, the
19 court may modify the method of payment.

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

1 lien.

2 (15) ~~(14)~~—Notwithstanding any other provision of this section,
3 a defendant shall not be imprisoned, jailed, or incarcerated for a
4 violation of probation or otherwise for failure to pay restitution
5 as ordered under this section unless the court determines that the
6 defendant has the resources to pay the ordered restitution and has
7 not made a good faith effort to do so.

8 (16) ~~(15)~~—In each case in which payment of restitution is
9 ordered as a condition of probation, the court shall order any
10 employed defendant to make regularly scheduled restitution
11 payments. If the defendant misses 2 or more regularly scheduled
12 payments, the court shall order the defendant to execute a wage
13 assignment to pay the restitution. The probation officer assigned
14 to the case shall review the case not less than twice yearly to
15 ensure that restitution is being paid as ordered. If the
16 restitution was ordered to be made within a specific period of
17 time, the probation officer assigned to the case shall review the
18 case at the end of the specific period of time to determine if the
19 restitution has been paid in full. The final review shall be
20 conducted not less than 60 days before the probationary period
21 expires. If the probation officer determines at any review that
22 restitution is not being paid as ordered, the probation officer
23 shall file a written report of the violation with the court on a
24 form prescribed by the state court administrative office or shall
25 petition the court for a probation violation. The report or
26 petition shall include a statement of the amount of the arrearage
27 and any reasons for the arrearage known by the probation officer.

1 The probation officer shall immediately provide a copy of the
2 report or petition to the prosecuting attorney. If a petition or
3 motion is filed or other proceedings are initiated to enforce
4 payment of restitution and the court determines that restitution is
5 not being paid or has not been paid as ordered by the court, the
6 court shall promptly take action necessary to compel compliance.

7 (17) ~~(16)~~—If the court determines that a defendant who is
8 ordered to pay restitution under this section is remanded to the
9 jurisdiction of the department of corrections, the court shall
10 provide a copy of the order of restitution to the department of
11 corrections when the court determines that the defendant is
12 remanded to the department's jurisdiction.

13 (18) ~~(17)~~—The court shall not impose a fee on a victim,
14 victim's estate, or prosecuting attorney for enforcing an order of
15 restitution.

16 (19) ~~(18)~~—If a person or entity entitled to restitution under
17 this section cannot be located, refuses to claim the restitution
18 within 2 years after the date on which he or she could have claimed
19 the restitution, or refuses to accept the restitution, the
20 restitution to which that person or entity is entitled shall be
21 deposited in the crime victim's rights fund created under section 4
22 of 1989 PA 196, MCL 780.904, or its successor fund. However, a
23 person or entity entitled to that restitution may claim that
24 restitution any time by applying to the court that originally
25 ordered and collected it. The court shall notify the crime victim
26 services commission of the application and the commission shall
27 approve a reduction in the court's revenue transmittal to the crime

1 victim's rights fund equal to the restitution owed to the person or
2 entity. The court shall use the reduction to reimburse that
3 restitution to the person or entity.

4 (20) ~~(19)~~—The court may amend an order of restitution entered
5 under this section on a motion by the prosecuting attorney, the
6 victim, or the defendant based upon new information related to the
7 injury, damages, or loss for which the restitution was ordered.

8 (21) ~~(20)~~—A court that receives notice that a defendant who
9 has an obligation to pay restitution under this section has
10 declared bankruptcy shall forward a copy of that notice to the
11 prosecuting attorney. The prosecuting attorney shall forward the
12 notice to the victim at the victim's last known address.

13 (22) ~~(21)~~—If the victim is a minor, the order of restitution
14 shall require the defendant pay to a parent of the victim an amount
15 that is determined to be reasonable for any of the following that
16 are actually incurred or reasonably expected to be incurred by the
17 parent as a result of the crime:

18 (a) Homemaking and child care expenses.

19 (b) Income loss not ordered to be paid under subsection
20 (4) (h).

21 (c) Mileage.

22 (d) Lodging or housing.

23 (e) Meals.

24 (f) Any other cost incurred in exercising the rights of the
25 victim or a parent under this act.

26 Enacting section 1. This amendatory act does not take effect
27 unless all of the following bills of the 95th Legislature are

1 enacted into law:

2 (a) Senate Bill No.____ or House Bill No.____ (request no.
3 00331'09).

4 (b) Senate Bill No.____ or House Bill No.____ (request no.
5 00331'09 b).