

# SENATE BILL No. 589

October 10, 1989, Introduced by Senators KELLY, V. SMITH,  
SCHWARZ, WELBORN and O'BRIEN and referred to the  
Committee on Criminal Justice and Urban Affairs.

A bill to amend sections 16, 44, and 76 of Act No. 87 of the  
Public Acts of 1985, entitled as amended

"Crime victim's rights act,"

section 16 as amended and section 76 as added by Act No. 21 of  
the Public Acts of 1988 and section 44 as added by Act No. 22 of  
the Public Acts of 1988, being sections 780.766, 780.794, and  
780.826 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 16, 44, and 76 of Act No. 87 of the  
2 Public Acts of 1985, section 16 as amended and section 76 as  
3 added by Act No. 21 of the Public Acts of 1988 and section 44 as  
4 added by Act No. 22 of the Public Acts of 1988, being sections  
5 780.766, 780.794, and 780.826 of the Michigan Compiled Laws, are  
6 amended to read as follows:

1       Sec. 16. (1) For purposes of this section only, "victim"  
2 means an individual who suffers direct or threatened physical,  
3 financial, or emotional harm as a result of the commission of a  
4 crime; and for purposes of subsections (2), (3), (4), (7), (9),  
5 (10), (11), and (15), "victim" includes a sole proprietorship,  
6 partnership, or corporation.

7       (2) The court, when sentencing a defendant convicted of a  
8 crime, may order, in addition to or in lieu of any other penalty  
9 authorized by law or in addition to any other penalty required by  
10 law, that the defendant make restitution to any victim of the  
11 defendant's course of conduct which gives rise to the conviction,  
12 or to the victim's estate.

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

16       (4) If a crime results in damage to or loss or destruction  
17 of property of a victim of the offense, the order of restitution  
18 may require that the defendant do either of the following:

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  
23 the greater of ~~subparagraphs~~ SUBPARAGRAPH (i) or (ii), less the  
24 value, determined as of the date the property is returned, of  
25 that property or any part of the property that is returned:

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

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

(5) If a crime 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 offense.

(d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family which has been incurred as a result of the ~~offense~~ CRIME.

(E) PAY AN AMOUNT EQUAL TO THE COST OF ACTUAL HOME MAKING EXPENSES AND CHILD CARE EXPENSES WHICH HAVE BEEN INCURRED AS A RESULT OF THE CRIME.

(6) If a crime 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) Instead of restitution under subsections (4) to (6), if the victim or victim's estate consents, the order of restitution may require that the defendant make restitution in services in lieu of money, or make restitution to a person designated by the

1 victim or victim's estate if that person provided services to the  
2 victim as a result of the crime.

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

6 (9) Any order of restitution shall be as fair as possible to  
7 the victim or victim's estate without unduly complicating or pro-  
8 longing the sentencing process.

9 (10) The court shall not order restitution with respect to a  
10 loss for which the victim or victim's estate has received or is  
11 to receive compensation, including insurance, except that the  
12 court may, in the interest of justice, order restitution to the  
13 crime victims compensation board or to any individuals, organi-  
14 zations, partnerships, corporations, or governmental entities  
15 that have compensated the victim or victim's estate for such a  
16 loss to the extent of the compensation paid. An order of resti-  
17 tution shall require that all restitution to a victim or victim's  
18 estate under the order be made before any restitution to any  
19 other person under that order is made.

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

1 (12) 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 The end of the period or the last installment shall not be later  
6 than the following:

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

9 (b) Two years after the end of imprisonment or discharge  
10 from parole, whichever occurs later, if the court does not order  
11 probation.

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

14 (13) If the defendant is placed on probation or paroled, any  
15 restitution ordered under this section shall be a condition of  
16 that probation or parole. The court may revoke probation and the  
17 parole board may revoke parole if the defendant fails to comply  
18 with the order and if the defendant has not made a good faith  
19 effort to comply with the order. In determining whether to  
20 revoke probation or parole, the court or parole board shall con-  
21 sider the defendant's employment status, earning ability, finan-  
22 cial resources, and the willfulness of the defendant's failure to  
23 pay, and any other special circumstances that may have a bearing  
24 on the defendant's ability to pay.

25 (14) A defendant who is required to pay restitution and who  
26 is not in willful default of the payment of the restitution, at  
27 any time, may petition the sentencing judge or his or her

1 successor for a cancellation of any unpaid portion of  
2 restitution. If it appears to the satisfaction of the court that  
3 payment of the amount due will impose a manifest hardship on the  
4 defendant or his or her immediate family, the court may cancel  
5 all or part of the amount due in restitution or modify the method  
6 of payment.

7 (15) An order of restitution may be enforced by the prose-  
8 cuting attorney or a victim or victim's estate named in the order  
9 to receive the restitution in the same manner as a judgment in a  
10 civil action.

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

18 Sec. 44. (1) For purposes of this section only, "victim"  
19 means an individual who suffers direct or threatened physical,  
20 financial, or emotional harm as a result of the commission of an  
21 offense; and for purposes of subsections (2), (4), (7), (9),  
22 (10), (11), and (15), "victim" includes a sole proprietorship,  
23 partnership, or corporation.

24 (2) The court, at the dispositional hearing for a juvenile  
25 offense, may order, in addition to or in lieu of any other dispo-  
26 sition authorized by law, that the juvenile make restitution to

1 any victim or victim's estate of the juvenile's course of conduct  
2 which gives rise to the disposition.

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

6 (4) If a juvenile offense results in damage to or loss or  
7 destruction of property of a victim of the offense, the order of  
8 restitution may require that the juvenile do either of the  
9 following:

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

12 (b) If return of the property under subdivision (a) is  
13 impossible, impractical, or inadequate, pay an amount equal to  
14 the greater of ~~subparagraphs~~ SUBPARAGRAPH (i) or (ii), less the  
15 value, determined as of the date the property is returned, of  
16 that property or any part of the property that is returned:

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

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

20 (5) If a juvenile offense results in physical or psychologi-  
21 cal injury to a victim, the order of restitution may require that  
22 the juvenile do 1 or more of the following, as applicable:

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

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

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

4 (d) Pay an amount equal to the cost of psychological and  
5 medical treatment for members of the victim's family which has  
6 been incurred as a result of the offense.

7 (E) PAY AN AMOUNT EQUAL TO THE COST OF ACTUAL HOME MAKING  
8 EXPENSES AND CHILD CARE EXPENSES WHICH HAVE BEEN INCURRED AS A  
9 RESULT OF THE OFFENSE.

10 (6) If a juvenile offense resulting in bodily injury also  
11 results in the death of a victim, the order of restitution may  
12 require that the juvenile pay an amount equal to the cost of  
13 actual funeral and related services.

14 (7) Instead of restitution under subsections (4) to (6), if  
15 the victim or victim's estate consents, the order of restitution  
16 may require that the juvenile make restitution in services in  
17 lieu of money, or make restitution to a person designated by the  
18 victim or victim's estate if that person provided services to the  
19 victim as a result of the offense.

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

23 (9) Any order of restitution shall be as fair as possible to  
24 the victim or victim's estate without unduly complicating or pro-  
25 longing the disposition process.

26 (10) The court shall not order restitution with respect to a  
27 loss for which the victim or victim's estate has received or is



1 to receive compensation, including insurance, except that the  
2 court may, in the interest of justice, order restitution to the  
3 crime victims compensation board or to any individuals, organi-  
4 zations, partnerships, corporations, or governmental entities  
5 that have compensated the victim or victim's estate for such a  
6 loss to the extent of the compensation paid. An order of resti-  
7 tution shall require that all restitution to a victim or victim's  
8 estate under the order be made before any restitution to any  
9 other person under that order is made.

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

17 (12) If not otherwise provided by the court under this sub-  
18 section, restitution shall be made immediately. However, the  
19 court may require that the juvenile make restitution under this  
20 section within a specified period or in specified installments.  
21 The end of the period or the last installment shall not be later  
22 than the following:

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

25 (b) If the juvenile is made a state ward, when the depart-  
26 ment of social services' jurisdiction over the juvenile expires.

1 (c) If the juvenile is made a ward of the court, when the  
2 court's jurisdiction over the juvenile expires.

3 (d) Three years after the date of disposition or when the  
4 court's jurisdiction over the juvenile expires, whichever is  
5 later.

6 (13) If the juvenile is placed on probation, any restitution  
7 ordered under this section shall be a condition of that  
8 probation. The court may revoke probation if the juvenile fails  
9 to comply with the order and if the juvenile has not made a good  
10 faith effort to comply with the order. In determining whether to  
11 revoke probation, the court shall consider the juvenile's employ-  
12 ment status, earning ability, financial resources, and the will-  
13 fulness of the juvenile's failure to pay, and any other special  
14 circumstances that may have a bearing on the juvenile's ability  
15 to pay.

16 (14) A juvenile who is required to pay restitution and who  
17 is not in willful default of the payment of the restitution, at  
18 any time, may petition the court for a cancellation of any unpaid  
19 portion of restitution. If it appears to the satisfaction of the  
20 court that payment of the amount due will impose a manifest hard-  
21 ship on the juvenile or his or her immediate family, the court  
22 may cancel all or part of the amount due in restitution or modify  
23 the method of payment.

24 (15) An order of restitution may be enforced by the prose-  
25 cuting attorney or a victim or victim's estate named in the order  
26 to receive the restitution in the same manner as a judgment in a  
27 civil action.

1       (16) Notwithstanding any other provision of this section, a  
2 juvenile shall not be detained for a violation of probation, or  
3 otherwise, for failure to pay restitution as ordered under this  
4 section unless the court determines that the juvenile has the  
5 resources to pay the ordered restitution and has not made a good  
6 faith effort to do so.

7       (17) If the juvenile is unable to pay all of the restitution  
8 ordered, after notice to the juvenile's custodial parent and an  
9 opportunity for the parent to be heard, the court may order the  
10 custodial parent to pay all or part of the unpaid portion of the  
11 restitution ordered. The amount of restitution the parent is  
12 ordered to pay under this subsection shall not exceed \$2,500.00.

13       (18) If the court orders the custodial parent to pay resti-  
14 tution under subsection (17), the court shall take into account  
15 the financial resources of the parent and the burden that the  
16 payment of restitution will impose, with due regard to any other  
17 moral or legal financial obligations that the parent may have.  
18 If a parent is required to pay restitution under subsection (17),  
19 the court shall provide for payment to be made in specified  
20 installments and within a specified period of time.

21       (19) A parent who has been ordered to pay restitution under  
22 subsection (17) may petition the court for a modification of the  
23 amount of restitution owed or for a cancellation of any unpaid  
24 portion of the restitution. The court shall cancel all or part  
25 of the amount of restitution due, if it appears to the satisfac-  
26 tion of the court that payment of the amount due will impose a  
27 manifest hardship on the parent.

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

2       (a) "Victim" means an individual who suffers actual finan-  
3 cial loss or expense as a result of the commission of a misde-  
4 meanor, and for purposes of subsections (2), (3), (4), (6), (8),  
5 (9), and (10), victim includes a sole proprietorship, partner-  
6 ship, or corporation.

7       (b) "Misdemeanor" means a violation of a law of this state,  
8 or of a local ordinance substantially corresponding to a law of  
9 this state, that is punishable by imprisonment for not more than  
10 1 year or by a fine that is not a civil fine, but is not a  
11 felony.

12       (2) The court, when sentencing a defendant convicted of a  
13 misdemeanor, may order, in addition to or in lieu of any other  
14 penalty authorized by law, or in addition to any other penalty  
15 required by law, that the defendant make restitution to any  
16 victim of the defendant's course of conduct that gives rise to  
17 the conviction or to the victim's estate.

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

21       (4) If a misdemeanor results in damage to or loss or  
22 destruction of property of a victim of the offense, the order of  
23 restitution may require that the defendant do either of the  
24 following:

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

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

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

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

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

12 (a) Pay an amount equal to the cost of the victim's actual  
13 medical and related professional services and devices relating to  
14 the physical care.

15 (b) Pay an amount equal to the cost of the victim's actual  
16 physical and occupational therapy and rehabilitation.

17 (c) Reimburse the victim or the victim's estate for  
18 after-tax income loss suffered by the victim as a result of the  
19 ~~offense~~ MISDEMEANOR.

20 (D) PAY AN AMOUNT EQUAL TO THE COST OF ACTUAL HOME MAKING  
21 EXPENSES AND CHILD CARE EXPENSES WHICH HAVE BEEN INCURRED AS A  
22 RESULT OF THE MISDEMEANOR.

23 (6) Instead of restitution under subsections (4) and (5), if  
24 the victim or victim's estate consents, the order of restitution  
25 may require that the defendant make restitution in services in  
26 lieu of money, or make restitution to a person designated by the

1 victim or victim's estate if that person provided services to the  
2 victim as a result of the misdemeanor.

3 (7) If the court orders restitution under this section, the  
4 court shall, if the victim is deceased, order that the restitu-  
5 tion be made to the victim's estate.

6 (8) Any order of restitution shall be as fair as possible to  
7 the victim or victim's estate without unduly complicating or pro-  
8 longing the sentencing process.

9 (9) The court shall not order restitution with respect to a  
10 loss for which the victim or victim's estate has received or is  
11 to receive compensation, including insurance, except that the  
12 court may, in the interest of justice, order restitution to the  
13 crime victims compensation board or to any individuals, organi-  
14 zations, partnerships, corporations, or governmental entities  
15 that have compensated the victim or victim's estate for such a  
16 loss to the extent of the compensation paid. An order of resti-  
17 tution shall require that all restitution to a victim or victim's  
18 estate under the order be made before any restitution to any  
19 other person under that order is made.

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

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