

HOUSE BILL No. 5932

September 22, 2016, Introduced by Rep. Cox 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
2009 PA 27.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER IX

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

(A) "COURSE OF CONDUCT" MEANS ALL OF THE FOLLOWING:

(i) EACH CRIME FOR WHICH THE INDIVIDUAL IS CONVICTED.

(ii) EACH CRIMINAL CHARGE AGAINST THE DEFENDANT THAT IS
DISMISSED AS PART OF A PLEA AGREEMENT.

(iii) EACH CRIME FOR WHICH THE DEFENDANT COULD HAVE BEEN
CHARGED BY THE PROSECUTING ATTORNEY BUT WAS NOT CHARGED.

(B) "CRIME" MEANS A FELONY, A MISDEMEANOR, OR AN ORDINANCE

1 **VIOLATION.**

2 (C) ~~(a)~~ "Crime victim services commission" means that term as
3 described in section 2 of 1976 PA 223, MCL 18.352.

4 (D) ~~(b)~~ "Victim" means an individual who suffers direct or
5 threatened physical, financial, or emotional harm as a result of
6 ~~the commission of a felony, misdemeanor, or ordinance violation.~~ **A**
7 **CRIME.** For purposes of subsections (2), (3), ~~(6), (8), (7)~~, (9),
8 (10), and ~~(13), (14)~~ **ONLY**, victim includes a sole proprietorship,
9 partnership, corporation, association, governmental entity, or any
10 other legal entity that suffers direct physical or financial harm
11 as a result of ~~a felony, misdemeanor, or ordinance violation.~~ **A**

12 **CRIME.**

13 (2) Except as provided in subsection ~~(8), (9)~~, when sentencing
14 a defendant convicted of a felony, misdemeanor, or ordinance
15 violation, the court shall order, in addition to or in lieu of any
16 other penalty authorized by law or in addition to any other penalty
17 required by law, that the defendant make full restitution to any
18 victim of the defendant's course of conduct ~~that gives rise to the~~
19 ~~conviction~~ or to the victim's estate. **FOR A CRIME IN WHICH MORE**
20 **THAN 1 PERSON PARTICIPATED, ALL DEFENDANTS OR RESPONDENTS SHALL BE**
21 **ORDERED TO PAY FULL RESTITUTION. FOR AN OFFENSE THAT IS RESOLVED BY**
22 **ASSIGNMENT OF THE DEFENDANT TO YOUTHFUL TRAINEE STATUS, BY A**
23 **DELAYED SENTENCE OR DEFERRED JUDGMENT OF GUILT, BY A FINDING OF NOT**
24 **GUILTY BY REASON OF INSANITY, OR IN ANOTHER WAY THAT IS NOT AN**
25 **ACQUITTAL OR UNCONDITIONAL DISMISSAL, THE COURT SHALL ORDER THE**
26 **RESTITUTION REQUIRED UNDER THIS SECTION.**

27 (3) If a ~~felony, misdemeanor, or ordinance violation~~ **CRIME**

1 results in damage to or loss or destruction of property of a victim
2 of the ~~felony, misdemeanor, or ordinance violation~~ **CRIME** or results
3 in the seizure or impoundment of property of a victim of the
4 ~~felony, misdemeanor, or ordinance violation~~, **CRIME**, the order of
5 restitution ~~may~~ **SHALL** require that the defendant do 1 or more of
6 the following, as applicable:

7 (a) Return the property to the owner of the property or to a
8 person designated by the owner.

9 **(B) IF DAMAGED PERSONAL OR REAL PROPERTY CAN BE REPAIRED TO**
10 **RESTORE THE PROPERTY TO ITS CONDITION BEFORE THE DEFENDANT'S OR**
11 **RESPONDENT'S COURSE OF CONDUCT, PAY AN AMOUNT EQUAL TO THE REPAIR**
12 **COST. ONE OR MORE REPAIR ESTIMATES MAY BE USED AS A BASIS FOR**
13 **RESTITUTION.**

14 **(C)** ~~(b)~~ If return of the property under subdivision (a) is
15 impossible, impractical, or inadequate, **OR IF REPAIR OF THE**
16 **PROPERTY UNDER SUBDIVISION (B) IS IMPOSSIBLE, IMPRACTICAL, OR**
17 **INADEQUATE**, pay an amount equal to the greater of subparagraph (i)
18 or (ii), less the value, determined as of the date the property is
19 returned, of that property or any part of the property that is
20 returned:

21 (i) The fair market value of the property on the date of the
22 damage, loss, or destruction. However, if the fair market value of
23 the property cannot be determined or is impractical to ascertain,
24 then the replacement value of the property shall be utilized in
25 lieu of the fair market value.

26 (ii) The fair market value of the property on the date of
27 sentencing. However, if the fair market value of the property

1 cannot be determined or is impractical to ascertain, then the
2 replacement value of the property shall be utilized in lieu of the
3 fair market value.

4 (D) ~~(e)~~ Pay the cost of the seizure or impoundment, or both.

5 (4) If a ~~felony, misdemeanor, or ordinance violation~~ **CRIME**
6 results in physical or psychological injury to a victim, the order
7 of restitution ~~may~~ **SHALL** require that the defendant do 1 or more of
8 the following, as applicable:

9 (a) Pay an amount equal to the **REASONABLY DETERMINED** cost of
10 ~~actual~~ medical and related professional services and devices,
11 **ACTUALLY INCURRED AND REASONABLY EXPECTED TO BE INCURRED**, relating
12 to physical and psychological care.

13 (b) Pay an amount equal to the **REASONABLY DETERMINED** cost of
14 ~~actual~~ physical and occupational therapy and rehabilitation
15 **ACTUALLY INCURRED AND REASONABLY EXPECTED TO BE INCURRED**.

16 (c) Reimburse the victim or the victim's estate for after-tax
17 income loss suffered by the victim as a result of the ~~felony,~~
18 ~~misdemeanor, or ordinance violation.~~ **CRIME**.

19 (d) Pay an amount equal to the **REASONABLY DETERMINED** cost of
20 psychological and medical treatment for members of the victim's
21 family ~~that has been incurred as a result of the felony,~~
22 ~~misdemeanor, or ordinance violation.~~ **ACTUALLY INCURRED AND**
23 **REASONABLY EXPECTED TO BE INCURRED AS A RESULT OF THE CRIME**.

24 (e) Pay an amount equal to the **REASONABLY DETERMINED** cost of
25 actual homemaking and child care expenses **ACTUALLY INCURRED AND**
26 **REASONABLY EXPECTED TO BE** incurred as a result of the ~~felony,~~
27 ~~misdemeanor, or ordinance violation.~~ **CRIME OR, IF HOMEMAKING OR**

1 CHILD CARE IS PROVIDED WITHOUT COMPENSATION BY A RELATIVE, FRIEND,
 2 OR ANY OTHER PERSON, AN AMOUNT EQUAL TO THE COSTS THAT WOULD
 3 ACTUALLY HAVE BEEN INCURRED AND REASONABLY BE EXPECTED TO BE
 4 INCURRED AS A RESULT OF THE CRIME FOR THAT HOMEMAKING AND CHILD
 5 CARE, BASED ON THE RATES IN THE AREA FOR COMPARABLE SERVICES.

6 (F) PAY AN AMOUNT EQUAL TO THE COST OF ACTUAL FUNERAL AND
 7 RELATED SERVICES.

8 (G) IF THE DECEASED VICTIM COULD BE CLAIMED AS A DEPENDENT BY
 9 HIS OR HER PARENT OR GUARDIAN ON THE PARENT'S OR GUARDIAN'S
 10 FEDERAL, STATE, OR LOCAL INCOME TAX RETURNS, PAY AN AMOUNT EQUAL TO
 11 THE LOSS OF THE TAX DEDUCTION OR TAX CREDIT. THE AMOUNT OF
 12 REIMBURSEMENT SHALL BE ESTIMATED FOR EACH YEAR THE VICTIM COULD
 13 REASONABLY BE CLAIMED AS A DEPENDENT.

14 (H) PAY AN AMOUNT EQUAL TO INCOME ACTUALLY LOST BY THE SPOUSE,
 15 PARENT, SIBLING, CHILD, OR GRANDPARENT OF THE VICTIM BECAUSE THE
 16 FAMILY MEMBER LEFT HIS OR HER EMPLOYMENT, TEMPORARILY OR
 17 PERMANENTLY, TO CARE FOR THE VICTIM BECAUSE OF THE INJURY.

18 (5) ~~If a felony, misdemeanor, or ordinance violation~~ CRIME
 19 resulting in bodily injury also results in the death of a victim ~~7~~
 20 ~~the order of restitution may require that the defendant pay an~~
 21 ~~amount equal to the cost of actual funeral and related services.~~ OR
 22 SERIOUS IMPAIRMENT OF A BODY FUNCTION OF A VICTIM, THE COURT MAY
 23 ORDER UP TO 3 TIMES THE AMOUNT OF RESTITUTION OTHERWISE ALLOWED
 24 UNDER THIS SECTION. AS USED IN THIS SUBSECTION, "SERIOUS IMPAIRMENT
 25 OF A BODY FUNCTION OF A VICTIM" INCLUDES, BUT IS NOT LIMITED TO, 1
 26 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) WHEN SENTENCING A DEFENDANT CONVICTED OF AN OFFENSE
11 DESCRIBED IN CHAPTER LXVIIA OF THE MICHIGAN PENAL CODE, 1931 PA
12 328, MCL 750.462A TO 750.462H, THE COURT SHALL ORDER THE DEFENDANT
13 TO PAY ALL OF THE FOLLOWING:

14 (A) LOST INCOME, CALCULATED BY WHICHEVER OF THE FOLLOWING
15 METHODS RESULTS IN THE LARGEST AMOUNT:

16 (i) THE GROSS AMOUNT RECEIVED BY THE DEFENDANT FROM OR THE
17 VALUE TO THE DEFENDANT OF THE VICTIM'S LABOR OR SERVICES.

18 (ii) THE VALUE OF THE VICTIM'S LABOR OR SERVICES AS CALCULATED
19 UNDER THE WORKFORCE OPPORTUNITY WAGE ACT, 2014 PA 138, MCL 408.411
20 TO 408.424, OR THE FEDERAL MINIMUM WAGE, WHICHEVER RESULTS IN THE
21 LARGEST VALUE.

22 (iii) INCOME LOSS AS DETERMINED UNDER SUBSECTION (4) (C) .

23 (B) THE COST OF TRANSPORTATION, TEMPORARY HOUSING, AND CHILD
24 CARE EXPENSES INCURRED BY THE VICTIM BECAUSE OF THE OFFENSE.

25 (C) ATTORNEY FEES AND OTHER COSTS AND EXPENSES INCURRED BY THE
26 VICTIM BECAUSE OF THE OFFENSE, INCLUDING, BUT NOT LIMITED TO, COSTS
27 AND EXPENSES RELATING TO ASSISTING THE INVESTIGATION OF THE OFFENSE

1 AND FOR ATTENDANCE AT RELATED COURT PROCEEDINGS AS FOLLOWS:

2 (i) WAGES LOST.

3 (ii) CHILD CARE.

4 (iii) TRANSPORTATION.

5 (iv) PARKING.

6 (D) ANY OTHER LOSS SUFFERED BY THE VICTIM AS A PROXIMATE
7 RESULT OF THE OFFENSE.

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

11 (8) ~~(7)~~—If the victim is deceased **OR DIES**, the court shall
12 order that the restitution **OR REMAINING RESTITUTION** be made to the
13 victim's estate.

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

1 The court shall not order restitution to be paid to a victim or
2 victim's estate if the victim or victim's estate has received or is
3 to receive compensation for that loss, and the court shall state on
4 the record with specificity the reasons for its action. ~~If an~~
5 ~~entity entitled to restitution under this subsection for~~
6 ~~compensating the victim or the victim's estate cannot or refuses to~~
7 ~~be reimbursed for that compensation, the restitution paid for that~~
8 ~~entity shall be deposited by the state treasurer in the crime~~
9 ~~victim's rights fund created under section 4 of 1989 PA 196, MCL~~
10 ~~780.904, or its successor fund.~~

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

18 (11) ~~(10)~~ If not otherwise provided by the court under this
19 subsection, restitution shall be made immediately. However, the
20 court may require that the defendant make restitution under this
21 section within a specified period or in specified installments.

22 (12) ~~(11)~~ If the defendant is placed on probation or paroled
23 or the court imposes a conditional sentence under section 3 of this
24 chapter, any restitution ordered under this section shall be a
25 condition of that probation, parole, or sentence. The court may
26 revoke probation or impose imprisonment under the conditional
27 sentence and the parole board may revoke parole if the defendant

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

9 **(13) ~~(12)~~ A-SUBJECT TO SUBSECTION (16),** A defendant who is
10 required to pay restitution and who is not in willful default of
11 the payment of the restitution may at any time petition the
12 sentencing judge or his or her successor to modify the method of
13 payment. If the court determines that payment under the order will
14 impose a manifest hardship on the defendant or his or her immediate
15 family, **AND IF THE COURT ALSO DETERMINES THAT MODIFYING THE METHOD**
16 **OF PAYMENT WILL NOT IMPOSE A MANIFEST HARDSHIP ON THE VICTIM,** the
17 court may modify the method of payment.

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

27 **(15) ~~(14)~~** Notwithstanding any other provision of this section,

1 a defendant shall not be imprisoned, jailed, or incarcerated for a
2 violation of probation or parole or otherwise for failure to pay
3 restitution as ordered under this section unless the court or
4 parole board determines that the defendant has the resources to pay
5 the ordered restitution and has not made a ~~good faith~~ **GOOD-FAITH**
6 effort to do so.

7 **(16) ~~(15)~~** In each case in which payment of restitution is
8 ordered as a condition of probation, the **COURT SHALL ORDER ANY**
9 **EMPLOYED DEFENDANT TO MAKE REGULARLY SCHEDULED RESTITUTION**
10 **PAYMENTS. IF THE DEFENDANT MISSES 2 OR MORE REGULARLY SCHEDULED**
11 **PAYMENTS, THE COURT SHALL ORDER THE DEFENDANT TO EXECUTE A WAGE**
12 **ASSIGNMENT TO PAY THE RESTITUTION. THE** probation officer assigned
13 to the case shall review the case not less than twice yearly to
14 ensure that restitution is being paid as ordered. **IF THE**
15 **RESTITUTION WAS ORDERED TO BE MADE WITHIN A SPECIFIC PERIOD OF**
16 **TIME, THE PROBATION OFFICER ASSIGNED TO THE CASE SHALL REVIEW THE**
17 **CASE AT THE END OF THE SPECIFIC PERIOD OF TIME TO DETERMINE IF THE**
18 **RESTITUTION HAS BEEN PAID IN FULL.** The final review shall be
19 conducted not less than 60 days before the probationary period
20 expires. If the probation officer determines **AT ANY REVIEW** that
21 restitution is not being paid as ordered, the probation officer
22 shall file a written report of the violation with the court on a
23 form prescribed by the state court administrative office **OR SHALL**
24 **PETITION THE COURT FOR A PROBATION VIOLATION.** The report **OR**
25 **PETITION** shall include a statement of the amount of the arrearage
26 and any reasons for the arrearage known by the probation officer.
27 The probation officer shall immediately provide a copy of the

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

6 (17) ~~(16)~~ If a defendant who is ordered to pay restitution
7 under this section is remanded to the jurisdiction of the
8 department of corrections, the court shall provide a copy of the
9 order of restitution to the department of corrections when the
10 defendant is ~~ordered~~ remanded to the department's jurisdiction.

11 (18) **THE COURT SHALL NOT IMPOSE A FEE ON A VICTIM, THE**
12 **VICTIM'S ESTATE, OR THE PROSECUTING ATTORNEY FOR ENFORCING AN ORDER**
13 **OF RESTITUTION.**

14 (19) IF A PERSON OR ENTITY ENTITLED TO RESTITUTION UNDER THIS
15 SECTION CANNOT BE LOCATED, REFUSES TO CLAIM THE RESTITUTION WITHIN
16 2 YEARS AFTER THE DATE ON WHICH HE OR SHE COULD HAVE CLAIMED THE
17 RESTITUTION, OR REFUSES TO ACCEPT THE RESTITUTION, THE RESTITUTION
18 TO WHICH THAT PERSON OR ENTITY IS ENTITLED SHALL BE DEPOSITED IN
19 THE CRIME VICTIM'S RIGHTS FUND CREATED UNDER SECTION 4 OF 1989 PA
20 196, MCL 780.904, OR ITS SUCCESSOR FUND. HOWEVER, A PERSON OR
21 ENTITY ENTITLED TO THAT RESTITUTION MAY CLAIM THAT RESTITUTION ANY
22 TIME BY APPLYING TO THE COURT THAT ORIGINALLY ORDERED AND COLLECTED
23 IT. THE COURT SHALL NOTIFY THE CRIME VICTIM SERVICES COMMISSION OF
24 THE APPLICATION AND THE COMMISSION SHALL APPROVE A REDUCTION IN THE
25 COURT'S REVENUE TRANSMITTAL TO THE CRIME VICTIM'S RIGHTS FUND EQUAL
26 TO THE RESTITUTION OWED TO THE PERSON OR ENTITY. THE COURT SHALL
27 USE THE REDUCTION TO OFFSET THE RESTITUTION IT PAYS TO THE PERSON

1 OR ENTITY.

2 (20) THE COURT MAY AMEND AN ORDER OF RESTITUTION ENTERED UNDER
3 THIS SECTION ON A MOTION BY THE PROSECUTING ATTORNEY, THE VICTIM,
4 OR THE DEFENDANT BASED UPON NEW INFORMATION RELATED TO THE INJURY,
5 DAMAGES, OR LOSS FOR WHICH THE RESTITUTION WAS ORDERED.

6 (21) A COURT THAT RECEIVES NOTICE THAT A DEFENDANT WHO HAS AN
7 OBLIGATION TO PAY RESTITUTION UNDER THIS SECTION HAS DECLARED
8 BANKRUPTCY SHALL FORWARD A COPY OF THAT NOTICE TO THE PROSECUTING
9 ATTORNEY. THE PROSECUTING ATTORNEY SHALL FORWARD THE NOTICE TO THE
10 VICTIM AT THE VICTIM'S LAST KNOWN ADDRESS.

11 (22) IF THE VICTIM IS A MINOR, THE ORDER OF RESTITUTION SHALL
12 REQUIRE THE DEFENDANT TO PAY TO A PARENT OF THE VICTIM AN AMOUNT
13 THAT IS DETERMINED TO BE REASONABLE FOR ANY OF THE FOLLOWING THAT
14 ARE ACTUALLY INCURRED OR REASONABLY EXPECTED TO BE INCURRED BY THE
15 PARENT AS A RESULT OF THE CRIME:

16 (A) HOMEMAKING AND CHILD CARE EXPENSES.

17 (B) INCOME LOSS NOT ORDERED TO BE PAID UNDER SUBSECTION

18 (4) (H) .

19 (C) MILEAGE.

20 (D) LODGING OR HOUSING.

21 (E) MEALS.

22 (F) ANY OTHER COST INCURRED IN EXERCISING THE RIGHTS OF THE
23 VICTIM OR A PARENT UNDER THIS ACT.

24 Enacting section 1. This amendatory act takes effect 90 days
25 after the date it is enacted into law.

26 Enacting section 2. This amendatory act does not take effect
27 unless all of the following bills of the 98th Legislature are

1 enacted into law:

2 (a) Senate Bill No. 873.

3 (b) Senate Bill No. _____ or House Bill No. 5933 (request no.
4 05111'16).