

HOUSE BILL No. 4042

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

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 30 and 31 of chapter XIIA (MCL 712A.30 and
712A.31), as amended by 1996 PA 561.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 30. (1) For purposes of this section and section 31 **OF
THIS CHAPTER:**

(a) "Juvenile offense" means a violation by a juvenile of a
penal law of this state or a violation by a juvenile of an
ordinance of a local unit of government of this state punishable by
imprisonment or by a fine that is not a civil fine.

(b) "Victim" means an individual who suffers direct or

1 threatened physical, financial, or emotional harm as a result of
2 the commission of a juvenile offense. For purposes of subsections
3 (2), (3), (6), ~~(8)~~, ~~(9)~~, and ~~(13)~~ **(10)**, **AND (14)**, victim includes a
4 sole proprietorship, partnership, corporation, association,
5 governmental entity, or other legal entity that suffers direct
6 physical or financial harm as a result of the commission of a
7 juvenile offense.

8 (2) Except as provided in subsection ~~(8)~~ **(9)**, at the
9 dispositional hearing for a juvenile offense, the court shall
10 order, in addition to or in lieu of any other disposition
11 authorized by law, that the juvenile make full restitution to any
12 victim of the juvenile's course of conduct that gives rise to the
13 disposition or to the victim's estate.

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

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

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

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

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

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

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

6 (a) Pay an amount equal to the cost of actual medical and
7 related professional services and devices relating to physical and
8 psychological care.

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

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 juvenile
13 offense.

14 (d) Pay an amount equal to the cost of psychological and
15 medical treatment for members of the victim's family that has been
16 incurred as a result of the juvenile offense.

17 (e) Pay an amount equal to the costs of actual homemaking and
18 child care expenses incurred as a result of the juvenile offense.

19 (5) If a juvenile offense resulting in bodily injury also
20 results in the death of a victim, the order of restitution may
21 require that the juvenile pay an amount equal to the cost of actual
22 funeral and related services.

23 (6) If the victim or victim's estate consents, the order of
24 restitution may require that the juvenile make restitution in
25 services in lieu of money.

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

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

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

1 estate cannot or refuses to be reimbursed for that compensation,
2 the restitution paid for that entity shall be deposited by the
3 state treasurer in the crime victim's rights fund created under
4 section 4 of ~~Act No. 196 of the Public Acts of 1989, being section~~
5 ~~780.904 of the Michigan Compiled Laws 1989 PA 196, MCL 780.904,~~ or
6 its successor fund.

7 (10) ~~(9)~~ Any amount paid to a victim or victim's estate under
8 an order of restitution shall be set off against any amount later
9 recovered as compensatory damages by the victim or the victim's
10 estate in any federal or state civil proceeding and shall reduce
11 the amount payable to a victim or a victim's estate by an award
12 from the crime victims compensation board made after an order of
13 restitution under this section.

14 (11) ~~(10)~~ If not otherwise provided by the court under this
15 subsection, restitution shall be made immediately. However, the
16 court may require that the juvenile make restitution under this
17 section within a specified period or in specified installments.

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

1 (13) ~~(12)~~—A juvenile who is required to pay restitution and
2 who is not in willful default of the payment of the restitution may
3 at any time petition the court to modify the method of payment. If
4 the court determines that payment under the order will impose a
5 manifest hardship on the juvenile or his or her immediate family,
6 the court may modify the method of payment.

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

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

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

1 restitution ordered that is outstanding. An order under this
2 subsection does not relieve the juvenile of his or her obligation
3 to pay restitution, but the amount owed by the juvenile shall be
4 offset by any amount paid by his or her parent. As used in this
5 subsection, "parent" does not include a 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 financial resources of the parent and the burden that the payment
9 of restitution will impose, with due regard to any other moral or
10 legal financial obligations that the parent may have. If a parent
11 is required to pay restitution under subsection ~~(15)~~—(16), the
12 court shall provide for payment to be made in specified
13 installments and 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.

21 (19) ~~(18)~~—In each case in which payment of restitution is
22 ordered as a condition of probation, the juvenile caseworker or
23 probation officer assigned to the case shall review the case not
24 less than twice yearly to ensure that restitution is being paid as
25 ordered. The final review shall be conducted not less than 60 days
26 before the expiration of the probationary period. If the juvenile
27 caseworker or probation officer determines the restitution is not

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

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

19 Sec. 31. (1) In determining the amount of restitution to order
20 under section 30 of this chapter, the court shall consider the
21 amount of the loss sustained by any victim as a result of the
22 juvenile offense. In determining whether to order the juvenile's
23 supervisory parent to pay restitution under section ~~30(15)~~—**30(16)**
24 of this chapter, the court shall consider the financial resources
25 of the juvenile's supervisory parent and the other factors
26 specified in section ~~30(16)~~—**30(17)** of this chapter.

27 (2) The court may order the person preparing a report for the

1 purpose of disposition to obtain information pertaining to the
2 factors set forth in subsection (1). That person shall include the
3 information collected in the disposition report or in a separate
4 report, as the court directs.

5 (3) The court shall disclose to the juvenile, the juvenile's
6 supervisory parent, and the prosecuting attorney all portions of
7 the disposition or other report pertaining to the matters described
8 in subsection (1).

9 (4) Any dispute as to the proper amount or type of restitution
10 shall be resolved by the court by a preponderance of the evidence.
11 The burden of demonstrating the amount of the loss sustained by a
12 victim as a result of the juvenile offense shall be on the
13 prosecuting attorney. The burden of demonstrating the financial
14 resources of the juvenile's supervisory parent and the other
15 factors specified in section ~~30(16)~~ 30(17) of this chapter shall be
16 on the supervisory parent.

17 Enacting section 1. This amendatory act does not take
18 effect unless all of the following bills of the 95th Legislature
19 are enacted into law:

20 (a) Senate Bill No. ____ or House Bill No. 4040(request no.
21 00331'09).

22 (b) Senate Bill No. ____ or House Bill No. 4041(request no.
23 00331'09 a).