

CRIME VICTIM'S RIGHTS ACT (EXCERPT)

Act 87 of 1985

780.751 Short title. [M.S.A. 28.1287(751)]

Sec. 1. This act shall be known and may be cited as the "crime victim's rights act".

History: 1985, Act 87, Eff. Oct. 9, 1985.

780.752 Definitions; designation of person to act in place of victim; privileges and rights.

Sec. 2. (1) Except as otherwise defined in this article, as used in this article: (a) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622.

(b) "Crime" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year or an offense expressly designated by law as a felony.

(c) "Defendant" means a person charged with or convicted of committing a crime against a victim.

(d) "Final disposition" means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal, or imposition of sentence by the court.

(e) "Juvenile" means a person within the jurisdiction of the circuit court under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606.

(f) "Juvenile facility" means a county facility, institution operated as an agency of the county or the family division of circuit court, or an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, to which a juvenile has been committed or in which a juvenile is detained.

(g) "Person" means an individual, organization, partnership, corporation, or governmental entity.

(h) "Prisoner" means a person who has been convicted and sentenced to imprisonment or placement in a juvenile facility for having committed a crime or an act that would be a crime if committed by an adult against a victim.

(i) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, or a special prosecuting attorney.

(j) "Victim" means any of the following: (i) An individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime, except as provided in subparagraph (ii), (iii), or (iv).

(ii) The following individuals other than the defendant if the victim is deceased: (A) The spouse of the deceased victim.

(B) A child of the deceased victim if the child is 18 years of age or older and sub-subparagraph (A) does not apply.

(C) A parent of a deceased victim if sub-subparagraphs (A) and (B) do not apply.

(D) The guardian or custodian of a child of a deceased victim if the child is less than 18 years of age and sub-subparagraphs (A) to (C) do not apply.

(E) A sibling of the deceased victim if sub-subparagraphs (A) to (D) do not apply.

(F) A grandparent of the deceased victim if sub-subparagraphs (A) to (E) do not apply.

(iii) A parent, guardian, or custodian of a victim who is less than 18 years of age and who is neither the defendant nor incarcerated, if the parent, guardian, or custodian so chooses.

(iv) A parent, guardian, or custodian of a victim who is mentally or emotionally unable to participate in the legal process if he or she is neither the defendant nor incarcerated.

(2) If a victim as defined in subsection (1)(j)(i) is physically or emotionally unable to exercise the privileges and rights under this article, the victim may designate his or her spouse, child 18 years of age or older, parent, sibling, grandparent, or any other person 18 years of age or older who is neither the defendant nor incarcerated to act in his or her place while the physical or emotional disability continues. The victim shall provide the prosecuting attorney with the name of the person who is to act in his or her place. During the physical or emotional disability, notices to be provided under this article to the victim shall continue to be sent only to the victim.

(3) An individual who is charged with a crime arising out of the same transaction from which the charge against the defendant arose is not eligible to exercise the privileges and rights established for victims under this article.

(4) An individual who is incarcerated is not eligible to exercise the privileges and rights established for victims under this article except that he or she may submit a written statement to the court for consideration at sentencing.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1988, Act 21, Eff. June 1, 1988 ;--Am. 1993, Act 341, Eff. May 1, 1994 ;--Am. 1998, Act 523, Imd. Eff. Jan. 12, 1999 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.753 Information to be given victim.

Sec. 3. Within 24 hours after the initial contact between the victim of a reported crime and the law enforcement agency having the responsibility for investigating that crime, that agency shall give to the victim the following information in writing: (a) The availability of emergency and medical services, if applicable.

(b) The availability of victim's compensation benefits and the address of the crime victims compensation board.

(c) The address and telephone number of the prosecuting attorney whom the victim should contact to obtain information about victim's rights.

(d) The following statements:

"If you would like to be notified of an arrest in your case or the release of the person arrested, or both, you should call [identify law enforcement agency and telephone number] and inform them."

"If you are not notified of an arrest in your case, you may call this law enforcement agency at [the law enforcement agency's telephone number] for the status of the case."

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1993, Act 341, Eff. May 1, 1994 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.754 Return of property to victim; retention of evidence. [M.S.A. 28.1287(754)]

Sec. 4. (1) The law enforcement agency having responsibility for investigating a reported crime shall promptly return to the victim property belonging to that victim which is taken in the course of the investigation, except as provided in subsections (2) to (4).

(2) The agency shall not return property which is contraband.

(3) The agency shall not return property if the ownership of the property is disputed until the dispute is resolved.

(4) The agency shall retain as evidence any weapon used in the commission of the crime and any other evidence if the prosecuting attorney certifies that there is a need to retain that evidence in lieu of a photograph or other means of memorializing its possession by the agency.

History: 1985, Act 87, Eff. Oct. 9, 1985.

780.755 Victim to be given notice of availability of pretrial release, telephone number of sheriff or juvenile facility, and notice of right to contact sheriff or juvenile facility; revocation of bond or personal recognizance.

Sec. 5. (1) Not later than 24 hours after the arraignment of the defendant for a crime, the law enforcement agency having responsibility for investigating the crime shall give to the victim notice of the availability of pretrial release for the defendant, the telephone number of the sheriff or juvenile facility, and notice that the victim may contact the sheriff or juvenile facility to determine whether the defendant has been released from custody. The law enforcement agency having responsibility for investigating the crime shall promptly notify the victim of the arrest or pretrial release of the defendant, or both, if the victim requests or has requested that information. If the defendant is released from custody by the sheriff or juvenile facility, the sheriff or juvenile facility shall notify the law enforcement agency having responsibility for investigating the crime.

(2) Based upon any credible evidence of acts or threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family, the prosecuting attorney may move that the bond or personal recognizance of a defendant be revoked.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1988, Act 21, Eff. June 1, 1988 ;--Am. 1993, Act 341, Eff. May 1, 1994 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.756 Notice to be given victim; consultation with prosecuting attorney; persons to be informed of victim's current address and telephone number.

Sec. 6. (1) Not later than 7 days after the defendant's arraignment for a crime, but not less than 24 hours before a preliminary examination, the prosecuting attorney shall give to each victim a written notice in plain English of each of the following: (a) A brief statement of the procedural steps in the processing of a criminal case.

(b) A specific list of the rights and procedures under this article.

(c) A convenient means for the victim to notify the prosecuting attorney that the victim chooses to exercise his or her rights under this article.

(d) Details and eligibility requirements for compensation from the crime victim services commission under 1976 PA 223, MCL 18.351 to 18.368.

(e) Suggested procedures if the victim is subjected to threats or intimidation.

(f) The person to contact for further information.

(2) If the victim requests, the prosecuting attorney shall give the victim notice of any scheduled court proceedings and any changes in that schedule.

(3) Before finalizing any negotiation that may result in a dismissal, plea or sentence bargain, or pretrial diversion, the prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the victim's views about the disposition of the prosecution for the crime, including the victim's views about dismissal, plea or sentence negotiations, and pretrial diversion programs.

(4) A victim who receives a notice under subsection (1) and who chooses to receive any notice or exercise any right under this article shall keep the following persons informed of the victim's current address and telephone number: (a) The prosecuting attorney, until final disposition or completion of the appellate process, whichever occurs later.

(b) The department of corrections or the sheriff as the prosecuting attorney directs if the defendant is imprisoned.

(c) The family independence agency or county juvenile agency as the prosecuting attorney directs if the defendant is held in a juvenile facility.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1988, Act 21, Eff. June 1, 1988 ;--Am. 1993, Act 341, Eff. May 1, 1994 ;--Am. 1998, Act 523, Imd. Eff. Jan. 12, 1999 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.757 Waiting area for victim or other safeguards. [M.S.A. 28.1287(757)]

Sec. 7. The court shall provide a waiting area for the victim separate from the defendant, defendant's relatives, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victim's contact with defendant, defendant's relatives, and defense witnesses during court proceedings.

History: 1985, Act 87, Eff. Oct. 9, 1985.

780.758 Motion not to compel testimony of victim or other witness; hearing; address and phone number of victim not to be in court file or documents; exemption from disclosure; exception.

Sec. 8. (1) Based upon the victim's reasonable apprehension of acts or threats of physical violence or intimidation by the defendant or at defendant's direction against the victim or the victim's immediate family, the prosecuting attorney may move that the victim or any other witness not be compelled to testify at pretrial proceedings or at trial for purposes of identifying the victim as to the victim's address, place of employment, or other personal identification without the victim's consent. A hearing on the motion shall be in camera.

(2) The work address and address of the victim shall not be in the court file or ordinary court documents unless contained in a transcript of the trial or it is used to identify the place of the crime. The work telephone number and telephone number of the victim shall not be in the court file or ordinary court documents except as contained in a transcript of the trial.

(3) Pursuant to section 24 of article I of the state constitution of 1963, guaranteeing to crime victims the right to be treated with respect for their dignity and privacy, all of the following information and visual representations of a victim are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246: (a) The home address, home telephone number, work address, and work telephone number of the victim unless the address is used to identify the place of the crime.

(b) A picture, photograph, drawing, or other visual representation, including any film, videotape, or digitally stored image of the victim.

(4) Subsection (3) shall not preclude the release of information to a victim advocacy organization or agency for the purpose of providing victim services.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.759 Speedy trial; requirements; hearing; notice; time of trial. [M.S.A. 28.1287(759)]

Sec. 9. (1) As provided in subsection (2), a speedy trial may be scheduled for any case in which the victim is declared by the prosecuting attorney to be any of the following: (a) A victim of child abuse, including sexual abuse or any other assaultive crime.

(b) A victim of criminal sexual conduct in the first, second, or third degree or of an assault with intent to commit criminal sexual conduct involving penetration or to commit criminal sexual conduct in the second degree

(c) Sixty-five years of age or older.

(d) An individual with a disability that inhibits the individual's ability to attend court or participate in the proceedings.

(2) The chief judge, upon motion of the prosecuting attorney for a speedy trial for a case described in subsection (1), shall set a hearing date within 14 days of the date of the filing of the motion. Notice shall be made pursuant to the Michigan court rules. If the motion is granted, the trial shall not be scheduled earlier than 21 days from the date of the hearing.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1993, Act 341, Eff. May 1, 1994.

780.760 Conference with victim by prosecuting attorney. [M.S.A. 28.1287(760)]

Sec. 10. Upon request of the victim, the prosecuting attorney shall confer with the victim prior to the selection of the jury and prior to the trial of the defendant.

History: 1985, Act 87, Eff. Oct. 9, 1985.

780.761 Presence of victim at trial; sequestering victim.

Sec. 11. The victim has the right to be present throughout the entire trial of the defendant, unless the victim is going to be called as a witness. If the victim is going to be called as a witness, the court may, for good cause shown, order the victim to be sequestered until the victim first testifies. The victim shall not be sequestered after he or she first testifies.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.762 Discharge or discipline of victim or victim representative by employer or employer's agent as misdemeanor; penalty; "victim representative" defined. [M.S.A. 28.1287(762)]

Sec. 12. (1) An employer or the employer's agent, who threatens to discharge or discipline or who discharges, disciplines, or causes to be discharged from employment or to be disciplined a victim because that victim is subpoenaed or requested by the prosecuting attorney to attend court for the purpose of giving testimony, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both, and may be punished for contempt of court.

(2) An employer or an employer's agent who disciplines or discharges a victim representative from employment, causes a victim representative to be disciplined or discharged from employment, or threatens to discipline or discharge a victim representative from employment because that victim representative attends or desires to attend court to be present during the testimony of the victim, is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both, and may be punished for contempt of court.

(3) As used in this section, "victim representative" means any of the following: (a) A guardian or custodian of a child of a deceased victim if the child is less than 18 years of age.

(b) A parent, guardian, or custodian of a victim of an assaultive crime if the victim of the assaultive crime is less than 18 years of age.

(c) A person who has been designated under section 2(2) to act in place of a victim of an assaultive crime during the duration of the victim's physical or emotional disability.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1993, Act 341, Eff. May 1, 1994.

780.763 Notice to be given victim by prosecuting attorney; means; contents of impact statement. [M.S.A. 28.1287(763)]

Sec. 13. (1) The prosecuting attorney, upon and in accordance with the request of the victim, shall give to the victim notice of the following: (a) The defendant's conviction.

(b) The crimes for which the defendant was convicted.

(c) The victim's right to make a written or oral impact statement for use in the preparation of a presentence investigation report concerning the defendant.

(d) The address and telephone number of the probation office which is to prepare the presentence investigation report.

(e) That a presentence investigation report and any statement of the victim included in the report will be made available to the defendant unless exempted from disclosure by the court.

(f) The victim's right to make an impact statement at sentencing.

(g) The time and place of the sentencing proceeding.

(2) The notice given by the prosecuting attorney to the victim must be given by any means reasonably calculated to give prompt actual notice.

(3) A notice given under subsection (1) shall inform the victim that his or her impact statement may include but shall not be limited to the following: (a) An explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim.

(b) An explanation of the extent of any economic loss or property damage suffered by the victim.

(c) An opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for loss or damage.

(d) The victim's recommendation for an appropriate sentence.

History: 1985, Act 87, Eff. Oct. 9, 1985.

780.763a Providing victim with form to receive certain notices.

Sec. 13a. When a defendant is sentenced to a term of imprisonment or ordered to be placed in a juvenile facility, the prosecuting attorney shall provide the victim with a form the victim may submit to receive the notices provided for under section 19, 20, or 20a. The form shall include the address of the department of corrections, the sheriff, the family independence agency, or the county juvenile agency, as applicable, to which the form may be sent.

History: Add. 1993, Act 341, Eff. May 1, 1994 ;--Am. 1998, Act 523, Imd. Eff. Jan. 12, 1999 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.764 Impact statement generally.

Sec. 14. The victim has the right to submit or make a written or oral impact statement to the probation officer for use by that officer in preparing a presentence investigation report concerning the defendant pursuant to section 14 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.14. A victim's written statement shall upon the victim's request, be included in the presentence investigation report.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.765 Oral impact statement at sentencing.

Sec. 15. The victim has the right to appear and make an oral impact statement at the sentencing of the defendant. If the victim is physically or emotionally unable to make the oral impact statement, the victim may designate any other person 18 years of age or older who is neither the defendant nor incarcerated to make the statement on his or her behalf. The other person need not be an attorney.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1988, Act 21, Eff. June 1, 1988 ;--Am. 1993, Act 341, Eff. May 1, 1994 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.766 "Victim" defined; order of restitution generally; order of restitution as condition of probation or parole; revocation of probation or parole; petition to modify payment method; lien; enforcement; failure to pay restitution; payment by parent of juvenile; review; report; compliance; copy of order to department of corrections; disposition of unclaimed restitution.

Sec. 16. (1) For purposes of this section only, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime. For purposes of subsections (2), (3), (6), (8), (9), and (13), victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of a crime.

(2) Except as provided in subsection (8), when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law,

that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate.

(3) If a crime results in damage to or loss or destruction of property of a victim of the crime or results in the seizure or impoundment of property of a victim of the crime, the order of restitution may require that the defendant do 1 or more of the following, as applicable: (a) Return the property to the owner of the property or to a person designated by the owner.

(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraph (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned: (i) The value of the property on the date of the damage, loss, or destruction.

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

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

(4) 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 reasonably determined cost of medical and related professional services and devices actually incurred and reasonably expected to be incurred relating to physical and psychological care.

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

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

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

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

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

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

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

(b) Loss of a hand or foot or use of a hand or foot.

(c) Loss of an eye or use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain damage or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of a body organ.

(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.

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

(8) The court shall order restitution to the crime victim services commission or to any individuals, partnerships, corporations, associations, governmental entities, or other legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. The court shall also order restitution for the costs of services provided to persons or entities that have provided services to the victim as a result of the crime. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation. However, an order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its action.

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

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

(11) If the defendant is placed on probation or paroled or the court imposes a conditional sentence as provided in section 3 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.3, any restitution ordered under this section shall be a condition of that probation, parole, or sentence. The court may revoke probation or impose imprisonment under the conditional sentence and the parole board may revoke parole if the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole or impose imprisonment, the court or parole board shall consider the defendant's employment status, earning ability, and financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

(12) A defendant who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the sentencing judge or his or her successor to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the defendant or his or her immediate family, and if the court also determines that modifying the method of payment will not impose a manifest hardship on the victim, the court may modify the method of payment.

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

(14) Notwithstanding any other provision of this section, a defendant shall not be imprisoned, jailed, or incarcerated for a violation of probation or parole or otherwise for failure to pay restitution as ordered under this

section unless the court or parole board determines that the defendant has the resources to pay the ordered restitution and has not made a good faith effort to do so.

(15) If the court determines that a juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile's parent or parents and an opportunity for the parent or parents to be heard the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which an order of restitution is based to pay any portion of the restitution ordered that is outstanding. An order under this subsection does not relieve the juvenile of his or her obligation to pay restitution as ordered, but the amount owed by the juvenile shall be offset by any amount paid by his or her parent. As used in this subsection: (a) "Juvenile" means a person within the court's jurisdiction under section 2d or 4 of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d and 712A.4.

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

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

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

(18) In each case in which payment of restitution is ordered as a condition of probation, the court may order any employed defendant to execute a wage assignment to pay the restitution. The probation officer assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. If the restitution was ordered to be made within a specific period of time, the probation officer assigned to the case shall review the case at the end of the specific period of time to determine if the restitution has been paid in full. The final review shall be conducted not less than 60 days before the probationary period expires. If the probation officer determines at any review that restitution is not being paid as ordered, the probation officer shall file a written report of the violation with the court on a form prescribed by the state court administrative office or shall petition the court for a probation violation. The report or petition shall include a statement of the amount of the arrearage and any reasons for the arrearage known by the probation officer. The probation officer shall immediately provide a copy of the report or petition to the prosecuting attorney. If a petition or motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance.

(19) If a defendant who is ordered to pay restitution under this section is remanded to the jurisdiction of the department of corrections, the court shall provide a copy of the order of restitution to the department of corrections when the defendant is remanded to the department's jurisdiction.

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

(21) If a person or entity entitled to restitution cannot be located or refuses to claim that restitution within 2 years after the date on which he or she could have claimed the restitution, the restitution paid to that person or entity shall be deposited in the crime victim's rights fund created under section 4 of 1989 PA 196, MCL 780.904, or its successor fund. However, a person or entity entitled to that restitution may claim that restitution any time by applying to the court that originally ordered and collected it. The court shall notify the crime victim services commission of the application and the commission shall approve a reduction in the court's revenue transmittal to the crime victim rights fund equal to the restitution owed to the person or entity. The court shall use the reduction to reimburse that restitution to the person or entity.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1986, Act 234, Imd. Eff. Oct. 6, 1986 ;--Am. 1988, Act 21, Eff. June 1, 1988 ;--Am. 1993, Act 341, Eff. May 1, 1994 ;--Am. 1996, Act 121, Eff. May 1, 1996 ;--Am. 1996, Act 562, Eff. June 1, 1997 ;--Am. 199, Act 232, Imd. Eff. July 3, 1998 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.766a Fines, costs, and assessments or payments other than victim payments; allocation of payments.

Sec. 16a. (1) If a person is subject to any combination of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments arising out of the same criminal proceeding, money collected from that person for the payment of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments shall be allocated as provided in this section.

(2) Except as otherwise provided in this subsection, if a person is subject to payment of victim payments and any combination of other fines, costs, assessments, probation or parole supervision fees, or other payments, 50% of each payment collected by the court from that person shall be applied to payment of victim payments, and the balance shall be applied to payment of fines, costs, supervision fees, and other assessments or payments. If any fines, costs, supervision fees, or other assessments or payments remain unpaid after all of the victim payments have been paid, any additional money collected shall be applied to payment of those fines, costs, supervision fees, or other assessments or payments. If any victim payments remain unpaid after all of the fines, costs, supervision fees, or other assessments or payments have been paid, any additional money collected shall be applied toward payment of those victim payments.

(3) In cases involving prosecutions for violations of state law, money allocated under subsection (2) for payment of fines, costs, probation and parole supervision fees, and assessments or payments other than victim payments shall be applied in the following order of priority: (a) Payment of costs.

(b) Payment of fines.

(c) Payment of probation or parole supervision fees.

(d) Payment of assessments and other payments, including reimbursement to third parties who reimbursed a victim for his or her loss.

(4) In cases involving prosecutions for violations of local ordinances, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority: (a) Payment of fines and costs.

(b) Payment of assessments and other payments.

(5) As used in this section, "victim payment" means restitution ordered to be paid to the victim, to the victim's estate, but not to a person who reimbursed the victim for his or her loss; or an assessment ordered under section 5 of 1989 PA 196, MCL 780.905.

History: Add. 2000, Act 503, Eff. June 1, 2001.

780.767 Amount of restitution; order; consideration; order to obtain information; disclosures; resolving dispute as to amount and type of restitution.

Sec. 17. (1) In determining the amount of restitution to order under section 16, the court shall consider the amount of the loss sustained by any victim as a result of the offense.

(2) The court may order the probation officer to obtain information pertaining to the amounts of loss described in subsection (1). The probation officer shall include the information collected in the presentence investigation report or in a separate report, as the court directs.

(3) The court shall disclose to both the defendant and the prosecuting attorney all portions of the presentence or other report pertaining to the matters described in subsection (1).

(4) Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1996, Act 562, Eff. June 1, 1997.

780.768 Sale of recollections, thoughts, and feelings of convicted person; proceeds to be held in escrow; disposition of proceeds.

Sec. 18. (1) A person convicted of a crime shall not derive any profit from the sale of his or her recollections, thoughts, and feelings with regard to the offense committed by that person until the victim receives any restitution or compensation ordered for him or her against the defendant and expenses of incarceration are recovered as provided in subsection (3) and until the escrow account created under subsection (2) is terminated under subsection (4).

(2) Upon the conviction of a defendant for a crime involving a victim, and after notice to any interested party, an attorney for the county in which the conviction occurred or the attorney general may petition the court in which the conviction occurred to order that defendant forfeit all or any part of proceeds received or to be received by the defendant, or the defendant's representatives or assignees, from contracts relating to the depiction of the crime or the defendant's recollections, thoughts, or feelings about the crime, in books, magazines, media entertainment, or live entertainment, as provided in this section. The proceeds shall be held in escrow for a period of not more than 5 years.

(3) During the existence of the escrow account, proceeds in the account shall be distributed in the following priority to satisfy the following: (a) An order of restitution entered under sections 16 and 17.

(b) Any civil judgment in favor of the victim against that defendant.

(c) Any reimbursement ordered under the prisoner reimbursement to the county act, Act No. 118 of the Public Acts of 1984, being sections 801.81 to 801.93 of the Michigan Compiled Laws, or ordered under the state correctional facility reimbursement act, Act No. 253 of the Public Acts of 1935, being sections 800.401 to 800.406 of the Michigan Compiled Laws.

(4) The balance remaining in the escrow account at the end of the escrow period shall be paid to the crime victim's rights assessment fund.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1996, Act 562, Eff. June 1, 1997.

780.768a Notice to victim; explanation of appeal process; rights of victim if conviction reversed.

Sec. 18a. (1) Upon the request of the victim, the prosecuting attorney shall notify the victim of the following: (a) That the defendant filed an appeal of his or her conviction or sentence or that the prosecuting attorney filed an appeal.

(b) Whether the defendant has been ordered released on bail or other recognizance pending the disposition of the appeal. If the prosecuting attorney is notified that the defendant has been ordered released on bail or other recognizance pending disposition of the appeal, the prosecuting attorney shall use any means reasonably calculated to give the victim notice of that order within 24 hours after the prosecuting attorney is notified of the order.

(c) The time and place of any appellate court proceedings and any changes in the time or place of those proceedings.

(d) The result of the appeal. If the conviction is ordered reversed, the sentence is vacated, the case is remanded for a new trial, or the prosecuting attorney's appeal is denied, and if the prosecuting attorney has filed the appropriate notice with the appellate court, the appellate court shall expedite delivery of the relevant document to the prosecuting attorney's office by any means reasonably calculated to give the prosecuting attorney prompt notice. The prosecuting attorney shall use any means reasonably calculated to give the victim notice of that order within 24 hours after the prosecuting attorney is notified of the order.

(2) If the prosecuting attorney is not successful in notifying the victim of an event described in subsection (1) within the period set forth in that subsection, the prosecuting attorney shall notify the victim of that event as soon as possible by any means reasonably calculated to give the victim prompt actual notice.

(3) Upon the request of the victim, the prosecuting attorney shall provide the victim with a brief explanation in plain English of the appeal process, including the possible dispositions.

(4) If the case is returned to the trial court for further proceedings or a new trial, the victim has the same rights as previously requested during the proceedings that led to the appeal.

History: Add. 1988, Act 21, Eff. June 1, 1988 ;--Am. 1993, Act 341, Eff. May 1, 1994 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.769 Request for notice by victim; exemption of victim's address and telephone number from disclosure.

Sec. 19. (1) Upon the victim's written request, the sheriff or the department of corrections shall mail to the victim the following, as applicable, about a prisoner who has been sentenced to imprisonment under the jurisdiction of the sheriff or the department for the crime against that victim: (a) Within 30 days after the request, notice of the sheriff's calculation of the prisoner's earliest release date or the department's calculation of the prisoner's earliest parole eligibility date, with all potential good time or disciplinary credits considered, if the sentence of imprisonment exceeds 90 days. The victim may request 1-time only notice of the calculation described in this subdivision.

(b) Notice of the prisoner's transfer or pending transfer to a minimum security facility and the facility's address.

(c) Notice of the prisoner's release or pending release in a community residential program or under furlough; any other transfer to community status; any transfer from 1 community residential program or electronic monitoring program to another; or any transfer from a community residential program or electronic monitoring program to a state correctional facility.

(d) Notice of the escape of the person accused, convicted, or imprisoned for committing a crime against the victim, as provided in section 20.

(e) Notice of the victim's right to address or submit a written statement for consideration by a parole board member or a member of any other panel having authority over the prisoner's release on parole, as provided in section 21.

(f) Notice of the decision of the parole board, or any other panel having authority over the prisoner's release on parole, after a parole review, as provided in section 21(3).

(g) Notice of the release of a prisoner 90 days before the date of the prisoner's discharge from prison, unless the notice has been otherwise provided under this article.

(h) Notice of a public hearing under section 44 of 1953 PA 232, MCL 791.244, regarding a reprieve, commutation, or pardon of the prisoner's sentence by the governor.

(i) Notice that a reprieve, commutation, or pardon has been granted.

(j) Notice that a prisoner has had his or her name legally changed while on parole or within 2 years after release from parole.

(k) Notice that a prisoner has been convicted of a new crime.

(l) Notice that a prisoner has been returned from parole status to a correctional facility due to an alleged violation of the conditions of his or her parole.

(2) A victim's address and telephone number maintained by a sheriff or the department of corrections upon a request for notice under subsection (1) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1988, Act 21, Eff. June 1, 1988 ;--Am. 1996, Act 105, Eff. Apr. 1, 1996 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.770 Notice of escape. [M.S.A. 28.1287(770)]

Sec. 20. (1) As provided in subsection (2) or (3), a victim who requests notice of the escape and the prosecuting attorney who is prosecuting or has prosecuted the crime for which the person is detained or under sentence shall be given immediate notice of the escape of the person accused, convicted, or imprisoned for committing a crime against the victim. The notice shall be given by any means reasonably calculated to give prompt actual notice.

(2) If the escape occurs before the sentence is executed or before the defendant is delivered to the department of corrections, the chief law enforcement officer of the agency in charge of the person's detention shall give notice of the escape to the prosecuting attorney, who shall then give notice of the escape to a victim who requested notice.

(3) If the defendant is confined pursuant to a sentence, the notice shall be given by the chief administrator of the place in which the prisoner is confined.

History: 1985, Act 87, Eff. Oct. 9, 1985.

780.770a Notice to victim by family independence agency or county juvenile agency; escape by juvenile.

Sec. 20a. (1) Upon a victim's written request, the family independence agency or county juvenile agency, as applicable, shall make a good faith effort to notify the victim before either of the following occurs: (a) A juvenile is dismissed from court jurisdiction or discharged from commitment to the family independence agency or county juvenile agency.

(b) A juvenile is transferred from a secure juvenile facility to a nonsecure juvenile facility.

(2) If the family independence agency or county juvenile agency is not successful in notifying the victim before an event described in subsection (1) occurs, it shall notify the victim as soon as possible after that event occurs by any means reasonably calculated to give prompt actual notice.

(3) Upon the victim's written request, the family independence agency or county juvenile agency, as applicable, shall give to the victim notice of a juvenile's escape. A victim who requests notice of an escape shall be given immediate notice of the escape by any means reasonably calculated to give prompt actual notice. If the escape occurs before the juvenile is delivered to the family independence agency or county juvenile agency, the agency in charge of the juvenile's detention shall give notice of the escape to the family independence agency or county juvenile agency, which shall then give notice of the escape to the victim who requested notice.

History: Add. 1993, Act 341, Eff. May 1, 1994 ;--Am. 1998, Act 523, Imd. Eff. Jan. 12, 1999.

780.770b Notice of review hearing. [M.S.A. 28.1287(770b)]

Sec. 20b. Upon the victim's request, the prosecuting attorney shall give the victim notice of a review hearing conducted pursuant to section 1b of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 769.1b of the Michigan Compiled Laws. The victim has the right to make a statement at the hearing, submit a written statement for use at the hearing, or both.

History: Add. 1993, Act 341, Eff. May 1, 1994.

780.771 Right of victim to address or submit statement to parole board or other panel; notice of pending review and victim's rights; representation of counsel; notice.

Sec. 21. (1) A victim shall have the right to address or submit a written statement for consideration by a parole board member or a member of any other panel having authority over the prisoner's release on parole.

(2) Not less than 30 days before a review of the prisoner's release, a victim who has requested notice under section 19(1)(f) shall be given written notice by the department of corrections informing the victim of the pending review and of victims' rights under this section. The victim, at his or her own expense, may be represented by counsel at the review.

(3) A victim shall receive notice of the decision of the board or panel and, if applicable, notice of the date of the prisoner's release on parole. Notice shall be mailed within a reasonable time after the board or panel reaches its decision but not later than 14 days after the board or panel has reached its decision. The notice shall include a statement of the victim's right to appeal a parole decision, as allowed under section 34(9) of 1953 PA 232, MCL 791.234.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 2000, Act 503, Eff. June 1, 2001.

780.772 Notice of final disposition of case. [M.S.A. 28.1287(772)]

Sec. 22. Upon the request of a victim, the prosecuting attorney shall, within 30 days of the final disposition of the case, notify the victim in writing of the final disposition of the case.

History: 1985, Act 87, Eff. Oct. 9, 1985.

780.772a Notice to victim of defendant's application to have conviction for assaultive crime set aside; "assaultive crime " defined. [M.S.A. 28.1287(772a)]

Sec. 22a. If a defendant applies to have a conviction for an assaultive crime set aside under Act No. 213 of the Public Acts of 1965, being sections 780.621 to 780.624 of the Michigan Compiled Laws, and if the name of the victim is known by the prosecuting attorney, the prosecuting attorney shall give to the victim of the assaultive crime written notice of the application and forward a copy of the application to the victim. The notice shall be by first-class mail to the victim's last known address. The victim has the right to appear at any proceeding under Act No. 213 of the Public Acts of 1965 concerning that conviction and make a written or oral statement. As used in this section, "assaultive crime" means that term as defined in section 9a of chapter X of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 770.9a of the Michigan Compiled Laws.

History: Add. 1993, Act 341, Eff. May 1, 1994.

780.773 Cause of action not created. [M.S.A. 28.1287(773)]

Sec. 23. Nothing in this article shall be construed as creating a cause of action for money damages against the state, a county, a municipality or any of their agencies, or instrumentalities, or employees.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1988, Act 21, Eff. June 1, 1988.

780.774 Failure to provide right, privilege, or notice to victim. [M.S.A. 28.1287(774)]

Sec. 24. The failure to provide a right, privilege, or notice to a victim under this article shall not be grounds for the defendant to seek to have the conviction or sentence set aside.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1988, Act 21, Eff. June 1, 1988.

780.775 Effective date of article; applicability. [M.S.A. 28.1287(775)]

Sec. 25. (1) This article shall take effect October 9, 1985.

(2) This article shall apply only to crimes committed on or after October 9, 1985.

History: 1985, Act 87, Eff. Oct. 9, 1985 ;--Am. 1988, Act 21, Eff. June 1, 1988.