

Act No. 184  
Public Acts of 1989  
Approved by the Governor  
August 23, 1989  
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August 24, 1989

**STATE OF MICHIGAN  
85TH LEGISLATURE  
REGULAR SESSION OF 1989**

Introduced by Senators Pollack, Carl, Welborn, Dingell, Nichols, Binsfeld, J. Hart, Geo. Hart, Fredricks, Cropsey, Dillingham, Barcia, Posthumus, Kelly, DiNello, DeGrow, Miller and O'Brien

# **ENROLLED SENATE BILL No. 189**

AN ACT to amend section 3 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," as amended by Act No. 78 of the Public Acts of 1988, being section 771.3 of the Michigan Compiled Laws; and to add section 3c.

*The People of the State of Michigan enact:*

Section 1. Section 3 of chapter XI of Act No. 175 of the Public Acts of 1927, as amended by Act No. 78 of the Public Acts of 1988, being section 771.3 of the Michigan Compiled Laws, is amended and section 3c is added to read as follows:

## **CHAPTER XI**

Sec. 3. (1) The conditions of probation shall include the following:

(a) That the probationer shall not, during the term of his or her probation, violate any criminal law of this state, or any ordinance of any municipality in the state.

(b) That the probationer shall not, during the term of his or her probation, leave the state without the consent of the court granting his or her application for probation.

(c) That the probationer shall make a report to the probation officer, either in person or in writing, monthly, or as often as the probation officer may require. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws.

(d) That the probationer, if convicted of a felony, pay a probation oversight fee or perform community service as prescribed in section 3c.

(2) As a condition of probation, the court may require the probationer to do 1 or more of the following:

(a) Be imprisoned in the county jail for not more than 12 months, at the time or intervals, which may be consecutive or nonconsecutive, within the probation as the court may determine. However, the period of confinement shall not exceed the maximum period of imprisonment provided for the offense charged if the maximum period is less than 12 months. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to a state institution or agency described in Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws.

(b) Pay immediately or within the period of his or her probation, a fine imposed at the time of being placed on probation.

(c) Pay costs pursuant to subsection (4).

(d) Pay restitution to the victim or the victim's estate.

(e) Engage in community service.

(3) Subsection (2) shall not apply to a person who is placed on probation for life pursuant to sections 1(3) and 2(3) of this chapter.

(4) The court may impose other lawful conditions of probation as the circumstances of the case may require or warrant, or as in its judgment may be proper. If the court requires the probationer to pay costs, the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and probationary oversight of the probationer.

(5) If the court imposes restitution or costs as part of a sentence of probation, the following shall apply:

(a) The court shall not require a probationer to pay restitution or costs unless the probationer is or will be able to pay them during the term of probation. In determining the amount and method of payment of restitution and costs, the court shall take into account the financial resources of the probationer and the nature of the burden that payment of restitution or costs will impose, with due regard to his or her other obligations.

(b) A probationer who is required to pay restitution or costs and who is not in willful default of the payment of the restitution or costs, at any time, may petition the sentencing judge or his or her successor for a remission of the payment of any unpaid portion of restitution, costs, or both. If it appears to the satisfaction of the court that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in restitution or costs or modify the method of payment.

(6) If a probationer is required to pay restitution or costs as part of a sentence of probation, the court may require payment to be made immediately or the court may provide for payment to be made within a specified period of time or in specified installments.

(7) If a probationer is ordered to pay restitution or costs as part of a sentence of probation, compliance with that order shall be a condition of probation. The court may revoke probation if the probationer fails to comply with the order and if the probationer has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the probationer's employment status, earning ability, financial resources, and the willfulness of the probationer's failure to pay, and any other special circumstances that may have a bearing on the probationer's ability to pay. The proceedings provided for in this subsection shall be in addition to those provided in section 4 of this chapter. A juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to a state institution or agency described in Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws, shall not be committed to the department of corrections for failure to comply with a restitution order.

Sec. 3c. (1) Except as otherwise provided in subsection (2), the court shall include in each order of probation for a defendant convicted of a felony that the department of corrections shall collect a probation oversight fee of \$30.00 per month from the probationer. Amounts collected in excess of the amount needed to support the operation of the probation and parole supervision program as provided in the annual appropriations act shall be deposited in the general fund.

(2) The court may order that a probationer perform community service for not more than 10 hours per month instead of paying a probation oversight fee if, at the time the probation order is entered, either of the following circumstances applies to that probationer:

(a) The imposition of the probation oversight fee would cause the probationer's combined court ordered payments to exceed 50% of the probationer's monthly net income.

(b) Even if the 50% limit in subdivision (a) is not exceeded, it appears to the court that the probationer is not able, or will not be able, to pay the probation oversight fee. The court shall take into account the financial resources of the probationer and the nature of the burden that payment of the probation oversight fee will impose, with due regard for the probationer's other obligations.

(3) At any time during the period covered by the probation order, upon the motion of the department of corrections or the probationer, the court may reduce the amount of the probation oversight fee, or suspend payment of the probation oversight fee, if it appears to the court that the circumstances prescribed in subsection (2) apply to that probationer. If the court reduces or suspends a probation oversight fee, the court shall require instead that the probationer perform community service for not more than 10 hours for each month the fee is reduced or suspended. The court may reinstate a probation oversight fee that has been decreased or suspended or may order that a probationer performing community service pursuant to subsection (2) begin instead to pay a probation oversight fee, upon motion of the department of corrections, if it appears to the court that the circumstances prescribed in subsection (2) no longer apply.

(4) A probation oversight fee required under this section shall be paid in the following order of priority in relation to other court-ordered payments, if any, to which the probationer is subject:

(a) First, any family support order.

(b) Second, any order of restitution or compensation for crime victims.

(c) Third, the probation oversight fee.

(d) Fourth, any other court-ordered payments.

(5) If a probationer is found by the court to have willfully defaulted in his or her obligation to pay a probation oversight fee, the unpaid probation oversight fee may be recovered by the department of treasury pursuant to section 30a of Act No. 122 of the Public Acts of 1941, being section 205.30a of the Michigan Compiled Laws; or the attorney general, on behalf of the state, may bring an action for the reimbursement to the state of unpaid probation oversight fees, and may use any remedy, interim order, or enforcement procedure allowed by law or court rule to enforce a judgment in favor of the state for that purpose.

(6) This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws.

Section 2. This amendatory act shall take effect October 1, 1989.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved .....

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Governor.