

HOUSE BILL No. 4982

July 13, 1989, Introduced by Reps. Hart, Pitoniak, Martin, DeMars, Niederstadt, Webb and Weeks and referred to the Committee on Judiciary.

A bill to amend section 3 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended "The code of criminal procedure," 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:

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

CHAPTER XI

5
6 Sec. 3. (1) The conditions of probation shall include the
7 following:

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

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

7 (c) That the probationer shall make a report to the proba-
8 tion officer, either in person or in writing, monthly, or as
9 often as the probation officer may require. This subdivision
10 does not apply to a juvenile placed on probation and committed
11 under section 1(3) or (4) of chapter IX to a state institution or
12 agency described in the youth rehabilitation services act, Act
13 No. 150 of the Public Acts of 1974, being sections 803.301 to
14 803.309 of the Michigan Compiled Laws.

15 (D) THAT THE PROBATIONER PAY A PROBATION OVERSIGHT FEE OR
16 PERFORM COMMUNITY SERVICE AS PRESCRIBED IN SECTION 3C.

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

19 (a) Be imprisoned in the county jail for not more than 12
20 months, at the time or intervals, which may be consecutive or
21 nonconsecutive, within the probation as the court may determine.
22 However, the period of confinement shall not exceed the maximum
23 period of imprisonment provided for the offense charged if the
24 maximum period is less than 12 months. This subdivision does not
25 apply to a juvenile placed on probation and committed under sec-
26 tion 1(3) or (4) of chapter IX to a state institution or agency

1 described in Act No. 150 of the Public Acts of 1974, being
2 sections 803.301 to 803.309 of the Michigan Compiled Laws.

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

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

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

7 (e) Engage in community service.

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

11 (4) The court may impose other lawful conditions of proba-
12 tion as the circumstances of the case may require or warrant, or
13 as in its judgment may be proper. If the court requires the pro-
14 bationer to pay costs, the costs shall be limited to expenses
15 specifically incurred in prosecuting the defendant or providing
16 legal assistance to the defendant. ~~and probationary oversight~~
17 ~~of the probationer.~~

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

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

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

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

15 (7) If a probationer is ordered to pay restitution or costs
16 as part of a sentence of probation, compliance with that order
17 shall be a condition of probation. The court may revoke proba-
18 tion if the probationer fails to comply with the order and if the
19 probationer has not made a good faith effort to comply with the
20 order. In determining whether to revoke probation, the court
21 shall consider the probationer's employment status, earning abil-
22 ity, financial resources, and the willfulness of the
23 probationer's failure to pay, and any other special circumstances
24 that may have a bearing on the probationer's ability to pay. The
25 proceedings provided for in this subsection shall be in addition
26 to those provided in section 4 of this chapter. A juvenile
27 placed on probation and committed under section 1(3) or (4) of

1 chapter IX to a state institution or agency described in Act
2 No. 150 of the Public Acts of 1974, being sections 803.301 to
3 803.309 of the Michigan Compiled Laws, shall not be committed to
4 the department of corrections for failure to comply with a resti-
5 tution order.

6 SEC. 3C. (1) EXCEPT AS OTHERWISE PROVIDED IN
7 SUBSECTION (2), THE COURT SHALL INCLUDE IN EACH ORDER OF PROBA-
8 TION THAT THE BUREAU OF FIELD SERVICES OF THE DEPARTMENT OF COR-
9 RECTIONS, OR ITS SUCCESSOR BUREAU OR DIVISION WITHIN THE DEPART-
10 MENT OF CORRECTIONS, SHALL COLLECT A PROBATION OVERSIGHT FEE OF
11 \$30.00 PER MONTH FROM THE PROBATIONER. THE DEPARTMENT SHALL
12 REMIT THE FEES COLLECTED UNDER THIS SECTION TO THE STATE TREA-
13 SURER FOR CREDIT TO THE STATE GENERAL FUND.

14 (2) THE COURT MAY ORDER THAT A PROBATIONER PERFORM COMMUNITY
15 SERVICE FOR NOT MORE THAN 10 HOURS PER MONTH INSTEAD OF PAYING A
16 PROBATION OVERSIGHT FEE IF, AT THE TIME THE PROBATION ORDER IS
17 ENTERED, EITHER OF THE FOLLOWING CIRCUMSTANCES APPLIES TO THAT
18 PROBATIONER:

19 (A) THE IMPOSITION OF THE PROBATION OVERSIGHT FEE WOULD
20 CAUSE THE PROBATIONER'S COMBINED COURT ORDERED PAYMENTS TO EXCEED
21 50% OF THE PROBATIONER'S MONTHLY NET INCOME FROM EMPLOYMENT.

22 (B) EVEN IF THE 50% LIMIT IN SUBDIVISION (A) IS NOT
23 EXCEEDED, IT APPEARS TO THE COURT THAT THE PROBATIONER IS NOT
24 ABLE, OR WILL NOT BE ABLE, TO PAY THE PROBATION OVERSIGHT FEE.
25 THE COURT SHALL TAKE INTO ACCOUNT THE FINANCIAL RESOURCES OF THE
26 PROBATIONER AND THE NATURE OF THE BURDEN THAT PAYMENT OF THE

1 PROBATION OVERSIGHT FEE WILL IMPOSE, WITH DUE REGARD FOR THE
2 PROBATIONER'S OTHER OBLIGATIONS.

3 (3) AT ANY TIME DURING THE PERIOD COVERED BY THE PROBATION
4 ORDER, UPON THE MOTION OF THE DEPARTMENT OF CORRECTIONS OR THE
5 PROBATIONER, THE COURT MAY REDUCE THE AMOUNT OF THE PROBATION
6 OVERSIGHT FEE, OR SUSPEND PAYMENT OF THE PROBATION OVERSIGHT FEE,
7 IF IT APPEARS TO THE COURT THAT THE CIRCUMSTANCES PRESCRIBED IN
8 SUBSECTION (2) APPLY TO THAT PROBATIONER. IF THE COURT SUSPENDS
9 A PROBATION OVERSIGHT FEE, THE COURT SHALL REQUIRE INSTEAD THAT
10 THE PROBATIONER PERFORM COMMUNITY SERVICE FOR NOT MORE THAN 10
11 HOURS PER MONTH. THE COURT MAY REINSTATE A PROBATION OVERSIGHT
12 FEE THAT HAS BEEN DECREASED OR SUSPENDED OR MAY ORDER THAT A PRO-
13 BATIONER PERFORMING COMMUNITY SERVICE PURSUANT TO SUBSECTION (2)
14 BEGIN INSTEAD TO PAY A PROBATION OVERSIGHT FEE, UPON MOTION OF
15 THE DEPARTMENT OF CORRECTIONS, IF IT APPEARS TO THE COURT THAT
16 THE CIRCUMSTANCES PRESCRIBED IN SUBSECTION (2) NO LONGER APPLY.

17 (4) A PROBATION OVERSIGHT FEE REQUIRED UNDER THIS SECTION
18 SHALL BE PAID IN THE FOLLOWING ORDER OF PRIORITY IN RELATION TO
19 OTHER COURT-ORDERED PAYMENTS, IF ANY, TO WHICH THE PROBATIONER IS
20 SUBJECT:

21 (A) FIRST, ANY FAMILY SUPPORT ORDER.

22 (B) SECOND, ANY ORDER OF RESTITUTION OR COMPENSATION FOR
23 CRIME VICTIMS.

24 (C) THIRD, THE PROBATION OVERSIGHT FEE.

25 (D) FOURTH, ANY OTHER COURT-ORDERED PAYMENTS.

26 (5) IF A PROBATIONER IS FOUND BY THE COURT TO HAVE WILLFULLY
27 DEFAULTED IN HIS OR HER OBLIGATION TO PAY A PROBATION OVERSIGHT

1 FEE, THE UNPAID PROBATION OVERSIGHT FEE MAY BE RECOVERED BY THE
2 DEPARTMENT OF TREASURY PURSUANT TO SECTION 30A OF ACT NO. 122 OF
3 THE PUBLIC ACTS OF 1941, BEING SECTION 205.30A OF THE MICHIGAN
4 COMPILED LAWS; OR THE ATTORNEY GENERAL, ON BEHALF OF THE STATE,
5 MAY BRING AN ACTION IN CIRCUIT COURT FOR THE REIMBURSEMENT TO THE
6 STATE OF UNPAID PROBATION OVERSIGHT FEES, AND MAY USE ANY REMEDY,
7 INTERIM ORDER, OR ENFORCEMENT PROCEDURE ALLOWED BY LAW OR COURT
8 RULE TO ENFORCE A JUDGMENT IN FAVOR OF THE STATE FOR THAT
9 PURPOSE.

10 (6) THIS SECTION DOES NOT APPLY TO A JUVENILE PLACED ON PRO-
11 BATION AND COMMITTED UNDER SECTION 1(3) OR (4) OF CHAPTER IX TO A
12 STATE INSTITUTION OR AGENCY DESCRIBED IN THE YOUTH REHABILITATION
13 SERVICES ACT, ACT. NO. 150 OF THE PUBLIC ACTS OF 1974, BEING SEC-
14 TIONS 803.301 TO 803.309 OF THE MICHIGAN COMPILED LAWS.