SENATE BILL No. 723

December 13, 1989, Introduced by Senators NICHOLS, WELBORN
    and DINGELL and referred to the Committee on Criminal
    Justice and Urban Affairs.

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. 184 of the Public Acts of 1989, being sec-

tion 771.3 of the Michigan Compiled Laws.

    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. 184 of the Public Acts

3 of 1989, being section 771.3 of the Michigan Compiled Laws, is

4 amended to read as follows:

5   CHAPTER XI

6   Sec. 3. (1) The conditions of probation shall include ALL

7 OF the 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, if convicted of a felony, pay a

16 probation oversight fee or perform community service as pre-

17 scribed in section 3c OF THIS CHAPTER.

18   (2) As a condition of probation, the court may require the

19 probationer to do 1 or more of the following:

20   (a) Be imprisoned in the county jail for not more than 12

21 months, at the time or intervals, which may be consecutive or

22 nonconsecutive, within the probation as the court may determine.

23 However, the period of confinement shall not exceed the maximum

24 period of imprisonment provided for the offense charged if the

25 maximum period is less than 12 months. This subdivision does not

26 apply to a juvenile placed on probation and committed under

27 section 1(3) or (4) of chapter IX to a state institution or

1 agency 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)~~ (3).

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~~

9 ~~placed on probation for life pursuant to sections 1(3) and 2(3)~~

10 ~~of this chapter.~~

11   (3) ~~(4)~~ The court may impose other lawful conditions of

12 probation as the circumstances of the case may require or war-

13 rant, or as in its judgment may be proper. If the court requires

14 the probationer to pay costs, the costs shall be limited to

15 expenses specifically incurred in prosecuting the defendant or

16 providing legal assistance to the defendant and probationary

17 oversight of the probationer.

18   (4) ~~(5)~~ If the court imposes restitution or costs as part

19 of a sentence of probation, BOTH OF 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   (5) ─(6)─ If a probationer is required to pay restitution or

11 costs as part of a sentence of probation, the court may require

12 payment to be made immediately or the court may provide for pay-

13 ment to be made within a specified period of time or in specified

14 installments.

15   (6) ─(7)─ If a probationer is ordered to pay restitution or

16 costs as part of a sentence of probation, compliance with that

17 order shall be a condition of probation. The court may revoke

18 probation if the probationer fails to comply with the order and

19 if the probationer has not made a good faith effort to comply

20 with the order. In determining whether to revoke probation, the

21 court shall consider the probationer's employment status, earning

22 ability, 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.