

HOUSE BILL No. 6130

September 17, 1998, Introduced by Reps. Brewer and Frank and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 3 of chapter IX, section 3 of chapter XI, section 8 of chapter XII, and section 22 of chapter XIV (MCL 769.3, 771.3, 772.8, and 774.22), section 3 of chapter IX as amended by 1982 PA 470, section 3 of chapter XI as amended by 1994 PA 445, section 8 of chapter XII as amended by 1994 PA 71, and section 22 of chapter XIV as amended by 1980 PA 506, and by adding section 1f to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX
2 SEC. 1F. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
3 THE COURT SHALL ORDER A DEFENDANT SENTENCED UNDER SECTION 1 OF
4 THIS CHAPTER TO PAY THE COSTS OF PROSECUTION.

1 (2) THE COURT SHALL NOT REQUIRE A DEFENDANT TO PAY COSTS
2 UNDER THIS SECTION UNLESS THE DEFENDANT IS OR WILL BE ABLE TO PAY
3 THEM DURING THE SENTENCE TERM. IN DETERMINING THE AMOUNT AND
4 METHOD OF PAYMENT OF COSTS, THE COURT SHALL TAKE INTO ACCOUNT THE
5 DEFENDANT'S FINANCIAL RESOURCES AND THE NATURE OF THE BURDEN THAT
6 PAYMENT OF COSTS WILL IMPOSE, WITH DUE REGARD TO HIS OR HER OTHER
7 OBLIGATIONS.

8 (3) A DEFENDANT WHO IS REQUIRED TO PAY COSTS UNDER THIS SEC-
9 TION AND WHO IS NOT IN WILLFUL DEFAULT OF THE PAYMENT OF THE
10 COSTS MAY PETITION THE SENTENCING JUDGE OR HIS OR HER SUCCESSOR
11 AT ANY TIME FOR A REMISSION OF THE PAYMENT OF ANY UNPAID PORTION
12 OF THOSE COSTS. IF THE COURT DETERMINES THAT PAYMENT OF THE
13 AMOUNT DUE WILL IMPOSE A MANIFEST HARDSHIP ON THE DEFENDANT OR
14 HIS OR HER IMMEDIATE FAMILY, THE COURT MAY REMIT ALL OR PART OF
15 THE AMOUNT DUE IN COSTS OR MODIFY THE METHOD OF PAYMENT.

16 (4) IF A DEFENDANT IS REQUIRED TO PAY COSTS UNDER THIS SEC-
17 TION, THE COURT MAY REQUIRE PAYMENT TO BE MADE IMMEDIATELY OR MAY
18 PROVIDE FOR PAYMENT TO BE MADE WITHIN A SPECIFIED PERIOD OF TIME
19 OR IN SPECIFIED INSTALLMENTS.

20 Sec. 3. (1) If a person is convicted of an offense punish-
21 able ~~at the discretion of the court, either~~ by A fine or
22 imprisonment, OR BOTH, the court may ~~award against the offender~~
23 IMPOSE a conditional sentence and order the person to pay a fine,
24 with ~~or without~~ the costs of prosecution, within a limited time
25 ~~to be expressed~~ STATED in the sentence ~~,~~ and, in default of
26 payment, COMMIT THE PERSON to ~~suffer the~~ imprisonment as ~~is~~
27 provided by law and ~~awarded~~ IMPOSED by the court.

1 (2) Except for a person who is convicted of criminal sexual
2 conduct in the first or third degree, the court may also place
3 the offender on probation with the condition that the offender
4 pay a fine, costs, damages, or any combination in installments
5 with any limited time and may, ~~in case of the~~ UPON default in
6 any of such payments, impose ~~such~~ sentence as ~~is~~ provided by
7 law.

8 (3) THE COURT SHALL NOT REQUIRE A DEFENDANT TO PAY COSTS
9 UNDER THIS SECTION UNLESS THE DEFENDANT IS OR WILL BE ABLE TO PAY
10 THEM DURING THE CONDITIONAL SENTENCE. IN DETERMINING THE AMOUNT
11 AND METHOD OF PAYMENT OF COSTS, THE COURT SHALL TAKE INTO ACCOUNT
12 THE DEFENDANT'S FINANCIAL RESOURCES AND THE NATURE OF THE BURDEN
13 THAT PAYMENT OF COSTS WILL IMPOSE, WITH DUE REGARD TO HIS OR HER
14 OTHER OBLIGATIONS.

15 (4) A DEFENDANT WHO IS REQUIRED TO PAY COSTS UNDER THIS SEC-
16 TION AND WHO IS NOT IN WILLFUL DEFAULT OF THE PAYMENT OF THE
17 COSTS MAY PETITION THE SENTENCING JUDGE OR HIS OR HER SUCCESSOR
18 AT ANY TIME FOR A REMISSION OF THE PAYMENT OF ANY UNPAID PORTION
19 OF THOSE COSTS. IF THE COURT DETERMINES THAT PAYMENT OF THE
20 AMOUNT DUE WILL IMPOSE A MANIFEST HARDSHIP ON THE DEFENDANT OR
21 HIS OR HER IMMEDIATE FAMILY, THE COURT MAY REMIT ALL OR PART OF
22 THE AMOUNT DUE IN COSTS OR MODIFY THE METHOD OF PAYMENT.

23 (5) IF A DEFENDANT IS REQUIRED TO PAY COSTS AS PART OF A
24 CONDITIONAL SENTENCE, THE COURT MAY REQUIRE PAYMENT TO BE MADE
25 IMMEDIATELY OR MAY PROVIDE FOR PAYMENT TO BE MADE WITHIN A SPECI-
26 FIED PERIOD OF TIME OR IN SPECIFIED INSTALLMENTS.

CHAPTER XI

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

(a) ~~The probationer shall not, during~~ DURING the term of his or her probation, THE PROBATIONER SHALL NOT violate any criminal law of this state, the United States, or another state or any ordinance of any municipality in this state or another state.

(b) ~~The probationer shall not, during~~ DURING the term of his or her probation, THE PROBATIONER SHALL NOT leave the state without the consent of the court granting his or her application for probation.

(c) The probationer shall report to the probation officer, either in person or in writing, monthly or as often as the probation officer requires. 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~~ 1974 PA 150, MCL 803.301 TO 803.309.

(d) ~~The probationer, if~~ IF convicted of a felony, THE PROBATIONER shall pay a probation supervision fee as prescribed in section 3c of this chapter.

(e) The probationer shall pay restitution to the victim of the defendant's course of conduct giving rise to the conviction or to the victim's estate as provided in chapter IX. An order

1 for payment of restitution may be modified and shall be enforced
2 as provided in chapter IX.

3 (f) The probationer shall pay an assessment ordered under
4 section 5 of ~~Act No. 196 of the Public Acts of 1989, being sec-~~
5 ~~tion 780.905 of the Michigan Compiled Laws~~ 1989 PA 196, MCL
6 780.905.

7 (G) THE PROBATIONER SHALL PAY THE COSTS OF THE PROSECUTION
8 GIVING RISE TO THE CONVICTION. THE COURT MAY ALLOW THE PROBA-
9 TIONER TO PAY THOSE COSTS IN INSTALLMENTS AS PROVIDED IN THE
10 ORDER.

11 (H) ~~(g) Beginning October 1, 1995, if~~ IF the probationer
12 is required to be registered ~~pursuant to~~ UNDER the sex offend-
13 ers registration act, ~~Act No. 295 of the Public Acts of 1994,~~
14 ~~being sections 28.721 to 28.732 of the Michigan Compiled Laws~~
15 1994 PA 295, MCL 28.721 TO 28.732, the probationer shall comply
16 with that act.

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 determines.
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. The court may permit day
25 parole as authorized under ~~Act No. 60 of the Public Acts of~~
26 ~~1961, being sections 801.251 to 801.258 of the Michigan Compiled~~
27 ~~Laws~~ 1962 PA 60, MCL 801.251 TO 801.258. The court may permit a

1 work or school release from jail. This subdivision does not
2 apply to a juvenile placed on probation and committed under sec-
3 tion 1(3) or (4) of chapter IX to a state institution or agency
4 described in ~~Act No. 150 of the Public Acts of 1974~~ THE YOUTH
5 REHABILITATION SERVICES ACT, 1974 PA 150, MCL 803.301 TO
6 803.309.

7 (b) Pay immediately or within the period of his or her pro-
8 bation a fine imposed when placed on probation.

9 (c) Pay costs OTHER THAN THE COSTS OF PROSECUTION DESCRIBED
10 IN SUBSECTION (1)(G) pursuant to subsection (4).

11 (d) Pay any assessment ordered by the court other than an
12 assessment described in subsection (1)(f).

13 (e) Engage in community service.

14 (f) Agree to pay BY WAGE ASSIGNMENT any restitution, assess-
15 ment, fine, or cost imposed by the court. ~~by wage assignment.~~

16 (g) Participate in inpatient or outpatient drug treatment.

17 (h) Participate in mental health treatment.

18 (i) Participate in mental health or substance abuse
19 counseling.

20 (j) Participate in a community corrections program.

21 (k) Be under house arrest.

22 (l) Be subject to electronic monitoring.

23 (m) Participate in a residential probation program.

24 (n) Satisfactorily complete a program of incarceration in a
25 special alternative incarceration unit as provided in section 3b
26 of this chapter.

1 (3) Subsection (2) may be applied to a person who is placed
2 on probation for life pursuant to sections 1(4) and 2(3) of this
3 chapter for the first 5 years of that probation.

4 (4) The court may impose other lawful conditions of proba-
5 tion as the circumstances of the case require or warrant ~~—~~ or
6 as in its judgment are proper. If the court requires the proba-
7 tioner to pay costs OTHER THAN THOSE DESCRIBED IN SUBSECTION
8 (1)(G), the costs shall be limited to expenses specifically
9 incurred in ~~prosecuting the defendant or~~ providing legal
10 assistance to the defendant and supervision of the probationer.

11 (5) If the court imposes costs as part of a sentence of pro-
12 bation, all of the following apply:

13 (a) The court shall not require a probationer to pay costs
14 unless the probationer is or will be able to pay them during the
15 term of probation. In determining the amount and method of pay-
16 ment of costs, the court shall take into account the
17 PROBATIONER'S financial resources ~~of the probationer~~ and the
18 nature of the burden that payment of costs will impose, with due
19 regard to his or her other obligations.

20 (b) A probationer who is required to pay costs and who is
21 not in willful default of the payment of the costs ~~—, at any~~
22 ~~time,~~ may petition the sentencing judge or his or her successor
23 AT ANY TIME for a remission of the payment of any unpaid portion
24 of those costs. If the court determines that payment of the
25 amount due will impose a manifest hardship on the probationer or
26 his or her immediate family, the court may remit all or part of
27 the amount due in costs or modify the method of payment.

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

5 (7) If a probationer is ordered to pay costs as part of a
6 sentence of probation, compliance with that order shall be a con-
7 dition of probation. The court may revoke probation if the pro-
8 bationer fails to comply with the order and if the probationer
9 has not made a good faith effort to comply with the order. In
10 determining whether to revoke probation, the court shall consider
11 the probationer's employment status, earning ability, and finan-
12 cial resources, the willfulness of the probationer's failure to
13 pay, and any other special circumstances that may have a bearing
14 on the probationer's ability to pay. The proceedings provided
15 for in this subsection are in addition to those provided in sec-
16 tion 4 of this chapter.

17 CHAPTER XII

18 Sec. 8. (1) If an order respecting costs is not made by the
19 court, costs shall be allowed and paid in the same manner as
20 costs in a prosecution of a minor offense in the same court. If
21 a person is required to give security to keep the peace, the
22 court ~~may further~~ SHALL order that the costs of prosecution ~~or~~
23 ~~any part of those costs~~ be paid by that person.

24 (2) The person shall be committed until the costs are paid
25 or until the person is otherwise legally discharged. HOWEVER,
26 THE COURT SHALL NOT REQUIRE A PERSON TO PAY COSTS UNLESS THE
27 PERSON IS OR WILL BE ABLE TO PAY THEM. IN DETERMINING THE AMOUNT

1 AND METHOD OF PAYMENT OF COSTS, THE COURT SHALL TAKE INTO ACCOUNT
 2 THE PERSON'S FINANCIAL RESOURCES AND THE NATURE OF THE BURDEN
 3 THAT PAYMENT OF COSTS WILL IMPOSE, WITH DUE REGARD TO HIS OR HER
 4 OTHER OBLIGATIONS.

5 (3) A PERSON WHO IS REQUIRED TO PAY COSTS UNDER THIS SECTION
 6 AND WHO IS NOT IN WILLFUL DEFAULT OF THE PAYMENT OF THE COSTS MAY
 7 PETITION THE SENTENCING JUDGE OR HIS OR HER SUCCESSOR AT ANY TIME
 8 FOR A REMISSION OF THE PAYMENT OF ANY UNPAID PORTION OF THOSE
 9 COSTS. IF THE COURT DETERMINES THAT PAYMENT OF THE AMOUNT DUE
 10 WILL IMPOSE A MANIFEST HARDSHIP ON THE PERSON OR HIS OR HER IMME-
 11 DIATE FAMILY, THE COURT MAY REMIT ALL OR PART OF THE AMOUNT DUE
 12 IN COSTS OR MODIFY THE METHOD OF PAYMENT.

13 (4) THE COURT MAY REQUIRE PAYMENT OF COSTS TO BE MADE IMME-
 14 DIATELY OR MAY PROVIDE FOR PAYMENT TO BE MADE WITHIN A SPECIFIED
 15 PERIOD OF TIME OR IN SPECIFIED INSTALLMENTS.

16 CHAPTER XIV

17 Sec. 22. (1) If the accused is tried and found guilty in a
 18 municipal court ~~—, either~~ by the court or ~~by~~ a jury ~~—~~, or is
 19 convicted upon a plea of guilty OR NOLO CONTENDERE, the court
 20 shall ~~—render—~~ ENTER A judgment and sentence the accused ~~—~~,
 21 ~~either~~ by a fine ~~—~~, OR imprisonment, or both. ~~—, as the case~~
 22 ~~may require.~~ The court SHALL also ~~may~~ order the accused to pay
 23 the costs of prosecution and MAY ORDER THE ACCUSED TO PAY other
 24 reasonable costs and expenses, direct and indirect, ~~—as~~ TO WHICH
 25 the public has been put ~~to~~ in connection with the offense, not
 26 to exceed \$15.00 FOR THE OTHER COSTS AND EXPENSES in a criminal

1 case. The punishment provided for by the sentence shall not
2 exceed the limit fixed by law for the offense charged.

3 (2) THE COURT SHALL NOT REQUIRE A DEFENDANT TO PAY COSTS
4 UNDER THIS SECTION UNLESS THE DEFENDANT IS OR WILL BE ABLE TO PAY
5 THEM DURING THE SENTENCE TERM. IN DETERMINING THE AMOUNT AND
6 METHOD OF PAYMENT OF COSTS, THE COURT SHALL TAKE INTO ACCOUNT THE
7 DEFENDANT'S FINANCIAL RESOURCES AND THE NATURE OF THE BURDEN THAT
8 PAYMENT OF COSTS WILL IMPOSE, WITH DUE REGARD TO HIS OR HER OTHER
9 OBLIGATIONS.

10 (3) A DEFENDANT WHO IS REQUIRED TO PAY COSTS UNDER THIS SEC-
11 TION AND WHO IS NOT IN WILLFUL DEFAULT OF THE PAYMENT OF THE
12 COSTS MAY PETITION THE SENTENCING JUDGE OR HIS OR HER SUCCESSOR
13 AT ANY TIME FOR A REMISSION OF THE PAYMENT OF ANY UNPAID PORTION
14 OF THOSE COSTS. IF THE COURT DETERMINES THAT PAYMENT OF THE
15 AMOUNT DUE WILL IMPOSE A MANIFEST HARDSHIP ON THE DEFENDANT OR
16 HIS OR HER IMMEDIATE FAMILY, THE COURT MAY REMIT ALL OR PART OF
17 THE AMOUNT DUE IN COSTS OR MODIFY THE METHOD OF PAYMENT.

18 (4) IF A DEFENDANT IS REQUIRED TO PAY COSTS AS PART OF THE
19 SENTENCE, THE COURT MAY REQUIRE PAYMENT TO BE MADE IMMEDIATELY OR
20 MAY PROVIDE FOR PAYMENT TO BE MADE WITHIN A SPECIFIED PERIOD OF
21 TIME OR IN SPECIFIED INSTALLMENTS.