

SENATE BILL NO. 264

April 11, 2019, Introduced by Senator VANDERWALL and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 2, 3, 3c, and 5 of chapter XI (MCL 771.2, 771.3, 771.3c, and 771.5), section 2 as amended by 2017 PA 10, section 3 as amended by 2012 PA 612, section 3c as amended by 2002 PA 483, and section 5 as amended by 1998 PA 520.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER XI

2

Sec. 2. (1) Except as provided in section 2a of this chapter

1 and section 36 of chapter VIII, if the defendant is convicted of an
2 offense that is not a felony, the probation period ~~shall~~**must** not
3 exceed 2 years. Except as provided in section 2a of this chapter
4 and section 36 of chapter VIII, if the defendant is convicted of a
5 felony, the probation period ~~shall~~**must** not exceed 5 years.

6 (2) Except as provided in subsection (4), section 2a of this
7 chapter, and section 36 of chapter VIII, after the defendant has
8 completed 1/2 of the original felony probation period of his or her
9 felony probation, the department or probation department may notify
10 the sentencing court. If, after a hearing to review the case and
11 the defendant's conduct while on probation, the court determines
12 that the defendant's behavior warrants a reduction in the
13 probationary term, the court may reduce that term by 100% or less.
14 The victim must be notified of the date and time of the hearing and
15 be given an opportunity to be heard. The court shall consider the
16 impact on the victim and repayment of outstanding restitution
17 caused by reducing the defendant's probationary term. Not less than
18 28 days before reducing or terminating a period of probation or
19 conducting a review under this section, the court shall notify the
20 prosecuting attorney, the defendant or, if the defendant has an
21 attorney, the defendant's attorney. However, this subsection does
22 not apply to a defendant who is subject to a mandatory probation
23 term.

24 (3) The department of corrections shall report, no later than
25 December 31 of each year, ~~after the effective date of the~~
26 ~~amendatory act that added this subsection,~~ to the committees of the
27 senate and house of representatives concerning the judiciary or
28 criminal justice the number of defendants referred to the court for
29 a hearing under subsection (2). The state court administrative

1 office shall report, no later than December 31 of each year, ~~after~~
2 ~~the effective date of the amendatory act that added this~~
3 ~~subsection,~~ to the committees of the senate and house of
4 representatives concerning the judiciary the number of probationers
5 who were released early from probation under subsection (2).

6 (4) A defendant who was convicted of 1 or more of the
7 following crimes is not eligible for reduced probation under
8 subsection (2):

9 (a) A violation of section 81(5) of the Michigan penal code,
10 1931 PA 328, MCL 750.81.

11 (b) A violation of section 84 of the Michigan penal code, 1931
12 PA 328, MCL 750.84.

13 (c) A violation of section 520c of the Michigan penal code,
14 1931 PA 328, MCL 750.520c.

15 (d) A violation of section 520e of the Michigan penal code,
16 1931 PA 328, MCL 750.520e.

17 (5) The court shall, by order to be entered in the case as the
18 court directs by general rule or in each case, fix and determine
19 the period and conditions of probation. The order is part of the
20 record in the case. The court may amend the order in form or
21 substance at any time. If the court reduces a defendant's
22 probationary term under subsection (2), the period by which that
23 term was reduced must be reported to the department of corrections.

24 (6) A defendant who was placed on probation under section 1(4)
25 of this chapter as it existed before March 1, 2003 for an offense
26 committed before March 1, 2003 is subject to the conditions of
27 probation specified in section 3 of this chapter, including payment
28 of a probation supervision fee as prescribed in section 3c of this
29 chapter, and to revocation for violation of these conditions, but

1 the probation period must not be reduced other than by a revocation
2 that results in imprisonment or as otherwise provided by law.

3 (7) If an individual is placed on probation for a listed
4 offense as that term is defined in section 2 of the sex offenders
5 registration act, 1994 PA 295, MCL 28.722, the individual's
6 probation officer shall register the individual or accept the
7 individual's registration as provided in that act.

8 **(8) An order entered under this section is subject to the**
9 **marihuana violation sentence reduction act.**

10 **(9)** ~~(8)~~ Subsection (1) does not apply to a juvenile placed on
11 probation and committed under section 1(3) or (4) of chapter IX to
12 an institution or agency described in the youth rehabilitation
13 services act, 1974 PA 150, MCL 803.301 to 803.309.

14 Sec. 3. (1) The sentence of probation ~~shall~~**must** include all
15 of the following conditions:

16 (a) During the term of his or her probation, the probationer
17 shall not violate any criminal law of this state, the United
18 States, or another state or any ordinance of any municipality in
19 this state or another state.

20 (b) During the term of his or her probation, the probationer
21 shall not leave the state without the consent of the court granting
22 his or her application for probation.

23 (c) The probationer shall report to the probation officer,
24 either in person or in writing, monthly or as often as the
25 probation officer requires. This subdivision does not apply to a
26 juvenile placed on probation and committed under section 1(3) or
27 (4) of chapter IX to an institution or agency described in the
28 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
29 803.309.

1 (d) If sentenced in circuit court, the probationer shall pay a
2 probation supervision fee as prescribed in section 3c of this
3 chapter.

4 (e) The probationer shall pay restitution to the victim of the
5 defendant's course of conduct giving rise to the conviction or to
6 the victim's estate as provided in chapter IX. An order for payment
7 of restitution may be modified and ~~shall~~**must** be enforced as
8 provided in chapter IX.

9 (f) The probationer shall pay an assessment ordered under
10 section 5 of 1989 PA 196, MCL 780.905.

11 (g) The probationer shall pay the minimum state cost
12 prescribed by section 1j of chapter IX.

13 (h) If the probationer is required to be registered under the
14 sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736,
15 the probationer shall comply with that act.

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

18 (a) Be imprisoned in the county jail for not more than 12
19 months at the time or intervals that may be consecutive or
20 nonconsecutive, within the probation as the court determines.
21 However, the period of confinement ~~shall~~**must** not exceed the
22 maximum period of imprisonment provided for the offense charged if
23 the maximum period is less than 12 months. The court may permit day
24 parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The
25 court may, subject to sections 3d and 3e of this chapter, permit
26 the individual to be released from jail to work at his or her
27 existing job or to attend a school in which he or she is enrolled
28 as a student. This subdivision does not apply to a juvenile placed
29 on probation and committed under section 1(3) or (4) of chapter IX

1 to an institution or agency described in the youth rehabilitation
2 services act, 1974 PA 150, MCL 803.301 to 803.309.

3 (b) Pay immediately or within the period of his or her
4 probation a fine imposed when placed on probation.

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

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

8 (e) Engage in community service.

9 (f) Agree to pay by wage assignment any restitution,
10 assessment, fine, or cost imposed by the court.

11 (g) Participate in inpatient or outpatient drug treatment or,
12 beginning January 1, 2005, participate in a drug treatment court
13 under chapter 10A of the revised judicature act of 1961, 1961 PA
14 236, MCL 600.1060 to ~~600.1084~~-**600.1088**.

15 (h) Participate in mental health treatment.

16 (i) Participate in mental health or substance abuse
17 counseling.

18 (j) Participate in a community corrections program.

19 (k) Be under house arrest.

20 (l) Be subject to electronic monitoring.

21 (m) Participate in a residential probation program.

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

25 (o) Be subject to conditions reasonably necessary for the
26 protection of 1 or more named persons.

27 (p) Reimburse the county for expenses incurred by the county
28 in connection with the conviction for which probation was ordered
29 as provided in the prisoner reimbursement to the county act, 1984

1 PA 118, MCL 801.81 to 801.93.

2 (q) Complete his or her high school education or obtain the
3 equivalency of a high school education in the form of a general
4 education development (GED) certificate.

5 (3) The court may impose other lawful conditions of probation
6 as the circumstances of the case require or warrant or as in its
7 judgment are proper.

8 (4) If an order or amended order of probation contains a
9 condition for the protection of 1 or more named persons as provided
10 in subsection (2)(o), the court or a law enforcement agency within
11 the court's jurisdiction shall enter the order or amended order
12 into the law enforcement information network. If the court rescinds
13 the order or amended order or the condition, the court shall remove
14 the order or amended order or the condition from the law
15 enforcement information network or notify that law enforcement
16 agency and the law enforcement agency shall remove the order or
17 amended order or the condition from the law enforcement information
18 network.

19 (5) If the court requires the probationer to pay costs under
20 subsection (2), the costs ~~shall~~**must** be limited to expenses
21 specifically incurred in prosecuting the defendant or providing
22 legal assistance to the defendant and supervision of the
23 probationer.

24 (6) If the court imposes costs under subsection (2) as part of
25 a sentence of probation, all of the following apply:

26 (a) The court shall not require a probationer to pay costs
27 under subsection (2) unless the probationer is or will be able to
28 pay them during the term of probation. In determining the amount
29 and method of payment of costs under subsection (2), the court

1 shall take into account the probationer's financial resources and
2 the nature of the burden that payment of costs will impose, with
3 due regard to his or her other obligations.

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

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

16 (8) If a probationer is ordered to pay costs as part of a
17 sentence of probation, compliance with that order ~~shall~~**must** be a
18 condition of probation. The court may revoke probation if the
19 probationer fails to comply with the order and if the probationer
20 has not made a good faith effort to comply with the order. In
21 determining whether to revoke probation, the court shall consider
22 the probationer's employment status, earning ability, and financial
23 resources, the willfulness of the probationer's failure to pay, and
24 any other special circumstances that may have a bearing on the
25 probationer's ability to pay. The proceedings provided for in this
26 subsection are in addition to those provided in section 4 of this
27 chapter.

28 (9) If entry of judgment is deferred in the circuit court, the
29 court shall require the individual to pay a supervision fee in the

1 same manner as is prescribed for a delayed sentence under section
2 1(3) of this chapter, shall require the individual to pay the
3 minimum state costs prescribed by section 1j of chapter IX, and may
4 impose, as applicable, the conditions of probation described in
5 subsections (1), (2), and (3).

6 (10) If sentencing is delayed or entry of judgment is deferred
7 in the district court or in a municipal court, the court shall
8 require the individual to pay the minimum state costs prescribed by
9 section 1j of chapter IX and may impose, as applicable, the
10 conditions of probation described in subsections (1), (2), and (3).

11 **(11) An order entered under this section is subject to the**
12 **marijuana violation sentence reduction act.**

13 Sec. 3c. (1) The circuit court shall include in each order of
14 probation for a defendant convicted of a crime that the department
15 of corrections shall collect a probation supervision fee of not
16 more than \$135.00 multiplied by the number of months of probation
17 ordered, but not more than 60 months. The fee is payable when the
18 probation order is entered, but the fee may be paid in monthly
19 installments if the court approves installment payments for that
20 probationer. In determining the amount of the fee, the court shall
21 consider the probationer's projected income and financial
22 resources. The court shall use the following table of projected
23 monthly income in determining the amount of the fee to be ordered:

24	<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
25	\$ 0-249.99	\$ 0.00
26	\$ 250.00-499.99	\$10.00
27	\$ 500.00-749.99	\$25.00
28	\$ 750.00-999.99	\$40.00

1 \$1,000.00 or more 5% of projected monthly
 2 income, but not more than
 3 \$135.00

4 The court may order a higher amount than indicated by the
 5 table, up to the maximum of \$135.00 multiplied by the number of
 6 months of probation ordered, but not more than 60 months, if the
 7 court determines that the probationer has sufficient assets or
 8 other financial resources to warrant the higher amount. If the
 9 court orders a higher amount, the amount and the reasons for
 10 ordering that amount shall be stated in the court order. The fee
 11 ~~shall~~**must** be collected as provided in section 25a of the
 12 corrections code of 1953, 1953 PA 232, MCL 791.225a. A person ~~shall~~
 13 **must** not be subject to more than 1 supervision fee at the same
 14 time. If a supervision fee is ordered for a person for any month or
 15 months during which that person already is subject to a supervision
 16 fee, the court shall waive the fee having the shorter remaining
 17 duration.

18 (2) If a person who is subject to a probation supervision fee
 19 is also subject to any combination of fines, costs, restitution
 20 orders, assessments, or payments arising out of the same criminal
 21 proceeding, the allocation of money collected for those obligations
 22 ~~shall~~**must** be as otherwise provided in section 22 of chapter XV.

23 (3) This section does not apply to a juvenile placed on
 24 probation and committed under section 1(3) or (4) of chapter IX to
 25 an institution or agency described in the youth rehabilitation
 26 services act, 1974 PA 150, MCL 803.301 to 803.309.

27 **(4) An order entered under this section is subject to the**
 28 **marihuana violation sentence reduction act.**

29 Sec. 5. (1) When the probation period terminates, the

1 probation officer shall report that fact and the probationer's
2 conduct during the probation period to the court. Upon receiving
3 the report, **subject to the marihuana violation sentence reduction**
4 **act**, the court may discharge the probationer from further
5 supervision and enter a judgment of suspended sentence or extend
6 the probation period as the circumstances require, so long as the
7 maximum probation period is not exceeded.

8 **(2) If a probationer is identified as a qualifying individual,**
9 **the court shall enter an order that complies with the marihuana**
10 **violation sentence reduction act.**

11 **(3)** ~~(2)~~—This section does not apply to a juvenile placed on
12 probation and committed under section 1(3) or (4) of chapter IX to
13 an institution or agency described in the youth rehabilitation
14 services act, 1974 PA 150, MCL 803.301 to 803.309.

15 **(4) As used in this section, "qualifying individual" means**
16 **that term as defined in section 3 of the marihuana violation**
17 **sentence reduction act.**

18 Enacting section 1. This amendatory act does not take effect
19 unless Senate Bill No. 262 of the 100th Legislature is enacted into
20 law.