

HOUSE BILL No. 5406

December 4, 1997, Introduced by Rep. Wallace and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 1, 2, and 3 of chapter XI (MCL 771.1, 771.2,
and 771.3), section 1 as amended by 1993 PA 185, section 2 as
amended by 1994 PA 286, and section 3 as amended by 1994 PA 445.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XI

Sec. 1. (1) In ~~all prosecutions~~ A PROSECUTION for
~~felonies~~ A FELONY or ~~misdemeanors~~ A MISDEMEANOR, except
murder, treason, criminal sexual conduct in the first or third
degree, OR robbery while armed, ~~and major controlled substance~~
~~offenses not described in subsection (4),~~ if the defendant has
been found guilty upon verdict or plea, and ~~if it appears to the~~
~~satisfaction of~~ the court DETERMINES that the defendant is not
likely again to engage in an offensive or criminal course of

1 conduct and that the public good does not require that the
2 defendant suffer the penalty imposed by law, the court may place
3 the defendant on probation under the charge and supervision of a
4 probation officer.

5 (2) ~~Except as provided in subsection (4), in~~ IN an action
6 in which the court may place the defendant on probation, the
7 court may delay the imposing of sentence of the defendant for ~~a~~
8 ~~period of~~ not ~~to exceed~~ MORE THAN 1 year ~~for the purpose of~~
9 ~~giving~~ TO GIVE the defendant an opportunity to prove to the
10 court his or her eligibility for probation or other leniency com-
11 patible with the ends of justice and the rehabilitation of the
12 defendant. When the sentencing is delayed, the court shall make
13 an order stating the reason for the delay. ~~, which~~ THE order
14 shall be entered upon the records of the court. The delay in
15 passing sentence ~~shall~~ DOES not deprive the court of jurisdic-
16 tion to sentence the defendant at any time during the period of
17 delay.

18 (3) If ~~a defendant is before the circuit court and is made~~
19 ~~subject to~~ THE COURT ORDERS a delay in imposing sentence under
20 subsection (2), the court shall include in the delayed sentence
21 order THE REQUIREMENT that the department of corrections ~~shall~~
22 collect a supervision fee of not more than \$30.00 multiplied by
23 the number of months of delay ordered, but not more than 12
24 months. The fee is payable when the delayed sentence order is
25 entered, but the fee may be paid in monthly installments if the
26 court approves installment payments for that defendant. In
27 determining the amount of the fee, the court shall consider the

1 defendant's projected income and financial resources. The court
 2 shall use the following table of projected monthly income in
 3 determining the amount of the fee to be ordered:

4	<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
5	\$ 0-249.99	\$ 0.00
6	\$ 250.00-499.99	\$10.00
7	\$ 500.00-749.99	\$20.00
8	\$ 750.00 or more	\$30.00

9 The court may order a higher amount than indicated by the table,
 10 up to the maximum of \$30.00 multiplied by the number of months of
 11 delay ordered but not more than 12 months, if the court deter-
 12 mines that the defendant has sufficient assets or other financial
 13 resources to warrant the higher amount. If the court orders a
 14 higher amount, the COURT SHALL STATE THE amount and the reasons
 15 for ordering that amount ~~shall be stated in the court~~ ITS
 16 order. The fee shall be collected as provided in section 25a of
 17 ~~Act No. 232 of the Public Acts of 1953, being section 791.225a~~
 18 ~~of the Michigan Compiled Laws~~ 1953 PA 232, MCL 791.225A. A
 19 person shall not be subject to more than 1 supervision fee at the
 20 same time. If a supervision fee is ordered for a person for any
 21 month or months during which that person already is subject to a

1 supervision fee, the court shall waive the fee having the shorter
2 remaining duration.

3 ~~-(4) The sentencing judge may place a defendant on life pro-~~
4 ~~bation pursuant to subsection (1) if the defendant is convicted~~
5 ~~for a violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv) of~~
6 ~~the public health code, Act No. 368 of the Public Acts of 1978,~~
7 ~~being sections 333.7401 or 333.7403 of the Michigan Compiled~~
8 ~~Laws, or conspiracy to commit either of those 2 offenses.~~
9 ~~Subsection (2) does not apply to this subsection.~~

10 (4) ~~-(5)-~~ Beginning June 1, 1988, this section does not
11 apply to a juvenile placed on probation and committed under sec-
12 tion 1(3) or (4) of chapter IX to a state institution or agency
13 described in the youth rehabilitation services act, ~~Act No. 150~~
14 ~~of the Public Acts of 1974, being sections 803.301 to 803.309 of~~
15 ~~the Michigan Compiled Laws 1974 PA 150, MCL 803.301 TO 803.309.~~

16 Sec. 2. (1) Except as provided in section 2a of this chap-
17 ter, if the defendant is convicted for an offense that is not a
18 felony, the period of probation shall not exceed 2 years. Except
19 as provided in section 2a of this chapter, if the defendant is
20 convicted of a felony ~~that is not a major controlled substance~~
21 ~~offense,~~ the period of probation shall not exceed 5 years.

22 (2) The court shall by order, to be filed or entered in the
23 cause as the court may direct by general rule or in each case,
24 fix and determine the period and conditions of probation. The
25 order, whether it is filed or entered, is part of the record in
26 the cause. The court may amend the order, in form or in
27 substance, at any time.

1 ~~-(3) A defendant who is placed on probation pursuant to~~
2 ~~section 1(4) of this chapter shall be placed on probation for~~
3 ~~life. That sentence shall be made subject to conditions of pro-~~
4 ~~bation specified in section 3 of this chapter, including the pay-~~
5 ~~ment of a probation supervision fee as prescribed in section 3c~~
6 ~~of this chapter, and to revocation for violation of those condi-~~
7 ~~tions, but the period of probation shall not be reduced other~~
8 ~~than by a revocation that results in imprisonment.~~

9 (3) ~~-(4)-~~ If an individual is placed on probation for a
10 listed offense enumerated in section 2 of the sex offenders reg-
11 istration act, 1994 PA 295, MCL 28.722, the individual's proba-
12 tion officer shall register the individual or accept the
13 individual's registration ~~pursuant to~~ UNDER that act.

14 (4) ~~-(5) Subsections (1) and (3) do~~ SUBSECTION (1) DOES not
15 apply to a juvenile placed on probation and committed under sec-
16 tion 1(3) or (4) of chapter IX to a state institution or agency
17 described in the youth rehabilitation services act, ~~Act No. 150~~
18 ~~of the Public Acts of 1974, being sections 803.301 to 803.309 of~~
19 ~~the Michigan Compiled Laws~~ 1974 PA 150, MCL 803.301 TO 803.309.

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

22 (a) The probationer shall not, during the term of his or her
23 probation, violate any criminal law of this state, the United
24 States, or another state or any ordinance of any municipality in
25 this state or another state.

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

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

12 (d) The probationer, if convicted of a felony, shall pay a
13 probation supervision fee as prescribed in section 3c of this
14 chapter.

15 (e) The probationer shall pay restitution to the victim of
16 the defendant's course of conduct giving rise to the conviction
17 or to the victim's estate as provided in chapter IX. An order
18 for payment of restitution may be modified and shall be enforced
19 as provided in chapter IX.

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

24 (g) Beginning October 1, 1995, if the probationer is
25 required to be registered ~~pursuant to~~ UNDER the sex offenders
26 registration act, ~~Act No. 295 of the Public Acts of 1994, being~~
27 ~~sections 28.721 to 28.732 of the Michigan Compiled Laws~~ 1994 PA

1 295, MCL 28.721 TO 28.732, the probationer shall comply with that
2 act.

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

5 (a) Be imprisoned in the county jail for not more than 12
6 months, at the time or intervals, which may be consecutive or
7 nonconsecutive, within the probation as the court determines.
8 However, the period of confinement shall not exceed the maximum
9 period of imprisonment provided for the offense charged if the
10 maximum period is less than 12 months. The court may permit day
11 parole as authorized under ~~Act No. 60 of the Public Acts of~~
12 ~~1961, being sections 801.251 to 801.258 of the Michigan Compiled~~
13 ~~Laws~~ 1962 PA 60, MCL 801.251 TO 801.258. The court may permit a
14 work or school release from jail. This subdivision does not
15 apply to a juvenile placed on probation and committed under sec-
16 tion 1(3) or (4) of chapter IX to a state institution or agency
17 described in ~~Act No. 150 of the Public Acts of 1974~~ THE YOUTH
18 REHABILITATION SERVICES ACT, 1974 PA 150, MCL 803.301 TO
19 803.309.

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

22 (c) Pay costs ~~pursuant to~~ UNDER subsection ~~(4)~~ (3).

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

25 (e) Engage in community service.

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

(g) Participate in inpatient or outpatient drug treatment.

(h) Participate in mental health treatment.

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

(j) Participate in a community corrections program.

(k) Be under house arrest.

(l) Be subject to electronic monitoring.

(m) Participate in a residential probation program.

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

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

(3) ~~—(4)—~~ The court may impose other lawful conditions of probation as the circumstances of the case require or warrant, or as in its judgment are 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 supervision of the probationer.

(4) ~~—(5)—~~ If the court imposes costs as part of a sentence of probation, all of the following apply:

(a) The court shall not require a probationer to pay 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 costs, the court shall take into account the financial

1 resources of the probationer and the nature of the burden that
2 payment of costs will impose, with due regard to his or her other
3 obligations.

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

12 (5) ~~-(6)-~~ If a probationer is required to pay costs as part
13 of a sentence of probation, the court may require payment to be
14 made immediately or the court may provide for payment to be made
15 within a specified period of time or in specified installments.

16 (6) ~~-(7)-~~ If a probationer is ordered to pay costs as part
17 of a sentence of probation, compliance with that order shall 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 finan-
23 cial resources, the willfulness of the probationer's failure to
24 pay, and any other special circumstances that may have a bearing
25 on the probationer's ability to pay. The proceedings provided
26 for in this subsection are in addition to those provided in
27 section 4 of this chapter.

1 Enacting section 1. This amendatory act does not take
2 effect unless all of the following bills of the 89th Legislature
3 are enacted into law:

4 (a) Senate Bill No. 280.

5 (b) Senate Bill No. 281.