

SENATE BILL No. 5

January 24, 1991, Introduced by Senator WELBORN 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. 184 of the Public Acts of 1989, being section 771.3 of the Michigan Compiled Laws; and to add section 3d to chapter XI.

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 and section 3d is added to chapter XI to read as
5 follows:

CHAPTER XI

1

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

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

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

10 (c) That the probationer shall make a report to the proba-
11 tion officer, either in person or in writing, monthly, or as
12 often as the probation officer may require. This subdivision
13 does not apply to a juvenile placed on probation and committed
14 under section 1(3) or (4) of chapter IX to a state institution or
15 agency described in the youth rehabilitation services act, Act
16 No. 150 of the Public Acts of 1974, being sections 803.301 to
17 803.309 of the Michigan Compiled Laws.

18 (d) That the probationer, if convicted of a felony, pay a
19 probation oversight fee or perform community service as pre-
20 scribed in section 3c.

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

23 (a) Be imprisoned in the county jail for not more than 12
24 months, at the time or intervals, which may be consecutive or
25 nonconsecutive, within the probation as the court may determine.
26 However, the period of confinement shall not exceed the maximum
27 period of imprisonment provided for the offense charged if the

1 maximum period is less than 12 months. 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, being sec-
5 tions 803.301 to 803.309 of the Michigan Compiled Laws.

6 (b) Pay immediately or within the period of his or her pro-
7 bation ~~—~~ a fine imposed at the time of being placed on
8 probation.

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

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

11 (e) Engage in community service, AS PROVIDED IN SECTION 3D
12 OF THIS CHAPTER.

13 (3) Subsection (2) ~~—shall—~~ DOES not apply to a person who is
14 placed on probation for life pursuant to sections 1(3) and 2(3)
15 of this chapter.

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

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

25 (a) The court shall not require a probationer to pay resti-
26 tution or costs unless the probationer is or will be able to pay
27 them during the term of probation. In determining the amount and

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

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

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

19 (7) If a probationer is ordered to pay restitution or costs
20 as part of a sentence of probation, compliance with that order
21 shall be a condition of probation. The court may revoke proba-
22 tion if the probationer fails to comply with the order and if the
23 probationer has not made a good faith effort to comply with the
24 order. In determining whether to revoke probation, the court
25 shall consider the probationer's employment status, earning abil-
26 ity, financial resources, and the willfulness of the
27 probationer's failure to pay, and any other special circumstances

1 that may have a bearing on the probationer's ability to pay. The
2 proceedings provided for in this subsection shall be in addition
3 to those provided in section 4 of this chapter. A juvenile
4 placed on probation and committed under section 1(3) or (4) of
5 chapter IX to a state institution or agency described in Act
6 No. 150 of the Public Acts of 1974, being sections 803.301 to
7 803.309 of the Michigan Compiled Laws, shall not be committed to
8 the department of corrections for failure to comply with a resti-
9 tution order.

10 SEC. 3D. (1) AS USED IN THIS SECTION:

11 (A) "AGENCY" MEANS A NONPROFIT ORGANIZATION, OR A GOVERNMEN-
12 TAL UNIT OR OTHER PUBLIC BODY THAT ACCEPTS COMMUNITY SERVICE FROM
13 OFFENDERS.

14 (B) "COMMUNITY SERVICE" MEANS UNCOMPENSATED LABOR PERFORMED
15 BY AN OFFENDER FOR AN AGENCY FOR THE PURPOSE OF ENHANCING THE
16 PHYSICAL, INTELLECTUAL, OR MENTAL WELL-BEING, ENVIRONMENTAL QUAL-
17 ITY, OR SOCIAL WELFARE OF THE COMMUNITY.

18 (C) "COURT" MEANS ANY COURT OF RECORD OF THIS STATE THAT HAS
19 THE AUTHORITY TO ORDER PROBATION, AND INCLUDES ITS PROBATION
20 DEPARTMENT AND ANY OTHER OF ITS OFFICES OR INSTRUMENTALITIES THAT
21 ARE RESPONSIBLE FOR FUNDING OR SUPERVISING COMMUNITY SERVICE.

22 (D) "MAJOR TRAFFIC OFFENSE" MEANS A TRAFFIC OFFENSE THAT IS
23 A MISDEMEANOR AND FOR WHICH 4 OR MORE POINTS MAY BE IMPOSED UNDER
24 SECTION 320A OF THE MICHIGAN VEHICLE CODE, ACT NO. 300 OF THE
25 PUBLIC ACTS OF 1949, BEING SECTION 257.320A OF THE MICHIGAN
26 COMPILED LAWS.

1 (2) THE COURT MAY ORDER THAT A PROBATIONER PERFORM COMMUNITY
2 SERVICE INSTEAD OF, OR IN ADDITION TO, ANY OTHER CONDITION OF
3 PROBATION, OR AS A METHOD OF DISCHARGING PAYMENT OF FINES, COSTS,
4 OR FEES THAT THE PROBATIONER IS UNABLE TO PAY. IF COMMUNITY
5 SERVICE IS ORDERED AS A METHOD OF DISCHARGING PAYMENT OF FINES,
6 COSTS, OR FEES, THE DEFENDANT SHALL BE CREDITED WITH PAYMENT
7 AGAINST THE FINES, COSTS, AND FEES, FOR COMMUNITY SERVICE PER-
8 FORMED, AT A RATE DETERMINED BY THE COURT BUT NOT LESS THAN THE
9 PREVAILING MINIMUM WAGE.

10 (3) IN ORDERING COMMUNITY SERVICE FOR A DEFENDANT, THE COURT
11 SHALL SELECT TASKS THAT ARE WITHIN THE DEFENDANT'S CAPABILITIES
12 AND THAT CAN BE PERFORMED BY THE DEFENDANT WITHIN A REASONABLE
13 PERIOD OF TIME.

14 (4) THE FAILURE BY A PROBATIONER TO PERFORM COMMUNITY SERV-
15 ICE AS ORDERED IS GROUNDS FOR REVOCATION OF PROBATION AS PROVIDED
16 IN SECTION 4 OF THIS CHAPTER.

17 (5) THE LENGTH OF A TERM OF COMMUNITY SERVICE IS SUBJECT TO
18 THE FOLLOWING LIMITS:

19 (A) FOR A MISDEMEANOR TRAFFIC OFFENSE, EXCEPT A MAJOR TRAF-
20 FIC OFFENSE, NOT MORE THAN 120 HOURS OR 15 DAYS.

21 (B) FOR A MAJOR TRAFFIC OFFENSE OR A MISDEMEANOR WHICH IS
22 NOT A TRAFFIC OFFENSE AND WHICH IS PUNISHABLE BY IMPRISONMENT FOR
23 6 MONTHS OR LESS, NOT MORE THAN 240 HOURS OR 30 DAYS.

24 (C) FOR ANY OTHER MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
25 MORE THAN 6 MONTHS BUT NOT MORE THAN 1 YEAR, NOT MORE THAN 480
26 HOURS OR 60 DAYS.

1 (D) FOR AN OFFENSE PUNISHABLE BY IMPRISONMENT FOR MORE THAN
2 1 YEAR, NOT MORE THAN 3,840 HOURS OR 480 DAYS.

3 (6) SUBSECTION (5) APPLIES ONLY TO COMMUNITY SERVICE IMPOSED
4 INSTEAD OF, OR IN CONJUNCTION WITH, ANY OTHER CONDITION OF
5 PROBATION. COMMUNITY SERVICE IMPOSED AS A METHOD OF DISCHARGING
6 FINES, COSTS, OR FEES IS NOT SUBJECT TO THE LIMITS OF
7 SUBSECTION (5).

8 (7) THIS SECTION DOES NOT PREVENT THE COURT FROM REQUIRING
9 COMMUNITY SERVICE IN CONNECTION WITH FINDING A PERSON RESPONSIBLE
10 FOR A CIVIL INFRACTION.

11 (8) THIS SECTION DOES NOT APPLY TO COMMUNITY SERVICE ORDERED
12 UNDER SECTION 3C.

13 Section 2. This amendatory act shall not take effect unless
14 Senate Bill No. _____ or House Bill No. _____ (request
15 no. 00401'91) of the 86th Legislature is enacted into law.