

Act No. 185
Public Acts of 1993
Approved by the Governor
September 30, 1993
Filed with the Secretary of State
September 30, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Reps. Bender, Cropsey, Walberg, Randall, Joe Young, Jr., Hill, Vorva, Whyman, Allen, Gnodtke, Galloway, Middaugh, Martin, Bankes, Gilmer, Middleton, Johnson, Bobier, Wetters, Pitoniak, Dalman and McNutt

ENROLLED HOUSE BILL No. 4875

AN ACT to amend section 13 of chapter II and sections 1, 2, 3, and 3c of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," section 1 of chapter XI as amended by Act No. 90 of the Public Acts of 1988, section 2 of chapter XI as amended by Act No. 251 of the Public Acts of 1992, and section 3 of chapter XI as amended and section 3c of chapter XI as added by Act No. 184 of the Public Acts of 1989, being sections 762.13, 771.1, 771.2, 771.3, and 771.3c of the Michigan Compiled Laws; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Section 13 of chapter II and sections 1, 2, 3, and 3c of chapter XI of Act No. 175 of the Public Acts of 1927, section 1 of chapter XI as amended by Act No. 90 of the Public Acts of 1988, section 2 of chapter XI as amended by Act No. 251 of the Public Acts of 1992, and section 3 of chapter XI as amended and section 3c of chapter XI as added by Act No. 184 of the Public Acts of 1989, being sections 762.13, 771.1, 771.2, 771.3, and 771.3c of the Michigan Compiled Laws, are amended to read as follows:

CHAPTER II

Sec. 13. (1) If a youth is assigned to the status of a youthful trainee and the underlying charge is an offense punishable by imprisonment in a state correctional facility for a term of more than 1 year, the court shall commit the

youth to the department of corrections for custodial supervision and training for a period not to exceed 3 years in an institutional facility designated by the department for such purpose or place the youth on probation for a period not to exceed 3 years. A youth placed on probation shall be under the supervision of a probation officer or community assistance officer appointed by the department of corrections. Upon commitment to and receipt by the department of corrections, a youthful trainee shall be subject to the direction of the department of corrections.

(2) The court shall include in each order of probation for a youth placed on probation under this section that the department of corrections shall collect a probation supervision fee of not more than \$30.00 multiplied by the number of months of probation ordered, but not more than 60 months. The fee is payable when the probation order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that probationer. In determining the amount of the fee, the court shall consider the probationer's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

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

The court may order a higher amount than indicated by the table, up to the maximum of \$30.00 multiplied by the number of months of probation ordered but not more than 60 months, if the court determines that the probationer has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the court order. The fee shall be collected as provided in section 25a of Act No. 232 of the Public Acts of 1953, being section 791.225a of the Michigan Compiled Laws. A person shall not be subject to more than 1 supervision fee at the same time. If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration.

CHAPTER XI

Sec. 1. (1) In all prosecutions for felonies or misdemeanors, except murder, treason, criminal sexual conduct in the first or third degree, 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 that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer.

(2) Except as provided in subsection (4), in an action in which the court may place the defendant on probation, the court may delay the imposing of sentence of the defendant for a period of not to exceed 1 year for the purpose of giving the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the rehabilitation of the defendant. When the sentencing is delayed, the court shall make an order stating the reason for the delay, which order shall be entered upon the records of the court. The delay in passing sentence shall not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.

(3) If a defendant is before the circuit court and is made subject to a delay in imposing sentence under subsection (2), the court shall include in the delayed sentence order that the department of corrections shall collect a supervision fee of not more than \$30.00 multiplied by the number of months of delay ordered, but not more than 12 months. The fee is payable when the delayed sentence order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that defendant. In determining the amount of the fee, the court shall consider the defendant's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

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

The court may order a higher amount than indicated by the table, up to the maximum of \$30.00 multiplied by the number of months of delay ordered but not more than 12 months, if the court determines that the defendant has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the court order. The fee shall be collected as provided in section 25a of Act No. 232 of the Public Acts of 1953, being section 791.225a of the Michigan Compiled Laws. A person shall not be subject to more than 1 supervision fee at the same time. If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration.

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

(5) Beginning June 1, 1988, this section 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.

Sec. 2. (1) Except as provided in section 2a of this chapter, if the defendant is convicted for an offense that is not a felony, the period of probation shall not exceed 2 years. Except as provided in section 2a of this chapter, if the defendant is convicted of a felony that is not a major controlled substance offense, the period of probation shall not exceed 5 years.

(2) The court shall by order, to be filed or entered in the cause as the court may direct by general rule or in each case, fix and determine the period and conditions of probation. The order, whether it is filed or entered, shall be considered as part of the record in the cause and shall be at all times alterable and amendable, both in form and in substance, in the court's discretion.

(3) A defendant who is placed on probation pursuant to section 1(4) of this chapter shall be placed on probation for life. That sentence shall be made subject to conditions of probation specified in section 3 of this chapter, including the payment of a probation supervision fee as prescribed in section 3c of this chapter, and to revocation for violation of those conditions, but the period of probation shall not be reduced other than by a revocation that results in imprisonment.

(4) Subsections (1) and (3) do 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.

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

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

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

(c) That the probationer shall make a report to the probation officer, either in person or in writing, monthly, or as often as the probation officer may require. 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.

(d) That the probationer, if convicted of a felony, pay a probation supervision fee as prescribed in section 3c of this chapter.

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

(a) Be imprisoned in the county jail for not more than 12 months, at the time or intervals, which may be consecutive or nonconsecutive, within the probation as the court may determine. However, the period of confinement shall not exceed the maximum period of imprisonment provided for the offense charged if the maximum period is less than 12 months. 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 Act No. 150 of the Public Acts of 1974.

(b) Pay immediately or within the period of his or her probation, a fine imposed at the time of being placed on probation.

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

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

(e) Engage in community service.

(3) Subsection (2) does not apply to a person who is placed on probation for life pursuant to sections 1(4) and 2(3) of this chapter.

(4) The court may impose other lawful conditions of probation as the circumstances of the case may require or warrant, or as in its judgment may be 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.

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

(a) The court shall not require a probationer to pay restitution or 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 restitution and costs, the court shall take into account the financial resources of the probationer and the nature of the burden that payment of restitution or costs will impose, with due regard to his or her other obligations.

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

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

(7) If a probationer is ordered to pay restitution or costs as part of a sentence of probation, compliance with that order shall be a condition of probation. The court may revoke probation if the probationer fails to comply with the order and if the probationer has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the probationer's employment status, earning ability, financial resources, and the willfulness of the probationer's failure to pay, and any other special circumstances that may have a bearing on the probationer's ability to pay. The proceedings provided for in this subsection shall be in addition to those provided in section 4 of this chapter. A juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to a state institution or agency described in Act No. 150 of the Public Acts of 1974 shall not be committed to the department of corrections for failure to comply with a restitution order.

Sec. 3c. (1) The circuit court shall include in each order of probation for a defendant convicted of a felony that the department of corrections shall collect a probation supervision fee of not more than \$30.00 multiplied by the number of months of probation ordered, but not more than 60 months. The fee is payable when the probation order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that probationer. In determining the amount of the fee, the court shall consider the probationer's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
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\$750.00 or more	\$30.00

The court may order a higher amount than indicated by the table, up to the maximum of \$30.00 multiplied by the number of months of probation ordered but not more than 60 months, if the court determines that the probationer has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the court order. The fee shall be collected as provided in section 25a of Act No. 232 of the Public Acts of 1953, being section 791.225a of the Michigan Compiled Laws. A person shall not be subject to more than 1 supervision fee at the same time. If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration.

(2) A probation oversight fee ordered before October 1, 1993, pursuant to this section as it existed before the 1993 amendatory act that amended this section remains enforceable according to the terms of that probation order notwithstanding the amendments made by the 1993 amendatory act that amended this section.

(3) If a person who is subject to a probation supervision fee is also subject to any combination of fines, costs, restitution orders, assessments, or payments arising out of the same criminal proceeding, the allocation of money collected for those obligations shall be as otherwise provided in the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 760.1 to 776.21 of the Michigan Compiled Laws.

(4) This section 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.

Section 2. This amendatory act shall take effect October 1, 1993.

Section 3. Enacting section 2 of Act No. 181 of the Public Acts of 1992 is repealed.

Section 4. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

- (a) House Bill No. 4876.
- (b) House Bill No. 4877.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.