



HOUSE BILL No. 4875

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June 22, 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 and referred to the Committee on Appropriations.

A bill 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

"The code of criminal procedure,"

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:

1 Section 1. Section 13 of chapter II and sections 1, 2, 3,  
2 and 3c of chapter XI of Act No. 175 of the Public Acts of 1927,  
3 section 1 of chapter XI as amended by Act No. 90 of the Public

1 Acts of 1988, section 2 of chapter XI as amended by Act No. 251  
2 of the Public Acts of 1992, and section 3 of chapter XI as  
3 amended and section 3c of chapter XI as added by Act No. 184 of  
4 the Public Acts of 1989, being sections 762.13, 771.1, 771.2,  
5 771.3, and 771.3c of the Michigan Compiled Laws, are amended to  
6 read as follows:

7

## CHAPTER II

8       Sec. 13. (1) If a youth is assigned to the status of a  
9 youthful trainee and the underlying charge is an offense punish-  
10 able by imprisonment in a state ~~prison~~ CORRECTIONAL FACILITY  
11 for a term of more than 1 year, the court shall ~~(a)~~ commit the  
12 youth to the department of corrections for custodial supervision  
13 and training for a period not to exceed 3 years in an institu-  
14 tional facility designated by the department for such purpose or  
15 ~~(b)~~ place the youth on probation for a period not to exceed 3  
16 years. A youth placed on probation shall be under the supervi-  
17 sion of a probation officer or community assistance officer  
18 appointed by the DEPARTMENT OF corrections. ~~commission.~~ Upon  
19 commitment to and receipt by the department of corrections, a  
20 youthful trainee shall be subject to the direction of the depart-  
21 ment of corrections.

22       (2) THE COURT SHALL INCLUDE IN EACH ORDER OF PROBATION FOR A  
23 YOUTH PLACED ON PROBATION UNDER THIS SECTION THAT THE DEPARTMENT  
24 OF CORRECTIONS SHALL COLLECT A PROBATION SUPERVISION FEE OF  
25 \$30.00 MULTIPLIED BY THE NUMBER OF MONTHS OF PROBATION ORDERED,  
26 BUT NOT MORE THAN 60 MONTHS. THE FEE IS PAYABLE WHEN THE  
27 PROBATION ORDER IS ENTERED, BUT THE FEE MAY BE PAID IN MONTHLY

1 INSTALLMENTS IF THE COURT APPROVES INSTALLMENT PAYMENTS FOR THAT  
2 PROBATIONER. THE FEE SHALL BE COLLECTED AS PROVIDED IN  
3 SECTION 25A OF ACT NO. 232 OF THE PUBLIC ACTS OF 1953, BEING  
4 SECTION 791.225A OF THE MICHIGAN COMPILED LAWS. A PERSON SHALL  
5 NOT BE SUBJECT TO MORE THAN 1 SUPERVISION FEE AT THE SAME TIME.  
6 IF A SUPERVISION FEE IS ORDERED FOR A PERSON FOR ANY MONTH OR  
7 MONTHS DURING WHICH THAT PERSON ALREADY IS SUBJECT TO A SUPERVI-  
8 SION FEE, THE COURT SHALL WAIVE THE FEE HAVING THE SHORTER  
9 REMAINING DURATION.

10 CHAPTER XI

11 Sec. 1. (1) In all prosecutions for felonies or misdemean-  
12 ors, except murder, treason, criminal sexual conduct in the first  
13 or third degree, robbery while armed, and major controlled sub-  
14 stance offenses not described in subsection ~~(3)~~ (4), if the  
15 defendant has been found guilty upon verdict or plea, and if it  
16 appears to the satisfaction of the court that the defendant is  
17 not likely again to engage in an offensive or criminal course of  
18 conduct and that the public good does not require that the  
19 defendant ~~shall~~ suffer the penalty imposed by law, the court  
20 may place the defendant on probation under the charge and super-  
21 vision of a probation officer.

22 (2) Except as provided in subsection ~~(3)~~ (4), in an action  
23 in which the court may place the defendant on probation, the  
24 court may delay the imposing of sentence of the defendant for a  
25 period of not to exceed 1 year for the purpose of giving the  
26 defendant an opportunity to prove to the court his or her  
27 eligibility for probation or other leniency compatible with the

1 ends of justice and the rehabilitation of the defendant. When  
2 the sentencing is delayed, the court shall make an order stating  
3 the reason for the delay, which order shall be entered upon the  
4 records of the court. The delay in passing sentence shall not  
5 deprive the court of jurisdiction to sentence the defendant at  
6 any time during the extended period.

7 (3) A DEFENDANT WHO IS BEFORE THE CIRCUIT COURT AND WHO IS  
8 MADE SUBJECT TO A DELAY IN IMPOSING SENTENCE UNDER SUBSECTION (2)  
9 SHALL BE REQUIRED IN THE DELAYED SENTENCE ORDER TO PAY A SUPERVI-  
10 SION FEE OF \$30.00 PER MONTH FOR THE PERIOD OF DELAY ORDERED, BUT  
11 NOT MORE THAN 12 MONTHS. THE FEE IS PAYABLE WHEN THE ORDER IS  
12 ENTERED, BUT THE FEE MAY BE PAID IN MONTHLY INSTALLMENTS IF THE  
13 COURT APPROVES INSTALLMENT PAYMENTS FOR THAT DEFENDANT. THE FEE  
14 SHALL BE COLLECTED AS PROVIDED IN SECTION 25A OF ACT NO. 232 OF  
15 THE PUBLIC ACTS OF 1953, BEING SECTION 791.225A OF THE MICHIGAN  
16 COMPILED LAWS. A PERSON SHALL NOT BE SUBJECT TO MORE THAN 1  
17 SUPERVISION FEE AT THE SAME TIME. IF A SUPERVISION FEE IS  
18 ORDERED FOR A PERSON FOR ANY MONTH OR MONTHS DURING WHICH THAT  
19 PERSON ALREADY IS SUBJECT TO A SUPERVISION FEE, THE COURT SHALL  
20 WAIVE THE FEE HAVING THE SHORTER REMAINING DURATION.

21 (4) ~~(3)~~ The sentencing judge may place a defendant on life  
22 probation pursuant to subsection (1) if the defendant is con-  
23 victed for a violation of section 7401(2)(a)(iv) or  
24 7403(2)(a)(iv) of the public health code, Act No. 368 of the  
25 Public Acts of 1978, being sections 333.7401 or 333.7403 of the  
26 Michigan Compiled Laws, or conspiracy to commit either of those 2  
27 offenses. Subsection (2) does not apply to this subsection.

1 (5) ~~(4)~~ Beginning June 1, 1988, this section 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 the youth rehabilitation services act, Act No. 150  
5 of the Public Acts of 1974, being sections 803.301 to 803.309 of  
6 the Michigan Compiled Laws.

7 Sec. 2. (1) Except as provided in section 2a of this chap-  
8 ter, if the defendant is convicted for an offense ~~which~~ THAT is  
9 not a felony, the period of probation shall not exceed 2 years.  
10 Except as provided in section 2a of this chapter, if the  
11 defendant is convicted of a felony ~~which~~ THAT is not a major  
12 controlled substance offense, the period of probation shall not  
13 exceed 5 years.

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

21 (3) A defendant who is placed on probation pursuant to sec-  
22 tion ~~+(3)~~ 1(4) of this chapter shall be placed on probation for  
23 life. That sentence ~~may~~ SHALL be made subject to conditions of  
24 probation specified in section 3 of this chapter, INCLUDING THE  
25 PAYMENT OF A PROBATION SUPERVISION FEE AS PRESCRIBED IN SECTION  
26 3C OF THIS CHAPTER, and to revocation for violation of those

1 conditions, but the period of probation shall not be reduced  
2 other than by a revocation ~~which~~ THAT results in imprisonment.

3 (4) Subsections (1) and (3) do not apply to 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 the  
6 youth rehabilitation services act, Act No. 150 of the Public Acts  
7 of 1974, being sections 803.301 to 803.309 of the Michigan  
8 Compiled Laws.

9 Sec. 3. (1) The conditions of probation shall include ALL  
10 OF the following:

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

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

17 (c) That the probationer shall make a report to the proba-  
18 tion officer, either in person or in writing, monthly, or as  
19 often as the probation officer may require. This subdivision  
20 does not apply to a juvenile placed on probation and committed  
21 under section 1(3) or (4) of chapter IX to a state institution or  
22 agency described in the youth rehabilitation services act, Act  
23 No. 150 of the Public Acts of 1974, being sections 803.301 to  
24 803.309 of the Michigan Compiled Laws.

25 (d) That the probationer, if convicted of a felony, pay a  
26 probation ~~oversight~~ SUPERVISION fee ~~or perform community~~  
27 ~~service~~ as prescribed in section 3c OF THIS CHAPTER.

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

3 (a) Be imprisoned in the county jail for not more than 12  
4 months, at the time or intervals, which may be consecutive or  
5 nonconsecutive, within the probation as the court may determine.  
6 However, the period of confinement shall not exceed the maximum  
7 period of imprisonment provided for the offense charged if the  
8 maximum period is less than 12 months. This subdivision does not  
9 apply to a juvenile placed on probation and committed under sec-  
10 tion 1(3) or (4) of chapter IX to a state institution or agency  
11 described in Act No. 150 of the Public Acts of 1974. ~~, being~~  
12 ~~sections 803.301 to 803.309 of the Michigan Compiled Laws.~~

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

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

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

17 (e) Engage in community service.

18 (3) Subsection (2) ~~shall~~ DOES not apply to a person who is  
19 placed on probation for life pursuant to sections ~~1(3)~~ 1(4) and  
20 2(3) of this chapter. .

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

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

3 (a) The court shall not require a probationer to pay resti-  
4 tution or costs unless the probationer is or will be able to pay  
5 them during the term of probation. In determining the amount and  
6 method of payment of restitution and costs, the court shall take  
7 into account the financial resources of the probationer and the  
8 nature of the burden that payment of restitution or costs will  
9 impose, with due regard to his or her other obligations.

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

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

24 (7) If a probationer is ordered to pay restitution or costs  
25 as part of a sentence of probation, compliance with that order  
26 shall be a condition of probation. The court may revoke  
27 probation if the probationer fails to comply with the order and

1 if the probationer has not made a good faith effort to comply  
2 with the order. In determining whether to revoke probation, the  
3 court shall consider the probationer's employment status, earning  
4 ability, financial resources, and the willfulness of the  
5 probationer's failure to pay, and any other special circumstances  
6 that may have a bearing on the probationer's ability to pay. The  
7 proceedings provided for in this subsection shall be in addition  
8 to those provided in section 4 of this chapter. A juvenile  
9 placed on probation and committed under section 1(3) or (4) of  
10 chapter IX to a state institution or agency described in Act  
11 No. 150 of the Public Acts of 1974 ~~, being sections 803.301 to~~  
12 ~~803.309 of the Michigan Compiled Laws,~~ shall not be committed to  
13 the department of corrections for failure to comply with a resti-  
14 tution order.

15       Sec. 3c. (1) ~~Except as otherwise provided in~~  
16 ~~subsection (2), the~~ THE CIRCUIT court shall include in each  
17 order of probation for a defendant convicted of a ~~felony~~ CRIME  
18 that the department of corrections shall collect a probation  
19 ~~oversight~~ SUPERVISION fee of \$30.00 ~~per month from the~~  
20 ~~probationer. Amounts collected in excess of the amount needed to~~  
21 ~~support the operation of the probation and parole supervision~~  
22 ~~program as provided in the annual appropriations act shall be~~  
23 ~~deposited in the general fund.~~ MULTIPLIED BY THE NUMBER OF  
24 MONTHS OF PROBATION ORDERED, BUT NOT MORE THAN 60 MONTHS. THE  
25 FEE IS PAYABLE WHEN THE PROBATION ORDER IS ENTERED, BUT THE FEE  
26 MAY BE PAID IN MONTHLY INSTALLMENTS IF THE CIRCUIT COURT APPROVES  
27 INSTALLMENT PAYMENTS FOR THAT PROBATIONER. THE FEE SHALL BE

1 COLLECTED AS PROVIDED IN SECTION 25A OF ACT NO. 232 OF THE PUBLIC  
2 ACTS OF 1953, BEING SECTION 791.225A OF THE MICHIGAN COMPILED  
3 LAWS. A PERSON SHALL NOT BE SUBJECT TO MORE THAN 1 SUPERVISION  
4 FEE AT THE SAME TIME. IF A SUPERVISION FEE IS ORDERED FOR A  
5 PERSON FOR ANY MONTH OR MONTHS DURING WHICH THAT PERSON ALREADY  
6 IS SUBJECT TO A SUPERVISION FEE, THE COURT SHALL WAIVE THE FEE  
7 HAVING THE SHORTER REMAINING DURATION.

8 (2) A PROBATION OVERSIGHT FEE ORDERED BEFORE OCTOBER 1,  
9 1993, PURSUANT TO THIS SECTION AS IT EXISTED BEFORE THE 1993  
10 AMENDATORY ACT THAT AMENDED THIS SECTION, IS ENFORCEABLE AFTER  
11 OCTOBER 1, 1993 TO THE SAME EXTENT, AND IN THE SAME MANNER, AS A  
12 PROBATION SUPERVISION FEE ORDERED UNDER THIS SECTION.

13 ~~(2) The court may order that a probationer perform commu-~~  
14 ~~nity service for not more than 10 hours per month instead of~~  
15 ~~paying a probation oversight fee if, at the time the probation~~  
16 ~~order is entered, either of the following circumstances applies~~  
17 ~~to that probationer:~~

18 ~~(a) The imposition of the probation oversight fee would~~  
19 ~~cause the probationer's combined court ordered payments to exceed~~  
20 ~~50% of the probationer's monthly net income.~~

21 ~~(b) Even if the 50% limit in subdivision (a) is not~~  
22 ~~exceeded, it appears to the court that the probationer is not~~  
23 ~~able, or will not be able, to pay the probation oversight fee.~~  
24 ~~The court shall take into account the financial resources of the~~  
25 ~~probationer and the nature of the burden that payment of the pro-~~  
26 ~~bation oversight fee will impose, with due regard for the~~  
27 ~~probationer's other obligations.~~

1 ~~(3) At any time during the period covered by the probation~~  
2 ~~order, upon the motion of the department of corrections or the~~  
3 ~~probationer, the court may reduce the amount of the probation~~  
4 ~~oversight fee, or suspend payment of the probation oversight fee,~~  
5 ~~if it appears to the court that the circumstances prescribed in~~  
6 ~~subsection (2) apply to that probationer. If the court reduces~~  
7 ~~or suspends a probation oversight fee, the court shall require~~  
8 ~~instead that the probationer perform community service for not~~  
9 ~~more than 10 hours for each month the fee is reduced or~~  
10 ~~suspended. The court may reinstate a probation oversight fee~~  
11 ~~that has been decreased or suspended or may order that a proba-~~  
12 ~~tioner performing community service pursuant to subsection (2)~~  
13 ~~begin instead to pay a probation oversight fee, upon motion of~~  
14 ~~the department of corrections, if it appears to the court that~~  
15 ~~the circumstances prescribed in subsection (2) no longer apply.~~

16 (3) ~~(4)~~ A probation ~~oversight~~ SUPERVISION fee ~~required~~  
17 ~~under this section~~ shall be paid in the following order of pri-  
18 ority in relation to other court-ordered payments, if any, to  
19 which the probationer is subject:

20 (a) First, any family support order.

21 (b) Second, any order of restitution or compensation for  
22 crime victims.

23 (c) Third, ANY COURT-ORDERED PAYMENTS FOR COURT COSTS,  
24 FINES, OR ATTORNEY FEES.

25 (D) FOURTH, the probation ~~oversight~~ SUPERVISION fee.

26 (E) ~~(d) Fourth~~ FIFTH, any other court-ordered payments.

1       ~~(5) If a probationer is found by the court to have~~  
 2 ~~willfully defaulted in his or her obligation to pay a probation~~  
 3 ~~oversight fee, the unpaid probation oversight fee may be recov-~~  
 4 ~~ered by the department of treasury pursuant to section 30a of Act~~  
 5 ~~No. 122 of the Public Acts of 1941, being section 205.30a of the~~  
 6 ~~Michigan Compiled Laws; or the attorney general, on behalf of the~~  
 7 ~~state, may bring an action for the reimbursement to the state of~~  
 8 ~~unpaid probation oversight fees, and may use any remedy, interim~~  
 9 ~~order, or enforcement procedure allowed by law or court rule to~~  
 10 ~~enforce a judgment in favor of the state for that purpose.~~

11       (4) ~~(6)~~ This section does not apply to a juvenile placed  
 12 on probation and committed under section 1(3) or (4) of chapter  
 13 IX to a state institution or agency described in the youth reha-  
 14 bilitation services act, Act No. 150 of the Public Acts of 1974,  
 15 being sections 803.301 to 803.309 of the Michigan Compiled Laws.

16       Section 2. This amendatory act shall take effect October 1,  
 17 1993.

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

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

23       (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 4877 (request  
 24 no. 03634'93 a).

25       (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 4876 (request  
 26 no. 03634'93 b).