



SENATE BILL No. 496

March 11, 1993, 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 ALL
3 OF the following:

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

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

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

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 DETERMINES. However, the period of confinement shall not exceed
27 the maximum period of imprisonment provided for the offense

1 charged if the maximum period is less than 12 months. This
2 subdivision does not apply to a juvenile placed on probation and
3 committed under section 1(3) or (4) of chapter IX to a state
4 institution or agency described in Act No. 150 of the Public Acts
5 of 1974. ~~—, being sections 803.301 to 803.309 of the Michigan~~
6 ~~Compiled Laws.~~

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

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

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

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

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

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

24 (5) If the court imposes restitution or costs as part of a
25 sentence of probation, ALL OF the following ~~—shall—~~ apply:

26 (a) The court shall not require a probationer to pay
27 restitution or costs unless the probationer is or will be able to

1 pay them during the term of probation. In determining the amount
2 and method of payment of restitution and costs, the court shall
3 take into account the financial resources of the probationer and
4 the nature of the burden that payment of restitution or costs
5 will impose, with due regard to his or her other obligations.

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

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

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

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

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

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

16 (B) "COMMUNITY SERVICE" MEANS UNCOMPENSATED LABOR PERFORMED
17 BY AN OFFENDER FOR AN AGENCY TO ENHANCE THE PHYSICAL, INTELLECTU-
18 AL, OR MENTAL WELL-BEING, ENVIRONMENTAL QUALITY, OR SOCIAL WEL-
19 FARE OF THE COMMUNITY.

20 (C) "COURT" MEANS ANY COURT OF RECORD OF THIS STATE THAT HAS
21 THE AUTHORITY TO ORDER PROBATION, AND INCLUDES THE PROBATION
22 DEPARTMENT FOR THAT COURT AND ANY OTHER OF ITS OFFICES OR INSTRU-
23 MENTALITIES THAT ARE RESPONSIBLE FOR FUNDING OR SUPERVISING COM-
24 MUNITY SERVICE.

25 (D) "MAJOR TRAFFIC OFFENSE" MEANS A TRAFFIC OFFENSE THAT IS
26 A MISDEMEANOR AND FOR WHICH 4 OR MORE POINTS MAY BE IMPOSED UNDER
27 SECTION 320A OF THE MICHIGAN VEHICLE CODE, ACT NO. 300 OF THE

1 PUBLIC ACTS OF 1949, BEING SECTION 257.320A OF THE MICHIGAN
2 COMPILED LAWS.

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

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

15 (4) A PROBATIONER'S FAILURE TO PERFORM COMMUNITY SERVICE AS
16 ORDERED IS GROUNDS FOR REVOCATION OF PROBATION AS PROVIDED IN
17 SECTION 4 OF THIS CHAPTER.

18 (5) EXCEPT AS PROVIDED IN SUBSECTION (6), THE LENGTH OF A
19 TERM OF COMMUNITY SERVICE IS SUBJECT TO THE FOLLOWING LIMITS:

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

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

25 (C) FOR ANY OTHER MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
26 MORE THAN 6 MONTHS BUT NOT MORE THAN 1 YEAR, NOT MORE THAN 480
27 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 Section 2. This amendatory act shall not take effect unless
12 Senate Bill No. 497

13 of the 87th Legislature is enacted into law.