

HOUSE BILL No. 5647

March 16, 2004, Introduced by Rep. Howell and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 1 and 3 of chapter XI (MCL 771.1 and 771.3),
section 1 as amended by 2002 PA 666 and section 3 as amended by
2003 PA 101.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER XI

2

Sec. 1. (1) In all prosecutions for felonies or

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misdemeanors other than murder, treason, criminal sexual conduct

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in the first or third degree, armed robbery, ~~and~~ or major

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controlled substance offenses, ~~not described in subsection (4),~~

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if the defendant has been found guilty upon verdict or plea and

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the court determines that the defendant is not likely again to

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engage in an offensive or criminal course of conduct and that the

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public good does not require that the defendant suffer the

1 penalty imposed by law, the court may place the defendant on
2 probation under the charge and supervision of a probation
3 officer.

4 (2) In an action in which the court may place the defendant
5 on probation, the court may delay sentencing the defendant for
6 not more than 1 year to give the defendant an opportunity to
7 prove to the court his or her eligibility for probation or other
8 leniency compatible with the ends of justice and the defendant's
9 rehabilitation, **such as participation in a drug treatment court**
10 **under chapter 10A of the revised judicature act of 1961, 1961 PA**
11 **236, MCL 600.1060 to 600.1082.** When sentencing is delayed, the
12 court shall enter an order stating the reason for the delay upon
13 the court's records. The delay in passing sentence does not
14 deprive the court of jurisdiction to sentence the defendant at
15 any time during the period of delay.

16 (3) If a defendant is before the circuit court and the court
17 delays imposing sentence under subsection (2), the court shall
18 include in the delayed sentence order that the department of
19 corrections shall collect a supervision fee of not more than
20 \$135.00 multiplied by the number of months of delay ordered, but
21 not more than 12 months. The fee is payable when the delayed
22 sentence order is entered, but the fee may be paid in monthly
23 installments if the court approves installment payments for that
24 defendant. In determining the amount of the fee, the court shall
25 consider the defendant's projected income and financial
26 resources. The court shall use the following table of projected
27 monthly income in determining the amount of the fee to be

1 ordered:

2	<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
3	\$ 0-249.99	\$ 0.00
4	\$ 250.00-499.99	\$ 10.00
5	\$ 500.00-749.99	\$ 25.00
6	\$ 750.00-999.99	\$ 40.00
7	\$1,000.00 or more	5% of projected monthly
8		income, but not more than
9		\$135.00

10 The court may order a higher amount than indicated by the table,
 11 up to the maximum of \$135.00 multiplied by the number of months
 12 of delay ordered but not more than 12 months, if the court
 13 determines that the defendant has sufficient assets or other
 14 financial resources to warrant the higher amount. If the court
 15 orders a higher amount, the amount and the reasons for ordering
 16 that amount shall be stated in the court order. The fee shall be
 17 collected as provided in section 25a of the corrections code of
 18 1953, 1953 PA 232, MCL 791.225a. A person shall not be subject
 19 to more than 1 supervision fee at the same time. If a
 20 supervision fee is ordered for a person for any month or months
 21 during which that person already is subject to a supervision fee,
 22 the court shall waive the fee having the shorter remaining
 23 duration.

24 (4) This section does not apply to a juvenile placed on
 25 probation and committed under section 1(3) or (4) of chapter IX

1 to an institution or agency described in the youth rehabilitation
2 services act, 1974 PA 150, MCL 803.301 to 803.309.

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

5 (a) During the term of his or her probation, the probationer
6 shall not violate any criminal law of this state, the United
7 States, or another state or any ordinance of any municipality in
8 this state or another state.

9 (b) During the term of his or her probation, the probationer
10 shall not leave the state without the consent of the court
11 granting his or her application for probation.

12 (c) The probationer shall report to the probation officer,
13 either in person or in writing, monthly or as often as the
14 probation officer requires. This subdivision does not apply to a
15 juvenile placed on probation and committed under section 1(3) or
16 (4) of chapter IX to an institution or agency described in the
17 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
18 803.309.

19 (d) If convicted of a felony, the probationer shall pay a
20 probation supervision fee as prescribed in section 3c of this
21 chapter.

22 (e) The probationer shall pay restitution to the victim of
23 the defendant's course of conduct giving rise to the conviction
24 or to the victim's estate as provided in chapter IX. An order
25 for payment of restitution may be modified and shall be enforced
26 as provided in chapter IX.

27 (f) The probationer shall pay an assessment ordered under

1 section 5 of 1989 PA 196, MCL 780.905.

2 (g) The probationer shall pay the minimum state cost
3 prescribed by section 1j of chapter IX.

4 (h) If the probationer is required to be registered under the
5 sex offenders registration act, 1994 PA 295, MCL 28.721 to
6 28.732, the probationer shall comply with that act.

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

9 (a) Be imprisoned in the county jail for not more than 12
10 months, at the time or intervals, which may be consecutive or
11 nonconsecutive, within the probation as the court determines.
12 However, the period of confinement shall not exceed the maximum
13 period of imprisonment provided for the offense charged if the
14 maximum period is less than 12 months. The court may permit day
15 parole as authorized under 1962 PA 60, MCL 801.251 to 801.258.
16 The court may permit a work or school release from jail. This
17 subdivision does not apply to a juvenile placed on probation and
18 committed under section 1(3) or (4) of chapter IX to an
19 institution or agency described in the youth rehabilitation
20 services act, 1974 PA 150, MCL 803.301 to 803.309.

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

23 (c) Pay costs pursuant to subsection (6).

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

26 (e) Engage in community service.

27 (f) Agree to pay by wage assignment any restitution,

1 assessment, fine, or cost imposed by the court.

2 (g) Participate in inpatient or outpatient drug treatment **or**
3 **participate in a drug treatment court under chapter 10A of the**
4 **revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to**
5 **600.1082.**

6 (h) Participate in mental health treatment.

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

9 (j) Participate in a community corrections program.

10 (k) Be under house arrest.

11 (l) Be subject to electronic monitoring.

12 (m) Participate in a residential probation program.

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

16 (o) Be subject to conditions reasonably necessary for the
17 protection of 1 or more named persons.

18 (p) Reimburse the county for expenses incurred by the county
19 in connection with the conviction for which probation was ordered
20 as provided in the prisoner reimbursement to the county act, 1984
21 PA 118, MCL 801.81 to 801.93.

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

25 **(3) —(4)—** The court may impose other lawful conditions of
26 probation as the circumstances of the case require or warrant or
27 as in its judgment are proper.

1 (4) ~~—(5)—~~ If an order or amended order of probation contains
2 a condition for the protection of 1 or more named persons as
3 provided in subsection (2)(o), the court or a law enforcement
4 agency within the court's jurisdiction shall enter the order or
5 amended order into the law enforcement information network. If
6 the court rescinds the order or amended order or the condition,
7 the court shall remove the order or amended order or the
8 condition from the law enforcement information network or notify
9 that law enforcement agency and the law enforcement agency shall
10 remove the order or amended order or the condition from the law
11 enforcement information network.

12 (5) ~~—(6)—~~ If the court requires the probationer to pay costs
13 under subsection (2), the costs shall be limited to expenses
14 specifically incurred in prosecuting the defendant or providing
15 legal assistance to the defendant and supervision of the
16 probationer.

17 (6) ~~—(7)—~~ If the court imposes costs as part of a sentence of
18 probation, all of the following apply:

19 (a) The court shall not require a probationer to pay costs
20 under subsection (2) unless the probationer is or will be able to
21 pay them during the term of probation. In determining the amount
22 and method of payment of costs under subsection (2), the court
23 shall take into account the probationer's financial resources and
24 the nature of the burden that payment of costs will impose, with
25 due regard to his or her other obligations.

26 (b) A probationer who is required to pay costs under
27 subsection (1)(g) or subsection (2)(c) and who is not in willful

1 default of the payment of the costs may petition the sentencing
2 judge or his or her successor at any time for a remission of the
3 payment of any unpaid portion of those costs. If the court
4 determines that payment of the amount due will impose a manifest
5 hardship on the probationer or his or her immediate family, the
6 court may remit all or part of the amount due in costs or modify
7 the method of payment.

8 (7) ~~—(8)—~~ If a probationer is required to pay costs as part
9 of a sentence of probation, the court may require payment to be
10 made immediately or the court may provide for payment to be made
11 within a specified period of time or in specified installments.

12 (8) ~~—(9)—~~ If a probationer is ordered to pay costs as part of
13 a sentence of probation, compliance with that order shall be a
14 condition of probation. The court may revoke probation if the
15 probationer fails to comply with the order and if the probationer
16 has not made a good faith effort to comply with the order. In
17 determining whether to revoke probation, the court shall consider
18 the probationer's employment status, earning ability, and
19 financial resources, the willfulness of the probationer's failure
20 to pay, and any other special circumstances that may have a
21 bearing on the probationer's ability to pay. The proceedings
22 provided for in this subsection are in addition to those provided
23 in section 4 of this chapter.

24 Enacting section 1. This amendatory act does not take
25 effect unless Senate Bill No. 998 of the 92nd Legislature is
26 enacted into law.