

# SENATE BILL No. 1115

October 22, 2014, Introduced by Senators CASPERSON, JOHNSON, ANANICH, PROOS, YOUNG and ANDERSON and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
by amending section 3 of chapter XI (MCL 771.3), as amended by 2012  
PA 612, and by adding section 1m to chapter IX.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### CHAPTER IX

SEC. 1M. (1) IF A DEFENDANT ENTERS A PLEA OF GUILTY OR NOLO  
CONTENDERE OR IF A COURT DETERMINES AFTER A HEARING OR TRIAL THAT  
THE DEFENDANT IS GUILTY, AT THE TIME OF SENTENCING OR AT THE TIME  
ENTRY OF JUDGMENT OF GUILT IS DEFERRED PURSUANT TO STATUTE OR  
SENTENCING IS DELAYED PURSUANT TO STATUTE, BEFORE IMPOSING A FINE,  
COST, FEE, OR ASSESSMENT, THE COURT SHALL DETERMINE THE DEFENDANT'S  
ABILITY TO PAY ANY FINE, COST, FEE, OR ASSESSMENT IMPOSED.

(2) IN MAKING THE DETERMINATION REQUIRED UNDER SUBSECTION (1),

1 THE COURT SHALL CONSIDER ALL OF THE FOLLOWING:

2 (A) THE DEFENDANT'S INCOME FROM EMPLOYMENT OR ANY OTHER  
3 SOURCE.

4 (B) THE DEFENDANT'S RECEIPT OR ENTITLEMENT TO PUBLIC  
5 ASSISTANCE.

6 (C) PROPERTY OWNED BY THE DEFENDANT OR IN WHICH THE DEFENDANT  
7 HAS AN ECONOMIC INTEREST.

8 (D) THE DEFENDANT'S OUTSTANDING OBLIGATIONS.

9 (E) THE DEFENDANT'S LIVING EXPENSES.

10 (F) THE NUMBER AND AGES OF THE DEFENDANT'S DEPENDENTS.

11 (G) THE DEFENDANT'S EMPLOYMENT AND JOB TRAINING HISTORY.

12 (H) THE DEFENDANT'S LEVEL OF EDUCATION.

13 (3) A COURT SHALL NOT IMPOSE FINES, COSTS, FEES, OR  
14 ASSESSMENTS THAT A DEFENDANT WOULD BE UNABLE TO PAY WITHOUT  
15 SUBSTANTIAL FINANCIAL HARDSHIP TO THE DEFENDANT OR TO THE  
16 DEFENDANT'S DEPENDENTS. THERE IS A REBUTTABLE PRESUMPTION THAT  
17 THERE WOULD BE SUBSTANTIAL FINANCIAL HARDSHIP UNDER THIS SUBSECTION  
18 IF THE DEFENDANT RECEIVES PUBLIC ASSISTANCE, INCLUDING UNDER THE  
19 FOOD ASSISTANCE PROGRAM, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES,  
20 MEDICAID, OR DISABILITY INSURANCE, RESIDES IN PUBLIC HOUSING, OR  
21 EARNS AN INCOME LESS THAN 140% OF THE FEDERAL POVERTY GUIDELINE.  
22 THERE IS ALSO A REBUTTABLE PRESUMPTION THAT THERE WOULD BE  
23 SUBSTANTIAL FINANCIAL HARDSHIP UNDER THIS SUBSECTION IF THE  
24 DEFENDANT IS CURRENTLY SERVING A SENTENCE IN A CORRECTIONAL  
25 INSTITUTION OR IS RECEIVING RESIDENTIAL TREATMENT IN A MENTAL  
26 HEALTH OR SUBSTANCE USE FACILITY.

27 (4) A COURT THAT ORDERS THE PAYMENT OF FINES, COSTS, FEES, OR

1 ASSESSMENTS UNDER THIS SECTION SHALL ORDER THE PAYMENT TO BE MADE  
2 IN INSTALLMENT AMOUNTS, AT INTERVALS, AND OVER A PERIOD OF TIME  
3 THAT THE COURT DETERMINES WILL NOT RESULT IN SUBSTANTIAL FINANCIAL  
4 HARDSHIP TO THE DEFENDANT OR TO THE DEFENDANT'S DEPENDENTS,  
5 CONSIDERING THE FACTORS ENUMERATED IN SUBSECTION (2). THIS  
6 SUBSECTION DOES NOT PROHIBIT AN ORDER FOR A 1-TIME PAYMENT IF THE  
7 PAYMENT WILL NOT RESULT IN A SUBSTANTIAL FINANCIAL HARDSHIP TO THE  
8 DEFENDANT OR THE DEFENDANT'S DEPENDENTS.

9 (5) THIS SECTION DOES NOT LIMIT THE POWER OF A COURT TO ORDER  
10 A DEFENDANT TO PARTICIPATE IN COMMUNITY SERVICE, A WORK PROGRAM, OR  
11 OTHER SIMILAR ACTIVITY.

12 (6) THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

13 (A) VICTIM RESTITUTION UNDER SECTION 1A OF THIS CHAPTER OR THE  
14 WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL  
15 780.751 TO 780.834.

16 (B) AN ASSESSMENT FOR CRIME VICTIM'S RIGHTS SERVICES UNDER  
17 SECTION 5 OF 1989 PA 196, MCL 780.905.

18 (C) THE MINIMUM STATE COST UNDER SECTION 1J OF THIS CHAPTER OR  
19 UNDER SECTION 18M OF CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939  
20 PA 288, MCL 712A.18M.

21 (D) A SUPERVISION FEE IMPOSED UNDER SECTION 13 OF CHAPTER II  
22 OR SECTION 1, 3(9), OR 3C OF CHAPTER XI.

23 (E) THE COST OF SUBSTANCE ABUSE SCREENING ORDERED UNDER EITHER  
24 OF THE FOLLOWING:

25 (i) SECTION 625B OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL  
26 257.625B.

27 (ii) SECTION 7411 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL

1 333.7411.

2 (F) THE COST OF TESTING FOR CERTAIN DISEASES UNDER SECTION  
3 5129 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5129.

4 CHAPTER XI

5 Sec. 3. (1) ~~The~~**A** sentence of probation **UNDER THIS CHAPTER**  
6 shall include all of the following conditions:

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

11 (b) During the term of his or her probation, the probationer  
12 shall not leave ~~the~~**THIS** state without the consent of the court  
13 granting his or her application for probation.

14 (c) The probationer shall report to the probation officer,  
15 either in person or in writing, monthly or as often as the  
16 probation officer requires. This subdivision does not apply to a  
17 juvenile placed on probation and committed under section 1(3) or  
18 (4) of chapter IX to an institution or agency described in the  
19 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to  
20 803.309.

21 (d) If sentenced in circuit court, the probationer shall pay a  
22 probation supervision fee as prescribed in section 3c of this  
23 chapter.

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

1 chapter IX.

2 (f) The probationer shall pay an assessment ordered under  
3 section 5 of 1989 PA 196, MCL 780.905.

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

6 (h) If the probationer is required to be registered under the  
7 sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736,  
8 the probationer shall comply with that act.

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

11 (a) Be imprisoned in the county jail for not more than 12  
12 months at the time or intervals, ~~that~~ **WHICH** may be consecutive or  
13 nonconsecutive, within the probation as the court determines.  
14 However, the period of confinement shall not exceed the maximum  
15 period of imprisonment provided for the offense charged if the  
16 maximum period is less than 12 months. The court may permit day  
17 parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The  
18 court may, subject to sections 3d and 3e of this chapter, permit  
19 the individual to be released from jail to work at his or her  
20 existing job or to attend a school in which he or she is enrolled  
21 as a student. This subdivision does not apply to a juvenile placed  
22 on probation and committed under section 1(3) or (4) of chapter IX  
23 to an institution or agency described in the youth rehabilitation  
24 services act, 1974 PA 150, MCL 803.301 to 803.309.

25 (b) ~~Pay~~ **AS PROVIDED IN SECTION 1M OF CHAPTER IX, PAY**  
26 immediately or within the period of his or her probation a fine  
27 imposed when placed on probation.

(c) Pay costs pursuant to subsection (5).

(d) Pay any assessment ordered by the court **AS PROVIDED IN SECTION 1M OF CHAPTER IX**, other than an assessment described in subsection (1)(f).

(e) Engage in community service.

(f) Agree to pay by wage assignment any restitution ~~—OR,~~  
**SUBJECT TO SECTION 1M OF CHAPTER IX, ANY** assessment, fine, or cost imposed by the court.

(g) Participate in inpatient or outpatient drug treatment or, beginning January 1, 2005, participate in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1084.

(h) Participate in mental health treatment.

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

(j) Participate in a community corrections program.

(k) Be under house arrest.

(l) Be subject to electronic monitoring.

(m) Participate in a residential probation program.

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

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

(p) Reimburse the county for expenses incurred by the county in connection with the conviction for which probation was ordered as provided in the prisoner reimbursement to the county act, 1984

1 PA 118, MCL 801.81 to 801.93.

2 (q) Complete his or her high school education or obtain the  
3 equivalency of a high school education in the form of a general  
4 education development (GED) certificate.

5 (3) The court may impose other lawful conditions of probation  
6 as the circumstances of the case require or warrant or as in its  
7 judgment are proper.

8 (4) If an order or amended order of probation contains a  
9 condition for the protection of 1 or more named persons as provided  
10 in subsection (2)(o), the court or a law enforcement agency within  
11 the court's jurisdiction shall enter the order or amended order  
12 into the law enforcement information network. If the court rescinds  
13 the order or amended order or the condition, the court shall remove  
14 the order or amended order or the condition from the law  
15 enforcement information network or notify that law enforcement  
16 agency and the law enforcement agency shall remove the order or  
17 amended order or the condition from the law enforcement information  
18 network.

19 (5) If the court requires the probationer to pay costs under  
20 subsection (2), the costs shall be limited to expenses specifically  
21 incurred in prosecuting the defendant or providing legal assistance  
22 to the defendant and supervision of the probationer.

23 (6) If the court imposes costs under subsection (2) as part of  
24 a sentence of probation, all of the following apply:

25 (a) The court shall not require a probationer to pay costs  
26 under subsection (2) unless **THE COURT DETERMINES UNDER SECTION 1M**  
27 **OF CHAPTER IX THAT** the probationer is or will be able to pay them

1 **THE COSTS** during the term of probation. ~~In determining the amount~~  
2 ~~and method of payment of costs under subsection (2), the court~~  
3 ~~shall take into account the probationer's financial resources and~~  
4 ~~the nature of the burden that payment of costs will impose, with~~  
5 ~~due regard to his or her other obligations.~~

6 (b) A probationer who is required to pay costs under  
7 subsection (1)(g) or (2)(c) and who is not in willful default of  
8 the payment of the costs may petition the sentencing judge or his  
9 or her successor at any time for a remission of the payment of any  
10 unpaid portion of those costs. If the court determines that payment  
11 of the amount due will impose a manifest hardship on the  
12 probationer or his or her immediate family, the court may remit all  
13 or part of the amount due in costs or modify the method of payment.

14 (7) If a probationer is required to pay costs as part of a  
15 sentence of probation, the court may require payment to be made  
16 immediately or the court may provide for payment to be made within  
17 a specified period of time or in specified installments **AS PROVIDED**  
18 **IN SECTION 1M OF CHAPTER IX.**

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



1 ~~probationer's ability to pay.~~ **AS PROVIDED IN SECTION 10 OF CHAPTER**  
2 **IX.** The proceedings provided for in this subsection are in addition  
3 to those provided in section 4 of this chapter.

4 (9) If entry of judgment is deferred in the circuit court, the  
5 court shall require the individual to pay a supervision fee in the  
6 same manner as is prescribed for a delayed sentence under section  
7 1(3) of this chapter, shall require the individual to pay the  
8 minimum state costs prescribed by section 1j of chapter IX, and may  
9 impose, as applicable, the conditions of probation described in  
10 subsections (1), (2), and (3).

11 (10) If sentencing is delayed or entry of judgment is deferred  
12 in the district court or in a municipal court, the court shall  
13 require the individual to pay the minimum state costs prescribed by  
14 section 1j of chapter IX and may impose, as applicable, the  
15 conditions of probation described in subsections (1), (2), and (3).

16 Enacting section 1. This amendatory act does not take effect  
17 unless all of the following bills of the 97th Legislature are  
18 enacted into law:

19 (a) Senate Bill No. 1113.

20  
21 (b) Senate Bill No. 1114.