

SENATE BILL No. 1051

December 18, 2009, Introduced by Senator WHITMER 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 2006
PA 655.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER XI

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

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

(b) During the term of his or her probation, the probationer

1 shall not leave the state without the consent of the court granting
2 his or her application for probation.

3 (c) The probationer shall report to the probation officer,
4 either in person or in writing, monthly or as often as the
5 probation officer requires. This subdivision does not apply to a
6 juvenile placed on probation and committed under section 1(3) or
7 (4) of chapter IX to an institution or agency described in the
8 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
9 803.309.

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

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

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

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

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

25 **(I) A PROBATIONER DESCRIBED IN THIS SUBDIVISION SHALL NOT**
26 **PARTICIPATE IN ANY WAY IN ACTIVITIES TRADITIONALLY CONDUCTED DURING**
27 **HOLIDAYS WHEN INDIVIDUALS LESS THAN 18 YEARS OF AGE ARE PRESENT,**

1 INCLUDING, BUT NOT LIMITED TO, WEARING A COSTUME RELATED TO THE
2 TRADITIONS OF THE HOLIDAY OR DISPENSING CANDY. THIS SUBDIVISION
3 APPLIES TO ANY PROBATIONER WHO WAS CONVICTED OF A LISTED OFFENSE AS
4 THAT TERM IS DEFINED IN SECTION 2 OF THE SEX OFFENDERS REGISTRATION
5 ACT, 1994 PA 295, MCL 28.722, AND WHO IS PLACED ON PROBATION ON OR
6 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
7 SUBDIVISION. THIS SUBDIVISION DOES NOT APPLY TO ANY OF THE
8 FOLLOWING:

9 (i) A PROBATIONER WHO WAS PLACED ON PROBATION BEFORE THE
10 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION.

11 (ii) A PROBATIONER WHOSE TERMS OF PROBATION AUTHORIZE HIM OR
12 HER TO RESIDE WITH HIS OR HER FAMILY DURING THE TERM OF PROBATION.

13 (iii) A PARENT OR GUARDIAN OF A PERSON UNDER 18 YEARS OF AGE WHO
14 IS PRESENT IN THE PROBATIONER'S HOME WHERE NO OTHER INDIVIDUALS
15 LESS THAN 18 YEARS OF AGE ARE PRESENT, EXCEPT AS OTHERWISE PROVIDED
16 IN SUBPARAGRAPH (iv) .

17 (iv) A PROBATIONER ATTENDING A HOLIDAY GATHERING THAT IS
18 PRIMARILY ATTENDED BY THE PROBATIONER'S IMMEDIATE FAMILY. AS USED
19 IN THIS SUBPARAGRAPH, "IMMEDIATE FAMILY" MEANS ANY OF THE
20 FOLLOWING:

21 (A) THE PROBATIONER'S PARENT, SPOUSE, SIBLING, OR CHILD.

22 (B) THE SPOUSE OF THE PROBATIONER'S PARENT, SIBLING, OR CHILD.

23 (C) A CHILD OF THE PROBATIONER'S PARENT, SPOUSE, SIBLING, OR
24 CHILD.

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

27 (a) Be imprisoned in the county jail for not more than 12

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

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

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

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

17 (e) Engage in community service.

18 (f) Agree to pay by wage assignment any restitution,
19 assessment, fine, or cost imposed by the court.

20 (g) Participate in inpatient or outpatient drug treatment or,
21 beginning January 1, 2005, participate in a drug treatment court
22 under chapter 10A of the revised judicature act of 1961, 1961 PA
23 236, MCL 600.1060 to 600.1082.

24 (h) Participate in mental health treatment.

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

27 (j) Participate in a community corrections program.

1 (k) Be under house arrest.

2 (l) Be subject to electronic monitoring.

3 (m) Participate in a residential probation program.

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

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

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

13 (q) Complete his or her high school education or obtain the
14 equivalency of a high school education in the form of a general
15 education development (GED) certificate.

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

19 (4) If an order or amended order of probation contains a
20 condition for the protection of 1 or more named persons as provided
21 in subsection (2)(o), the court or a law enforcement agency within
22 the court's jurisdiction shall enter the order or amended order
23 into the law enforcement information network. If the court rescinds
24 the order or amended order or the condition, the court shall remove
25 the order or amended order or the condition from the law
26 enforcement information network or notify that law enforcement
27 agency and the law enforcement agency shall remove the order or

1 amended order or the condition from the law enforcement information
2 network.

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

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

9 (a) The court shall not require a probationer to pay costs
10 under subsection (2) unless the probationer is or will be able to
11 pay them during the term of probation. In determining the amount
12 and method of payment of costs under subsection (2), the court
13 shall take into account the probationer's financial resources and
14 the nature of the burden that payment of costs will impose, with
15 due regard to his or her other obligations.

16 (b) A probationer who is required to pay costs under
17 subsection (1)(g) or (2)(c) and who is not in willful default of
18 the payment of the costs may petition the sentencing judge or his
19 or her successor at any time for a remission of the payment of any
20 unpaid portion of those costs. If the court determines that payment
21 of the amount due will impose a manifest hardship on the
22 probationer or his or her immediate family, the court may remit all
23 or part of the amount due in costs or modify the method of payment.

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

1 (8) If a probationer is ordered to pay costs as part of a
2 sentence of probation, compliance with that order shall be a
3 condition of probation. The court may revoke probation if the
4 probationer fails to comply with the order and if the probationer
5 has not made a good faith effort to comply with the order. In
6 determining whether to revoke probation, the court shall consider
7 the probationer's employment status, earning ability, and financial
8 resources, the willfulness of the probationer's failure to pay, and
9 any other special circumstances that may have a bearing on the
10 probationer's ability to pay. The proceedings provided for in this
11 subsection are in addition to those provided in section 4 of this
12 chapter.

13 (9) If entry of judgment is deferred in the circuit court, the
14 court shall require the individual to pay a supervision fee in the
15 same manner as is prescribed for a delayed sentence under section
16 1(3) of this chapter, shall require the individual to pay the
17 minimum state costs prescribed by section 1j of chapter IX, and may
18 impose, as applicable, the conditions of probation described in
19 subsections (1), (2), and (3).

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