

HOUSE BILL No. 4304

February 15, 1991, Introduced by Reps. Pitoniak, Ciaramitaro, Leland, Kilpatrick, Wallace, Clack, DeMars, Baade, Weeks, Dalman, Gire, McNutt, Perry Bullard and Olshove and referred to the Committee on Corrections.

A bill to amend section 28 of chapter IX and section 3 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

section 28 of chapter IX as amended by Act No. 78 of the Public Acts of 1988 and section 3 of chapter XI as amended by Act No. 184 of the Public Acts of 1989, being sections 769.28 and 771.3 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 28 of chapter IX and section 3 of chap-
2 ter XI of Act No. 175 of the Public Acts of 1927, section 28 of
3 chapter IX as amended by Act No. 78 of the Public Acts of 1988
4 and section 3 of chapter XI as amended by Act No. 184 of the
5 Public Acts of 1989, being sections 769.28 and 771.3 of the
6 Michigan Compiled Laws, are amended to read as follows:

CHAPTER IX

1

2 Sec. 28. (1) ~~Notwithstanding any provision of law to the~~
3 ~~contrary, in~~ IN THE case of the commitment or sentence of a
4 person convicted of a crime or contempt of court to imprisonment
5 for a maximum of 1 year or less, the commitment or sentence shall
6 be made to the county jail, ~~of~~ MINIMUM SECURITY CAMP, LOCAL
7 COMMUNITY CORRECTIONS CENTER, OR A COMBINATION OF THOSE FACILI-
8 TIES, IN the county in which the person was convicted, and not to
9 a state ~~penal institution~~ CORRECTIONAL FACILITY.

10 (2) IN THE CASE OF A COMMITMENT OR SENTENCE OF A PERSON CON-
11 VICTED OF A CRIME TO IMPRISONMENT FOR A MAXIMUM OF 2 YEARS OR
12 LESS, THE COMMITMENT OR SENTENCE MAY BE MADE TO A COUNTY JAIL,
13 MINIMUM SECURITY CAMP, OR LOCAL COMMUNITY CORRECTIONS CENTER, OR
14 A COMBINATION OF THOSE FACILITIES, RATHER THAN A STATE CORREC-
15 TIONAL FACILITY. THIS SUBSECTION SHALL NOT APPLY UNLESS THE
16 STATE APPROPRIATES FUNDS TO PAY FOR THE EXPENSE OF MAINTAINING
17 PRISONERS COMMITTED UNDER THIS SUBSECTION.

18 (3) This section ~~shall~~ DOES not apply to a juvenile placed
19 on probation and committed to a state institution or agency
20 described in the youth rehabilitation services act, Act No. 150
21 of the Public Acts of 1974, being sections 803.301 to 803.309 of
22 the Michigan Compiled Laws, under section 1(3) or (4) of this
23 chapter.

24

CHAPTER XI

25 Sec. 3. (1) The conditions of probation shall include the
26 following:

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

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

7 (c) That the probationer shall make a report to the proba-
8 tion officer, either in person or in writing, monthly, or as
9 often as the probation officer may require. This subdivision
10 does not apply to a juvenile placed on probation and committed
11 under section 1(3) or (4) of chapter IX to a state institution or
12 agency described in the youth rehabilitation services act, Act
13 No. 150 of the Public Acts of 1974, being sections 803.301 to
14 803.309 of the Michigan Compiled Laws.

15 (d) That the probationer, if convicted of a felony, pay a
16 probation oversight fee or perform community service as pre-
17 scribed in section 3c.

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

20 (a) Be imprisoned in the county jail, MINIMUM SECURITY CAMP,
21 OR LOCAL COMMUNITY CORRECTIONS CENTER, OR A COMBINATION OF THOSE
22 FACILITIES for not more than ~~+2-~~ 24 months, at the time or
23 intervals, which may be consecutive or nonconsecutive, within the
24 probation as the court may determine. However, the period of
25 confinement shall not exceed the maximum period of imprisonment
26 provided for the offense charged if the maximum period is less
27 than ~~+2-~~ 24 months. This subdivision does not apply to a

1 juvenile placed on probation and committed under section 1(3) or
2 (4) of chapter IX to a state institution or agency described in
3 Act No. 150 of the Public Acts of 1974, being sections 803.301 to
4 803.309 of the Michigan Compiled Laws.

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

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

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

9 (e) Engage in community service.

10 (3) Subsection (2) shall not apply to a person who is placed
11 on probation for life pursuant to sections 1(3) and 2(3) of this
12 chapter.

13 (4) The court may impose other lawful conditions of proba-
14 tion as the circumstances of the case may require or warrant, or
15 as in its judgment may be proper. If the court requires the pro-
16 bationer to pay costs, the costs shall be limited to expenses
17 specifically incurred in prosecuting the defendant or providing
18 legal assistance to the defendant and probationary oversight of
19 the probationer.

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

22 (a) The court shall not require a probationer to pay resti-
23 tution or costs unless the probationer is or will be able to pay
24 them during the term of probation. In determining the amount and
25 method of payment of restitution and costs, the court shall take
26 into account the financial resources of the probationer and the

1 nature of the burden that payment of restitution or costs will
2 impose, with due regard to his or her other obligations.

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

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

17 (7) If a probationer is ordered to pay restitution or costs
18 as part of a sentence of probation, compliance with that order
19 shall be a condition of probation. The court may revoke proba-
20 tion if the probationer fails to comply with the order and if the
21 probationer has not made a good faith effort to comply with the
22 order. In determining whether to revoke probation, the court
23 shall consider the probationer's employment status, earning abil-
24 ity, financial resources, and the willfulness of the
25 probationer's failure to pay, and any other special circumstances
26 that may have a bearing on the probationer's ability to pay. The
27 proceedings provided for in this subsection shall be in addition

1 to those provided in section 4 of this chapter. A juvenile
2 placed on probation and committed under section 1(3) or (4) of
3 chapter IX to a state institution or agency described in Act
4 No. 150 of the Public Acts of 1974, being sections 803.301 to
5 803.309 of the Michigan Compiled Laws, shall not be committed to
6 the department of corrections for failure to comply with a resti-
7 tution order.

8 Section 2. This amendatory act shall not take effect unless
9 Senate Bill No. _____ or House Bill No. 4306 (request
10 no. 00987'91) of the 86th Legislature is enacted into law.