

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Jones, Rocca and Schuitmaker

ENROLLED SENATE BILL No. 1127

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 3 of chapter XI (MCL 771.3), as amended by 2006 PA 655, and by adding sections 3d and 3f to chapter XI.

The People of the State of Michigan enact:

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

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

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

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

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

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

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

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

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

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

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

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

(e) Engage in community service.

(f) Agree to pay by wage assignment any restitution, 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 PA 118, MCL 801.81 to 801.93.

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

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

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

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

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

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

(b) A probationer who is required to pay costs under subsection (1)(g) or (2)(c) and who is not in willful default of the payment of the costs may petition the sentencing judge or his or her successor at any time for a remission of the

payment of any unpaid portion of those costs. If the court determines that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

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

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

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

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

Sec. 3d. (1) Before an individual convicted of a felony is released from jail under section 3 of this chapter to attend work or school, the court, at the time of sentencing, shall order the department of corrections to verify that the individual is currently employed or currently enrolled in school, as applicable. However, the requirement for verification of employment or school enrollment by the department of corrections does not apply if the county sheriff has provided or will provide that verification. If required, the department of corrections shall provide this verification to the court within 7 days after the order is issued. The court shall not order the individual to be released to attend work or school unless the county sheriff or the department has determined that the individual is currently employed or currently enrolled in school, as applicable. The order of release shall provide that release is contingent at all times upon the approval of the county sheriff.

(2) As used in this section, "school" means any of the following:

- (a) A school of secondary education.
- (b) A community college, college, or university.
- (c) A state-licensed technical or vocational school or program.
- (d) A program that prepares the person for the general education development (GED) test.

Sec. 3f. (1) A person shall not knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device or knowingly interfere with a signal, impulse, or data that is being transmitted by or stored within an electronic monitoring device worn or otherwise used by an individual as a condition for any of the following:

- (a) Work release or house arrest.
- (b) Bond or other pretrial release.
- (c) Probation.
- (d) Parole.
- (e) Postrelease supervision or postconviction bond.
- (f) Release under section 3e.

(2) A person shall not knowingly and without authority request or solicit any other person to remove, destroy, or circumvent the operation of an electronic monitoring device or knowingly interfere with a signal, impulse, or data that is being transmitted by or stored within an electronic monitoring device worn or otherwise used by an individual as described in subsection (1).

(3) Subsections (1) and (2) do not apply to either of the following:

(a) The owner of the electronic monitoring device or his or her agent while performing proper maintenance and repairs on that device.

(b) A person who removes the electronic monitoring device at the direction of a physician due to an immediate medical necessity.

(4) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$4,000.00, or both.

(5) As used in this section, "electronic monitoring device" includes any electronic device or instrument that is used to track the location of a person or detect the presence of alcohol.

Enacting section 1. This amendatory act takes effect March 1, 2013.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1126 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor