

HOUSE BILL No. 4031

January 10, 2019, Introduced by Rep. Brann and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 13 of chapter II and sections 1 and 3c of
chapter XI (MCL 762.13, 771.1, and 771.3c), section 13 of chapter
II as amended by 2015 PA 33, section 1 of chapter XI as amended by
2006 PA 631, and section 3c of chapter XI as amended by 2002 PA
483.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER II

1
2 Sec. 13. (1) If an individual is assigned to the status of a
3 youthful trainee and the underlying charge is an offense punishable
4 by imprisonment for a term of more than 1 year, the court shall do
5 1 of the following:

6 (a) Except as provided in subsection (2), commit the

1 individual to the department of corrections for custodial
2 supervision and training for not more than 2 years. If the
3 individual is less than 21 years of age, he or she ~~shall~~**MUST** be
4 committed to an institutional facility designated by the department
5 for that purpose.

6 (b) Place the individual on probation for not more than 3
7 years subject to probation conditions as provided in section 3 of
8 chapter XI. The terms and conditions of probation may include
9 participation in a drug treatment court under chapter 10A of the
10 revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to
11 ~~600.1084~~**600.1088**.

12 (c) Commit the individual to the county jail for not more than
13 1 year.

14 (d) Except as provided in subsection (2), commit the
15 individual to the department of corrections under subdivision (a)
16 or to the county jail under subdivision (c), and then place the
17 individual on probation for not more than 1 year subject to
18 probation conditions as provided in section 3 of chapter XI.

19 (2) An individual assigned to the status of youthful trainee
20 ~~shall~~**MUST** not be committed to the department of corrections for
21 custodial supervision and training under subsection (1)(a) or (d)
22 if the underlying charge is for a violation of any of the
23 following:

24 (a) Article 7 of the public health code, 1978 PA 368, MCL
25 333.7101 to 333.7545.

26 (b) Section 110, 110a(4), 157n to 157v, 157w(1)(c), 227, 356,
27 357, 413, 530, or 535(3) or (7) of the Michigan penal code, 1931 PA

1 328, MCL 750.110, 750.110a, 750.157n to 750.157v, 750.157w,
2 750.227, 750.356, 750.357, 750.413, 750.530, and 750.535.

3 (3) If an individual is assigned to the status of youthful
4 trainee and the underlying charge is for an offense punishable by
5 imprisonment for 1 year or less, the court shall place the
6 individual on probation for not more than 2 years, subject to
7 probation conditions as provided in section 3 of chapter XI.

8 (4) An individual placed on probation under this section ~~shall~~
9 **MUST** be under the supervision of a probation officer. Upon
10 commitment to and receipt by the department of corrections, a
11 youthful trainee ~~shall be~~ **IS** subject to the direction of the
12 department of corrections. If an individual is placed on probation
13 following a commitment to the department of corrections under
14 subsection (1)(d), a youthful trainee ~~shall~~ **MUST** be reassigned to
15 the supervision of a probation officer.

16 (5) If an individual is committed to the county jail under
17 subsection (1)(c) or (d) or as a probation condition, the court may
18 authorize work release or release for educational purposes.

19 (6) ~~The~~ **EXCEPT AS PROVIDED IN SUBSECTION (7) AND SUBJECT TO**
20 **SUBSECTION (8), THE** court shall include in each order of probation
21 for an individual placed on probation under this section that the
22 department of corrections ~~shall~~ collect a probation supervision fee
23 of ~~not more than \$135.00~~ **\$30.00** multiplied by the number of months
24 of probation ordered, but not more than 36 months, **IF THE**
25 **INDIVIDUAL IS PLACED ON PROBATION SUPERVISION WITHOUT AN ELECTRONIC**
26 **MONITORING DEVICE. IF THE INDIVIDUAL IS PLACED ON PROBATION**
27 **SUPERVISION UNDER THIS SUBSECTION WITH AN ELECTRONIC MONITORING**

1 DEVICE, THE COURT SHALL INCLUDE IN ITS ORDER OF PROBATION THAT THE
 2 DEPARTMENT OF CORRECTIONS COLLECT A PROBATION SUPERVISION FEE OF
 3 \$60.00 MULTIPLIED BY THE NUMBER OF MONTHS OF PROBATION ORDERED, BUT
 4 NOT MORE THAN 36 MONTHS. The fee is payable when the probation
 5 order is entered, but the fee may be paid in monthly installments
 6 if the court approves installment payments for that probationer. In
 7 ~~determining the amount of the fee, the court shall consider the~~
 8 ~~probationer's projected income and financial resources. The court~~
 9 ~~shall use the following table of projected monthly income in~~
 10 ~~determining the amount of the fee to be ordered:~~

11	Projected Monthly Income	Amount of Fee
12	\$ 0-249.99	\$ 0.00
13	\$ 250.00-499.99	\$10.00
14	\$ 500.00-749.99	\$25.00
15	\$ 750.00-999.99	\$40.00
16	\$1,000.00 or more	5% of projected monthly
17		income, but not more than
18		\$135.00

19 ~~The court may order a higher amount than indicated by the~~
 20 ~~table, up to the maximum of \$135.00 multiplied by the number of~~
 21 ~~months of probation ordered but not more than 36 months, if the~~
 22 ~~court determines that the probationer has sufficient assets or~~
 23 ~~other financial resources to warrant the higher amount. If the~~
 24 ~~court orders a higher amount, the amount and the reasons for~~
 25 ~~ordering that amount shall be stated in the court order. The fee~~
 26 ~~shall **MUST** be collected as provided in section 25a of the~~
 27 ~~corrections code of 1953, 1953 PA 232, MCL 791.225a. A person shall~~

1 **MUST** not be subject to more than 1 supervision fee at the same
2 time. If a supervision fee is ordered for a person for any month or
3 months during which that person already is subject to a supervision
4 fee, the court shall waive the fee having the shorter remaining
5 duration.

6 (7) **THE COURT MAY WAIVE THE FEE REQUIRED TO BE COLLECTED UNDER**
7 **THIS SECTION IF THE COURT DETERMINES THE SUPERVISED INDIVIDUAL IS**
8 **INDIGENT.**

9 (8) **BEGINNING ON OCTOBER 1, 2019, AND EACH OCTOBER 1**
10 **THEREAFTER, THE STATE COURT ADMINISTRATIVE OFFICE SHALL DETERMINE**
11 **THE FEE AMOUNT FOR THE FEES THAT MUST BE COLLECTED UNDER THIS**
12 **SECTION TO ENSURE THAT THE TOTAL FUNDS COLLECTED BY THE DEPARTMENT**
13 **OF CORRECTIONS UNDER THIS SECTION ARE NOT LESS THAN THOSE COLLECTED**
14 **UNDER THIS SECTION IN THE FISCAL YEAR THAT IMMEDIATELY PRECEDED THE**
15 **YEAR THAT THE AMENDATORY ACT THAT ADDED THIS SUBSECTION BECOMES**
16 **EFFECTIVE.**

17 (9) **AS USED IN THIS SECTION, "ELECTRONIC MONITORING DEVICE"**
18 **INCLUDES ANY ELECTRONIC DEVICE OR INSTRUMENT THAT IS USED TO TRACK**
19 **THE LOCATION OF AN INDIVIDUAL, ENFORCE A CURFEW, OR DETECT THE**
20 **PRESENCE OF ALCOHOL IN AN INDIVIDUAL'S BODY.**

21 CHAPTER XI

22 Sec. 1. (1) In all prosecutions for felonies, misdemeanors, or
23 ordinance violations other than murder, treason, criminal sexual
24 conduct in the first or third degree, armed robbery, or major
25 controlled substance offenses, if the defendant has been found
26 guilty upon verdict or plea and the court determines that the
27 defendant is not likely again to engage in an offensive or criminal

1 course of conduct and that the public good does not require that
2 the defendant suffer the penalty imposed by law, the court may
3 place the defendant on probation under the charge and supervision
4 of a probation officer.

5 (2) In an action in which the court may place the defendant on
6 probation, the court may delay sentencing the defendant for not
7 more than 1 year to give the defendant an opportunity to prove to
8 the court his or her eligibility for probation or other leniency
9 compatible with the ends of justice and the defendant's
10 rehabilitation, such as participation in a drug treatment court
11 under chapter 10A of the revised judicature act of 1961, 1961 PA
12 236, MCL 600.1060 to ~~600.1082~~-**600.1088**. When sentencing is
13 delayed, the court shall enter an order stating the reason for the
14 delay upon the court's records. The delay in passing sentence does
15 not deprive the court of jurisdiction to sentence the defendant at
16 any time during the period of delay.

17 (3) ~~If~~**EXCEPT AS PROVIDED IN SUBSECTION (6) AND SUBJECT TO**
18 **SUBSECTION (5), IF** a defendant is before the circuit court and the
19 court delays imposing sentence under subsection (2), the court
20 shall include in the delayed sentence order that the department of
21 corrections ~~shall collect a supervision fee of not more than~~
22 ~~\$135.00~~**\$30.00** multiplied by the number of months of delay ordered,
23 but not more than 12 months, **IF THE INDIVIDUAL IS PLACED ON**
24 **SUPERVISION WITHOUT ELECTRONIC MONITORING. IF THE INDIVIDUAL IS**
25 **PLACED ON SUPERVISION WITH AN ELECTRONIC MONITORING DEVICE UNDER**
26 **THIS SUBSECTION, THE COURT SHALL INCLUDE IN THE DELAYED SENTENCE**
27 **ORDER THAT THE DEPARTMENT OF CORRECTIONS COLLECT A SUPERVISION FEE**

1 OF \$60.00 MULTIPLIED BY THE NUMBER OF MONTHS OF SUPERVISION ORDERED
 2 UNDER THE DELAY OF SENTENCE, BUT NOT MORE THAN 12 MONTHS. The fee
 3 is payable when the delayed sentence order is entered, but the fee
 4 may be paid in monthly installments if the court approves
 5 installment payments for that defendant. ~~In determining the amount~~
 6 ~~of the fee, the court shall consider the defendant's projected~~
 7 ~~income and financial resources. The court shall use the following~~
 8 ~~table of projected monthly income in determining the amount of the~~
 9 ~~fee to be ordered:~~

10	Projected Monthly Income	Amount of Fee
11	\$ 0-249.99	\$ 0.00
12	\$ 250.00-499.99	\$10.00
13	\$ 500.00-749.99	\$25.00
14	\$ 750.00-999.99	\$40.00
15	\$1,000.00 or more	5% of projected monthly
16		income, but not more than
17		\$135.00

18 ~~The court may order a higher amount than indicated by the~~
 19 ~~table, up to the maximum of \$135.00 multiplied by the number of~~
 20 ~~months of delay ordered but not more than 12 months, if the court~~
 21 ~~determines that the defendant has sufficient assets or other~~
 22 ~~financial resources to warrant the higher amount. If the court~~
 23 ~~orders a higher amount, the amount and the reasons for ordering~~
 24 ~~that amount shall be stated in the court order. The fee shall **MUST**~~
 25 ~~be collected as provided in section 25a of the corrections code of~~
 26 ~~1953, 1953 PA 232, MCL 791.225a. A person shall **MUST** not be subject~~
 27 ~~to more than 1 supervision fee at the same time. If a supervision~~

1 fee is ordered for a person for any month or months during which
2 that person already is subject to a supervision fee, the court
3 shall waive the fee having the shorter remaining duration.

4 (4) This section does not apply to a juvenile placed on
5 probation and committed under section 1(3) or (4) of chapter IX to
6 an institution or agency described in the youth rehabilitation
7 services act, 1974 PA 150, MCL 803.301 to 803.309.

8 (5) BEGINNING ON OCTOBER 1, 2019, AND EACH OCTOBER 1
9 THEREAFTER, THE STATE COURT ADMINISTRATIVE OFFICE SHALL DETERMINE
10 THE FEE AMOUNT FOR THE FEES THAT MUST BE COLLECTED UNDER THIS
11 SECTION TO ENSURE THAT THE TOTAL FUNDS COLLECTED BY THE DEPARTMENT
12 OF CORRECTIONS UNDER THIS SECTION ARE NOT LESS THAN THOSE COLLECTED
13 UNDER THIS SECTION IN THE FISCAL YEAR THAT IMMEDIATELY PRECEDED THE
14 YEAR THAT THE AMENDATORY ACT THAT ADDED THIS SUBSECTION BECOMES
15 EFFECTIVE.

16 (6) THE COURT MAY WAIVE THE FEE REQUIRED TO BE COLLECTED UNDER
17 THIS SECTION IF THE COURT DETERMINES THE SUPERVISED INDIVIDUAL IS
18 INDIGENT.

19 (7) AS USED IN THIS SECTION, "ELECTRONIC MONITORING DEVICE"
20 INCLUDES ANY ELECTRONIC DEVICE OR INSTRUMENT THAT IS USED TO TRACK
21 THE LOCATION OF AN INDIVIDUAL, ENFORCE A CURFEW, OR DETECT THE
22 PRESENCE OF ALCOHOL IN AN INDIVIDUAL'S BODY.

23 Sec. 3c. (1) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (2) AND
24 SUBJECT TO SUBSECTION (5), THE circuit court shall include in each
25 order of probation for a defendant convicted of a crime that the
26 department of corrections ~~shall~~ collect a probation supervision fee
27 of ~~not more than \$135.00~~ \$30.00 multiplied by the number of months

1 of probation ordered, but not more than 60 months, **IF A DEFENDANT**
 2 **IS PLACED ON PROBATION SUPERVISION WITHOUT AN ELECTRONIC MONITORING**
 3 **DEVICE. IF A DEFENDANT IS PLACED ON PROBATION SUPERVISION WITH AN**
 4 **ELECTRONIC MONITORING DEVICE UNDER THIS SUBSECTION, THE CIRCUIT**
 5 **COURT'S ORDER SHALL INCLUDE IN ITS ORDER THAT THE DEPARTMENT OF**
 6 **CORRECTIONS COLLECT A PROBATION SUPERVISION FEE OF \$60.00**
 7 **MULTIPLIED BY THE NUMBER OF MONTHS OF PROBATION ORDERED, BUT NOT**
 8 **MORE THAN 60 MONTHS.** The fee is payable when the probation order is
 9 entered, but the fee may be paid in monthly installments if the
 10 court approves installment payments for that probationer. ~~In~~
 11 ~~determining the amount of the fee, the court shall consider the~~
 12 ~~probationer's projected income and financial resources. The court~~
 13 ~~shall use the following table of projected monthly income in~~
 14 ~~determining the amount of the fee to be ordered:~~

15	Projected Monthly Income	Amount of Fee
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18	\$ 500.00-749.99	\$25.00
19	\$ 750.00-999.99	\$40.00
20	\$1,000.00 or more	5% of projected monthly
21		income, but not more than
22		\$135.00

23 ~~The court may order a higher amount than indicated by the~~
 24 ~~table, up to the maximum of \$135.00 multiplied by the number of~~
 25 ~~months of probation ordered, but not more than 60 months, if the~~
 26 ~~court determines that the probationer has sufficient assets or~~
 27 ~~other financial resources to warrant the higher amount. If the~~

1 ~~court orders a higher amount, the amount and the reasons for~~
2 ~~ordering that amount shall be stated in the court order.~~ The fee
3 ~~shall~~ **MUST** be collected as provided in section 25a of the
4 corrections code of 1953, 1953 PA 232, MCL 791.225a. A person ~~shall~~
5 **MUST** not be subject to more than 1 supervision fee at the same
6 time. If a supervision fee is ordered for a person for any month or
7 months during which that person already is subject to a supervision
8 fee, the court shall waive the fee having the shorter remaining
9 duration.

10 **(2) THE CIRCUIT COURT MAY WAIVE THE FEE REQUIRED TO BE**
11 **COLLECTED UNDER THIS SECTION IF THE COURT DETERMINES THAT THE**
12 **SUPERVISED INDIVIDUAL IS INDIGENT.**

13 **(3)** ~~(2)~~—If a person who is subject to a probation supervision
14 fee is also subject to any combination of fines, costs, restitution
15 orders, assessments, or payments arising out of the same criminal
16 proceeding, the allocation of money collected for those obligations
17 ~~shall~~ **MUST** be as otherwise provided in section 22 of chapter XV.

18 **(4)** ~~(3)~~—This section does not apply to a juvenile placed on
19 probation and committed under section 1(3) or (4) of chapter IX to
20 an institution or agency described in the youth rehabilitation
21 services act, 1974 PA 150, MCL 803.301 to 803.309.

22 **(5) BEGINNING ON OCTOBER 1, 2019, AND EACH OCTOBER 1**
23 **THEREAFTER, THE STATE COURT ADMINISTRATIVE OFFICE SHALL DETERMINE**
24 **THE FEE AMOUNT FOR THE FEES REQUIRED TO BE COLLECTED UNDER THIS**
25 **SECTION TO ENSURE THAT THE TOTAL FUNDS COLLECTED BY THE DEPARTMENT**
26 **OF CORRECTIONS UNDER THIS SECTION ARE NOT LESS THAN THOSE COLLECTED**
27 **UNDER THIS SECTION IN THE FISCAL YEAR THAT IMMEDIATELY PRECEDED THE**

1 YEAR THAT THE AMENDATORY ACT THAT ADDED THIS SUBSECTION BECOMES
2 EFFECTIVE.

3 (6) AS USED IN THIS SECTION, "ELECTRONIC MONITORING DEVICE"
4 INCLUDES ANY ELECTRONIC DEVICE OR INSTRUMENT THAT IS USED TO TRACK
5 THE LOCATION OF AN INDIVIDUAL, ENFORCE A CURFEW, OR DETECT THE
6 PRESENCE OF ALCOHOL IN AN INDIVIDUAL'S BODY.

7 Enacting section 1. This amendatory act takes effect 90 days
8 after the date it is enacted into law.

9 Enacting section 2. This amendatory act does not take effect
10 unless Senate Bill No. ____ or House Bill No. 4032 (request no.
11 00161'19 a) of the 100th Legislature is enacted into law.