

HOUSE BILL No. 4127

February 7, 1991, Introduced by Reps. Perry Bullard, Ciaramitaro, Clack, Pitoniak, Profit, Jondahl, Wozniak, Hertel, Saunders, DeMars, Murphy, Bennett, Gubow, Hunter, Bennane and Willis Bullard and referred to the Committee on Judiciary.

A bill to amend the title and section 12 of chapter IX, section 3 of chapter X, and sections 3 and 14 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

section 12 of chapter IX as amended by Act No. 90 of the Public Acts of 1988, section 3 of chapter X as amended by Act No. 205 of the Public Acts of 1981, section 3 of chapter XI as amended by Act No. 184 of the Public Acts of 1989, and section 14 of chapter XI as amended by Act No. 88 of the Public Acts of 1985, being sections 769.12, 770.3, 771.3, and 771.14 of the Michigan Compiled Laws; and to add sections 31, 32, 33, 34, 35, and 36 to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and section 12 of chapter IX, section
2 3 of chapter X, and sections 3 and 14 of chapter XI of Act

1 No. 175 of the Public Acts of 1927, section 12 of chapter IX as
2 amended by Act No. 90 of the Public Acts of 1988, section 3 of
3 chapter X as amended by Act No. 205 of the Public Acts of 1981,
4 section 3 of chapter XI as amended by Act No. 184 of the Public
5 Acts of 1989, and section 14 of chapter XI as amended by Act
6 No. 88 of the Public Acts of 1985, being sections 769.12, 770.3,
7 771.3, and 771.14 of the Michigan Compiled Laws, are amended and
8 sections 31, 32, 33, 34, 35, and 36 are added to chapter IX to
9 read as follows:

10 TITLE

11 An act to revise, consolidate, and codify the laws relating
12 to criminal procedure and to define the jurisdiction, powers, and
13 duties of courts, judges, and other officers of the court under
14 the provisions of this act; to provide laws relative to the
15 rights of persons accused of criminal offenses and ordinance vio-
16 lations; to provide for the arrest of persons charged with or
17 suspected of criminal offenses and ordinance violations; to pro-
18 vide for bail of persons arrested for or accused of criminal
19 offenses and ordinance violations; to provide for the examination
20 of persons accused of criminal offenses; to regulate the proce-
21 dure relative to grand juries, indictments, informations, and
22 proceedings before trial; to provide for trials of persons com-
23 plained of or indicted for criminal offenses and ordinance viola-
24 tions and to provide for the procedure in those trials; to pro-
25 vide for judgments and sentences of persons convicted of criminal
26 offenses and ordinance violations; TO ESTABLISH A SENTENCING
27 COMMISSION AND TO PRESCRIBE ITS POWERS AND DUTIES; to provide for

1 procedure relating to new trials and appeals in criminal and
 2 ordinance violation cases; to provide a uniform system of proba-
 3 tion throughout this state and the appointment of probation offi-
 4 cers; to prescribe the powers, duties, and compensation of proba-
 5 tion officers; to provide penalties for the violation of the
 6 duties of probation officers; to provide for procedure governing
 7 proceedings to prevent crime and proceedings for the discovery of
 8 crime; to provide for fees of officers, witnesses, and others in
 9 criminal and ordinance violation cases; to set forth miscella-
 10 neous provisions as to criminal procedure in certain cases; to
 11 provide penalties for the violation of certain provisions of this
 12 act; and to repeal all acts and parts of acts inconsistent with
 13 or contravening any of the provisions of this act.

14 CHAPTER IX

15 Sec. 12. (1) If a person has been convicted of 3 or more
 16 felonies, attempts to commit felonies, or both, whether the con-
 17 victions occurred in this state or WERE FOR FELONIES WHERE THE
 18 CONVICTION OCCURRED AND would have been for felonies in this
 19 state if the convictions obtained outside this state had been
 20 obtained in this state, and that person commits a subsequent
 21 felony within this state, the person shall be punished upon con-
 22 viction OF THE SUBSEQUENT FELONY AND RESENTENCING UNDER SECTION
 23 13 OF THIS CHAPTER as follows:

24 (a) If the subsequent felony is punishable upon a first con-
 25 viction by imprisonment for a maximum term of 5 years or more, or
 26 for life, ~~then~~ the court, except as otherwise provided in this
 27 section or section 1 of chapter ~~++~~ XI, may sentence the person

1 upon conviction of the fourth or subsequent offense to
2 imprisonment ~~in a state prison for the term or~~ life or for a
3 lesser term.

4 (b) If the subsequent felony is punishable upon a first con-
5 viction by imprisonment for a maximum term ~~which~~ THAT is less
6 than 5 years, ~~then~~ the court, except as otherwise provided in
7 this section or section 1 of chapter ~~++~~ XI, may sentence the
8 person to imprisonment for a term of 15 years or a lesser term.

9 (c) If the subsequent felony is a major controlled substance
10 offense, the person shall be punished as provided by part 74 of
11 the public health code, Act No. 368 of the Public Acts of 1978,
12 being sections 333.7401 to ~~333.7415~~ 333.7461 of the Michigan
13 Compiled Laws.

14 (2) If the court pursuant to this section imposes a sentence
15 of imprisonment for any term of years, the court shall fix the
16 length of both the minimum and maximum sentence within any speci-
17 fied limits in terms of years or A fraction ~~thereof~~ OF A YEAR,
18 and the sentence so imposed ~~shall be considered~~ IS an indeter-
19 minate sentence.

20 (3) ~~Offenders~~ AN OFFENDER sentenced under this section or
21 section 10 or 11 OF THIS CHAPTER for ~~offenses~~ AN OFFENSE other
22 than a major controlled substance offense ~~shall~~ IS not ~~be~~
23 eligible for parole before the expiration of the minimum term
24 fixed by the sentencing judge at the time of sentence, ~~without~~
25 ~~the written approval of the sentencing judge or a successor. A~~
26 ~~person to be punished under this section or section 10 or 11 need~~
27 ~~not have been indicted and convicted as a previous offender in~~

~~1 order to receive the increased punishment provided in this~~
~~2 section or section 11, but may be proceeded against as provided~~
~~3 in section 13.~~ LESS DISCIPLINARY CREDITS.

4 (4) This section and sections 10 and 11 ~~govern the length~~
5 ~~of sentence to be imposed for the commission of a subsequent~~
6 ~~felony and~~ are not in derogation of other provisions of law
7 ~~which~~ THAT permit or direct the imposition of a consecutive
8 sentence for a subsequent felony.

9 SEC. 31. AS USED IN THIS SECTION AND SECTIONS 32 TO 36 OF
10 THIS CHAPTER:

11 (A) "COMMISSION" MEANS THE SENTENCING COMMISSION CREATED IN
12 SECTION 33 OF THIS CHAPTER.

13 (B) "DEPARTURE" MEANS A SENTENCE THAT IS IMPOSED THAT IS NOT
14 WITHIN THE APPROPRIATE MINIMUM SENTENCE RANGE ESTABLISHED UNDER
15 THE SENTENCING GUIDELINES DEVELOPED PURSUANT TO SECTION 34 OF
16 THIS CHAPTER.

17 (C) "INTERMEDIATE SANCTION" MEANS PROBATION OR ANY SANCTION,
18 OTHER THAN IMPRISONMENT IN A STATE PRISON OR STATE REFORMATORY,
19 THAT MAY LAWFULLY BE IMPOSED. INTERMEDIATE SANCTION MAY INCLUDE,
20 BUT IS NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

21 (i) INPATIENT OR OUTPATIENT DRUG TREATMENT.

22 (ii) RESIDENTIAL PROBATION.

23 (iii) MENTAL HEALTH TREATMENT.

24 (iv) MENTAL HEALTH OR SUBSTANCE ABUSE COUNSELING.

25 (v) JAIL WITH WORK OR SCHOOL RELEASE.

26 (vi) JAIL.

- 1 (vii) PROBATION WITH JAIL.
- 2 (viii) PARTICIPATION IN A COMMUNITY CORRECTIONS PROGRAM.
- 3 (ix) COMMUNITY SERVICE.
- 4 (x) RESTITUTION.
- 5 (xi) A FINE.
- 6 (xii) COSTS.
- 7 (xiii) HOUSE ARREST.
- 8 (xiv) ELECTRONIC MONITORING.
- 9 (xv) PROBATION WITH SPECIAL ALTERNATIVE INCARCERATION.
- 10 (D) "OFFENDER CHARACTERISTICS" MEANS ONLY THE PRIOR CRIMINAL
- 11 RECORD OF AN OFFENDER.
- 12 (E) "OFFENSE CHARACTERISTICS" MEANS THE ELEMENTS OF THE
- 13 CRIME AND THE AGGRAVATING AND MITIGATING FACTORS RELATING TO THE
- 14 OFFENSE THAT THE COMMISSION DETERMINES ARE APPROPRIATE AND THAT
- 15 ARE CONSISTENT WITH SECTION 34 OF THIS CHAPTER.
- 16 (F) "PRIOR CRIMINAL RECORD" MEANS THE RECORDED CRIMINAL HIS-
- 17 TORY OF AN OFFENDER, INCLUDING ALL MISDEMEANOR AND FELONY CONVIC-
- 18 TIONS, PROBATION VIOLATIONS, AND JUVENILE ADJUDICATIONS FOR ACTS
- 19 THAT WOULD HAVE BEEN CRIMES IF COMMITTED BY AN ADULT.
- 20 SEC. 32. (1) WHEN SENTENCING GUIDELINES DEVELOPED PURSUANT
- 21 TO SECTION 34 OF THIS CHAPTER TAKE EFFECT AS PROVIDED IN THAT
- 22 SECTION, THE SENTENCING GUIDELINES PROMULGATED BY MICHIGAN
- 23 SUPREME COURT ORDER 1988-4 NO LONGER APPLY.
- 24 (2) EXCEPT FOR A DEPARTURE FROM THE APPROPRIATE SENTENCE
- 25 RANGE PROVIDED FOR UNDER SECTION 35(1) OF THIS CHAPTER, THE MINI-
- 26 MUM SENTENCE IMPOSED BY A COURT OF THIS STATE FOR A FELONY
- 27 COMMITTED ON OR AFTER THE EFFECTIVE DATE OF THE CONCURRENT

1 RESOLUTION OF THE LEGISLATURE FIRST APPROVING THE SENTENCING
2 GUIDELINES DEVELOPED BY THE SENTENCING COMMISSION PURSUANT TO
3 SECTION 34 OF THIS CHAPTER SHALL BE WITHIN THE APPROPRIATE SEN-
4 TENCE RANGE UNDER THE SENTENCING GUIDELINES IN EFFECT ON THE DATE
5 THE CRIME WAS COMMITTED.

6 (3) MULTIPLE CONVICTIONS ARISING OUT OF A SINGLE TRANSACTION
7 ARE CONSIDERED AS ONLY 1 CONVICTION FOR PURPOSES OF DETERMINING
8 THE APPROPRIATE SENTENCE RANGE FOR SENTENCING ON A CONVICTION
9 ARISING OUT OF THAT TRANSACTION.

10 (4) IF A CRIME HAS A MANDATORY PENALTY, THE COURT SHALL
11 IMPOSE THAT SENTENCE AND THIS SECTION AND SECTIONS 35 AND 36 OF
12 THIS CHAPTER SHALL NOT APPLY TO SENTENCING FOR THAT CRIME.

13 (5) IF A TERM OF INCARCERATION IS IMPOSED UNDER THIS SEC-
14 TION, THE COURT MAY ALSO ORDER THAT RESTITUTION, A FINE, OR
15 COSTS, OR ANY COMBINATION OF RESTITUTION, A FINE, OR COSTS, BE
16 PAID.

17 SEC. 33. (1) A SENTENCING COMMISSION IS CREATED IN THE LEG-
18 ISLATIVE COUNCIL. THE LEGISLATIVE COUNCIL SHALL PROVIDE THE COM-
19 MISSION WITH SUITABLE OFFICE SPACE, STAFF, AND NECESSARY
20 EQUIPMENT. THE COMMISSION SHALL CONSIST OF 11 MEMBERS APPOINTED
21 BY THE GOVERNOR, WITH THE ADVICE AND CONSENT OF THE SENATE, AS
22 FOLLOWS:

23 (A) THREE PERSONS WHO ARE JUDGES, 1 OF WHOM IS A CIRCUIT
24 COURT JUDGE AND 1 OF WHOM IS A JUDGE OF THE RECORDER'S COURT OF
25 THE CITY OF DETROIT.

26 (B) ONE PERSON WHO IS REPRESENTATIVE OF THE PROSECUTING
27 ATTORNEYS OF THIS STATE.

1 (C) ONE PERSON WHO IS REPRESENTATIVE OF CRIMINAL DEFENSE
2 ATTORNEYS.

3 (D) ONE PERSON WHO IS REPRESENTATIVE OF THE DEPARTMENT OF
4 CORRECTIONS.

5 (E) ONE PERSON WHO IS REPRESENTATIVE OF ADVOCATES OF ALTER-
6 NATIVES TO INCARCERATION.

7 (F) ONE PERSON WHO IS REPRESENTATIVE OF CRIME VICTIMS.

8 (G) THREE PERSONS WHO ARE REPRESENTATIVE OF THE GENERAL
9 PUBLIC, 1 OF WHOM SHALL BE CHAIRPERSON OF THE COMMISSION.

10 (2) THE MEMBERS OF THE COMMISSION SHALL BE APPOINTED FOR
11 TERMS OF 4 YEARS, EXCEPT THAT OF THE MEMBERS FIRST APPOINTED,
12 4 MEMBERS SHALL SERVE FOR 2 YEARS, 4 MEMBERS SHALL SERVE FOR
13 3 YEARS, AND 3 MEMBERS SHALL SERVE FOR 4 YEARS, AS DESIGNATED BY
14 THE GOVERNOR.

15 (3) A VACANCY ON THE COMMISSION CAUSED BY THE EXPIRATION OF
16 A TERM OR A RESIGNATION OR DEATH SHALL BE FILLED IN THE SAME
17 MANNER AS THE ORIGINAL APPOINTMENT. A MEMBER APPOINTED TO FILL A
18 VACANCY CAUSED BY A RESIGNATION OR DEATH SHALL BE APPOINTED FOR
19 THE BALANCE OF THE UNEXPIRED TERM.

20 (4) A MEMBER OF THE COMMISSION SHALL NOT RECEIVE A SALARY IN
21 THAT CAPACITY, BUT SHALL BE REIMBURSED FOR HIS OR HER REASONABLE
22 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF
23 DUTIES AS A MEMBER OF THE COMMISSION.

24 (5) THE BUSINESS OF THE COMMISSION SHALL BE CONDUCTED AT
25 PUBLIC MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT,
26 ACT NO. 267 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 15.261 TO
27 15.275 OF THE MICHIGAN COMPILED LAWS. A QUORUM CONSISTS OF

1 6 MEMBERS. ALL BUSINESS OF THE COMMISSION SHALL BE CONDUCTED BY
2 NOT LESS THAN A QUORUM. A WRITING PREPARED, OWNED, USED, IN THE
3 POSSESSION OF, OR RETAINED BY THE COMMISSION IN THE PERFORMANCE
4 OF AN OFFICIAL FUNCTION SHALL BE MADE AVAILABLE TO THE PUBLIC IN
5 COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT, ACT NO. 442 OF
6 THE PUBLIC ACTS OF 1976, BEING SECTIONS 15.231 TO 15.246 OF THE
7 MICHIGAN COMPILED LAWS.

8 SEC. 34. (1) THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

9 (A) COLLECT, PREPARE, ANALYZE, AND DISSEMINATE INFORMATION
10 REGARDING STATE AND LOCAL SENTENCING PRACTICES FOR FELONIES AND
11 THE UTILIZATION OF PRISONS AND JAILS. THE STATE COURT ADMINIS-
12 TRATOR SHALL CONTINUE TO COLLECT DATA REGARDING SENTENCING PRAC-
13 TICES AND SHALL PROVIDE THIS DATA TO THE COMMISSION.

14 (B) CONDUCT ON-GOING RESEARCH REGARDING THE IMPACT OF THE
15 SENTENCING GUIDELINES DEVELOPED PURSUANT TO THIS SECTION.

16 (C) COLLECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS
17 REGARDING THE POPULATIONS AND CAPACITIES OF STATE AND LOCAL COR-
18 RECTIONAL FACILITIES AND THE IMPACT OF THE SENTENCING GUIDELINES
19 ON THOSE POPULATIONS AND CAPACITIES.

20 (D) IN COOPERATION WITH THE STATE COURT ADMINISTRATOR, COL-
21 LECT, ANALYZE, AND COMPILE DATA REGARDING THE EFFECT OF SENTENC-
22 ING GUIDELINES ON THE CASE LOAD, DOCKET FLOW, AND CASE BACKLOG OF
23 THE TRIAL AND APPELLATE COURTS OF THIS STATE.

24 (E) DEVELOP SENTENCING GUIDELINES, INCLUDING SENTENCE RANGES
25 FOR THE MINIMUM SENTENCE FOR EACH OFFENSE AND INTERMEDIATE SANC-
26 TIONS AS PROVIDED IN SUBSECTION (2), AND MODIFICATIONS TO THE
27 GUIDELINES AS PROVIDED IN SUBSECTION (4). THE SENTENCING

1 GUIDELINES AND ANY MODIFICATIONS TO THE GUIDELINES DEVELOPED BY
2 THE COMMISSION UNDER THIS SECTION SHALL ACCOMPLISH ALL OF THE
3 FOLLOWING:

4 (i) REDUCE SENTENCING DISPARITIES BASED ON FACTORS OTHER
5 THAN OFFENSE CHARACTERISTICS AND OFFENDER CHARACTERISTICS AND
6 ENSURE THAT OFFENDERS WITH SIMILAR OFFENSE AND OFFENDER CHARAC-
7 TERISTICS RECEIVE SUBSTANTIALLY SIMILAR SENTENCES.

8 (ii) BE PROPORTIONATE TO THE SERIOUSNESS OF THE OFFENSE AND
9 THE OFFENDER'S PRIOR CRIMINAL RECORD. AN OFFENSE INVOLVING VIO-
10 LENCE AGAINST A PERSON SHALL BE CONSIDERED MORE SEVERE THAN OTHER
11 OFFENSES.

12 (iii) PROVIDE FOR PROTECTION OF THE PUBLIC.

13 (iv) CONSIDER THE LIKELIHOOD THAT THE CAPACITY OF STATE AND
14 LOCAL CORRECTIONAL FACILITIES WILL BE EXCEEDED.

15 (v) SPECIFY THE CIRCUMSTANCES UNDER WHICH A TERM OF IMPRIS-
16 ONMENT IS PROPER AND THE CIRCUMSTANCES UNDER WHICH INTERMEDIATE
17 SANCTIONS ARE PROPER.

18 (vi) ESTABLISH SENTENCE RANGES FOR IMPRISONMENT THAT ARE
19 WITHIN THE MINIMUM AND MAXIMUM SENTENCES ALLOWED BY LAW FOR THE
20 OFFENSES TO WHICH THE RANGES APPLY.

21 (vii) ESTABLISH SEPARATE SENTENCE RANGES FOR CONVICTIONS
22 UNDER THE HABITUAL OFFENDER PROVISIONS IN SECTIONS 10, 11, 12,
23 AND 13 OF THIS CHAPTER WHICH MAY INCLUDE AS AN AGGRAVATING
24 FACTOR, AMONG OTHER RELEVANT CONSIDERATIONS, THAT THE ACCUSED HAS
25 ENGAGED IN A PATTERN OF PROVEN OR ADMITTED CRIMINAL BEHAVIOR.

26 (F) ESTABLISH SENTENCE RANGES THAT THE COMMISSION CONSIDERS
27 APPROPRIATE.

1 (G) DEVELOP PAROLE GUIDELINES AS PROVIDED IN SECTION 33E OF
2 ACT NO. 232 OF THE PUBLIC ACTS OF 1953, BEING SECTION 791.233E OF
3 THE MICHIGAN COMPILED LAWS.

4 (2) THE SENTENCING GUIDELINES SHALL INCLUDE RECOMMENDED
5 INTERMEDIATE SANCTIONS FOR EACH SENTENCE RANGE IN WHICH THE REC-
6 OMMENDED MINIMUM SENTENCE IS LESS THAN 12 MONTHS.

7 (3) THE SENTENCING GUIDELINES DEVELOPED PURSUANT TO
8 SUBSECTION (1) SHALL BE SUBMITTED TO THE SECRETARY OF THE SENATE
9 AND THE CLERK OF THE HOUSE OF REPRESENTATIVES ON OCTOBER 1, 1992
10 IN THE FORM OF A CONCURRENT RESOLUTION TO APPROVE THE
11 GUIDELINES. THE CONCURRENT RESOLUTION SHALL BE REFERRED TO THE
12 JUDICIARY COMMITTEE OF EACH HOUSE. NOT LATER THAN 60 DAYS AFTER
13 REFERRAL, EACH COMMITTEE SHALL VOTE TO RECOMMEND APPROVAL OR DIS-
14 APPROVAL OF THE CONCURRENT RESOLUTION. NOT LATER THAN 90 DAYS
15 AFTER THE VOTE OF ITS RESPECTIVE JUDICIARY COMMITTEE, EACH HOUSE
16 SHALL TAKE A RECORD ROLL CALL VOTE ON THE CONCURRENT RESOLUTION.
17 APPROVAL OF THE SENTENCING GUIDELINES REQUIRES A VOTE IN FAVOR OF
18 THE CONCURRENT RESOLUTION BY A MAJORITY OF THE MEMBERS ELECTED TO
19 AND SERVING IN EACH HOUSE. IF BOTH THE SENATE AND HOUSE OF REP-
20 RESENTATIVES DO NOT APPROVE THE CONCURRENT RESOLUTION WITHIN THE
21 TIME LIMITS PROVIDED BY THIS SUBSECTION, THE COMMISSION SHALL
22 REVISE THE SENTENCING GUIDELINES WITHIN 240 DAYS AFTER THE DATE
23 SENTENCING GUIDELINES WERE PREVIOUSLY SUBMITTED TO THE
24 LEGISLATURE. REVISED SENTENCING GUIDELINES ARE SUBJECT TO THE
25 REQUIREMENTS OF SUBSECTIONS (1) AND (2) AND THE SAME APPROVAL
26 PROCESS AS THE SENTENCING GUIDELINES ORIGINALLY SUBMITTED
27 PURSUANT TO THIS SUBSECTION. UNTIL THE LEGISLATURE APPROVES

1 SENTENCING GUIDELINES, THE COMMISSION SHALL CONTINUE TO REVISE
2 AND RESUBMIT THE SENTENCING GUIDELINES TO THE LEGISLATURE AS PRO-
3 VIDED IN THIS SUBSECTION.

4 (4) THE COMMISSION MAY RECOMMEND MODIFICATIONS TO THE SEN-
5 TENCING GUIDELINES APPROVED BY THE LEGISLATURE UNDER
6 SUBSECTION (3). MODIFICATIONS OF THOSE SENTENCING GUIDELINES
7 SHALL NOT BE IMPLEMENTED SOONER THAN 2 YEARS AFTER THE EFFECTIVE
8 DATE OF THOSE SENTENCING GUIDELINES, UNLESS THE MODIFICATIONS ARE
9 BASED UPON OMISSIONS, TECHNICAL ERRORS, CHANGES IN THE LAW, OR
10 COURT DECISIONS. SUBSEQUENT MODIFICATIONS SHALL NOT BE IMPE-
11 MENTED SOONER THAN 2 YEARS AFTER PREVIOUS MODIFICATIONS OTHER
12 THAN MODIFICATIONS BASED UPON OMISSIONS, TECHNICAL ERRORS,
13 CHANGES IN THE LAW, OR COURT DECISIONS. ANY MODIFICATION PRO-
14 POSED BY THE COMMISSION AS PERMITTED UNDER THIS SUBSECTION IS
15 SUBJECT TO THE SAME APPROVAL PROCESS AS SET FORTH IN
16 SUBSECTION (3).

17 (5) SENTENCING GUIDELINES AND MODIFICATIONS APPROVED BY THE
18 LEGISLATURE SHALL BE PUBLISHED IN THE MICHIGAN REGISTER.

19 (6) FOR PURPOSES OF THIS SECTION, THE TOTAL CAPACITY OF
20 STATE CORRECTIONAL FACILITIES SHALL BE DETERMINED BY INCLUDING
21 THE CAPACITIES OF ALL PERMANENT AND TEMPORARY STATE CORRECTIONAL
22 FACILITIES IN USE AND ALL STATE CORRECTIONAL FACILITIES APPROVED
23 FOR CONSTRUCTION PURSUANT TO THE JOINT CAPITAL OUTLAY PROCESS AT
24 THE TIME OF THE DETERMINATION.

25 SEC. 35. (1) A COURT MAY DEPART FROM THE APPROPRIATE SEN-
26 TENCE RANGE ESTABLISHED UNDER THE SENTENCING GUIDELINES APPROVED
27 PURSUANT TO SECTION 34 IF THE COURT HAS A SUBSTANTIAL AND

1 COMPELLING REASON FOR THAT DEPARTURE. THE COURT SHALL NOT USE A
2 PERSON'S GENDER, RACE, ETHNICITY, ALIENAGE, NATIONAL ORIGIN,
3 LEGAL OCCUPATION, LACK OF EMPLOYMENT, REPRESENTATION BY APPOINTED
4 LEGAL COUNSEL, REPRESENTATION BY RETAINED LEGAL COUNSEL, APPEAR-
5 ANCE IN PROPRIA PERSONA, OR RELIGION TO DEPART FROM THE APPROPRI-
6 ATE SENTENCE RANGE. THE COURT SHALL NOT BASE A DEPARTURE ON AN
7 OFFENSE CHARACTERISTIC OR OFFENDER CHARACTERISTIC ALREADY TAKEN
8 INTO ACCOUNT IN DETERMINING THE APPROPRIATE SENTENCE RANGE. THE
9 COURT SHALL STATE THE REASON FOR THE DEPARTURE ON THE RECORD.

10 (2) IF THE TRIAL COURT IMPOSES ON A DEFENDANT A MINIMUM SEN-
11 TENCE THAT IS HIGHER OR MORE SEVERE THAN THE APPROPRIATE SENTENCE
12 RANGE, AS PART OF THE COURT'S ADVICE OF THE DEFENDANT'S RIGHT TO
13 APPEAL, THE COURT SHALL ADVISE THE DEFENDANT ORALLY AND IN WRIT-
14 ING OF THE RIGHT TO APPEAL THE SENTENCE PURSUANT TO THIS SECTION
15 ON THE GROUNDS THAT IT IS HIGHER OR MORE SEVERE THAN THE APPRO-
16 PRIATE SENTENCE RANGE.

17 (3) IF SENTENCE IS APPEALED BECAUSE IT IS HIGHER OR MORE
18 SEVERE THAN THE APPROPRIATE SENTENCE RANGE, THE COURT OF APPEALS
19 MAY EITHER AFFIRM THE SENTENCE OR REMAND IT PURSUANT TO
20 SUBSECTION (6). UPON REMAND, THE SENTENCE SHALL ONLY BE
21 DECREASED IN LENGTH OR MADE LESS SEVERE, OR BOTH.

22 (4) IF A PROSECUTING ATTORNEY APPEALS A MINIMUM SENTENCE
23 BECAUSE IT IS LOWER OR LESS SEVERE THAN THE APPROPRIATE SENTENCE
24 RANGE, THE COURT OF APPEALS MAY EITHER AFFIRM THE SENTENCE OR
25 REMAND IT PURSUANT TO SUBSECTION (6). UPON REMAND, THE SENTENCE
26 SHALL ONLY BE INCREASED IN LENGTH OR MADE MORE SEVERE, OR BOTH.

1 (5) ALL OF THE FOLLOWING SHALL BE PART OF THE RECORD FILED
2 FOR AN APPEAL OF A SENTENCE UNDER THIS SECTION:

3 (A) AN ENTIRE STENOGRAPHIC RECORD OF THE SENTENCING
4 PROCEEDINGS.

5 (B) THE PRESENTENCE INVESTIGATION REPORT.

6 (C) ANY OTHER REPORTS OR DOCUMENTS THE SENTENCING COURT USED
7 IN IMPOSING SENTENCE.

8 (6) IF, UPON A REVIEW OF THE RECORD, THE COURT OF APPEALS
9 FINDS THAT THE TRIAL COURT DID NOT HAVE A SUBSTANTIAL AND COMPEL-
10 LING REASON FOR DEPARTING FROM THE APPROPRIATE SENTENCE RANGE,
11 THE COURT SHALL REMAND THE MATTER TO THE SENTENCING JUDGE OR
12 ANOTHER TRIAL COURT JUDGE FOR RESENTENCING PURSUANT TO THIS
13 CHAPTER.

14 (7) TIME SERVED ON THE SENTENCE APPEALED UNDER THIS SECTION
15 SHALL BE CONSIDERED TIME SERVED ON ANY SENTENCE IMPOSED AFTER
16 REMAND.

17 (8) AN APPEAL OF A SENTENCE UNDER THIS SECTION DOES NOT STAY
18 THE EXECUTION OF THE SENTENCE.

19 SEC. 36. BEGINNING ON THE EFFECTIVE DATE OF THE CONCURRENT
20 RESOLUTION FIRST APPROVING THE SENTENCING GUIDELINES DEVELOPED
21 PURSUANT TO SECTION 34 OF THIS CHAPTER, IF THE RECOMMENDED MINI-
22 MUM SENTENCE FOR A DEFENDANT IS LESS THAN 12 MONTHS UNDER THE
23 SENTENCING GUIDELINES, THE COURT SHALL IMPOSE AN INTERMEDIATE
24 SANCTION UNLESS THE COURT STATES ON THE RECORD A SUBSTANTIAL AND
25 COMPELLING REASON TO IMPOSE A SENTENCE OF IMPRISONMENT.

CHAPTER X

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Sec. 3. (1) Subject to ~~the limitations imposed by~~ section 12 of this chapter AND SECTION 35 OF CHAPTER IX, an aggrieved party ~~shall have~~ HAS a right of appeal from a final judgment or trial order as follows:

(a) In a felony or misdemeanor case tried in the circuit court or recorder's court of the city of Detroit, there shall be a right of appeal to the court of appeals ~~—~~ within ~~60~~ 42 days after the entry of judgment or after the entry of an order appointing appellate counsel for an indigent defendant pursuant to supreme court rule, or within ~~60~~ 42 days after the entry of an order denying a motion for new trial where the motion is timely filed as prescribed in section 2(1) of this chapter.

(b) In a misdemeanor or ordinance violation case tried in the district court in districts other than the thirty-sixth district, there shall be a right of appeal to the circuit court in the county in which the misdemeanor or ordinance violation was committed, within ~~20~~ 21 days after the entry of judgment, or within ~~20~~ 21 days after entry of an order denying a motion for new trial where the motion is timely filed as prescribed in section 2(2) of this chapter.

(c) In a misdemeanor or ordinance violation case tried in the district court in the thirty-sixth district, or in a felony case over which the district court in the thirty-sixth district has jurisdiction before trial, there shall be a right of appeal to the recorder's court of the city of Detroit within ~~20~~ 21 days after the entry of judgment, or within ~~20~~ 21 days after

1 entry of an order denying a motion for a new trial where the
2 motion is timely filed as prescribed in section 2(2) of this
3 chapter.

4 (d) In a misdemeanor or ordinance violation case tried in a
5 municipal court, there shall be a right of appeal as provided in
6 chapter XIV.

7 (2) An appeal from an interlocutory judgment or order in a
8 felony, misdemeanor, or ordinance violation may be taken, in the
9 manner provided by supreme court rule, by application for leave
10 to appeal to the same court of which a final judgment in that
11 case would be appealable as a matter of right under subsection
12 (1).

13 (3) After expiration of the period prescribed in subsection
14 (1) for timely appeal, the appellate court may grant leave to
15 appeal from any order or judgment from which timely appeal would
16 have been available as of right, or by leave, upon conditions
17 prescribed by supreme court rule.

18 (4) Further appellate review of matters appealed to the cir-
19 cuit court under subsection (1)(b), (1)(d), or (2) may be had
20 only upon application for leave to appeal granted by the court of
21 appeals.

22 (5) Further appellate review of matters appealed to the
23 recorder's court under subsection (1)(c) may be had only upon
24 application for leave to appeal granted by the court of appeals.

25 (6) Further review of any matter appealed to the court of
26 appeals under this section may be had only upon application for
27 leave to appeal granted by the supreme court.

1 (7) An appeal as of right and an appeal by application for
2 leave to appeal provided for in this section shall be taken pur-
3 suant to and within the time prescribed by supreme court rule.

4 CHAPTER XI

5 Sec. 3. (1) The conditions of probation shall include ALL
6 OF the following:

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

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

13 (c) That the probationer shall make a report to the proba-
14 tion officer, either in person or in writing, monthly, or as
15 often as the probation officer may require. This subdivision
16 does not apply to a juvenile placed on probation and committed
17 under section 1(3) or (4) of chapter IX to a state institution or
18 agency described in the youth rehabilitation services act, Act
19 No. 150 of the Public Acts of 1974, being sections 803.301 to
20 803.309 of the Michigan Compiled Laws.

21 (d) That the probationer, if convicted of a felony, pay a
22 probation oversight fee or perform community service as pre-
23 scribed in section 3c OF THIS CHAPTER.

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

26 (a) Be imprisoned in the county jail for not more than 12
27 months, at the time or intervals, which may be consecutive or

1 nonconsecutive, within the probation as the court may determine.
2 However, the period of confinement shall not exceed the maximum
3 period of imprisonment provided for the offense charged if the
4 maximum period is less than 12 months. THE COURT MAY PERMIT A
5 WORK OR SCHOOL RELEASE FROM THE JAIL. This subdivision does not
6 apply to a juvenile placed on probation and committed under sec-
7 tion 1(3) or (4) of chapter IX to a state institution or agency
8 described in Act No. 150 of the Public Acts of 1974, being sec-
9 tions 803.301 to 803.309 of the Michigan Compiled Laws.

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

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

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

14 (e) Engage in community service.

15 (F) PARTICIPATE IN INPATIENT OR OUTPATIENT DRUG TREATMENT.

16 (G) PARTICIPATE IN MENTAL HEALTH TREATMENT.

17 (H) PARTICIPATE IN MENTAL HEALTH OR SUBSTANCE ABUSE
18 COUNSELING.

19 (I) PARTICIPATE IN A COMMUNITY CORRECTIONS PROGRAM.

20 (J) BE UNDER HOUSE ARREST.

21 (K) BE SUBJECT TO ELECTRONIC MONITORING.

22 (L) PARTICIPATE IN A RESIDENTIAL PROBATION PROGRAM.

23 (M) SATISFACTORILY COMPLETE A PROGRAM OF INCARCERATION IN A
24 SPECIAL ALTERNATIVE INCARCERATION UNIT AS PROVIDED IN SECTION 3B
25 OF THIS CHAPTER.

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

4 (4) The court may impose other lawful conditions of proba-
5 tion as the circumstances of the case may require or warrant, or
6 as in its judgment may be proper. If the court requires the pro-
7 bationer to pay costs, the costs shall be limited to expenses
8 specifically incurred in prosecuting the defendant or providing
9 legal assistance to the defendant and probationary oversight of
10 the probationer.

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

13 (a) The court shall not require a probationer to pay resti-
14 tution or costs unless the probationer is or will be able to pay
15 them during the term of probation. In determining the amount and
16 method of payment of restitution and costs, the court shall take
17 into account the financial resources of the probationer and the
18 nature of the burden that payment of restitution or costs will
19 impose, with due regard to his or her other obligations.

20 (b) A probationer who is required to pay restitution or
21 costs and who is not in willful default of the payment of the
22 restitution or costs, at any time, may petition the sentencing
23 judge or his or her successor for a remission of the payment of
24 any unpaid portion of restitution, costs, or both. If it appears
25 to the satisfaction of the court that payment of the amount due
26 will impose a manifest hardship on the probationer or his or her

1 immediate family, the court may remit all or part of the amount
2 due in restitution or costs or modify the method of payment.

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

8 (7) If a probationer is ordered to pay restitution or costs
9 as part of a sentence of probation, compliance with that order
10 ~~shall be~~ IS a condition of probation. The court may revoke
11 probation if the probationer fails to comply with the order and
12 if the probationer has not made a good faith effort to comply
13 with the order. In determining whether to revoke probation, the
14 court shall consider the probationer's employment status, earning
15 ability, AND financial resources, ~~and~~ the willfulness of the
16 probationer's failure to pay, and any other special circumstances
17 that may have a bearing on the probationer's ability to pay. The
18 proceedings provided for in this subsection ~~shall be~~ ARE in
19 addition to those provided in section 4 of this chapter. A juve-
20 nile placed on probation and committed under section 1(3) or (4)
21 of chapter IX to a state institution or agency described in Act
22 No. 150 of the Public Acts of 1974, being sections 803.301 to
23 803.309 of the Michigan Compiled Laws, shall not be committed to
24 the department of corrections for failure to comply with a resti-
25 tution order.

26 Sec. 14. (1) Before sentencing ~~any~~ A person charged with
27 a felony ~~—~~ and, if directed by the court, in any other case in

1 which ~~any~~ A person is charged with a misdemeanor within the
2 jurisdiction of the court, the probation officer shall inquire
3 into the antecedents, character, and circumstances of the person,
4 and shall report in writing to the court.

5 (2) A presentence investigation report prepared pursuant to
6 subsection (1) shall include all of the following:

7 (a) An evaluation of and a prognosis for the person's
8 adjustment in the community based on factual information con-
9 tained in the report.

10 (b) A written statement, if provided by the victim, of any
11 physical or emotional injury or economic loss suffered by any
12 victim of the course of conduct giving rise to the conviction for
13 which the person is being sentenced.

14 (c) If requested by a victim, any written impact statement
15 submitted by the victim pursuant to the crime victim's rights
16 act.

17 (d) A specific written recommendation for disposition based
18 on the evaluation and other information as prescribed by the
19 assistant director of the department of corrections in charge of
20 probation.

21 (e) A statement prepared by the prosecuting attorney on the
22 applicability of any consecutive sentencing provision.

23 (F) A SPECIFIC STATEMENT AS TO THE APPLICABILITY OF INTERME-
24 DIATE SANCTIONS, AS DEFINED IN SECTION 31 OF CHAPTER IX.

25 (G) FOR A PERSON TO BE SENTENCED PURSUANT TO THE SENTENCING
26 GUIDELINES APPROVED BY THE LEGISLATURE PURSUANT TO SECTION 34 OF
27 CHAPTER IX, ALL OF THE FOLLOWING:

1 (i) FOR EACH CONVICTION ENTERED, THE SENTENCE GRID THAT
2 CONTAINS THE APPROPRIATE SENTENCE RANGE.

3 (ii) THE COMPUTATION THAT DETERMINES THE APPROPRIATE SEN-
4 TENCE RANGE FOR EACH CONVICTION ENTERED.

5 (iii) THE RECOMMENDED SENTENCE.

6 (iv) THE DEFENDANT'S PRIOR CRIMINAL RECORD, INCLUDING ANY
7 CONVICTIONS FOR MISDEMEANORS OR FELONIES THAT ARE ON THE
8 DEFENDANT'S DRIVER'S RECORD. AS USED IN THIS SUBPARAGRAPH,
9 "PRIOR CRIMINAL RECORD" MEANS THE RECORDED CRIMINAL HISTORY OF AN
10 OFFENDER, INCLUDING ALL MISDEMEANOR AND FELONY CONVICTIONS, PRO-
11 BATION VIOLATIONS, AND JUVENILE ADJUDICATIONS FOR ACTS THAT WOULD
12 HAVE BEEN CRIMES IF COMMITTED BY AN ADULT.

13 (v) DIAGNOSTIC OPINIONS THAT ARE AVAILABLE AND NOT EXEMPTED
14 FROM DISCLOSURE UNDER SUBSECTION (3).

15 (3) The court may exempt from disclosure in the presentence
16 investigation report information or a diagnostic opinion ~~which~~
17 THAT might seriously disrupt a program of rehabilitation or
18 sources of information obtained on a promise of confidentiality.
19 If a part of the presentence investigation report is not dis-
20 closed, the court shall state on the record the reasons for its
21 action and inform the defendant and his or her attorney that
22 information has not been disclosed. The action of the court in
23 exempting information from disclosure ~~shall be~~ IS subject to
24 appellate review. Information or a diagnostic opinion exempted
25 from disclosure pursuant to this subsection shall be specifically
26 noted in the presentence investigation report.

1 (4) The court shall permit the prosecutor, the defendant's
2 attorney, and the defendant to review the presentence
3 investigation report ~~prior to~~ BEFORE sentencing.

4 (5) At the time of sentencing, either party may challenge,
5 on the record, the accuracy or relevancy of any information con-
6 tained in the presentence investigation report. The court may
7 order an adjournment to permit the parties to prepare a challenge
8 or a response to a challenge. If the court finds ON THE RECORD
9 that the challenged information is inaccurate or irrelevant, that
10 finding shall be made a part of the record, ~~and~~ the presentence
11 investigation report shall be amended, and the inaccurate or
12 irrelevant information shall be stricken accordingly before the
13 report is transmitted to the department of corrections.

14 (6) On appeal, the defendant's attorney, or the defendant if
15 proceeding pro se, shall be provided with a copy of the presen-
16 tence investigation report and any attachments ~~thereto~~ TO THE
17 PRESENTENCE INVESTIGATION REPORT with the exception of any infor-
18 mation exempted from disclosure, on the record ~~by~~ by the court
19 pursuant to subsection (3).

20 (7) If the person is committed to a state penal institution,
21 a copy or amended copy of the presentence investigation report
22 and, if a psychiatric examination of the person has been made for
23 the court, a copy of the psychiatric report shall accompany the
24 commitment papers. If the person is sentenced by fine or impris-
25 onment or placed on probation or other disposition of his or her
26 case is made by the court, a copy or amended copy of the
27 presentence investigation report, including a psychiatric

1 examination report made in the case, shall be filed with the
2 department of corrections.

3 (8) A prisoner under the jurisdiction of the department of
4 corrections shall be provided with a copy of any presentence
5 investigation report in the department's possession about that
6 prisoner, except for information exempted from disclosure pursu-
7 ant to subsection (3), not less than 30 days before a parole
8 hearing is held pursuant to section 35 of Act No. 232 of the
9 Public Acts of 1953, being section 791.235 of the Michigan
10 Compiled Laws.

11 Section 2. Section 12 of chapter IX and section 3 of chap-
12 ter XI of Act No. 175 of the Public Acts of 1927, as amended by
13 this amendatory act, and sections 31, 32, 33, and 34 of chapter
14 IX of Act No. 175 of the Public Acts of 1927, as added by this
15 amendatory act, shall take effect April 1, 1992.

16 Section 3. Section 3 of chapter X and section 14 of chapter
17 XI of Act No. 175 of the Public Acts of 1927, as amended by this
18 amendatory act, and sections 35 and 36 of chapter IX of Act
19 No. 175 of the Public Acts of 1927, as added by this amendatory
20 act, shall take effect on the effective date of the concurrent
21 resolution of the legislature first approving the sentencing
22 guidelines developed pursuant to section 34 of chapter IX of Act
23 No. 175 of the Public Acts of 1927.

24 Section 4. This amendatory act shall not take effect unless
25 Senate Bill No. _____ or House Bill No. 4130 (request
26 no. 00986'91 *) of the 86th Legislature is enacted into law.