



HOUSE BILL No. 4684

May 4, 1993, Introduced by Reps. Ciaramitaro, Nye, Cropsey, Wallace, Owen and Kilpatrick 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 IMPOSED THAT IS NOT WITHIN
14 THE RECOMMENDED MINIMUM SENTENCE RANGE ESTABLISHED UNDER THE SEN-
15 TENCING GUIDELINES DEVELOPED PURSUANT TO SECTION 34 OF THIS
16 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 INCLUDES,
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 THE COMMISSION DETERMINES ARE APPROPRIATE AND CONSISTENT
15 WITH THE CRITERIA DESCRIBED IN SECTION 34(1)(E) 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 PROVIDED FOR UNDER SECTION 35(1)
25 OF THIS CHAPTER, THE MINIMUM SENTENCE IMPOSED BY A COURT OF THIS
26 STATE FOR A FELONY COMMITTED ON OR AFTER THE EFFECTIVE DATE OF
27 THE ACT FIRST ENACTING INTO LAW THE SENTENCING GUIDELINES

1 DEVELOPED PURSUANT TO SECTION 34 OF THIS CHAPTER SHALL BE WITHIN
2 THE RECOMMENDED SENTENCE RANGE UNDER THE SENTENCING GUIDELINES IN
3 EFFECT ON THE DATE THE CRIME WAS COMMITTED.

4 (3) MULTIPLE CONVICTIONS ARISING OUT OF A SINGLE TRANSACTION
5 ARE CONSIDERED AS 1 CONVICTION FOR DETERMINING THE RECOMMENDED
6 SENTENCE RANGE FOR A CONVICTION ARISING OUT OF THAT TRANSACTION.

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

10 (5) IF A TERM OF INCARCERATION IS IMPOSED UNDER THIS SEC-
11 TION, THE COURT MAY ALSO ORDER ANY COMBINATION OF RESTITUTION, A
12 FINE, OR COST BE PAID.

13 SEC. 33. (1) A SENTENCING COMMISSION IS CREATED IN THE LEG-
14 ISLATIVE COUNCIL. THE LEGISLATIVE COUNCIL SHALL PROVIDE THE COM-
15 MISSION WITH SUITABLE OFFICE SPACE, STAFF, AND NECESSARY
16 EQUIPMENT. THE COMMISSION SHALL CONSIST OF 17 MEMBERS APPOINTED
17 BY THE CHAIRPERSON AND ALTERNATE CHAIRPERSON OF THE LEGISLATIVE
18 COUNCIL AS FOLLOWS:

19 (A) THREE INDIVIDUALS WHO ARE MEMBERS OF THE SENATE, 2 OF
20 WHOM ARE FROM THE MAJORITY PARTY AND 1 OF WHOM IS FROM THE MINOR-
21 ITY PARTY.

22 (B) THREE INDIVIDUALS WHO ARE MEMBERS OF THE HOUSE OF REPRE-
23 SENTATIVES, 2 OF WHOM ARE FROM THE MAJORITY PARTY AND 1 OF WHOM
24 IS FROM THE MINORITY PARTY.

25 (C) THREE INDIVIDUALS WHO ARE JUDGES, 1 OF WHOM IS A CIRCUIT
26 COURT JUDGE AND 1 OF WHOM IS A JUDGE OF THE RECORDER'S COURT OF
27 THE CITY OF DETROIT.

1 (D) ONE INDIVIDUAL WHO IS REPRESENTATIVE OF THE PROSECUTING
2 ATTORNEYS OF THIS STATE.

3 (E) ONE INDIVIDUAL WHO IS REPRESENTATIVE OF CRIMINAL DEFENSE
4 ATTORNEYS.

5 (F) ONE INDIVIDUAL WHO IS REPRESENTATIVE OF THE DEPARTMENT
6 OF CORRECTIONS.

7 (G) ONE INDIVIDUAL WHO IS REPRESENTATIVE OF ADVOCATES OF
8 ALTERNATIVES TO INCARCERATION.

9 (H) ONE INDIVIDUAL WHO IS REPRESENTATIVE OF CRIME VICTIMS.

10 (I) THREE INDIVIDUALS WHO ARE REPRESENTATIVE OF THE GENERAL
11 PUBLIC, 1 OF WHOM SHALL BE CHAIRPERSON OF THE COMMISSION.

12 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
13 MEMBERS OF THE COMMISSION SHALL BE APPOINTED FOR TERMS OF
14 4 YEARS. OF THE MEMBERS FIRST APPOINTED PURSUANT TO SUBSECTION
15 (1)(C) TO (I), 4 MEMBERS SHALL SERVE FOR 2 YEARS, 4 MEMBERS SHALL
16 SERVE FOR 3 YEARS, AND 3 MEMBERS SHALL SERVE FOR 4 YEARS, AS DES-
17 IGNATED BY THE CHAIRPERSON AND ALTERNATE CHAIRPERSON OF THE LEG-
18 ISLATIVE COUNCIL. THE MEMBERS OF THE COMMISSION APPOINTED PURSU-
19 ANT TO SUBSECTION (1)(A) AND (B) SHALL BE APPOINTED FOR TERMS OF
20 2 YEARS.

21 (3) A VACANCY ON THE COMMISSION CAUSED BY THE EXPIRATION OF
22 A TERM OR A RESIGNATION OR DEATH SHALL BE FILLED IN THE SAME
23 MANNER AS THE ORIGINAL APPOINTMENT. A MEMBER APPOINTED TO FILL A
24 VACANCY CAUSED BY A RESIGNATION OR DEATH SHALL BE APPOINTED FOR
25 THE BALANCE OF THE UNEXPIRED TERM.

26 (4) A MEMBER OF THE COMMISSION SHALL NOT RECEIVE A SALARY
27 FOR BEING A COMMISSION MEMBER, BUT SHALL BE REIMBURSED FOR HIS OR

1 HER REASONABLE ACTUAL AND NECESSARY EXPENSES INCURRED PERFORMING
2 HIS OR HER DUTIES AS A MEMBER OF THE COMMISSION.

3 (5) THE COMMISSION'S BUSINESS SHALL BE CONDUCTED AT PUBLIC
4 MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, ACT
5 NO. 267 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 15.261 TO
6 15.275 OF THE MICHIGAN COMPILED LAWS.

7 (6) A QUORUM CONSISTS OF 6 MEMBERS. ALL COMMISSION BUSINESS
8 SHALL BE CONDUCTED BY NOT LESS THAN A QUORUM.

9 (7) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF,
10 OR RETAINED BY THE COMMISSION IN PERFORMING AN OFFICIAL FUNCTION
11 SHALL BE MADE AVAILABLE TO THE PUBLIC IN COMPLIANCE WITH THE
12 FREEDOM OF INFORMATION ACT, ACT NO. 442 OF THE PUBLIC ACTS OF
13 1976, BEING SECTIONS 15.231 TO 15.246 OF THE MICHIGAN COMPILED
14 LAWS.

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

16 (A) COLLECT, PREPARE, ANALYZE, AND DISSEMINATE INFORMATION
17 REGARDING STATE AND LOCAL SENTENCING PRACTICES FOR FELONIES AND
18 THE UTILIZATION OF PRISONS AND JAILS. THE STATE COURT ADMINIS-
19 TRATOR SHALL CONTINUE TO COLLECT DATA REGARDING SENTENCING PRAC-
20 TICES AND SHALL PROVIDE THAT DATA TO THE COMMISSION.

21 (B) CONDUCT ONGOING RESEARCH REGARDING THE IMPACT OF THE
22 SENTENCING GUIDELINES DEVELOPED PURSUANT TO THIS SECTION.

23 (C) COLLECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS
24 REGARDING THE POPULATIONS AND CAPACITIES OF STATE AND LOCAL COR-
25 RECTIONAL FACILITIES AND THE IMPACT OF THE SENTENCING GUIDELINES
26 ON THOSE POPULATIONS AND CAPACITIES.

1 (D) IN COOPERATION WITH THE STATE COURT ADMINISTRATOR,
2 COLLECT, ANALYZE, AND COMPILE DATA REGARDING THE EFFECT OF
3 SENTENCING GUIDELINES ON THE CASE LOAD, DOCKET FLOW, AND CASE
4 BACKLOG OF THE TRIAL AND APPELLATE COURTS OF THIS STATE.

5 (E) DEVELOP SENTENCING GUIDELINES, INCLUDING SENTENCE RANGES
6 FOR THE MINIMUM SENTENCE FOR EACH OFFENSE AND INTERMEDIATE SANC-
7 TIONS AS PROVIDED IN SUBSECTION (2), AND MODIFICATIONS TO THE
8 GUIDELINES AS PROVIDED IN SUBSECTION (4). THE SENTENCING GUIDE-
9 LINES AND ANY MODIFICATIONS TO THE GUIDELINES SHALL ACCOMPLISH
10 ALL OF THE FOLLOWING:

11 (i) REDUCE SENTENCING DISPARITIES BASED ON FACTORS OTHER
12 THAN OFFENSE CHARACTERISTICS AND OFFENDER CHARACTERISTICS AND
13 ENSURE THAT OFFENDERS WITH SIMILAR OFFENSE AND OFFENDER CHARAC-
14 TERISTICS RECEIVE SUBSTANTIALLY SIMILAR SENTENCES.

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

19 (iii) PROVIDE FOR PROTECTION OF THE PUBLIC.

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

22 (v) SPECIFY THE CIRCUMSTANCES UNDER WHICH A TERM OF IMPRIS-
23 ONMENT IS PROPER AND THE CIRCUMSTANCES UNDER WHICH INTERMEDIATE
24 SANCTIONS ARE PROPER.

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

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

6 (F) ESTABLISH SENTENCE RANGES THE COMMISSION CONSIDERS
7 APPROPRIATE.

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

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

14 (3) THE COMMISSION SHALL SUBMIT THE SENTENCING GUIDELINES
15 DEVELOPED PURSUANT TO SUBSECTION (1) TO THE SECRETARY OF THE
16 SENATE AND THE CLERK OF THE HOUSE OF REPRESENTATIVES ON
17 OCTOBER 1, 1994. IF THE SENTENCING GUIDELINES ARE NOT ENACTED
18 INTO LAW BY THE LEGISLATURE WITHIN 90 DAYS AFTER THEY ARE SUBMIT-
19 TED TO THE SECRETARY OF THE SENATE AND THE CLERK OF THE HOUSE OF
20 REPRESENTATIVES, THE COMMISSION SHALL REVISE THE SENTENCING
21 GUIDELINES AND SUBMIT THE REVISED GUIDELINES TO THE SECRETARY OF
22 THE SENATE AND THE CLERK OF THE HOUSE OF REPRESENTATIVES WITHIN
23 180 DAYS AFTER THE DATE SENTENCING GUIDELINES WERE PREVIOUSLY
24 SUBMITTED. THE REVISED SENTENCING GUIDELINES ARE SUBJECT TO THE
25 REQUIREMENTS OF SUBSECTIONS (1) AND (2) AND TO THE SAME ENACTMENT
26 PROCESS AS THE SENTENCING GUIDELINES ORIGINALLY SUBMITTED
27 PURSUANT TO THIS SUBSECTION. UNTIL THE LEGISLATURE ENACTS

1 SENTENCING GUIDELINES INTO LAW, THE COMMISSION SHALL CONTINUE TO
2 REVISE AND RESUBMIT THE SENTENCING GUIDELINES TO THE LEGISLATURE
3 AS PROVIDED IN THIS SUBSECTION.

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

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

22 SEC. 35. (1) A COURT MAY DEPART FROM THE RECOMMENDED SEN-
23 TENCE RANGE ESTABLISHED UNDER THE SENTENCING GUIDELINES ENACTED
24 INTO LAW PURSUANT TO SECTION 34 IF THE COURT HAS A SUBSTANTIAL
25 AND COMPELLING REASON FOR THAT DEPARTURE. THE COURT SHALL NOT
26 USE A PERSON'S GENDER, RACE, ETHNICITY, ALIENAGE, NATIONAL
27 ORIGIN, LEGAL OCCUPATION, LACK OF EMPLOYMENT, REPRESENTATION BY

1 APPOINTED LEGAL COUNSEL, REPRESENTATION BY RETAINED LEGAL
2 COUNSEL, APPEARANCE IN PROPRIA PERSONA, OR RELIGION TO DEPART
3 FROM THE APPROPRIATE SENTENCE RANGE. THE COURT SHALL NOT BASE A
4 DEPARTURE ON AN OFFENSE CHARACTERISTIC OR OFFENDER CHARACTERISTIC
5 ALREADY TAKEN INTO ACCOUNT IN DETERMINING THE APPROPRIATE SEN-
6 TENCE RANGE. THE COURT SHALL STATE THE REASON FOR THE DEPARTURE
7 ON THE RECORD.

8 (2) IF THE TRIAL COURT IMPOSES ON A DEFENDANT A MINIMUM SEN-
9 TENCE THAT IS LONGER OR MORE SEVERE THAN THE RECOMMENDED SENTENCE
10 RANGE, AS PART OF THE COURT'S ADVICE OF THE DEFENDANT'S RIGHT TO
11 APPEAL, THE COURT SHALL ADVISE THE DEFENDANT ORALLY AND IN WRIT-
12 ING HE OR SHE HAS THE RIGHT TO APPEAL THE SENTENCE PURSUANT TO
13 THIS SECTION ON GROUNDS THAT IT IS LONGER OR MORE SEVERE THAN THE
14 RECOMMENDED SENTENCE RANGE.

15 (3) IF THE DEFENDANT APPEALS A SENTENCE BECAUSE IT IS LONGER
16 OR MORE SEVERE THAN THE RECOMMENDED SENTENCE RANGE, THE COURT OF
17 APPEALS MAY AFFIRM THE SENTENCE OR REMAND IT PURSUANT TO
18 SUBSECTION (6). UPON REMAND, THE SENTENCE SHALL ONLY BE
19 DECREASED IN LENGTH OR MADE LESS SEVERE, OR BOTH.

20 (4) IF A PROSECUTING ATTORNEY APPEALS A MINIMUM SENTENCE
21 BECAUSE IT IS SHORTER OR LESS SEVERE THAN THE RECOMMENDED SEN-
22 TENCE RANGE, THE COURT OF APPEALS MAY AFFIRM THE SENTENCE OR
23 REMAND IT PURSUANT TO SUBSECTION (6). UPON REMAND, THE SENTENCE
24 SHALL ONLY BE INCREASED IN LENGTH OR MADE MORE SEVERE, OR BOTH.

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

1 (A) AN ENTIRE RECORD OF THE SENTENCING PROCEEDINGS.

2 (B) THE PRESENTENCE INVESTIGATION REPORT.

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

5 (6) IF, UPON A REVIEW OF THE RECORD, THE COURT OF APPEALS
6 FINDS THE TRIAL COURT DID NOT HAVE A SUBSTANTIAL AND COMPELLING
7 REASON FOR DEPARTING FROM THE RECOMMENDED SENTENCE RANGE, THE
8 COURT SHALL REMAND THE MATTER TO THE SENTENCING JUDGE OR ANOTHER
9 TRIAL COURT JUDGE FOR RESENTENCING PURSUANT TO THIS CHAPTER.

10 (7) TIME SERVED ON THE SENTENCE APPEALED UNDER THIS SECTION
11 IS CONSIDERED TIME SERVED ON ANY SENTENCE IMPOSED AFTER REMAND.

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

14 SEC. 36. BEGINNING ON THE EFFECTIVE DATE OF THE ACT FIRST
15 ENACTING INTO LAW THE SENTENCING GUIDELINES DEVELOPED PURSUANT TO
16 SECTION 34 OF THIS CHAPTER, IF THE RECOMMENDED MINIMUM SENTENCE
17 FOR A DEFENDANT IS LESS THAN 12 MONTHS UNDER THE SENTENCING
18 GUIDELINES, THE COURT SHALL IMPOSE AN INTERMEDIATE SANCTION
19 UNLESS THE COURT STATES ON THE RECORD A SUBSTANTIAL AND COMPEL-
20 LING REASON TO IMPOSE A SENTENCE OF IMPRISONMENT.

21 CHAPTER X

22 Sec. 3. (1) Subject to ~~the limitations imposed by~~ section
23 12 of this chapter AND SECTION 35 OF CHAPTER IX, an aggrieved
24 party ~~shall have~~ HAS a right of appeal from a final judgment or
25 trial order as follows:

26 (a) In a felony or misdemeanor case tried in the circuit
27 court or recorder's court of the city of Detroit, there ~~shall~~

1 ~~be~~ IS a right of appeal to the court of appeals ~~—~~ within ~~60~~
2 42 days after the entry of judgment or after the entry of an
3 order appointing appellate counsel for an indigent defendant pur-
4 suant to supreme court rule, or within ~~60~~ 42 days after the
5 entry of an order denying a motion for new trial ~~where~~ IF the
6 motion is timely filed as prescribed in section 2(1) of this
7 chapter.

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

16 (c) In a misdemeanor or ordinance violation case tried in
17 the district court in the thirty-sixth district, or in a felony
18 case over which the district court in the thirty-sixth district
19 has jurisdiction before trial, there ~~shall be~~ IS a right of
20 appeal to the recorder's court of the city of Detroit within ~~20~~
21 21 days after the entry of judgment, or within ~~20~~ 21 days after
22 entry of an order denying a motion for a new trial ~~where~~ IF the
23 motion is timely filed as prescribed in section 2(2) of this
24 chapter.

25 (d) In a misdemeanor or ordinance violation case tried in a
26 municipal court, there ~~shall be~~ IS a right of appeal as
27 provided in chapter XIV.

1 (2) An appeal from an interlocutory judgment or order in a
2 felony, misdemeanor, or ordinance violation may be taken, in the
3 manner provided by supreme court rule, by application for leave
4 to appeal to the same court of which a final judgment in that
5 case would be appealable as a matter of right under subsection
6 (1).

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

12 (4) Further appellate review of matters appealed to the cir-
13 cuit court under subsection (1)(b) ~~---(1)(d)---~~ OR (D) or UNDER
14 SUBSECTION (2) may be had only upon application for leave to
15 appeal granted by the court of appeals.

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

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

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

25 CHAPTER XI

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

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

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

7 (c) ~~That the~~ THE probationer shall make a report to the
8 probation 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 for not more than 12
21 months, at the time or intervals, which may be consecutive or
22 nonconsecutive, within the probation as the court ~~may determine~~
23 DETERMINES. However, the period of confinement shall not exceed
24 the maximum period of imprisonment provided for the offense
25 charged if the maximum period is less than 12 months. THE COURT
26 MAY PERMIT A WORK OR SCHOOL RELEASE FROM JAIL. This subdivision
27 does not apply to a juvenile placed on probation and committed

1 under section 1(3) or (4) of chapter IX to a state institution or
2 agency described in Act No. 150 of the Public Acts of 1974. ~~7~~
3 ~~being sections 803.301 to 803.309 of the Michigan Compiled Laws.~~

4 (b) Pay immediately or within the period of his or her pro-
5 bation ~~7~~ a fine imposed ~~at the time of being~~ WHEN placed on
6 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 (F) PARTICIPATE IN INPATIENT OR OUTPATIENT DRUG TREATMENT.

11 (G) PARTICIPATE IN MENTAL HEALTH TREATMENT.

12 (H) PARTICIPATE IN MENTAL HEALTH OR SUBSTANCE ABUSE
13 COUNSELING.

14 (I) PARTICIPATE IN A COMMUNITY CORRECTIONS PROGRAM.

15 (J) BE UNDER HOUSE ARREST.

16 (K) BE SUBJECT TO ELECTRONIC MONITORING.

17 (L) PARTICIPATE IN A RESIDENTIAL PROBATION PROGRAM.

18 (M) SATISFACTORILY COMPLETE A PROGRAM OF INCARCERATION IN A
19 SPECIAL ALTERNATIVE INCARCERATION UNIT AS PROVIDED IN SECTION 3B
20 OF THIS CHAPTER.

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

24 (4) The court may impose other lawful conditions of proba-
25 tion as the circumstances of the case may require or warrant, or
26 as in its judgment may be proper. If the court requires the
27 probationer to pay costs, the costs shall be limited to expenses

1 specifically incurred in prosecuting the defendant or providing
2 legal assistance to the defendant and probationary oversight of
3 the probationer.

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

6 (a) The court shall not require a probationer to pay resti-
7 tution or costs unless the probationer is or will be able to pay
8 ~~them~~ THAT RESTITUTION OR THOSE COSTS during the term of
9 probation. In determining the amount and method of payment of
10 restitution ~~and~~ OR costs, the court shall take into account the
11 financial resources of the probationer and the nature of the
12 burden that payment of restitution or costs will impose, with due
13 regard to his or her other obligations.

14 (b) A probationer who is required to pay restitution or
15 costs and who is not in willful default of the payment of the
16 restitution or costs, at any time, may petition the sentencing
17 judge or his or her successor for a remission of the payment of
18 any unpaid portion of restitution, costs, or both. If ~~it~~
19 ~~appears to the satisfaction of~~ the court ~~that~~ DETERMINES pay-
20 ment of the amount due will impose a manifest hardship on the
21 probationer or his or her immediate family, the court may remit
22 all or part of the amount due in restitution or costs or modify
23 the method of payment.

24 (6) If a probationer is required to pay restitution or costs
25 as part of a sentence of probation, the court may require payment
26 to be made immediately or the court may provide for payment to be

1 made within a specified period of time or in specified
2 installments.

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

21 Sec. 14. (1) Before ~~sentencing any~~ A person charged with
22 a felony ~~, and,~~ IS SENTENCED OR, if directed by the court, in
23 any other case in which ~~any~~ A person is charged with a misde-
24 meanor within the jurisdiction of the court, the probation offi-
25 cer shall inquire into the antecedents, character, and circum-
26 stances of the person, and shall report in writing to the court.

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

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

6 (b) A written statement, if provided by the victim, of any
7 physical or emotional injury or economic loss suffered by ~~any~~
8 EACH victim of the course of conduct giving rise to the convic-
9 tion for which the person is being sentenced.

10 (c) If requested by a victim, any written impact statement
11 submitted by the victim pursuant to the crime victim's rights
12 act.

13 (d) A specific written recommendation for disposition based
14 on the evaluation and other information as prescribed by the
15 assistant director of the department of corrections in charge of
16 probation.

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

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

21 (G) FOR A PERSON TO BE SENTENCED PURSUANT TO THE SENTENCING
22 GUIDELINES ENACTED INTO LAW PURSUANT TO SECTION 34 OF CHAPTER IX,
23 ALL OF THE FOLLOWING:

24 (i) FOR EACH CONVICTION ENTERED, THE SENTENCE GRID THAT CON-
25 TAINS THE RECOMMENDED SENTENCE RANGE.

26 (ii) THE COMPUTATION THAT DETERMINES THE RECOMMENDED
27 SENTENCE RANGE FOR EACH CONVICTION ENTERED.

1 (iii) THE RECOMMENDED SENTENCE.

2 (iv) THE DEFENDANT'S PRIOR CRIMINAL RECORD, INCLUDING ANY

3 CONVICTIONS FOR MISDEMEANORS OR FELONIES THAT ARE ON THE

4 DEFENDANT'S DRIVER'S RECORD. AS USED IN THIS SUBPARAGRAPH,

5 "PRIOR CRIMINAL RECORD" MEANS THE RECORDED CRIMINAL HISTORY OF AN

6 OFFENDER, INCLUDING ALL MISDEMEANOR AND FELONY CONVICTIONS, PRO-

7 BATION VIOLATIONS, AND JUVENILE ADJUDICATIONS FOR ACTS THAT WOULD

8 HAVE BEEN CRIMES IF COMMITTED BY AN ADULT.

9 (v) DIAGNOSTIC OPINIONS THAT ARE AVAILABLE AND NOT EXEMPTED

10 FROM DISCLOSURE UNDER SUBSECTION (3).

11 (3) The court may exempt from disclosure in the presentence

12 investigation report information or a diagnostic opinion ~~which~~

13 THAT might seriously disrupt a program of rehabilitation or

14 sources of information obtained on a promise of confidentiality.

15 If a part of the presentence investigation report is not dis-

16 closed, the court shall state on the record the reasons for its

17 action and inform the defendant and his or her attorney that

18 information has not been disclosed. The action of the court in

19 exempting information from disclosure ~~shall be~~ IS subject to

20 appellate review. Information or a diagnostic opinion exempted

21 from disclosure pursuant to this subsection shall be specifically

22 noted in the presentence investigation report.

23 (4) The court shall permit the prosecutor, the defendant's

24 attorney, and the defendant to review the presentence investiga-

25 tion report ~~prior to~~ BEFORE sentencing.

26 (5) At the time of sentencing, either party may challenge,

27 on the record, the accuracy or relevancy of any information

1 contained in the presentence investigation report. The court may
2 order an adjournment to permit the parties to prepare a challenge
3 or a response to a challenge. If the court finds ~~that~~ ON THE
4 RECORD the challenged information is inaccurate or irrelevant,
5 that finding shall be made a part of the record, ~~and~~ the pre-
6 sentence investigation report shall be amended, and the inaccu-
7 rate or irrelevant information shall be stricken accordingly
8 before the report is transmitted to the department of
9 corrections.

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

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

26 (8) A prisoner under the jurisdiction of the department of
27 corrections shall be provided with a copy of any presentence

1 investigation report in the department's possession about that
2 prisoner, except for information exempted from disclosure pursu-
3 ant to subsection (3), not less than 30 days before a parole
4 hearing is held pursuant to section 35 of Act No. 232 of the
5 Public Acts of 1953, being section 791.235 of the Michigan
6 Compiled Laws.

7 Section 2. Section 12 of chapter IX and section 3 of chap-
8 ter XI of Act No. 175 of the Public Acts of 1927, as amended by
9 this amendatory act, and sections 31, 32, 33, and 34 of chapter
10 IX of Act No. 175 of the Public Acts of 1927, as added by this
11 amendatory act, shall take effect April 1, 1994.

12 Section 3. Section 3 of chapter X and section 14 of chapter
13 XI of Act No. 175 of the Public Acts of 1927, as amended by this
14 amendatory act, and sections 35 and 36 of chapter IX of Act
15 No. 175 of the Public Acts of 1927, as added by this amendatory
16 act, shall take effect on the effective date of the act of the
17 legislature first enacting into law the sentencing guidelines
18 developed pursuant to section 34 of chapter IX of Act No. 175 of
19 the Public Acts of 1927.

20 Section 4. This amendatory act shall not take effect unless
21 Senate Bill No. ____ or House Bill No. ____ (request
22 no. 01862'93) of the 87th Legislature is enacted into law.