



HOUSE BILL No. 4782

May 13, 1993, Introduced by Reps. Nye, Ciaramitaro, Lowe, Bodem, Dalman, Dolan, Bobier, Voorhees, Brackenridge, London and McNutt 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
3 No. 175 of the Public Acts of 1927, section 12 of chapter IX as
4 amended by Act No. 90 of the Public Acts of 1988, section 3 of
5 chapter X as amended by Act No. 205 of the Public Acts of 1981,
6 section 3 of chapter XI as amended by Act No. 184 of the Public
7 Acts of 1989, and section 14 of chapter XI as amended by Act
8 No. 88 of the Public Acts of 1985, being sections 769.12, 770.3,
9 771.3, and 771.14 of the Michigan Compiled Laws, are amended and
10 sections 31, 32, 33, 34, 35, and 36 are added to chapter IX to
11 read as follows:

TITLE

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

1 criminal offenses and ordinance violations; TO ESTABLISH A
2 SENTENCING COMMISSION AND TO PRESCRIBE ITS POWERS AND DUTIES; to
3 provide for procedure relating to new trials and appeals in crim-
4 inal and ordinance violation cases; to provide a uniform system
5 of probation throughout this state and the appointment of proba-
6 tion officers; to prescribe the powers, duties, and compensation
7 of probation officers; to provide penalties for the violation of
8 the duties of probation officers; to provide for procedure gov-
9 erning proceedings to prevent crime and proceedings for the dis-
10 covery of crime; to provide for fees of officers, witnesses, and
11 others in criminal and ordinance violation cases; to set forth
12 miscellaneous provisions as to criminal procedure in certain
13 cases; to provide penalties for the violation of certain provi-
14 sions of this act; and to repeal all acts and parts of acts
15 inconsistent with or contravening any of the provisions of this
16 act.

17 CHAPTER IX

18 Sec. 12. (1) If a person has been convicted of ANY COMBINA-
19 TION OF 3 or more felonies ~~—~~ OR attempts to commit felonies,
20 ~~or both,~~ whether the convictions occurred in this state or
21 ATTEMPTS TO COMMIT FELONIES would have been for felonies in this
22 state if ~~the convictions obtained outside this state had been~~
23 obtained in this state, ~~and that person~~ commits a subsequent
24 felony within this state, the person shall be punished upon con-
25 viction OF THE SUBSEQUENT FELONY AND RESENTENCING UNDER SECTION
26 13 OF THIS CHAPTER as follows:

1 (a) If the subsequent felony is punishable upon a first
 2 conviction by imprisonment for a maximum term of 5 years or more,
 3 or for life, ~~then~~ the court, except as otherwise provided in
 4 this section or section 1 of chapter ~~++~~ XI, may sentence the
 5 person upon conviction of the fourth or subsequent offense to
 6 imprisonment ~~in a state prison~~ for ~~the term or~~ life or for a
 7 lesser term.

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

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

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

24 (3) ~~Offenders~~ AN OFFENDER sentenced under this section or
 25 section 10 or 11 OF THIS CHAPTER for ~~offenses~~ AN OFFENSE other
 26 than a major controlled substance offense ~~shall~~ IS not ~~be~~
 27 eligible for parole before the expiration of the minimum term

1 fixed by the sentencing judge at the time of sentence, ~~without~~
2 ~~the written approval of the sentencing judge or a successor. A~~
3 ~~person to be punished under this section or section 10 or 11 need~~
4 ~~not have been indicted and convicted as a previous offender in~~
5 ~~order to receive the increased punishment provided in this sec-~~
6 ~~tion or section 11, but may be proceeded against as provided in~~
7 ~~section 13.~~ LESS DISCIPLINARY CREDITS.

8 (4) This section and sections 10 and 11 ~~govern the length~~
9 ~~of sentence to be imposed for the commission of a subsequent~~
10 ~~felony and~~ OF THIS CHAPTER are not in derogation of other provi-
11 sions of law ~~which~~ THAT permit or direct the imposition of a
12 consecutive sentence for a subsequent felony.

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

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

17 (B) "DEPARTURE" MEANS A SENTENCE IMPOSED THAT IS NOT WITHIN
18 THE RECOMMENDED MINIMUM SENTENCE RANGE ESTABLISHED UNDER THE SEN-
19 TENCING GUIDELINES DEVELOPED PURSUANT TO SECTION 34 OF THIS
20 CHAPTER.

21 (C) "INTERMEDIATE SANCTION" MEANS PROBATION OR ANY SANCTION,
22 OTHER THAN IMPRISONMENT IN A STATE PRISON OR STATE REFORMATORY,
23 THAT MAY LAWFULLY BE IMPOSED. INTERMEDIATE SANCTION INCLUDES,
24 BUT IS NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

25 (i) INPATIENT OR OUTPATIENT DRUG TREATMENT.

26 (ii) RESIDENTIAL PROBATION.

(iii) MENTAL HEALTH TREATMENT.

(iv) MENTAL HEALTH OR SUBSTANCE ABUSE COUNSELING.

(v) JAIL WITH WORK OR SCHOOL RELEASE.

(vi) JAIL.

(vii) PROBATION WITH JAIL.

(viii) PARTICIPATION IN A COMMUNITY CORRECTIONS PROGRAM.

(ix) COMMUNITY SERVICE.

(x) RESTITUTION.

(xi) A FINE.

(xii) COSTS.

(xiii) HOUSE ARREST.

(xiv) ELECTRONIC MONITORING.

(xv) PROBATION WITH SPECIAL ALTERNATIVE INCARCERATION.

(D) "OFFENDER CHARACTERISTICS" MEANS ONLY THE PRIOR CRIMINAL RECORD OF AN OFFENDER.

(E) "OFFENSE CHARACTERISTICS" MEANS THE ELEMENTS OF THE CRIME AND THE AGGRAVATING AND MITIGATING FACTORS RELATING TO THE OFFENSE THE COMMISSION DETERMINES ARE APPROPRIATE AND CONSISTENT WITH THE CRITERIA DESCRIBED IN SECTION 34(1)(E) OF THIS CHAPTER.

(F) "PRIOR CRIMINAL RECORD" MEANS THE RECORDED CRIMINAL HISTORY OF AN OFFENDER, INCLUDING ALL MISDEMEANOR AND FELONY CONVICTIONS, PROBATION VIOLATIONS, AND JUVENILE ADJUDICATIONS FOR ACTS THAT WOULD HAVE BEEN CRIMES IF COMMITTED BY AN ADULT.

SEC. 32. (1) WHEN SENTENCING GUIDELINES DEVELOPED PURSUANT TO SECTION 34 OF THIS CHAPTER TAKE EFFECT AS PROVIDED IN THAT SECTION, THE SENTENCING GUIDELINES PROMULGATED BY MICHIGAN SUPREME COURT ORDER 1988-4 NO LONGER APPLY.

1 (2) EXCEPT FOR A DEPARTURE PROVIDED FOR UNDER SECTION 35(1)
2 OF THIS CHAPTER, THE MINIMUM SENTENCE IMPOSED BY A COURT OF THIS
3 STATE FOR A FELONY COMMITTED ON OR AFTER THE EFFECTIVE DATE OF
4 THE ACT FIRST ENACTING INTO LAW THE SENTENCING GUIDELINES DEVEL-
5 OPED PURSUANT TO SECTION 34 OF THIS CHAPTER SHALL BE WITHIN THE
6 RECOMMENDED SENTENCE RANGE UNDER THE SENTENCING GUIDELINES IN
7 EFFECT ON THE DATE THE CRIME WAS COMMITTED.

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

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

14 (5) IF A TERM OF INCARCERATION IS IMPOSED UNDER THIS SEC-
15 TION, THE COURT MAY ALSO ORDER ANY COMBINATION OF RESTITUTION, A
16 FINE, OR COSTS BE 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 CONSISTS OF THE FOLLOWING MEMBERS
21 APPOINTED BY THE CHAIRPERSON AND ALTERNATE CHAIRPERSONS OF THE
22 LEGISLATIVE COUNCIL AS FOLLOWS:

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

1 (B) THREE INDIVIDUALS WHO ARE MEMBERS OF THE HOUSE OF
2 REPRESENTATIVES, 2 OF WHOM ARE FROM THE MAJORITY PARTY AND 1 OF
3 WHOM IS FROM THE MINORITY PARTY.

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

7 (D) ONE INDIVIDUAL WHO REPRESENTS THE PROSECUTING ATTORNEYS
8 OF THIS STATE.

9 (E) ONE INDIVIDUAL WHO REPRESENTS CRIMINAL DEFENSE
10 ATTORNEYS.

11 (F) ONE INDIVIDUAL WHO REPRESENTS THE DEPARTMENT OF
12 CORRECTIONS.

13 (G) ONE INDIVIDUAL WHO REPRESENTS ADVOCATES OF ALTERNATIVES
14 TO INCARCERATION.

15 (H) ONE INDIVIDUAL WHO REPRESENTS CRIME VICTIMS.

16 (I) THREE INDIVIDUALS WHO REPRESENT THE GENERAL PUBLIC, 1 OF
17 WHOM SHALL BE CHAIRPERSON OF THE COMMISSION.

18 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
19 MEMBERS OF THE COMMISSION SHALL BE APPOINTED FOR TERMS OF
20 4 YEARS. OF THE MEMBERS FIRST APPOINTED PURSUANT TO SUBSECTION
21 (1)(C) TO (I), 4 MEMBERS SHALL SERVE FOR 2 YEARS, 4 MEMBERS SHALL
22 SERVE FOR 3 YEARS, AND 3 MEMBERS SHALL SERVE FOR 4 YEARS, AS DES-
23 IGNATED BY THE CHAIRPERSON AND ALTERNATE CHAIRPERSON OF THE LEG-
24 ISLATIVE COUNCIL. THE MEMBERS OF THE COMMISSION APPOINTED PURSU-
25 ANT TO SUBSECTION (1)(A) AND (B) SHALL BE APPOINTED FOR TERMS OF
26 2 YEARS.

1 (3) A VACANCY ON THE COMMISSION CAUSED BY THE EXPIRATION OF
2 A TERM OR A RESIGNATION OR DEATH SHALL BE FILLED IN THE SAME
3 MANNER AS THE ORIGINAL APPOINTMENT. A MEMBER APPOINTED TO FILL A
4 VACANCY CAUSED BY A RESIGNATION OR DEATH SHALL BE APPOINTED FOR
5 THE BALANCE OF THE UNEXPIRED TERM.

6 (4) A COMMISSION MEMBER SHALL NOT RECEIVE A SALARY FOR BEING
7 A COMMISSION MEMBER, BUT SHALL BE REIMBURSED FOR HIS OR HER REA-
8 SONABLE, ACTUAL, AND NECESSARY EXPENSES INCURRED PERFORMING HIS
9 OR HER DUTIES AS A COMMISSION MEMBER.

10 (5) THE COMMISSION'S BUSINESS SHALL BE CONDUCTED AT PUBLIC
11 MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, ACT
12 NO. 267 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 15.261 TO
13 15.275 OF THE MICHIGAN COMPILED LAWS.

14 (6) A QUORUM CONSISTS OF A MAJORITY OF THE MEMBERS APPOINTED
15 UNDER SUBSECTION (1). ALL COMMISSION BUSINESS SHALL BE CONDUCTED
16 BY NOT LESS THAN A QUORUM.

17 (7) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF,
18 OR RETAINED BY THE COMMISSION IN PERFORMING AN OFFICIAL FUNCTION
19 SHALL BE MADE AVAILABLE TO THE PUBLIC IN COMPLIANCE WITH THE
20 FREEDOM OF INFORMATION ACT, ACT NO. 442 OF THE PUBLIC ACTS OF
21 1976, BEING SECTIONS 15.231 TO 15.246 OF THE MICHIGAN COMPILED
22 LAWS.

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

24 (A) COLLECT, PREPARE, ANALYZE, AND DISSEMINATE INFORMATION
25 REGARDING STATE AND LOCAL SENTENCING PRACTICES FOR FELONIES AND
26 THE USE OF PRISONS AND JAILS. THE STATE COURT ADMINISTRATOR

1 SHALL CONTINUE TO COLLECT DATA REGARDING SENTENCING PRACTICES AND
2 SHALL PROVIDE THAT DATA TO THE COMMISSION.

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

5 (C) COLLECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS
6 REGARDING THE POPULATIONS AND CAPACITIES OF STATE AND LOCAL COR-
7 RECTIONAL FACILITIES AND THE IMPACT OF THE SENTENCING GUIDELINES
8 ON THOSE POPULATIONS AND CAPACITIES.

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

13 (E) DEVELOP SENTENCING GUIDELINES, INCLUDING SENTENCE RANGES
14 FOR THE MINIMUM SENTENCE FOR EACH OFFENSE AND INTERMEDIATE SANC-
15 TIONS AS PROVIDED IN SUBSECTION (2), AND MODIFICATIONS TO THE
16 GUIDELINES AS PROVIDED IN SUBSECTION (4). THE SENTENCING GUIDE-
17 LINES AND ANY MODIFICATIONS TO THE GUIDELINES SHALL ACCOMPLISH
18 ALL OF THE FOLLOWING:

19 (i) REDUCE SENTENCING DISPARITIES BASED ON FACTORS OTHER
20 THAN OFFENSE CHARACTERISTICS AND OFFENDER CHARACTERISTICS AND
21 ENSURE THAT OFFENDERS WITH SIMILAR OFFENSE AND OFFENDER CHARAC-
22 TERISTICS RECEIVE SUBSTANTIALLY SIMILAR SENTENCES.

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

1 (iii) PROVIDE FOR PROTECTION OF THE PUBLIC.

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

4 (v) SPECIFY THE CIRCUMSTANCES UNDER WHICH A TERM OF IMPRIS-
5 ONMENT IS PROPER AND THE CIRCUMSTANCES UNDER WHICH INTERMEDIATE
6 SANCTIONS ARE PROPER.

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

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

15 (F) ESTABLISH SENTENCE RANGES THE COMMISSION CONSIDERS
16 APPROPRIATE.

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

20 (3) THE COMMISSION SHALL SUBMIT THE SENTENCING GUIDELINES
21 DEVELOPED PURSUANT TO SUBSECTION (1) TO THE SECRETARY OF THE
22 SENATE AND THE CLERK OF THE HOUSE OF REPRESENTATIVES ON
23 OCTOBER 1, 1994. IF THE SENTENCING GUIDELINES ARE NOT ENACTED
24 INTO LAW BY THE LEGISLATURE WITHIN 90 DAYS AFTER THEY ARE SUBMIT-
25 TED TO THE SECRETARY OF THE SENATE AND THE CLERK OF THE HOUSE OF
26 REPRESENTATIVES, THE COMMISSION SHALL REVISE THE SENTENCING
27 GUIDELINES AND SUBMIT THE REVISED GUIDELINES TO THE SECRETARY OF

1 THE SENATE AND THE CLERK OF THE HOUSE OF REPRESENTATIVES WITHIN
2 180 DAYS AFTER THE DATE SENTENCING GUIDELINES WERE PREVIOUSLY
3 SUBMITTED. THE REVISED SENTENCING GUIDELINES ARE SUBJECT TO THE
4 REQUIREMENTS OF SUBSECTIONS (1) AND (2) AND TO THE SAME ENACTMENT
5 PROCESS AS THE SENTENCING GUIDELINES ORIGINALLY SUBMITTED PURSU-
6 ANT TO THIS SUBSECTION. UNTIL THE LEGISLATURE ENACTS SENTENCING
7 GUIDELINES INTO LAW, THE COMMISSION SHALL CONTINUE TO REVISE AND
8 RESUBMIT THE SENTENCING GUIDELINES TO THE LEGISLATURE AS PROVIDED
9 IN THIS SUBSECTION.

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

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

1 SEC. 35. (1) A COURT MAY DEPART FROM THE RECOMMENDED
2 SENTENCE RANGE ESTABLISHED UNDER THE SENTENCING GUIDELINES
3 ENACTED INTO LAW PURSUANT TO SECTION 34 IF THE COURT HAS A SUB-
4 STANTIAL AND COMPELLING REASON FOR THAT DEPARTURE. THE COURT
5 SHALL NOT USE AN INDIVIDUAL'S GENDER, RACE, ETHNICITY, ALIENAGE,
6 NATIONAL ORIGIN, LEGAL OCCUPATION, LACK OF EMPLOYMENT, REPRESENTEN-
7 TATION BY APPOINTED LEGAL COUNSEL, REPRESENTATION BY RETAINED
8 LEGAL COUNSEL, APPEARANCE IN PROPRIA PERSONA, OR RELIGION TO
9 DEPART FROM THE APPROPRIATE SENTENCE RANGE. THE COURT SHALL NOT
10 BASE A DEPARTURE ON AN OFFENSE CHARACTERISTIC OR OFFENDER CHARAC-
11 TERISTIC ALREADY TAKEN INTO ACCOUNT IN DETERMINING THE APPROPRI-
12 ATE SENTENCE RANGE. THE COURT SHALL STATE THE REASON FOR THE
13 DEPARTURE ON THE RECORD.

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

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

26 (4) IF A PROSECUTING ATTORNEY APPEALS A MINIMUM SENTENCE
27 BECAUSE IT IS SHORTER OR LESS SEVERE THAN THE RECOMMENDED

1 SENTENCE RANGE, THE COURT OF APPEALS MAY AFFIRM THE SENTENCE OR
2 REMAND IT PURSUANT TO SUBSECTION (6). UPON REMAND, THE SENTENCE
3 SHALL ONLY BE INCREASED IN LENGTH OR MADE MORE SEVERE, OR BOTH.

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

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

7 (B) THE PRESENTENCE INVESTIGATION REPORT.

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

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

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

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

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

CHAPTER X

1

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

6 (a) In a felony or misdemeanor case tried in the circuit
7 court or recorder's court of the city of Detroit, there ~~shall~~
8 ~~be~~ IS a right of appeal to the court of appeals ~~—~~ within ~~60~~
9 42 days after the entry of judgment or after the entry of an
10 order appointing appellate counsel for an indigent defendant pur-
11 suant to supreme court rule, or within ~~60~~ 42 days after the
12 entry of an order denying a motion for new trial ~~where~~ IF the
13 motion is timely filed as prescribed in section 2(1) of this
14 chapter.

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

23 (c) In a misdemeanor or ordinance violation case tried in
24 the district court in the thirty-sixth district, or in a felony
25 case over which the district court in the thirty-sixth district
26 has jurisdiction before trial, there ~~shall be~~ IS a right of
27 appeal to the recorder's court of the city of Detroit within ~~20~~

1 21 days after the entry of judgment, or within ~~20~~ 21 days after
 2 entry of an order denying a motion for a new trial ~~where~~ IF the
 3 motion is timely filed as prescribed in section 2(2) of this
 4 chapter.

5 (d) In a misdemeanor or ordinance violation case tried in a
 6 municipal court, there ~~shall be~~ IS a right of appeal as pro-
 7 vided in chapter XIV.

8 (2) An appeal from an interlocutory judgment or order in a
 9 felony, misdemeanor, or ordinance violation may be taken, in the
 10 manner provided by supreme court rule, by application for leave
 11 to appeal to the same court of which a final judgment in that
 12 case would be appealable as a matter of right under subsection
 13 (1).

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

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

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

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

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

7 CHAPTER XI

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

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

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

16 (c) ~~That the~~ THE probationer shall ~~make a~~ report to the
17 probation officer ~~—, either~~ in person or in writing, monthly ~~—~~
18 or as often as the probation officer ~~may require~~ REQUIRES.

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

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

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

3 (a) Be imprisoned in the county jail for not more than 12
4 months, at the time or intervals, which may be consecutive or
5 nonconsecutive, within the probation as the court ~~may determine~~
6 DETERMINES. However, the period of confinement shall not exceed
7 the maximum period of imprisonment provided for the offense
8 charged if the maximum period is less than 12 months. THE COURT
9 MAY PERMIT A WORK OR SCHOOL RELEASE FROM JAIL. 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 Act No. 150 of the Public Acts of 1974. ~~—~~
13 ~~being sections 803.301 to 803.309 of the Michigan Compiled Laws.~~

14 (b) Pay immediately or within the period of his or her pro-
15 bation ~~—~~ a fine imposed ~~at the time of being~~ WHEN placed on
16 probation.

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

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

19 (e) Engage in community service.

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

21 (G) PARTICIPATE IN MENTAL HEALTH TREATMENT.

22 (H) PARTICIPATE IN MENTAL HEALTH OR SUBSTANCE ABUSE
23 COUNSELING.

24 (I) PARTICIPATE IN A COMMUNITY CORRECTIONS PROGRAM.

25 (J) BE UNDER HOUSE ARREST.

26 (K) BE SUBJECT TO ELECTRONIC MONITORING.

1 (L) PARTICIPATE IN A RESIDENTIAL PROBATION PROGRAM.

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

5 (3) Subsection (2) ~~shall~~ DOES not apply to a person ~~who~~
6 ~~is~~ placed on probation for life pursuant to sections 1(3) and
7 2(3) of this chapter.

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

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

17 (a) The court shall not require a probationer to pay resti-
18 tution or costs unless the probationer is or will be able to pay
19 ~~them~~ THAT RESTITUTION OR THOSE COSTS during the term of
20 probation. In determining the amount and method of payment of
21 restitution ~~and~~ OR costs, the court shall take into account the
22 financial resources of the probationer and the nature of the
23 burden that payment of restitution or costs will impose, with due
24 regard to his or her other obligations.

25 (b) A probationer who is required to pay restitution or
26 costs and who is not in willful default of the payment of the
27 restitution or costs ~~, at any time,~~ may petition the sentencing

1 judge or his or her successor for a remission of the payment of
 2 any unpaid portion of restitution ~~—~~ OR costs, or both. If ~~it~~
 3 ~~appears to the satisfaction of~~ the court ~~that~~ DETERMINES pay-
 4 ment of the amount due will impose a manifest hardship on the
 5 probationer or his or her immediate family, the court may remit
 6 all or part of the amount due in restitution or costs or modify
 7 the method of payment.

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

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

1 ~~803.309 of the Michigan Compiled Laws,~~ shall not be committed to
2 the department of corrections for failure to comply with a resti-
3 tution order.

4 Sec. 14. (1) Before ~~sentencing any~~ A person charged with
5 a felony ~~, and,~~ IS SENTENCED OR, if directed by the court, in
6 any other case in which ~~any~~ A person is charged with a misde-
7 meanor within the COURT'S jurisdiction, ~~of the court,~~ the pro-
8 bation officer shall inquire into the antecedents, character, and
9 circumstances of the person, and shall report in writing to the
10 court.

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

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

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

20 (c) If requested by a victim, any written impact statement
21 submitted by the victim pursuant to the crime victim's rights
22 act, ACT NO. 87 OF THE PUBLIC ACTS OF 1985, BEING SECTIONS
23 780.751 TO 780.834 OF THE MICHIGAN COMPILED LAWS.

24 (d) A specific written recommendation for disposition based
25 on the evaluation and other information as prescribed by the
26 assistant director of the department of corrections in charge of
27 probation.

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

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

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

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

10 (ii) THE COMPUTATION THAT DETERMINES THE RECOMMENDED SEN-
11 TENCE RANGE FOR EACH CONVICTION ENTERED.

12 (iii) THE RECOMMENDED SENTENCE.

13 (iv) THE DEFENDANT'S PRIOR CRIMINAL RECORD, INCLUDING ANY
14 CONVICTIONS FOR MISDEMEANORS OR FELONIES THAT ARE ON THE
15 DEFENDANT'S DRIVER'S RECORD. AS USED IN THIS SUBPARAGRAPH,
16 "PRIOR CRIMINAL RECORD" MEANS THE RECORDED CRIMINAL HISTORY OF AN
17 OFFENDER, INCLUDING ALL MISDEMEANOR AND FELONY CONVICTIONS, PRO-
18 BATION VIOLATIONS, AND JUVENILE ADJUDICATIONS FOR ACTS THAT WOULD
19 HAVE BEEN CRIMES IF COMMITTED BY AN ADULT.

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

22 (3) The court may exempt from disclosure in the presentence
23 investigation report information or a diagnostic opinion ~~which~~
24 THAT might seriously disrupt a program of rehabilitation or
25 sources of information obtained on a promise of confidentiality.
26 If a part of the presentence investigation report is not
27 disclosed, the court shall state on the record the reasons for

1 its action and inform the defendant and his or her attorney that
2 information has not been disclosed. The action of the court in
3 exempting information from disclosure ~~shall be~~ IS subject to
4 appellate review. Information or a diagnostic opinion exempted
5 from disclosure pursuant to this subsection shall be specifically
6 noted in the presentence investigation report.

7 (4) The court shall permit the prosecutor, the defendant's
8 attorney, and the defendant to review the presentence investiga-
9 tion report ~~prior to~~ BEFORE sentencing.

10 (5) At ~~the time of~~ sentencing, either party may challenge
11 ~~—~~ on the record ~~—~~ the accuracy or relevancy of any informa-
12 tion contained in the presentence investigation report. The
13 court may order an adjournment to permit the parties to prepare a
14 challenge or a response to a challenge. If the court finds ON
15 THE RECORD that the challenged information is inaccurate or
16 irrelevant, that finding shall be made a part of the record,
17 ~~and~~ the presentence investigation report shall be amended, and
18 the inaccurate or irrelevant information shall be stricken
19 accordingly before the report is transmitted to the department of
20 corrections.

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

1 (7) If the person is committed to a state penal institution,
2 a copy or amended copy of the presentence investigation report
3 and, if a psychiatric examination of the person has been made for
4 the court, a copy of the psychiatric report shall accompany the
5 commitment papers. If the person is sentenced by fine or impris-
6 onment or placed on probation or other disposition of his or her
7 case is made by the court, a copy or amended copy of the presen-
8 tence investigation report, including a psychiatric examination
9 report made in the case, shall be filed with the department of
10 corrections.

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

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

24 Section 3. Section 3 of chapter X and section 14 of chapter
25 XI of Act No. 175 of the Public Acts of 1927, as amended by this
26 amendatory act, and sections 35 and 36 of chapter IX of Act
27 No. 175 of the Public Acts of 1927, as added by this amendatory

1 act, shall take effect on the effective date of the act of the
2 legislature first enacting into law the sentencing guidelines
3 developed pursuant to section 34 of chapter IX of Act No. 175 of
4 the Public Acts of 1927.