



SENATE BILL No. 64

January 13, 1993, Introduced by Senator VAN REGENMORTER
and referred to the Committee on Judiciary.

A bill to amend the title and section 12 of chapter IX 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 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, 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 and sec-
2 tions 3 and 14 of chapter XI of Act No. 175 of the Public Acts of
3 1927, section 12 of chapter IX as amended by Act No. 90 of the
4 Public Acts of 1988, section 3 of chapter XI as amended by Act

1 No. 184 of the Public Acts of 1989, and section 14 of chapter XI
2 as amended by Act No. 88 of the Public Acts of 1985, being sec-
3 tions 769.12, 771.3, and 771.14 of the Michigan Compiled Laws,
4 are amended and sections 31, 32, 33, 34, 35, and 36 are added to
5 chapter IX to read as follows:

6 TITLE

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

1 probation officers; to provide penalties for the violation of the
 2 duties of probation officers; to provide for procedure governing
 3 proceedings to prevent crime and proceedings for the discovery of
 4 crime; to provide for fees of officers, witnesses, and others in
 5 criminal and ordinance violation cases; to set forth miscella-
 6 neous provisions as to criminal procedure in certain cases; to
 7 provide penalties for the violation of certain provisions of this
 8 act; and to repeal all acts and parts of acts inconsistent with
 9 or contravening any of the provisions of this act.

10

CHAPTER IX

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

21 (a) If the subsequent felony is punishable upon a first con-
 22 viction by imprisonment for a maximum term of 5 years or more, or
 23 for life, ~~then~~ the court, except as otherwise provided in this
 24 section or section 1 of chapter ~~—11—~~ XI, may sentence the person
 25 upon conviction of the fourth or subsequent offense to imprison-
 26 ment ~~in a state prison for the term or~~ life or for a lesser
 27 term.

1 (b) If the subsequent felony is punishable upon a first
2 conviction by imprisonment for a maximum term ~~which~~ THAT is
3 less than 5 years, ~~then~~ the court, except as otherwise provided
4 in this section or section 1 of chapter ~~11~~ XI, may sentence the
5 person to imprisonment for a term of 15 years or a lesser term.

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

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

17 (3) ~~Offenders~~ AN OFFENDER sentenced under this section or
18 section 10 or 11 OF THIS CHAPTER for ~~offenses~~ AN OFFENSE other
19 than a major controlled substance offense ~~shall~~ IS not ~~be~~
20 eligible for parole before the expiration of the minimum term
21 fixed by the sentencing judge at the time of sentence, ~~without~~
22 ~~the written approval of the sentencing judge or a successor. A~~
23 ~~person to be punished under this section or section 10 or 11 need~~
24 ~~not have been indicted and convicted as a previous offender in~~
25 ~~order to receive the increased punishment provided in this sec-~~
26 ~~tion or section 11, but may be proceeded against as provided in~~
27 ~~section 13.~~ LESS DISCIPLINARY CREDITS.

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

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

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

10 (B) "DEPARTURE" MEANS A SENTENCE IMPOSED THAT IS NOT WITHIN
11 THE RECOMMENDED MINIMUM SENTENCE RANGE ESTABLISHED UNDER SENTENC-
12 ING GUIDELINES ENACTED INTO LAW.

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

17 (i) INPATIENT OR OUTPATIENT DRUG TREATMENT.

18 (ii) RESIDENTIAL PROBATION.

19 (iii) MENTAL HEALTH TREATMENT.

20 (iv) MENTAL HEALTH OR SUBSTANCE ABUSE COUNSELING.

21 (v) JAIL WITH WORK OR SCHOOL RELEASE.

22 (vi) JAIL.

23 (vii) PROBATION WITH JAIL.

24 (viii) PARTICIPATION IN A COMMUNITY CORRECTIONS PROGRAM.

25 (ix) COMMUNITY SERVICE.

26 (x) RESTITUTION.

1 (xi) A FINE.

2 (xii) COSTS.

3 (xiii) HOUSE ARREST.

4 (xiv) ELECTRONIC MONITORING.

5 (xv) PROBATION WITH SPECIAL ALTERNATIVE INCARCERATION.

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

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

12 (F) "PRIOR CRIMINAL RECORD" MEANS THE RECORDED CRIMINAL HIS-
13 TORY OF AN OFFENDER, INCLUDING ALL MISDEMEANOR AND FELONY CONVIC-
14 TIONS, PROBATION VIOLATIONS, AND JUVENILE ADJUDICATIONS FOR ACTS
15 THAT WOULD HAVE BEEN CRIMES IF COMMITTED BY AN ADULT.

16 SEC. 32. (1) THE SENTENCING GUIDELINES PROMULGATED BY
17 MICHIGAN SUPREME COURT ORDER 1988-4 SHALL NOT APPLY ON OR AFTER
18 THE EFFECTIVE DATE OF THE ACT BY WHICH THE LEGISLATURE ENACTS
19 INTO LAW SENTENCING GUIDELINES.

20 (2) EXCEPT FOR A DEPARTURE PROVIDED FOR UNDER SECTION 35(1)
21 OF THIS CHAPTER, THE MINIMUM SENTENCE IMPOSED BY A COURT OF THIS
22 STATE FOR A FELONY COMMITTED ON OR AFTER THE EFFECTIVE DATE OF
23 THE ACT FIRST ENACTING INTO LAW SENTENCING GUIDELINES SHALL BE
24 WITHIN THE RECOMMENDED SENTENCE RANGE UNDER THE SENTENCING GUIDE-
25 LINES IN EFFECT ON THE DATE THE CRIME WAS COMMITTED.

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

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

7 (5) IF A TERM OF INCARCERATION IS IMPOSED UNDER THIS SEC-
8 TION, THE COURT MAY ALSO ORDER ANY COMBINATION OF RESTITUTION, A
9 FINE, OR COSTS BE PAID.

10 SEC. 33. (1) A SENTENCING COMMISSION IS CREATED IN THE LEG-
11 ISLATIVE COUNCIL. THE LEGISLATIVE COUNCIL SHALL PROVIDE THE COM-
12 MISSION WITH SUITABLE OFFICE SPACE, STAFF, AND NECESSARY
13 EQUIPMENT. THE COMMISSION CONSISTS OF THE FOLLOWING MEMBERS
14 APPOINTED BY THE GOVERNOR, WITH THE ADVICE AND CONSENT OF THE
15 SENATE, AS FOLLOWS:

16 (A) THREE INDIVIDUALS WHO ARE JUDGES, 1 OF WHOM IS A CIRCUIT
17 COURT JUDGE, 1 OF WHOM IS A JUDGE OF THE RECORDER'S COURT OF THE
18 CITY OF DETROIT, AND 1 OF WHOM IS A COURT OF APPEALS JUDGE.

19 (B) ONE INDIVIDUAL RECOMMENDED BY THE SUPREME COURT.

20 (C) ONE INDIVIDUAL WHO REPRESENTS LAW ENFORCEMENT.

21 (D) ONE INDIVIDUAL WHO REPRESENTS THE PROSECUTING ATTORNEYS
22 OF THIS STATE.

23 (E) ONE INDIVIDUAL WHO REPRESENTS CRIMINAL DEFENSE
24 ATTORNEYS.

25 (F) ONE INDIVIDUAL WHO REPRESENTS THE DEPARTMENT OF
26 CORRECTIONS.

1 (G) ONE INDIVIDUAL WHO REPRESENTS ADVOCATES OF ALTERNATIVES
2 TO INCARCERATION.

3 (H) ONE INDIVIDUAL WHO REPRESENTS CRIME VICTIMS.

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

6 (2) THE MEMBERS OF THE COMMISSION SHALL BE APPOINTED FOR
7 TERMS OF 4 YEARS. OF THE MEMBERS FIRST APPOINTED PURSUANT TO
8 SUBSECTION (1), 4 MEMBERS SHALL SERVE FOR 2 YEARS, 4 MEMBERS
9 SHALL SERVE FOR 3 YEARS, AND 3 MEMBERS SHALL SERVE FOR 4 YEARS,
10 AS DESIGNATED BY THE GOVERNOR.

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

16 (4) A COMMISSION MEMBER SHALL NOT RECEIVE A SALARY FOR BEING
17 A COMMISSION MEMBER, BUT SHALL BE REIMBURSED FOR HIS OR HER REA-
18 SONABLE, ACTUAL, AND NECESSARY EXPENSES INCURRED PERFORMING HIS
19 OR HER DUTIES AS A COMMISSION MEMBER.

20 (5) THE COMMISSION'S BUSINESS SHALL BE CONDUCTED AT PUBLIC
21 MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, ACT
22 NO. 267 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 15.261 TO
23 15.275 OF THE MICHIGAN COMPILED LAWS.

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

1 (7) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF,
2 OR RETAINED BY THE COMMISSION IN PERFORMING AN OFFICIAL FUNCTION
3 SHALL BE MADE AVAILABLE TO THE PUBLIC IN COMPLIANCE WITH THE
4 FREEDOM OF INFORMATION ACT, ACT NO. 442 OF THE PUBLIC ACTS OF
5 1976, BEING SECTIONS 15.231 TO 15.246 OF THE MICHIGAN COMPILED
6 LAWS.

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

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

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

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

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

23 (E) DEVELOP RECOMMENDED SENTENCING GUIDELINES, INCLUDING
24 SENTENCE RANGES FOR THE MINIMUM SENTENCE FOR EACH OFFENSE AND
25 INTERMEDIATE SANCTIONS AS PROVIDED IN SUBSECTION (3), AND MAY
26 RECOMMEND MODIFICATIONS AS PROVIDED IN SUBSECTION (5) TO
27 GUIDELINES ENACTED INTO LAW. THE RECOMMENDED SENTENCING

1 GUIDELINES AND ANY MODIFICATIONS TO THE RECOMMENDED SENTENCING
2 GUIDELINES SHALL DO ALL OF THE FOLLOWING:

3 (i) PROVIDE FOR PROTECTION OF THE PUBLIC.

4 (ii) 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 (iii) 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 (iv) SPECIFY THE CIRCUMSTANCES UNDER WHICH A TERM OF IMPRIS-
13 ONMENT IS PROPER AND THE CIRCUMSTANCES UNDER WHICH INTERMEDIATE
14 SANCTIONS ARE PROPER, WHILE PROVIDING FOR THE PROTECTION OF THE
15 PUBLIC.

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

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

24 (vii) ENSURE THAT DANGEROUS INDIVIDUALS ARE SECURELY
25 CONFINED.

26 (viii) IF THE LEGISLATURE PROVIDES FOR A FORM OF
27 DISCIPLINARY TIME TO BE ADDED TO A MINIMUM SENTENCE INSTEAD OF A

1 FORM OF DISCIPLINARY CREDITS TO BE SUBTRACTED FROM A MINIMUM
2 SENTENCE, CONSIDER THE EFFECT OF THAT DISCIPLINARY TIME.

3 (2) THE COMMISSION MAY CONSIDER THE LIKELIHOOD THAT THE
4 CAPACITY OF STATE AND LOCAL CORRECTIONAL FACILITIES WILL BE
5 EXCEEDED IN DEVELOPING RECOMMENDED SENTENCING GUIDELINES. FOR
6 PURPOSES OF THIS SUBSECTION, THE TOTAL CAPACITY OF STATE CORREC-
7 TIONAL FACILITIES SHALL BE DETERMINED BY INCLUDING THE CAPACITIES
8 OF ALL PERMANENT AND TEMPORARY STATE CORRECTIONAL FACILITIES IN
9 USE AND ALL STATE CORRECTIONAL FACILITIES APPROVED FOR CONSTRUC-
10 TION PURSUANT TO THE JOINT CAPITAL OUTLAY PROCESS AT THE TIME OF
11 THE DETERMINATION.

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

15 (4) THE COMMISSION SHALL SUBMIT THE RECOMMENDED SENTENCING
16 GUIDELINES DEVELOPED PURSUANT TO SUBSECTION (1) TO THE SECRETARY
17 OF THE SENATE AND THE CLERK OF THE HOUSE OF REPRESENTATIVES BY
18 JUNE 30, 1994. THE LEGISLATURE MAY USE THE RECOMMENDED SENTENC-
19 ING GUIDELINES IN ENACTING SENTENCING GUIDELINES INTO LAW.

20 (5) THE COMMISSION MAY RECOMMEND MODIFICATIONS TO THE SEN-
21 TENCING GUIDELINES ENACTED INTO LAW USING THE SAME FACTORS
22 DESCRIBED IN SUBSECTIONS (1)(E) AND (2).

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

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

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

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

11 (B) THE PRESENTENCE INVESTIGATION REPORT.

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

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

19 (4) TIME SERVED ON THE SENTENCE APPEALED UNDER THIS SECTION
20 IS CONSIDERED TIME SERVED ON ANY SENTENCE IMPOSED AFTER REMAND.

21 (5) AN APPEAL OF A SENTENCE UNDER THIS SECTION DOES NOT STAY
22 EXECUTION OF THE SENTENCE.

23 SEC. 36. IF THE RECOMMENDED MINIMUM SENTENCE FOR A
24 DEFENDANT IS LESS THAN 12 MONTHS UNDER THE SENTENCING GUIDELINES,
25 THE COURT SHALL IMPOSE AN INTERMEDIATE SANCTION UNLESS THE COURT
26 STATES ON THE RECORD A SUBSTANTIAL AND COMPELLING REASON TO
27 IMPOSE A SENTENCE OF IMPRISONMENT.

CHAPTER XI

1

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

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

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

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

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

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

23 (a) Be imprisoned in the county jail for not more than 12
24 months, at the time or intervals, which may be consecutive or
25 nonconsecutive, within the probation as the court ~~may determine~~
26 DETERMINES. However, the period of confinement shall not exceed
27 the maximum period of imprisonment provided for the offense

1 charged if the maximum period is less than 12 months. THE COURT
 2 MAY PERMIT A WORK OR SCHOOL RELEASE FROM JAIL. This subdivision
 3 does not apply to a juvenile placed on probation and committed
 4 under section 1(3) or (4) of chapter IX to a state institution or
 5 agency described in Act No. 150 of the Public Acts of 1974. —
 6 ~~being sections 803.301 to 803.309 of the Michigan Compiled Laws.~~

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

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

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

12 (e) Engage in community service.

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

14 (G) PARTICIPATE IN MENTAL HEALTH TREATMENT.

15 (H) PARTICIPATE IN MENTAL HEALTH OR SUBSTANCE ABUSE
 16 COUNSELING.

17 (I) PARTICIPATE IN A COMMUNITY CORRECTIONS PROGRAM.

18 (J) BE UNDER HOUSE ARREST.

19 (K) BE SUBJECT TO ELECTRONIC MONITORING.

20 (l) PARTICIPATE IN A RESIDENTIAL PROBATION PROGRAM.

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

24 (3) Subsection (2) ~~shall~~ DOES not apply to a person ~~who~~
 25 ~~is~~ placed on probation for life pursuant to sections 1(3) and
 26 2(3) of this chapter.

1 (4) The court may impose other lawful conditions of
2 probation as the circumstances of the case may require or
3 warrant, or as in its judgment may be proper. If the court
4 requires the probationer to pay costs, the costs shall be limited
5 to expenses specifically incurred in prosecuting the defendant or
6 providing legal assistance to the defendant and probationary
7 oversight of the probationer.

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

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

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

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

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

24 Sec. 14. (1) Before ~~sentencing any~~ A person charged with
25 a felony ~~, and,~~ IS SENTENCED OR, if directed by the court, in
26 any other case in which ~~any~~ A person is charged with a
27 misdemeanor within the jurisdiction of the court, the probation

1 officer shall inquire into the antecedents, character, and
2 circumstances of the person, and shall report in writing to the
3 court.

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

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

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

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

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

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

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

24 (G) FOR A PERSON TO BE SENTENCED PURSUANT TO SENTENCING
25 GUIDELINES ENACTED INTO LAW, ALL OF THE FOLLOWING:

26 (i) FOR EACH CONVICTION ENTERED, THE SENTENCE GRID THAT
27 CONTAINS THE RECOMMENDED SENTENCE RANGE.

1 (ii) THE COMPUTATION THAT DETERMINES THE RECOMMENDED
2 SENTENCE RANGE FOR EACH CONVICTION ENTERED.

3 (iii) THE RECOMMENDED SENTENCE.

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

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

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

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

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

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

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

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

9 Section 2. Section 14 of chapter XI of Act No. 175 of the
10 Public Acts of 1927, as amended by this amendatory act, and sec-
11 tions 35 and 36 of chapter IX of Act No. 175 of the Public Acts
12 of 1927, as added by this amendatory act, shall take effect on
13 the effective date of sentencing guidelines enacted into law
14 after the effective date of this amendatory act.