



HOUSE BILL No. 5033

September 13, 1995, Introduced by Reps. Ryan, Bush, Law, Rocca, Hill, Kukuk, Jersevic, Green, Horton, Kaza, Jaye, McBryde, Pitoniak, Hammerstrom, London, Bullard, Profit, Jellema, Bodem, Gnodtke, Middaugh, Goschka, Voorhees, Anthony, Sikkema, Rhead, Cropsey, Johnson, Dolan, Dobb, Gernaat, Dobronski, Palamara, Gustafson, Galloway and Llewellyn and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 8, 9, 31, 33, and 34 of chapter IX and sections 3b and 14 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

section 8 of chapter IX as amended by Act No. 322 of the Public Acts of 1994, sections 31, 33, and 34 of chapter IX as added and section 14 of chapter XI as amended by Act No. 445 of the Public Acts of 1994, and section 3b of chapter XI as amended by Act No. 426 of the Public Acts of 1994, being sections 769.8, 769.9, 769.31, 769.33, 769.34, 771.3b, and 771.14 of the Michigan Compiled Laws; to add section 8a to chapter IX; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 8, 9, 31, 33, and 34 of chapter IX and
2 sections 3b and 14 of chapter XI of Act No. 175 of the Public

1 (3) Before or at the time of imposing the sentence the judge
2 shall ascertain by examining the ~~convict~~ DEFENDANT under oath
3 ~~or~~ otherwise, and by other evidence as can be obtained tend-
4 ing to indicate briefly the causes of the criminal character or
5 conduct of the ~~convict~~ DEFENDANT, which facts and other facts
6 that appear to be ~~pertinent~~ RELEVANT in the case ~~or~~ the judge
7 shall cause to be entered upon the minutes of the court.

8 SEC. 8A. (1) WHEN THE COURT IMPOSES A DETERMINATE SENTENCE
9 PURSUANT TO THIS CHAPTER, THE COURT SHALL ALSO IMPOSE A PERIOD OF
10 SUPERVISED RELEASE IN THE JUDGMENT OF SENTENCE TO FOLLOW THE
11 PERSON'S DETERMINATE TERM OF IMPRISONMENT, IN ACCORDANCE WITH THE
12 SENTENCING GUIDELINES. THE PERIOD OF SUPERVISED RELEASE SHALL
13 NOT EXCEED 2 YEARS. IN THE CASE OF A PRISONER SUBJECT TO DISCI-
14 PLINARY TIME UNDER SECTION 34 OF ACT NO. 118 OF THE PUBLIC ACTS
15 OF 1893, BEING SECTION 800.34 OF THE MICHIGAN COMPILED LAWS, THE
16 PERIOD OF SUPERVISED RELEASE SHALL BEGIN UPON THE EXPIRATION OF
17 THE PRISONER'S TERM OF IMPRISONMENT PLUS ANY DISCIPLINARY TIME
18 ACCUMULATED PURSUANT TO SECTION 34 OF ACT NO. 118 OF THE PUBLIC
19 ACTS OF 1893. THE PERSON'S DETERMINATE SENTENCE PLUS ACCUMULATED
20 DISCIPLINARY TIME SHALL NOT EXCEED THE MAXIMUM PENALTY PROVIDED
21 BY LAW FOR THE OFFENSE.

22 (2) EXCEPT AS PROVIDED IN THIS SECTION, THE COURT SHALL NOT
23 RETAIN JURISDICTION OVER THE PERSON DURING THE PERIOD OF SUPER-
24 VISED RELEASE.

25 (3) THE COURT HAS EXCLUSIVE JURISDICTION TO IMPOSE A PENAL-
26 TY, INCLUDING REVOCATION OF SUPERVISED RELEASE, FOR A VIOLATION

1 OF THE PERSON'S SUPERVISED RELEASE CONDITIONS ALLEGED TO BE A
2 FELONY.

3 Sec. 9. (1) The provisions of this chapter ~~relative to~~
4 ~~indeterminate~~ CONCERNING DETERMINATE sentences ~~shall~~ DO not
5 apply to a person convicted for ~~the commission of~~ COMMITTING an
6 offense for which the only punishment prescribed by law is
7 imprisonment for life.

8 (2) In all cases ~~where~~ IN WHICH the maximum sentence in
9 the discretion of the court may be imprisonment for life or any
10 number or term of years, the court may impose a sentence for life
11 or may impose a DETERMINATE sentence for any NUMBER OR term of
12 years. ~~If the sentence imposed by the court is for any term of~~
13 ~~years, the court shall fix both the minimum and the maximum of~~
14 ~~that sentence in terms of years or fraction thereof, and sen-~~
15 ~~tences so imposed shall be considered indeterminate sentences.~~
16 ~~The court shall not impose a sentence in which the maximum pen-~~
17 ~~alty is life imprisonment with a minimum for a term of years~~
18 ~~included in the same sentence.~~

19 (3) In cases involving ~~a major controlled substance~~ AN
20 offense for which the court is directed by law to impose a sen-
21 tence ~~which~~ THAT cannot be less than a specified term of years
22 ~~nor~~ OR more than a specified term of years, the court in impos-
23 ing the sentence shall fix the length of ~~both the minimum and~~
24 ~~maximum~~ THE sentence within those specified limits ~~, in terms~~
25 ~~of years or fraction thereof,~~ and the sentence so imposed shall
26 be considered ~~an indeterminate~~ A DETERMINATE sentence.

1 Sec. 31. As used in this section and sections 32 to 34 of
2 this chapter:

3 (a) "Commission" means the sentencing commission created in
4 section 32 of this chapter.

5 (b) "Departure" means a sentence imposed that is not within
6 the appropriate ~~minimum~~ sentence range established under the
7 sentencing guidelines developed pursuant to section 33 of this
8 chapter.

9 (c) "Intermediate sanction" means probation or any sanction,
10 other than imprisonment in a state prison or state reformatory,
11 that may lawfully be imposed. Intermediate sanction includes,
12 but is not limited to, 1 or more of the following:

13 (i) Inpatient or outpatient drug treatment.

14 (ii) Probation with any probation conditions required or
15 authorized by law.

16 (iii) Residential probation.

17 (iv) Probation with jail.

18 (v) Probation with special alternative incarceration.

19 (vi) Mental health treatment.

20 (vii) Mental health or substance abuse counseling.

21 (viii) Jail.

22 (ix) Jail with work or school release.

23 (x) Jail, with or without authorization for day parole under
24 Act No. 60 of the Public Acts of 1962, being sections 801.251 to
25 801.258 of the Michigan Compiled Laws.

26 (xi) Participation in a community corrections program.

1 (xii) Community service.

2 (xiii) Payment of a fine.

3 (xiv) House arrest.

4 (xv) Electronic monitoring.

5 (d) "Offender characteristics" means only the prior criminal
6 record of an offender.

7 (e) "Offense characteristics" means the elements of the
8 crime and the aggravating and mitigating factors relating to the
9 offense that the commission determines are appropriate and con-
10 sistent with the criteria described in section 33(1)(e) of this
11 chapter. For purposes of this subdivision, an offense described
12 in section 33b of Act No. 232 of the Public Acts of 1953, being
13 section 791.233b of the Michigan Compiled Laws, that resulted in
14 a conviction and that arose out of the same transaction as the
15 offense for which the sentencing guidelines are being scored
16 shall be considered as an aggravating factor.

17 (f) "Prior criminal record" means all of the following:

18 (i) Misdemeanor and felony convictions.

19 (ii) Probation and parole violations involving criminal
20 activity.

21 (iii) Dispositions entered pursuant to section 18 of chapter
22 XIIIA of Act No. 288 of the Public Acts of 1939, being section
23 712A.18 of the Michigan Compiled Laws, for acts that would have
24 been crimes if committed by an adult.

25 (iv) Assignment to youthful trainee status pursuant to sec-
26 tions 11 to 15 of chapter II.

1 (v) A conviction set aside pursuant to Act No. 213 of the
2 Public Acts of 1965, being sections 780.621 to 780.624 of the
3 Michigan Compiled Laws.

4 (vi) Dispositions described in subparagraph (iii) that have
5 been set aside under section 18e of chapter XIIA of Act No. 288
6 of the Public Acts of 1939, being section 712A.18e of the
7 Michigan Compiled Laws, or expunged.

8 (g) "Total capacity of state correctional facilities" means,
9 at any given time, the capacities of all permanent and temporary
10 state correctional facilities in use and all state correctional
11 facilities approved for construction pursuant to the joint capi-
12 tal outlay process as of the preceding June 1.

13 Sec. 33. (1) The commission shall do all of the following:

14 (a) Collect, prepare, analyze, and disseminate information
15 regarding state and local sentencing practices for felonies and
16 the use of prisons and jails. The state court administrator
17 shall continue to collect data regarding sentencing practices and
18 shall provide the data necessary to the commission.

19 (b) Conduct on-going research regarding the impact of the
20 sentencing guidelines developed pursuant to this section.

21 (c) Collect, analyze, and compile data and make projections
22 regarding the populations and capacities of state and local cor-
23 rectional facilities and the impact of the sentencing guidelines
24 on those populations and capacities.

25 (d) In cooperation with the state court administrator, col-
26 lect, analyze, and compile data regarding the effect of

1 sentencing guidelines on the case load, docket flow, and case
2 backlog of the trial and appellate courts of this state.

3 (e) Develop sentencing guidelines, including sentence ranges
4 for the ~~minimum~~ DETERMINATE sentence for each offense, APPRO-
5 PRIATE RANGES FOR SUPERVISED RELEASE TO FOLLOW A DETERMINATE
6 SENTENCE, and intermediate sanctions as provided in subsection
7 (3), and modifications to the guidelines as provided in subsec-
8 tion (5). The sentencing guidelines and any modifications to the
9 guidelines shall accomplish all of the following:

10 (i) Provide for protection of the public.

11 (ii) An offense involving violence against a person shall be
12 considered more severe than other offenses.

13 (iii) Be proportionate to the seriousness of the offense and
14 the offender's prior criminal record.

15 (iv) Reduce sentencing disparities based on factors other
16 than offense characteristics and offender characteristics and
17 ensure that offenders with similar offense and offender charac-
18 teristics receive substantially similar sentences.

19 (v) Specify the circumstances under which a term of impris-
20 onment is proper and the circumstances under which intermediate
21 sanctions are proper.

22 (vi) Establish sentence ranges for imprisonment that are
23 within the minimum and maximum DETERMINATE sentences allowed by
24 law for the offenses to which the ranges apply.

25 ~~(vii) Establish separate sentence ranges for convictions~~
26 ~~under the habitual offender provisions in sections 10, 11, 12,~~
27 ~~and 13 of this chapter, which may include as an aggravating~~

1 ~~factor, among other relevant considerations, that the accused has~~
2 ~~engaged in a pattern of proven or admitted criminal behavior.~~

3 (vii) ~~(viii)~~ Establish sentence ranges the commission con-
4 siders appropriate.

5 (viii) ESTABLISH RANGES FOR SUPERVISED RELEASE TO FOLLOW A
6 DETERMINATE SENTENCE PURSUANT TO SECTION 8A OF THIS CHAPTER.

7 (2) In developing recommended sentencing guidelines, the
8 commission shall consider the likelihood that the capacity of
9 state and local correctional facilities will be exceeded. The
10 commission shall submit to the legislature a prison impact report
11 relating to any sentencing guidelines submitted under this
12 section. The report shall include the projected impact on total
13 capacity of state correctional facilities.

14 (3) The sentencing guidelines shall include recommended
15 intermediate sanctions for each case in which the upper limit of
16 the recommended ~~minimum~~ sentence range is 18 months or less.

17 (4) The commission shall submit the recommended sentencing
18 guidelines developed pursuant to this section to the secretary of
19 the senate and the clerk of the house of representatives on or
20 before July 15, 1996. If a proper request is submitted by a
21 serving member of the legislature, the legislative service bureau
22 shall prepare by September 15, 1996 a bill embodying the
23 commission's recommended sentencing guidelines for introduction.
24 If sentencing guidelines are not enacted into law by the legisla-
25 ture by December 31, 1996, the commission shall revise the guide-
26 lines and submit the revised sentencing guidelines to the
27 secretary of the senate and the clerk of the house of

1 representatives by March 31, 1997. If sentencing guidelines are
2 not enacted into law by the legislature within 60 days after the
3 commission submits the revised sentencing guidelines to the sec-
4 retary of the senate and the clerk of the house of representa-
5 tives, the commission shall revise the sentencing guidelines and
6 submit the revised guidelines to the secretary of the senate and
7 the clerk of the house of representatives within 90 days. The
8 revised sentencing guidelines are subject to the requirements of
9 subsections (1), (2), and (3) and to the same enactment process
10 as the sentencing guidelines originally submitted pursuant to
11 this subsection. Until the legislature enacts sentencing guide-
12 lines into law, the commission shall continue to revise and
13 resubmit the sentencing guidelines to the legislature as provided
14 in this subsection.

15 (5) The commission may recommend modifications to the sen-
16 tencing guidelines enacted into law under subsection (4).
17 Modifications of those sentencing guidelines shall not be recom-
18 mended sooner than 2 years after the effective date of those sen-
19 tencing guidelines, unless the modifications are based upon omis-
20 sions, technical errors, changes in the law, or court decisions.
21 Subsequent modifications shall not be recommended sooner than 2
22 years after previous modifications other than modifications based
23 upon omissions, technical errors, changes in the law, or court
24 decisions. Any modification proposed by the commission as per-
25 mitted under this subsection is subject to the same enactment
26 process as set forth in subsection (4).

1 Sec. 34. (1) The sentencing guidelines promulgated by order
2 of the Michigan supreme court shall not apply to felonies
3 committed on or after the effective date of the act by which the
4 legislature enacts sentencing guidelines into law.

5 (2) Except for a departure from the appropriate ~~minimum~~
6 sentence range provided for under subsection (3), the ~~minimum~~
7 DETERMINATE sentence imposed by a court of this state for a
8 felony committed on or after the effective date of the act first
9 enacting into law the sentencing guidelines developed pursuant to
10 section 33 of this chapter shall be within the appropriate sen-
11 tence range under the sentencing guidelines in effect on the date
12 the crime was committed.

13 (3) Subject to the following limitations, a court may depart
14 from the appropriate sentence range established under the sen-
15 tencing guidelines enacted into law pursuant to section 33 of
16 this chapter if the court has a substantial and compelling reason
17 for that departure and states on the record the reasons for
18 departure:

19 (a) The court shall not use an individual's gender, race,
20 ethnicity, alienage, national origin, legal occupation, lack of
21 employment, representation by appointed legal counsel, represen-
22 tation by retained legal counsel, appearance in propria persona,
23 or religion to depart from the appropriate sentence range.

24 (b) The court shall not base a departure on an offense char-
25 acteristic or offender characteristic already taken into account
26 in determining the appropriate sentence range unless the court
27 finds from the facts contained in the court record, including the

1 presentence investigation report, that the characteristic has
2 been given inadequate or disproportionate weight.

3 (4) Beginning on the effective date of the act first enact-
4 ing into law the sentencing guidelines developed pursuant to sec-
5 tion 33 of this chapter, if the upper limit of the appropriate
6 ~~minimum~~ sentence for a defendant convicted for a felony commit-
7 ted on or after that date is 18 months or less under the sentenc-
8 ing guidelines, the court shall impose an intermediate sanction
9 unless the court states on the record a substantial and compel-
10 ling reason to sentence the individual to the jurisdiction of the
11 department of corrections.

12 (5) If a crime has a mandatory determinate penalty or a man-
13 datory penalty of life imprisonment, the court shall impose that
14 penalty. This section does not apply to sentencing for that
15 crime.

16 (6) As part of the sentence, the court may also order the
17 defendant to pay any combination of a fine, costs, or applicable
18 assessments. The court shall order payment of restitution as
19 provided by law.

20 (7) If the trial court imposes on a defendant a ~~minimum~~
21 DETERMINATE sentence that is longer or more severe than the
22 appropriate sentence range, as part of the court's advice of the
23 defendant's rights concerning appeal, the court shall advise the
24 defendant orally and in writing that he or she may appeal the
25 sentence as provided by law on grounds that it is longer or more
26 severe than the appropriate sentence range.

1 (8) All of the following shall be part of the record filed
2 for an appeal of a sentence under this section:

3 (a) An entire record of the sentencing proceedings.

4 (b) The presentence investigation report. Any portion of
5 the presentence investigation report exempt from disclosure by
6 law shall not be a public record.

7 (c) Any other reports or documents the sentencing court used
8 in imposing sentence.

9 (9) An appeal of a sentence under this section does not stay
10 execution of the sentence.

11 (10) If a ~~minimum~~ DETERMINATE sentence is within the
12 appropriate guidelines sentence range, the court of appeals shall
13 affirm that sentence and shall not remand for resentencing absent
14 an error in scoring the sentencing guidelines or inaccurate
15 information relied upon in determining the defendant's sentence.
16 A party shall not raise on appeal an issue challenging the scor-
17 ing of the sentencing guidelines or challenging the accuracy of
18 information relied upon in determining a sentence that is within
19 the appropriate guidelines sentence range unless the party has
20 raised the issue at sentencing, in a proper motion for resentenc-
21 ing, or in a proper motion to remand filed in the court of
22 appeals.

23 (11) If, upon a review of the record, the court of appeals
24 finds the trial court did not have a substantial and compelling
25 reason for departing from the appropriate sentence range, the
26 court shall remand the matter to the sentencing judge or another
27 trial court judge for resentencing pursuant to this chapter.

1 (12) Time served on the sentence appealed under this section
2 is considered time served on any sentence imposed after remand.

3

CHAPTER XI

4 Sec. 3b. (1) In addition to any other terms or conditions
5 of probation provided for under this chapter, the court may
6 require under a probation order that a person convicted of a
7 crime, except a crime specified in subsection (17), for which a
8 sentence in a state correctional facility may be imposed shall
9 satisfactorily complete a program of incarceration in a special
10 alternative incarceration unit, and a period of not less than 120
11 days of probation under intensive supervision. The special
12 alternative incarceration program shall be established and oper-
13 ated by the department of corrections as provided in the special
14 alternative incarceration act, Act No. 287 of the Public Acts of
15 1988, being sections 798.11 to 798.18 of the Michigan Compiled
16 Laws. The court also may require the person to satisfactorily
17 complete a local residential program of vocational training, edu-
18 cation, and substance abuse treatment, pursuant to subsection (9)
19 or (10).

20 (2) In order for a person to be placed in a special alterna-
21 tive incarceration program, the person shall meet all of the fol-
22 lowing requirements:

23 (a) The person has never served a sentence of imprisonment
24 in a state correctional facility.

25 (b) The person would likely be sentenced to imprisonment in
26 a state correctional facility.

1 (c) The felony sentencing guidelines upper limit for the
2 recommended ~~minimum~~ sentence for the person's offense is 12
3 months or more, as determined by the department. This subdivi-
4 sion does not apply in either of the following circumstances:

5 (i) The person's offense is not covered by the felony sen-
6 tencing guidelines.

7 (ii) The reason for the person being considered for place-
8 ment is that he or she violated the conditions of his or her
9 probation.

10 (d) The person is physically able to participate in the spe-
11 cial alternative incarceration program.

12 (e) The person does not appear to have any mental handicap
13 that would prevent participation in the special alternative
14 incarceration program.

15 (3) Subsection (2)(b) and (c) do not prevent the department
16 of corrections from entering into contracts with counties for
17 participation in the county jail special alternative incarcera-
18 tion program. The county jail special alternative program is a
19 program in which convicted felons who would have been sentenced
20 to a county jail with a sentence of 6 to 12 months can
21 participate.

22 (4) Before a court may place a person pursuant to this sec-
23 tion, an initial investigation shall be completed by the proba-
24 tion officer. The initial investigation shall establish that the
25 person meets the requirements of subsection (2)(a) to (b).

26 (5) After a person is placed in a special alternative
27 incarceration program, the department shall establish that the

1 person meets the requirements of subsection (2). If the person
2 does not meet the requirements of subsection (2), the person
3 shall be returned to the court for sentencing. The placement of
4 a person in a special alternative incarceration program is condi-
5 tioned upon the person meeting the requirements of subsection
6 (2). If a person does not meet the requirements of subsection
7 (2), the probation order is rescinded, and the person shall be
8 sentenced in the manner provided by law.

9 (6) A person shall not be placed in a program of special
10 alternative incarceration unless the person consents to the
11 placement.

12 (7) In every case in which a person is placed in a special
13 alternative incarceration program, the clerk of the sentencing
14 court shall, within 5 working days after the placement, mail to
15 the department of corrections a certified copy of the judgment of
16 sentence and the presentence investigation report of the person
17 being placed.

18 (8) Except as provided in subsections (9) to (12), a person
19 shall be placed in a special alternative incarceration program
20 for a period of not more than 120 days. If, during that period,
21 the person misses more than 5 days of program participation due
22 to medical excuse for illness or injury occurring after he or she
23 was placed in the program, the period of placement shall be
24 increased by the number of days missed, beginning with the sixth
25 day of medical excuse, up to a maximum of 20 days. A medical
26 excuse shall be verified by a physician's statement, a copy of
27 which shall be provided to the sentencing court. A person who is

1 medically unable to participate in the program for more than 25
2 days shall be returned to the court for sentencing pursuant to
3 subsection (5).

4 (9) The order of probation under subsection (1) may require
5 that a person who successfully completes a special alternative
6 incarceration program also successfully complete an additional
7 period of not more than 120 days of residential treatment in the
8 local governmental jurisdiction from which the person was commit-
9 ted, beginning immediately upon completion of the special alter-
10 native incarceration program, if the local unit of government has
11 created a residential program providing vocational training, edu-
12 cation, and substance abuse treatment, designed in whole or in
13 part for persons who complete a program of special alternative
14 incarceration.

15 (10) The order of probation under subsection (1) may autho-
16 rize the department of corrections to require a person who suc-
17 cessfully completes a special alternative incarceration program
18 to also successfully complete an additional period of not more
19 than 120 days of residential treatment in a program operated by
20 the department of corrections pursuant to section 4(2) of the
21 special alternative incarceration act, Act No. 287 of the Public
22 Acts of 1988, being section 798.14 of the Michigan Compiled
23 Laws. A probationer sentenced pursuant to subsection (9) is not
24 eligible for residential treatment pursuant to this subsection.

25 (11) An order of probation under subsection (1) that
26 requires an additional period of residential treatment upon

1 completion of the special alternative incarceration program shall
2 be considered to be entered pursuant to subsection (9).

3 (12) A person who successfully completes a program of spe-
4 cial alternative incarceration shall be placed on probation under
5 intensive supervision for a period of not less than 120 days.
6 The period of probation under intensive supervision shall begin
7 upon the completion of the program of special alternative incar-
8 ceration, unless the person has been ordered to complete an addi-
9 tional program of residential treatment as described in subsec-
10 tion (9) or (10), in which case the period of probation under
11 intensive supervision shall begin upon completion of the program
12 of residential treatment.

13 (13) Upon receiving a satisfactory report of performance in
14 the program from the department of corrections, the court shall
15 authorize the release of the person from confinement in the spe-
16 cial alternative incarceration unit. The receipt of an unsatis-
17 factory report shall be grounds for revocation of probation as
18 would any other violation of a condition or term of probation.

19 (14) A term of special alternative incarceration shall be
20 served in the manner provided in the special alternative incar-
21 ceration act, Act No. 287 of the Public Acts of 1988, being sec-
22 tions 798.11 to 798.18 of the Michigan Compiled Laws.

23 (15) Except as provided in subsection (16), a person shall
24 not be incarcerated in a special alternative incarceration unit
25 more than once.

26 (16) If a person was placed in a special alternative
27 incarceration program but was returned to the court for

1 sentencing because of a medical condition existing at the time of
2 the placement, the person may be placed again in a special alter-
3 native incarceration program after the medical condition is
4 corrected.

5 (17) A person who is convicted of any of the following
6 crimes shall not be eligible for placement in the special alter-
7 native incarceration program:

8 (a) Section 145c, 520b, 520c, 520d, or 520g of the Michigan
9 penal code, Act No. 328 of the Public Acts of 1931, being sec-
10 tions 750.145c, 750.520b, 750.520c, 750.520d, and 750.520g of the
11 Michigan Compiled Laws.

12 (b) Section 72, 73, or 75 of Act No. 328 of the Public Acts
13 of 1931, being sections 750.72, 750.73, and 750.75 of the
14 Michigan Compiled Laws.

15 (c) An attempt to commit a crime described in subdivision
16 (a) or (b).

17 Sec. 14. (1) Before the court sentences a person charged
18 with a felony or a person who is a licensee or registrant under
19 article 15 of the public health code, Act No. 368 of the Public
20 Acts of 1978, being sections 333.16101 to 333.18838 of the
21 Michigan Compiled Laws, as described in section 1(11) of chapter
22 IX, and, if directed by the court, in any other case in which a
23 person is charged with a misdemeanor within the jurisdiction of
24 the court, the probation officer shall inquire into the ante-
25 cedents, character, and circumstances of the person, and shall
26 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) If requested by a victim, any written impact statement
7 submitted by the victim pursuant to the crime victim's rights
8 act, Act No. 87 of the Public Acts of 1985, being
9 sections 780.751 to 780.834 of the Michigan Compiled Laws.

10 (c) A specific written recommendation for disposition based
11 on the evaluation and other information as prescribed by the
12 assistant director of the department of corrections in charge of
13 probation.

14 (d) A statement prepared by the prosecuting attorney as to
15 whether consecutive sentencing is required or authorized by law.

16 (e) For a person to be sentenced pursuant to the sentencing
17 guidelines enacted into law pursuant to section 33 of chapter IX,
18 all of the following:

19 (i) For each conviction entered, the sentence grid that con-
20 tains the appropriate ~~minimum~~ sentence range.

21 (ii) The computation that determines the appropriate
22 ~~minimum~~ sentence range for each conviction entered.

23 (iii) A specific statement as to the applicability of inter-
24 mediate sanctions, as defined in section 31 of chapter IX.

25 (iv) The recommended sentence.

26 (f) If a person is to be sentenced for a misdemeanor
27 involving the illegal delivery, possession, or use of alcohol or

1 a controlled substance or a felony, a statement that the person
2 is licensed or registered under article 15 of the public health
3 code, Act No. 368 of the Public Acts of 1978, being
4 sections 333.16101 to 333.18838 of the Michigan Compiled Laws, if
5 applicable.

6 (g) Diagnostic opinions that are available and not exempted
7 from disclosure under subsection (3).

8 (3) The court may exempt from disclosure in the presentence
9 investigation report information or a diagnostic opinion that
10 might seriously disrupt a program of rehabilitation or sources of
11 information obtained on a promise of confidentiality. If a part
12 of the presentence investigation report is not disclosed, the
13 court shall state on the record the reasons for its action and
14 inform the defendant and his or her attorney that information has
15 not been disclosed. The action of the court in exempting infor-
16 mation from disclosure is subject to appellate review.

17 Information or a diagnostic opinion exempted from disclosure pur-
18 suant to this subsection shall be specifically noted in the pre-
19 sentence investigation report.

20 (4) The court shall permit the prosecutor, the defendant's
21 attorney, and the defendant to review the presentence investiga-
22 tion report before sentencing.

23 (5) At the time of sentencing, either party may challenge,
24 on the record, the accuracy or relevancy of any information con-
25 tained in the presentence investigation report. The court may
26 order an adjournment to permit the parties to prepare a challenge
27 or a response to a challenge. If the court finds on the record

1 that the challenged information is inaccurate or irrelevant, that
2 finding shall be made a part of the record, the presentence
3 investigation report shall be amended, and the inaccurate or
4 irrelevant information shall be stricken accordingly before the
5 report is transmitted to the department of corrections.

6 (6) On appeal, the defendant's attorney, or the defendant if
7 proceeding pro se, shall be provided with a copy of the presentence
8 investigation report and any attachments to the report with
9 the exception of any information exempted from disclosure, on the
10 record, by the court pursuant to subsection (3).

11 (7) If the person is committed to a state penal institution,
12 a copy or amended copy of the presentence investigation report
13 and, if a psychiatric examination of the person has been made for
14 the court, a copy of the psychiatric report shall accompany the
15 commitment papers. If the person is sentenced by fine or imprisonment
16 or placed on probation or other disposition of his or her
17 case is made by the court, a copy or amended copy of the presentence
18 investigation report, including a psychiatric examination
19 report made in the case, shall be filed with the department of
20 corrections.

21 (8) A prisoner under the jurisdiction of the department of
22 corrections shall be provided with a copy of any presentence
23 investigation report in the department's possession about that
24 prisoner, except for information exempted from disclosure pursuant
25 to subsection (3), not less than 30 days before a parole
26 interview is conducted pursuant to section 35 of Act No. 232 of

1 the Public Acts of 1953, being section 791.235 of the Michigan
2 Compiled Laws.

3 Section 2. Sections 10, 11, 12, and 13 of chapter IX of Act
4 No. 175 of the Public Acts of 1927, being sections 769.10,
5 769.11, 769.12, and 769.13 of the Michigan Compiled Laws, are
6 repealed effective on the effective date of the act by which the
7 legislature enacts sentencing guidelines into law pursuant to
8 section 33 of chapter IX of the code of criminal procedure, Act
9 No. 175 of the Public Acts of 1927, being section 769.33 of the
10 Michigan Compiled Laws.

11 Section 3. Sections 8, 9, and 34 of chapter IX and
12 sections 3b and 14 of chapter XI of Act No. 175 of the Public
13 Acts of 1927, as amended by this amendatory act, and section 8a
14 of chapter IX of Act No. 175 of the Public Acts of 1927, as added
15 by this amendatory act, shall take effect on the effective date
16 of the act by which the legislature enacts sentencing guidelines
17 into law pursuant to section 33 of chapter IX of the code of
18 criminal procedure, Act No. 175 of the Public Acts of 1927, being
19 section 769.33 of the Michigan Compiled Laws.

20 Section 4. The provisions enacted by this amendatory act do
21 not apply to an offense committed on or before the effective date
22 of this amendatory act. A person who committed an offense on or
23 before the effective date this amendatory act is subject to sen-
24 tencing as provided by law when the person committed the
25 offense.

1 Section 5. This amendatory act shall not take effect unless
2 all of the following bills of the 88th Legislature are enacted
3 into law:

4 (a) Senate Bill No. ____ or House Bill No. 5035 (request
5 no. 01456'95 a *).

6 (b) Senate Bill No. ____ or House Bill No. 5034 (request
7 no. 01456'95 b *).