

Act No. 520
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**STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998**

Introduced by Senator Schwarz

ENROLLED SENATE BILL No. 1188

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 1 of chapter I, section 1f of chapter IV, section 14 of chapter VI, sections 1, 1b, and 28 of chapter IX, and sections 1, 2, 2a, 3, 3a, 3c, 4, 5, 7, and 14a of chapter XI, (MCL 761.1, 764.1f, 766.14, 769.1, 769.1b, 769.28, 771.1, 771.2, 771.2a, 771.3, 771.3a, 771.3c, 771.4, 771.5, 771.7, and 771.14a), section 1 of chapter I and section 14 of chapter VI as amended by 1996 PA 418, section 1f of chapter IV as amended by 1996 PA 255, section 1 of chapter IX as amended by 1996 PA 248, section 1b of chapter IX and section 7 of chapter XI as amended by 1996 PA 247, section 28 of chapter IX and sections 3a, 4, and 5 of chapter XI as amended and section 14a of chapter XI as added by 1988 PA 78, sections 1 and 3c of chapter XI as amended by 1993 PA 185, section 2 of chapter XI as amended by 1994 PA 286, section 2a of chapter XI as added by 1992 PA 251, and section 3 of chapter XI as amended by 1994 PA 445.

The People of the State of Michigan enact:

CHAPTER I

Sec. 1. As used in this act:

- (a) "Person", "accused", or a similar word means an individual or, unless a contrary intention appears, a public or private corporation, partnership, or unincorporated or voluntary association.
- (b) "Act" or "doing of an act" includes "omission to act".

- (c) "Property" includes any matter or thing upon or in respect to which an offense may be committed.
- (d) "Indictment" means 1 or more of the following:
- (i) An indictment.
 - (ii) An information.
 - (iii) A presentment.
 - (iv) A complaint.
 - (v) A warrant.
 - (vi) A formal written accusation.
- (vii) Unless a contrary intention appears, a count contained in any document described in subparagraphs (i) through (vi).
- (e) "Writing", "written", or a similar term refers to words printed, painted, engraved, lithographed, photographed, copied, traced, or otherwise made visible to the eye.
- (f) "Magistrate" means a judge of the district court or a judge of a municipal court. Magistrate does not include a district court magistrate, except that a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided in this act, the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, or any other statute. This definition does not limit the power of a justice of the supreme court, a circuit judge, or a judge of a court of record having jurisdiction of criminal cases under this act, or deprive him or her of the power to exercise the authority of a magistrate.
- (g) "Felony" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.
- (h) "Misdemeanor" means a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.
- (j) "Ordinance violation" means either of the following:
- (i) A violation of an ordinance or charter of a city, village, township, or county that is punishable by imprisonment or a fine that is not a civil fine.
 - (ii) A violation of an ordinance, rule, or regulation of any other governmental entity authorized by law to enact ordinances, rules, or regulations that is punishable by imprisonment or a fine that is not a civil fine.
- (k) "Minor offense" means a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$500.00 and includes a violation described in section 9f(2) of chapter IV for which the maximum permissible penalty does not exceed 92 days in jail and a fine.
- (l) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, or, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based.
- (m) "Judicial district" means the following:
- (i) With regard to the circuit court, the county.
 - (ii) With regard to municipal courts, the city in which the municipal court functions or the village served by a municipal court under section 9928 of the revised judicature act of 1961, 1961 PA 236, MCL 600.9928.
 - (iii) With regard to the district court, the county, district, or political subdivision in which venue is proper for criminal actions.
- (n) "Complaint" means a written accusation, under oath or upon affirmation, that a felony, misdemeanor, or ordinance violation has been committed and that the person named or described in the accusation is guilty of the offense.
- (o) "Clerk" means the clerk or a deputy clerk of the court.
- (p) "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is enforcing laws of the United States.
- (q) "Jail", "prison", or a similar word includes a juvenile facility in which a juvenile has been placed pending trial under section 27a of chapter IV.
- (r) "Juvenile" means a person within the jurisdiction of the circuit court under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606.
- (s) "Juvenile facility" means a county facility, institution operated as an agency of the county or family division of circuit court, or an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, to which a juvenile has been committed under section 27a of chapter IV.
- (t) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act.

(u) “Taken”, “brought”, or “before” a magistrate or judge for purposes of criminal arraignment or the setting of bail means either of the following:

(i) Physical presence before a judge or district court magistrate.

(ii) Presence before a judge or district court magistrate by use of 2-way closed circuit television.

CHAPTER IV

Sec. 1f. (1) If the prosecuting attorney has reason to believe that a juvenile 14 years of age or older but less than 17 years of age has committed a specified juvenile violation, the prosecuting attorney may authorize the filing of a complaint and warrant on the charge with a magistrate concerning the juvenile.

(2) As used in this section, “specified juvenile violation” means any of the following:

(a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349, 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531.

(b) A violation of section 84 or 110a(2) of the Michigan penal code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is armed with a dangerous weapon. As used in this subdivision, “dangerous weapon” means 1 or more of the following:

(i) A loaded or unloaded firearm, whether operable or inoperable.

(ii) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

(iii) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.

(iv) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).

(c) A violation of section 186a of the Michigan penal code, 1931 PA 328, MCL 750.186a, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the individual escaped or attempted to escape was 1 of the following:

(i) A high-security or medium-security facility operated by the family independence agency or a county juvenile agency.

(ii) A high-security facility operated by a private agency under contract with the family independence agency or a county juvenile agency.

(d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

(e) An attempt to commit a violation described in subdivisions (a) to (d).

(f) Conspiracy to commit a violation described in subdivisions (a) to (d).

(g) Solicitation to commit a violation described in subdivisions (a) to (d).

(h) Any lesser included offense of a violation described in subdivisions (a) to (g) if the individual is charged with a violation described in subdivisions (a) to (g).

(i) Any other violation arising out of the same transaction as a violation described in subdivisions (a) to (g) if the individual is charged with a violation described in subdivisions (a) to (g).

CHAPTER VI

Sec. 14. (1) If the court determines at the conclusion of the preliminary examination of a person charged with a felony that the offense charged is not a felony or that an included offense that is not a felony has been committed, the accused shall not be dismissed but the magistrate shall proceed in the same manner as if the accused had initially been charged with an offense that is not a felony.

(2) If at the conclusion of the preliminary examination of a juvenile the magistrate finds that a specified juvenile violation did not occur or that there is not probable cause to believe that the juvenile committed the violation, but that there is probable cause to believe that some other offense occurred and that the juvenile committed that other offense, the magistrate shall transfer the case to the family division of circuit court of the county where the offense is alleged to have been committed.

(3) A transfer under subsection (2) does not prevent the family division of circuit court from waiving jurisdiction over the juvenile under section 4 of chapter XIIA of 1939 PA 288, MCL 712A.4.

(4) As used in this section, “specified juvenile violation” means any of the following:

(a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349, 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.89, 750.91, 750.316, 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531.

(b) A violation of section 84 or 110a(2) of the Michigan penal code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is armed with a dangerous weapon. As used in this subdivision, "dangerous weapon" means 1 or more of the following:

(i) A loaded or unloaded firearm, whether operable or inoperable.

(ii) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

(iii) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.

(iv) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).

(c) A violation of section 186a of the Michigan penal code, 1931 PA 328, MCL 750.186a, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the individual escaped or attempted to escape was 1 of the following:

(i) A high-security or medium-security facility operated by the family independence agency or a county juvenile agency.

(ii) A high-security facility operated by a private agency under contract with the family independence agency or a county juvenile agency.

(d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

(e) An attempt to commit a violation described in subdivisions (a) to (d).

(f) Conspiracy to commit a violation described in subdivisions (a) to (d).

(g) Solicitation to commit a violation described in subdivisions (a) to (d).

(h) Any lesser included offense of a violation described in subdivisions (a) to (g) if the individual is charged with a violation described in subdivisions (a) to (g).

(i) Any other violation arising out of the same transaction as a violation described in subdivisions (a) to (g) if the individual is charged with a violation described in subdivisions (a) to (g).

CHAPTER IX

Sec. 1. (1) A judge of a court having jurisdiction may pronounce judgment against and pass sentence upon a person convicted of an offense in that court. The sentence shall not exceed the sentence prescribed by law. The court shall sentence a juvenile convicted of any of the following crimes in the same manner as an adult:

(a) Arson of a dwelling in violation of section 72 of the Michigan penal code, 1931 PA 328, MCL 750.72.

(b) Assault with intent to commit murder in violation of section 83 of the Michigan penal code, 1931 PA 328, MCL 750.83.

(c) Assault with intent to maim in violation of section 86 of the Michigan penal code, 1931 PA 328, MCL 750.86.

(d) Attempted murder in violation of section 91 of the Michigan penal code, 1931 PA 328, MCL 750.91.

(e) Conspiracy to commit murder in violation of section 157a of the Michigan penal code, 1931 PA 328, MCL 750.157a.

(f) Solicitation to commit murder in violation of section 157b of the Michigan penal code, 1931 PA 328, MCL 750.157b.

(g) First degree murder in violation of section 316 of the Michigan penal code, 1931 PA 328, MCL 750.316.

(h) Second degree murder in violation of section 317 of the Michigan penal code, 1931 PA 328, MCL 750.317.

(i) Kidnapping in violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349.

(j) First degree criminal sexual conduct in violation of section 520b of the Michigan penal code, 1931 PA 328, MCL 750.520b.

(k) Armed robbery in violation of section 529 of the Michigan penal code, 1931 PA 328, MCL 750.529.

(l) Carjacking in violation of section 529a of the Michigan penal code, 1931 PA 328, MCL 750.529a.

(2) A person convicted of a felony or of a misdemeanor punishable by imprisonment for more than 92 days shall not be sentenced until the court has examined the court file and has determined that the person's fingerprints have been taken.

(3) Unless a juvenile is required to be sentenced in the same manner as an adult under subsection (1), a judge of a court having jurisdiction over a juvenile shall conduct a hearing at the juvenile's sentencing to determine if the best interests of the public would be served by placing the juvenile on probation and committing the juvenile to an institution

or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, or by imposing any other sentence provided by law for an adult offender. Except as provided in subsection (5), the court shall sentence the juvenile in the same manner as an adult unless the court determines by a preponderance of the evidence that the interests of the public would be best served by placing the juvenile on probation and committing the juvenile to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309. The rules of evidence do not apply to a hearing under this subsection. In making the determination required under this subsection, the judge shall consider all of the following, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency:

(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(b) The juvenile's culpability in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(e) The adequacy of the punishment or programming available in the juvenile justice system.

(f) The dispositional options available for the juvenile.

(4) With the consent of the prosecutor and the defendant, the court may waive the hearing required under subsection (3). If the court waives the hearing required under subsection (3), the court may place the juvenile on probation and commit the juvenile to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, but shall not impose any other sentence provided by law for an adult offender.

(5) If a juvenile is convicted of a violation or conspiracy to commit a violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, the court shall determine whether the best interests of the public would be served by imposing the sentence provided by law for an adult offender, by placing the individual on probation and committing the individual to an institution or agency under subsection (3), or by imposing a sentence of imprisonment for any term of years but not less than 25 years. If the court determines by clear and convincing evidence that the best interests of the public would be served by imposing a sentence of imprisonment for any term of years but not less than 25 years, the court may impose that sentence. In making its determination, the court shall use the criteria specified in subsection (3).

(6) The court shall state on the record the court's findings of fact and conclusions of law for the probation and commitment decision or sentencing decision made under subsection (3). If a juvenile is committed under subsection (3) to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, a transcript of the court's findings shall be sent to the family independence agency or county juvenile agency, as applicable.

(7) If a juvenile is committed under subsection (3) or (4) to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, the written order of commitment shall contain a provision for the reimbursement to the court by the juvenile or those responsible for the juvenile's support, or both, for the cost of care or service. The amount of reimbursement ordered shall be reasonable, taking into account both the income and resources of the juvenile and those responsible for the juvenile's support. The amount may be based upon the guidelines and model schedule prepared under section 18(6) of chapter XIIA of 1939 PA 288, MCL 712A.18. The reimbursement provision applies during the entire period the juvenile remains in care outside the juvenile's own home and under court supervision. The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under county, state, or court supervision. The court may also collect benefits paid by the government of the United States for the cost of care of the juvenile. Money collected for juveniles placed with or committed to the family independence agency or a county juvenile agency shall be accounted for and reported on an individual basis. In cases of delinquent accounts, the court may also enter an order to intercept state tax refunds or the federal income tax refund of a child, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to

contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

(8) If the court appoints an attorney to represent a juvenile, an order entered under this section may require the juvenile or person responsible for the juvenile's support, or both, to reimburse the court for attorney fees.

(9) An order directed to a person responsible for the juvenile's support under this section is not binding on the person unless an opportunity for a hearing has been given and until a copy of the order is served on the person, personally or by first-class mail to the person's last known address.

(10) If a juvenile is placed on probation and committed under subsection (3) or (4) to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, the court shall retain jurisdiction over the juvenile while the juvenile is on probation and committed to that institution or agency.

(11) If the court has retained jurisdiction over a juvenile under subsection (10), the court shall conduct an annual review of the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in that placement. In conducting this review, the court shall examine the juvenile's annual report prepared under section 3 of the juvenile facilities act, 1988 PA 73, MCL 803.223. The court may order changes in the juvenile's placement or treatment plan including, but not limited to, committing the juvenile to the jurisdiction of the department of corrections, based on the review.

(12) If an individual who is under the court's jurisdiction under section 4 of chapter XIIA of 1939 PA 288, MCL 712A.4, is convicted of a violation or conspiracy to commit a violation of section 7401(2)(a)(i) or section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, the court shall determine whether the best interests of the public would be served by imposing the sentence provided by law for an adult offender or by imposing a sentence of imprisonment for any term of years but not less than 25 years. If the court determines by clear and convincing evidence that the best interests of the public would be served by imposing a sentence of imprisonment for any term of years but not less than 25 years, the court may impose that sentence. In making its determination, the court shall use the criteria specified in subsection (3) to the extent they apply.

(13) When sentencing a person convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the court shall examine the presentence investigation report and determine if the person being sentenced is licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838. The court shall also examine the court file and determine if a report of the conviction upon which the person is being sentenced has been forwarded to the department of consumer and industry services as provided in section 16a. If the report has not been forwarded to the department of consumer and industry services, the court shall order the clerk of the court to immediately prepare and forward the report as provided in section 16a.

Sec. 1b. (1) If a juvenile is placed on probation and committed under section 1(3) or (4) of this chapter to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued or the court may commit the juvenile to the department of corrections as provided in this section. In making this determination, the court shall consider the following:

- (a) The extent and nature of the juvenile's participation in education, counseling, or work programs.
- (b) The juvenile's willingness to accept responsibility for prior behavior.
- (c) The juvenile's behavior in his or her current placement.
- (d) The juvenile's prior record and character and his or her physical and mental maturity.
- (e) The juvenile's potential for violent conduct as demonstrated by prior behavior.
- (f) The recommendations of the institution or agency charged with the juvenile's care for the juvenile's release or continued custody.
- (g) Other information the prosecuting attorney or juvenile may submit.

(2) A review hearing shall be scheduled and held unless adjourned for good cause as near as possible to, but before, the juvenile's nineteenth birthday. If the institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety, that institution or agency may petition the court to conduct a review hearing at any time before the juvenile becomes 19 years of age or, if the court has continued jurisdiction under subsection (1), at any time before the juvenile becomes 21 years of age.

(3) Not less than 14 days before a review hearing is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may extend jurisdiction over the juvenile and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal

counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(4) The institution or agency charged with the care of the juvenile shall prepare commitment reports as provided in section 5 of the juvenile facilities act, 1988 PA 73, MCL 803.225, for use by the court at a review hearing held under this section.

(5) The court shall conduct a final review of the juvenile's probation and commitment under section 1(3) or (4) of this chapter not less than 3 months before the end of the period that the juvenile is on probation and committed to the institution or agency. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose the sentence. In making its determination, the court shall consider the criteria specified in subsection (1) and all of the following criteria:

- (a) The effect of treatment on the juvenile's rehabilitation.
- (b) Whether the juvenile is likely to be dangerous to the public if released.
- (c) The best interests of the public welfare and the protection of public security.

(6) Not less than 14 days before a final review hearing under subsection (5) is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may impose a sentence upon the juvenile under subsection (5) and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(7) After a sentence is imposed under subsection (1) or (5), the juvenile shall receive credit for the period of time served on probation and committed to an agency or institution under section 1(3) or (4) of this chapter.

Sec. 28. Notwithstanding any provision of law to the contrary, if a person convicted of a crime or contempt of court is committed or sentenced to imprisonment for a maximum of 1 year or less, the commitment or sentence shall be to the county jail of the county in which the person was convicted and not to a state penal institution. This section does not apply to a juvenile placed on probation and committed to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, under section 1(3) or (4) of this chapter.

CHAPTER XI

Sec. 1. (1) In all prosecutions for felonies or misdemeanors other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, and major controlled substance offenses not described in subsection (4), if the defendant has been found guilty upon verdict or plea and the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer.

(2) Except as provided in subsection (4), in an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation. When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.

(3) If a defendant is before the circuit court and the court delays imposing sentence under subsection (2), the court shall include in the delayed sentence order that the department of corrections shall collect a supervision fee of not more than \$30.00 multiplied by the number of months of delay ordered, but not more than 12 months. The fee is payable when the delayed sentence order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that defendant. In determining the amount of the fee, the court shall consider the defendant's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$ 250.00-499.99	\$ 10.00
\$ 500.00-749.99	\$ 20.00
\$ 750.00 or more	\$ 30.00

The court may order a higher amount than indicated by the table, up to the maximum of \$30.00 multiplied by the number of months of delay ordered but not more than 12 months, if the court determines that the defendant has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the

amount and the reasons for ordering that amount shall be stated in the court order. The fee shall be collected as provided in section 25a of 1953 PA 232, MCL 791.225a. A person shall not be subject to more than 1 supervision fee at the same time. If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration.

(4) The sentencing judge may place a defendant on life probation pursuant to subsection (1) if the defendant is convicted for a violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, or conspiracy to commit either offense. Subsection (2) does not apply to this subsection.

(5) This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

Sec. 2. (1) Except as provided in section 2a of this chapter, if the defendant is convicted for an offense that is not a felony, the probation period shall not exceed 2 years. Except as provided in section 2a of this chapter, if the defendant is convicted of a felony that is not a major controlled substance offense, the probation period shall not exceed 5 years.

(2) The court shall by order, to be filed or entered in the cause as the court may direct by general rule or in each case, fix and determine the period and conditions of probation. The order is part of the record in the cause. The court may amend the order in form or substance at any time.

(3) A defendant who is placed on probation under section 1(4) of this chapter shall be placed on probation for life. That sentence shall be made subject to conditions of probation specified in section 3 of this chapter, including the payment of a probation supervision fee as prescribed in section 3c of this chapter, and to revocation for violation of those conditions, but the probation period shall not be reduced other than by a revocation that results in imprisonment.

(4) If an individual is placed on probation for a listed offense enumerated in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the individual's probation officer shall register the individual or accept the individual's registration as provided in that act.

(5) Subsections (1) and (3) do not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

Sec. 2a. (1) The court may place an individual convicted of violating section 411h of the Michigan penal code, 1931 PA 328, MCL 750.411h, on probation for not more than 5 years. The sentence is subject to the conditions of probation set forth in section 411h(3) of the Michigan penal code, 1931 PA 328, MCL 750.400h, and section 3 of this chapter. The probation is subject to revocation for any violation of a condition of that probation.

(2) The court may place an individual convicted of violating section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i, on probation for any term of years, but not less than 5 years. The sentence is subject to the conditions of probation set forth in section 411i(4) of the Michigan penal code, 1931 PA 328, MCL 750.411i, and section 3 of this chapter. The probation is subject to revocation for any violation of a condition of that probation.

(3) The court shall by order, to be filed or entered in the cause as the court directs by general rule or in each case, fix and determine the period and conditions of probation. The order is part of the record in the cause. The court may amend the order in form or substance at any time.

(4) This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

Sec. 3. (1) The sentence of probation shall include all of the following conditions:

(a) During the term of his or her probation, the probationer shall not violate any criminal law of this state, the United States, or another state or any ordinance of any municipality in this state or another state.

(b) During the term of his or her probation, the probationer shall not leave the state without the consent of the court granting his or her application for probation.

(c) The probationer shall report to the probation officer, either in person or in writing, monthly or as often as the probation officer requires. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(d) If convicted of a felony, the probationer shall pay a probation supervision fee as prescribed in section 3c of this chapter.

(e) The probationer shall pay restitution to the victim of the defendant's course of conduct giving rise to the conviction or to the victim's estate as provided in chapter IX. An order for payment of restitution may be modified and shall be enforced as provided in chapter IX.

(f) The probationer shall pay an assessment ordered under section 5 of 1989 PA 196, MCL 780.905.

(g) If the probationer is required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, the probationer shall comply with that act.

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

(a) Be imprisoned in the county jail for not more than 12 months, at the time or intervals, which may be consecutive or nonconsecutive, within the probation as the court determines. However, the period of confinement shall not exceed the maximum period of imprisonment provided for the offense charged if the maximum period is less than 12 months. The court may permit day parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The court may permit a work or school release from jail. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(b) Pay immediately or within the period of his or her probation a fine imposed when placed on probation.

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

(d) Pay any assessment ordered by the court other than an assessment described in subsection (1)(f).

(e) Engage in community service.

(f) Agree to pay by wage assignment any restitution, assessment, fine, or cost imposed by the court.

(g) Participate in inpatient or outpatient drug treatment.

(h) Participate in mental health treatment.

(i) Participate in mental health or substance abuse counseling.

(j) Participate in a community corrections program.

(k) Be under house arrest.

(l) Be subject to electronic monitoring.

(m) Participate in a residential probation program.

(n) Satisfactorily complete a program of incarceration in a special alternative incarceration unit as provided in section 3b of this chapter.

(o) Be subject to conditions reasonably necessary for the protection of 1 or more named persons.

(p) Reimburse the county for expenses incurred by the county in connection with the conviction for which probation was ordered as provided in the prisoner reimbursement to the county act, 1984 PA 118, MCL 801.81 to 801.93.

(3) Subsection (2) may be applied to a person who is placed on probation for life pursuant to sections 1(4) and 2(3) of this chapter for the first 5 years of that probation.

(4) The court may impose other lawful conditions of probation as the circumstances of the case require or warrant or as in its judgment are proper.

(5) If an order or amended order of probation contains a condition for the protection of 1 or more named persons as provided in subsection (2)(o), the court or a law enforcement agency within the court's jurisdiction shall enter the order or amended order into the law enforcement information network. If the court rescinds the order or amended order or the condition, the court shall remove the order or amended order or the condition from the law enforcement information network or notify that law enforcement agency and the law enforcement agency shall remove the order or amended order or the condition from the law enforcement information network.

(6) If the court requires the probationer to pay costs, the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer.

(7) If the court imposes costs as part of a sentence of probation, all of the following apply:

(a) The court shall not require a probationer to pay costs unless the probationer is or will be able to pay them during the term of probation. In determining the amount and method of payment of costs, the court shall take into account the probationer's financial resources and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations.

(b) A probationer who is required to pay costs and who is not in willful default of the payment of the costs may petition the sentencing judge or his or her successor at any time for a remission of the payment of any unpaid portion of those costs. If the court determines that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

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

(9) If a probationer is ordered to pay costs as part of a sentence of probation, compliance with that order shall be a condition of probation. The court may revoke probation if the probationer fails to comply with the order and if the

probationer has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the probationer's employment status, earning ability, and financial resources, the willfulness of the probationer's failure to pay, and any other special circumstances that may have a bearing on the probationer's ability to pay. The proceedings provided for in this subsection are in addition to those provided in section 4 of this chapter.

Sec. 3a. (1) A person under 22 years of age who is convicted of a crime in this state for which a sentence in a state prison may be imposed may be required under a probation order to spend not more than 1 year of the probation period, as the court directs, in a probation camp made available to the court by the department of corrections. Admission to a probation camp under this section shall be made only with the prior consent of the department of corrections. The department shall have custody of the probationer for the period the court directs. A probationer fleeing the department's custody may be pursued and recaptured as if the probationer had been regularly committed to a penal institution and had escaped from the institution. A violation by the probationer of the department's rules constitutes sufficient grounds for the court to revoke its probation order and to sentence the probationer for the offense for which he or she was originally convicted and placed on probation. This section does not restrict or limit the court's jurisdiction to place a person on probation in another facility suitable and available to the court. The expense of transporting a probationer to and from the probation camp shall be borne by the county from which the probationer was committed to the department of corrections.

(2) This section does not apply to a person placed on probation under sections 1(3) and 2(3) of this chapter or to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

Sec. 3c. (1) The circuit court shall include in each order of probation for a defendant convicted of a felony that the department of corrections shall collect a probation supervision fee of not more than \$30.00 multiplied by the number of months of probation ordered, but not more than 60 months. The fee is payable when the probation order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that probationer. In determining the amount of the fee, the court shall consider the probationer's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$ 250.00-499.99	\$ 10.00
\$ 500.00-749.99	\$ 20.00
\$ 750.00 or more	\$ 30.00

The court may order a higher amount than indicated by the table, up to the maximum of \$30.00 multiplied by the number of months of probation ordered, but not more than 60 months, if the court determines that the probationer has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the court order. The fee shall be collected as provided in section 25a of 1953 PA 232, MCL 791.225a. A person shall not be subject to more than 1 supervision fee at the same time. If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration.

(2) A probation oversight fee ordered before October 1, 1993 under this section as it existed before amendment by 1993 PA 185 remains enforceable according to the terms of that probation order notwithstanding the amendments made by 1993 PA 185 to this section.

(3) If a person who is subject to a probation supervision fee is also subject to any combination of fines, costs, restitution orders, assessments, or payments arising out of the same criminal proceeding, the allocation of money collected for those obligations shall be as otherwise provided in the code of criminal procedure, 1927 PA 175, MCL 760.1 to 776.22.

(4) This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

Sec. 4. It is the intent of the legislature that the granting of probation is a matter of grace conferring no vested right to its continuance. If during the probation period the sentencing court determines that the probationer is likely again to engage in an offensive or criminal course of conduct or that the public good requires revocation of probation, the court may revoke probation. All probation orders are revocable in any manner the court that imposed probation considers applicable either for a violation or attempted violation of a probation condition or for any other type of antisocial conduct or action on the probationer's part for which the court determines that revocation is proper in the public interest. Hearings on the revocation shall be summary and informal and not subject to the rules of evidence or of pleadings applicable in criminal trials. In its probation order or by general rule, the court may provide for the apprehension, detention, and confinement of a probationer accused of violating a probation condition or conduct inconsistent with the public good. The method of hearing and presentation of charges are within the court's discretion, except that the probationer is entitled to a written copy of the charges constituting the claim that he or she violated probation and to

a probation revocation hearing. The court may investigate and enter a disposition of the probationer as the court determines best serves the public interest. If a probation order is revoked, the court may sentence the probationer in the same manner and to the same penalty as the court might have done if the probation order had never been made. This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

Sec. 5. (1) When the probation period terminates, the probation officer shall report that fact and the probationer's conduct during the probation period to the court. Upon receiving the report, the court may discharge the probationer from further supervision and enter a judgment of suspended sentence or extend the probation period as the circumstances require, so long as the maximum probation period is not exceeded.

(2) This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

Sec. 7. (1) If the court finds that a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, the court shall revoke probation and order the juvenile committed to the department of corrections for a term of years that does not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation. The court shall grant credit against the sentence for the period of time the juvenile served on probation.

(2) If the court finds that a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, violated probation other than as provided in subsection (1), the court may order the juvenile committed to the department of corrections or may order any of the following for the juvenile:

- (a) A change of placement.
- (b) Community service.
- (c) Substance abuse counseling.
- (d) Mental health counseling.
- (e) Participation in a vocational-technical education program.
- (f) Incarceration in a county jail for not more than 30 days. If a juvenile is under 17 years of age, the juvenile shall be placed in a room or ward out of sight and sound from adult prisoners.
- (g) Other participation or performance as the court considers necessary.

Sec. 14a. (1) Before the court sentences a juvenile under section 1(3) or (4) of chapter IX, the family independence agency or county juvenile agency, as applicable, shall inquire into the juvenile's antecedents, character, and circumstances and shall report in writing to the court as provided in section 4 of the juvenile facilities act, 1988 PA 73, MCL 803.224.

(2) The court may exempt from disclosure in a report under this section information or a diagnostic opinion that might seriously disrupt a program of rehabilitation or sources of information obtained on a promise of confidentiality. If a part of the report is not disclosed, the court shall state on the record the reasons for its action and inform the juvenile and his or her attorney that information has not been disclosed. The action of the court in exempting information from disclosure is subject to appellate review. Information or a diagnostic opinion exempted from disclosure under this subsection shall be specifically noted in the report.

(3) The court shall permit the prosecutor, the juvenile's attorney, and the juvenile to review the report before sentencing.

(4) At the time of sentencing, either party may challenge on the record the accuracy or relevancy of any information contained in the report. The court may order an adjournment to permit the parties to prepare a challenge or a response to a challenge. If the court finds that the challenged information is inaccurate or irrelevant, that finding shall be made a part of the record and the report shall be amended by striking the inaccurate or irrelevant information.

(5) The juvenile and, on appeal, the juvenile's attorney shall be provided with a copy of the report and any attachments to the report, with the exception of any information exempted from disclosure under subsection (2).

(6) If the juvenile is committed to a state penal institution or is placed on probation and committed to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, a copy of the report and any attachments to it shall accompany the commitment papers. If the juvenile is sentenced by fine or imprisonment or placed on probation but not committed to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, a copy of the report and any attachments to it shall be filed with the department of corrections.

(7) A report under this section is in addition to, and not in lieu of, a presentence investigation report required by section 14 of this chapter.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 89th Legislature are enacted into law:

- (a) Senate Bill No. 1183.
- (b) Senate Bill No. 1184.
- (c) Senate Bill No. 1185.
- (d) Senate Bill No. 1186.
- (e) Senate Bill No. 1187.
- (f) Senate Bill No. 1196.
- (g) Senate Bill No. 1197.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Maya Rudolph

Clerk of the House of Representatives.

Approved _____

Governor.