

HOUSE BILL No. 5395

November 1, 2001, Introduced by Reps. McConico, Kowall, Julian and Hardman and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 34 of chapter IX and sections 1 and 2 of
chapter XI (MCL 769.34, 771.1, and 771.2), section 34 of chapter
IX as amended by 2000 PA 279 and sections 1 and 2 of chapter XI
as amended by 1998 PA 520.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

Sec. 34. (1) The sentencing guidelines promulgated by order
of the Michigan supreme court ~~shall~~ DO not apply to felonies
enumerated in part 2 of chapter XVII committed on or after
January 1, 1999.

(2) Except as otherwise provided in this subsection or for a
departure from the appropriate minimum sentence range provided
for under subsection (3), the minimum sentence imposed by a court

1 of this state for a felony enumerated in part 2 of chapter XVII
2 committed on or after January 1, 1999 shall be within the appro-
3 priate sentence range under the version of those sentencing
4 guidelines in effect on the date the crime was committed. ~~Both~~
5 ALL of the following apply to minimum sentences under this
6 subsection:

7 (a) If a statute mandates a minimum sentence for an individ-
8 ual sentenced to the jurisdiction of the department of correc-
9 tions, the court shall impose sentence in accordance with that
10 statute. Imposing a mandatory minimum sentence is not a depart-
11 ure under this section. If a statute mandates a minimum sen-
12 tence for an individual sentenced to the jurisdiction of the
13 department of corrections and the statute authorizes the sentenc-
14 ing judge to depart from that minimum sentence, imposing a sen-
15 tence that exceeds the recommended sentence range but is less
16 than the mandatory minimum sentence is not a departure under this
17 section. If the Michigan vehicle code, 1949 PA 300, MCL 257.1 to
18 257.923, mandates a minimum sentence for an individual sentenced
19 to the jurisdiction of the department of corrections and the
20 Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, autho-
21 rizes the sentencing judge to impose a sentence that is less than
22 that minimum sentence, imposing a sentence that exceeds the rec-
23 ommended sentence range but is less than the mandatory minimum
24 sentence is not a departure under this section.

25 (b) The court shall not impose a minimum sentence, including
26 a departure, that exceeds 2/3 of the statutory maximum sentence.

1 (C) FOR A VIOLATION OF SECTION 7401(2)(A)(i), (ii), (iii),
2 OR (iv) OR 7403(2)(A)(i), (ii), (iii), OR (iv) OF THE PUBLIC
3 HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, IF THE STAT-
4 UTORY MINIMUM SENTENCE FOR THAT VIOLATION IS WITHIN THE SENTENC-
5 ING RANGE APPLICABLE TO THAT DEFENDANT UNDER SENTENCING GUIDE-
6 LINES OR EXCEEDS THAT RANGE, THE COURT SHALL SENTENCE THE
7 DEFENDANT WITHIN THE SENTENCING RANGE ESTABLISHED UNDER SENTENC-
8 ING GUIDELINES.

9 (3) A court may depart from the appropriate sentence range
10 established under the sentencing guidelines set forth in chapter
11 XVII if the court has a substantial and compelling reason for
12 that departure and states on the record the reasons for
13 departure. All of the following apply to a departure:

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

19 (b) The court shall not base a departure on an offense char-
20 acteristic or offender characteristic already taken into account
21 in determining the appropriate sentence range unless the court
22 finds from the facts contained in the court record, including the
23 presentence investigation report, that the characteristic has
24 been given inadequate or disproportionate weight.

25 (4) Intermediate sanctions shall be imposed under this chap-
26 ter as follows:

1 (a) If the upper limit of the recommended minimum sentence
2 range for a defendant determined under the sentencing guidelines
3 set forth in chapter XVII is 18 months or less, the court shall
4 impose an intermediate sanction unless the court states on the
5 record a substantial and compelling reason to sentence the indi-
6 vidual to the jurisdiction of the department of corrections. An
7 intermediate sanction may include a jail term that does not
8 exceed the upper limit of the recommended minimum sentence range
9 or 12 months, whichever is less.

10 (b) If the offense is a violation of section 7401(2)(a)(iv)
11 or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL
12 333.7401 and 333.7403, and the upper limit of the recommended
13 minimum sentence range is 18 months or less, the court shall,
14 ABSENT A DEPARTURE, impose a sentence of ~~life~~ probation ~~absent~~
15 ~~a departure~~ FOR A PERIOD OF NOT MORE THAN 5 YEARS.

16 (c) If an attempt to commit a felony designated in offense
17 class H in part 2 of ~~this~~ chapter XVII is punishable by impris-
18 onment for more than 1 year, the court shall impose an intermedi-
19 ate sanction upon conviction of that offense absent a departure.

20 (d) If the upper limit of the recommended minimum sentence
21 exceeds 18 months and the lower limit of the recommended minimum
22 sentence is 12 months or less, the court shall sentence the
23 offender as follows absent a departure:

24 (i) To imprisonment with a minimum term within that range.

25 (ii) To an intermediate sanction that may include a term of
26 imprisonment of not more than 12 months.

1 (5) If a crime has a mandatory determinant penalty or a
2 mandatory penalty of life imprisonment, the court shall impose
3 that penalty. This section does not apply to sentencing for that
4 crime.

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

9 (7) If the trial court imposes on a defendant a minimum sen-
10 tence that is longer or more severe than the appropriate sentence
11 range, as part of the court's advice of the defendant's rights
12 concerning appeal, the court shall advise the defendant orally
13 and in writing that he or she may appeal the sentence as provided
14 by law on grounds that it is longer or more severe than the
15 appropriate sentence range.

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

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

19 (b) The presentence investigation report. Any portion of
20 the presentence investigation report exempt from disclosure by
21 law shall not be a public record.

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

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

26 (10) If a minimum sentence is within the appropriate
27 guidelines sentence range, the court of appeals shall affirm that

1 sentence and shall not remand for resentencing absent an error in
2 scoring the sentencing guidelines or inaccurate information
3 relied upon in determining the defendant's sentence. A party
4 shall not raise on appeal an issue challenging the scoring of the
5 sentencing guidelines or challenging the accuracy of information
6 relied upon in determining a sentence that is within the appro-
7 priate guidelines sentence range unless the party has raised the
8 issue at sentencing, in a proper motion for resentencing, or in a
9 proper motion to remand filed in the court of appeals.

10 (11) If, upon a review of the record, the court of appeals
11 finds the trial court did not have a substantial and compelling
12 reason for departing from the appropriate sentence range, the
13 court shall remand the matter to the sentencing judge or another
14 trial court judge for resentencing under this chapter.

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

17 CHAPTER XI

18 Sec. 1. (1) In all prosecutions for felonies or misdemean-
19 ors other than murder, treason, criminal sexual conduct in the
20 first or third degree, armed robbery, and major controlled sub-
21 stance offenses not described in subsection (4), if the defendant
22 has been found guilty upon verdict or plea and the court deter-
23 mines that the defendant is not likely again to engage in an
24 offensive or criminal course of conduct and that the public good
25 does not require that the defendant suffer the penalty imposed by
26 law, the court may place the defendant on probation under the
27 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

1 \$ 500.00-749.99 \$ 20.00

2 \$ 750.00 or more \$ 30.00

3 The court may order a higher amount than indicated by the table,
4 up to the maximum of \$30.00 multiplied by the number of months of
5 delay ordered but not more than 12 months, if the court deter-
6 mines that the defendant has sufficient assets or other financial
7 resources to warrant the higher amount. If the court orders a
8 higher amount, the amount and the reasons for ordering that
9 amount shall be stated in the court order. The fee shall be col-
10 lected as provided in section 25a of 1953 PA 232, MCL 791.225a.
11 A person shall not be subject to more than 1 supervision fee at
12 the same time. If a supervision fee is ordered for a person for
13 any month or months during which that person already is subject
14 to a supervision fee, the court shall waive the fee having the
15 shorter remaining duration.

16 (4) The sentencing judge may place a defendant on ~~life~~
17 probation ~~pursuant to~~ FOR A PERIOD OF NOT MORE THAN 5 YEARS
18 UNDER subsection (1) if the defendant is convicted for a viola-
19 tion of section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public
20 health code, 1978 PA 368, MCL 333.7401 and 333.7403, or conspir-
21 acy to commit either offense. Subsection (2) does not apply to
22 this subsection.

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

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

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

12 (3) A defendant who is placed on probation under section
13 1(4) of this chapter shall be placed on probation for ~~life~~ A
14 PERIOD OF NOT MORE THAN 5 YEARS. That sentence shall be made
15 subject to conditions of probation specified in section 3 of this
16 chapter, including the payment of a probation supervision fee as
17 prescribed in section 3c of this chapter, and to revocation for
18 violation of those conditions, but the probation period shall not
19 be reduced other than by a revocation that results in
20 imprisonment.

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

26 (5) Subsections (1) and (3) do not apply to a juvenile
27 placed on probation and committed under section 1(3) or (4) of

1 chapter IX to an institution or agency described in the youth
2 rehabilitation services act, 1974 PA 150, MCL 803.301 to
3 803.309.