

HOUSE BILL No. 4964

June 21, 2007, Introduced by Reps. Condino, Kathleen Law, Tobocman, Byrnes, Vagnozzi, Miller, Alma Smith, Leland, Angerer, Donigan, Bieda, Scott, Warren, Polidori, Dean and Meadows and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding sections 32 and 33 to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

SEC. 32. (1) A SENTENCING COMMISSION IS CREATED IN THE
LEGISLATIVE COUNCIL. THE LEGISLATIVE COUNCIL SHALL PROVIDE THE
COMMISSION WITH SUITABLE OFFICE SPACE, STAFF, AND NECESSARY
EQUIPMENT. THE COMMISSION SHALL CONSIST OF THE FOLLOWING MEMBERS:

(A) FOUR INDIVIDUALS WHO ARE MEMBERS OF THE SENATE, CONSISTING
OF 2 MEMBERS FROM EACH CAUCUS.

(B) FOUR INDIVIDUALS WHO ARE MEMBERS OF THE HOUSE OF
REPRESENTATIVES, CONSISTING OF 2 MEMBERS FROM EACH CAUCUS.

1 (C) TWO INDIVIDUALS WHO ARE CIRCUIT COURT JUDGES.

2 (D) ONE INDIVIDUAL WHO REPRESENTS THE PROSECUTING ATTORNEYS OF
3 THIS STATE.

4 (E) ONE INDIVIDUAL WHO REPRESENTS CRIMINAL DEFENSE ATTORNEYS.

5 (F) ONE INDIVIDUAL WHO REPRESENTS LAW ENFORCEMENT.

6 (G) ONE INDIVIDUAL WHO REPRESENTS THE DEPARTMENT OF
7 CORRECTIONS.

8 (H) ONE INDIVIDUAL WHO REPRESENTS ADVOCATES OF ALTERNATIVES TO
9 INCARCERATION.

10 (I) ONE INDIVIDUAL WHO REPRESENTS CRIME VICTIMS.

11 (J) ONE INDIVIDUAL WHO REPRESENTS THE DEPARTMENT OF MANAGEMENT
12 AND BUDGET.

13 (K) TWO INDIVIDUALS WHO REPRESENT THE GENERAL PUBLIC.

14 (2) THE LEADER OF EACH CAUCUS IN THE SENATE AND THE LEADER OF
15 EACH CAUCUS IN THE HOUSE OF REPRESENTATIVES SHALL APPOINT THE
16 COMMISSION MEMBERS DESCRIBED IN SUBSECTION (1) (A) AND (B) BY
17 JANUARY 1, 2008. BY AGREEMENT AND WITH THE GOVERNOR'S CONCURRENCE,
18 THE LEADER OF EACH CAUCUS IN THE SENATE AND THE LEADER OF EACH
19 CAUCUS IN THE HOUSE OF REPRESENTATIVES SHALL APPOINT THE REMAINING
20 COMMISSION MEMBERS DESCRIBED IN SUBSECTION (1) (C) TO (K) BY JANUARY
21 1, 2008. THE GOVERNOR SHALL DESIGNATE 1 OF THE MEMBERS REPRESENTING
22 THE GENERAL PUBLIC AS COMMISSION CHAIRPERSON.

23 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
24 COMMISSION MEMBERS SHALL BE APPOINTED FOR TERMS OF 4 YEARS. OF THE
25 MEMBERS FIRST APPOINTED UNDER SUBSECTION (1) (C) TO (K), 4 MEMBERS
26 SHALL SERVE FOR 2 YEARS, 4 MEMBERS SHALL SERVE FOR 3 YEARS, AND 3
27 MEMBERS SHALL SERVE FOR 4 YEARS, AS DESIGNATED BY THE CHAIRPERSON

1 AND ALTERNATE CHAIRPERSON OF THE LEGISLATIVE COUNCIL. THE MEMBERS
2 OF THE COMMISSION APPOINTED UNDER SUBSECTION (1) (A) AND (B) SHALL
3 BE APPOINTED FOR TERMS OF 2 YEARS.

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

9 (5) A COMMISSION MEMBER SHALL NOT RECEIVE A SALARY FOR BEING A
10 COMMISSION MEMBER, BUT SHALL BE REIMBURSED FOR HIS OR HER
11 REASONABLE, ACTUAL, AND NECESSARY EXPENSES INCURRED IN THE
12 PERFORMANCE OF HIS OR HER DUTIES AS A COMMISSION MEMBER.

13 (6) THE COMMISSION'S BUSINESS SHALL BE CONDUCTED AT PUBLIC
14 MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA
15 267, MCL 15.261 TO 15.275.

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

19 (8) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR
20 RETAINED BY THE COMMISSION IN THE PERFORMANCE OF AN OFFICIAL
21 FUNCTION SHALL BE MADE AVAILABLE TO THE PUBLIC IN COMPLIANCE WITH
22 THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

23 SEC. 33. (1) THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

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

1 PROVIDE THE DATA NECESSARY TO THE COMMISSION.

2 (B) CONDUCT ONGOING RESEARCH REGARDING THE IMPACT OF THE
3 SENTENCING GUIDELINES SET FORTH IN CHAPTER XVII.

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

8 (D) IN COOPERATION WITH THE STATE COURT ADMINISTRATOR,
9 COLLECT, ANALYZE, AND COMPILE DATA REGARDING THE EFFECT OF
10 SENTENCING GUIDELINES ON THE CASELOAD, DOCKET FLOW, AND CASE
11 BACKLOG OF THE TRIAL AND APPELLATE COURTS OF THIS STATE.

12 (E) DEVELOP MODIFICATIONS TO THE SENTENCING GUIDELINES AS
13 PROVIDED IN SUBSECTION (4). ANY MODIFICATIONS TO THE SENTENCING
14 GUIDELINES SHALL ACCOMPLISH ALL OF THE FOLLOWING:

15 (i) PROVIDE FOR PROTECTION OF THE PUBLIC.

16 (ii) CONSIDER AN OFFENSE INVOLVING VIOLENCE AGAINST A PERSON AS
17 MORE SEVERE THAN OTHER OFFENSES.

18 (iii) BE PROPORTIONATE TO THE SERIOUSNESS OF THE OFFENSE AND THE
19 OFFENDER'S PRIOR CRIMINAL RECORD.

20 (iv) REDUCE SENTENCING DISPARITIES BASED ON FACTORS OTHER THAN
21 OFFENSE CHARACTERISTICS AND OFFENDER CHARACTERISTICS AND ENSURE
22 THAT OFFENDERS WITH SIMILAR OFFENSE AND OFFENDER CHARACTERISTICS
23 RECEIVE SUBSTANTIALLY SIMILAR SENTENCES.

24 (v) SPECIFY THE CIRCUMSTANCES UNDER WHICH A TERM OF
25 IMPRISONMENT IS PROPER AND THE CIRCUMSTANCES UNDER WHICH
26 INTERMEDIATE SANCTIONS ARE PROPER.

27 (vi) ESTABLISH SENTENCE RANGES FOR IMPRISONMENT THAT ARE WITHIN

1 THE MINIMUM AND MAXIMUM SENTENCES ALLOWED BY LAW FOR THE OFFENSES
2 TO WHICH THE RANGES APPLY.

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

8 (viii) ESTABLISH SENTENCE RANGES THAT THE COMMISSION CONSIDERS
9 APPROPRIATE.

10 (2) IN DEVELOPING MODIFICATIONS TO THE SENTENCING GUIDELINES,
11 THE COMMISSION SHALL CONSIDER THE LIKELIHOOD THAT THE CAPACITY OF
12 STATE AND LOCAL CORRECTIONAL FACILITIES WILL BE EXCEEDED. THE
13 COMMISSION SHALL SUBMIT TO THE LEGISLATURE A PRISON IMPACT REPORT
14 RELATING TO ANY MODIFICATIONS TO SENTENCING GUIDELINES. THE REPORT
15 SHALL INCLUDE THE PROJECTED IMPACT ON TOTAL CAPACITY OF STATE
16 CORRECTIONAL FACILITIES.

17 (3) MODIFICATIONS TO SENTENCING GUIDELINES SHALL INCLUDE
18 RECOMMENDED INTERMEDIATE SANCTIONS FOR EACH CASE IN WHICH THE UPPER
19 LIMIT OF THE RECOMMENDED MINIMUM SENTENCE RANGE IS 18 MONTHS OR
20 LESS.

21 (4) THE COMMISSION MAY RECOMMEND MODIFICATIONS TO THE
22 SENTENCING GUIDELINES SET FORTH IN CHAPTER XVII.

23 (5) THE COMMISSION SHALL SUBMIT ANY RECOMMENDED MODIFICATIONS
24 TO THE SENTENCING GUIDELINES TO THE SECRETARY OF THE SENATE AND THE
25 CLERK OF THE HOUSE OF REPRESENTATIVES. IF THE LEGISLATURE DOES NOT
26 ENACT MODIFICATIONS TO THE SENTENCING GUIDELINES WITHIN 60 DAYS
27 AFTER INTRODUCTION OF A BILL TO ENACT SENTENCING GUIDELINES

1 MODIFICATIONS BASED ON THE RECOMMENDATIONS, THE COMMISSION SHALL
2 REVISE THE RECOMMENDED MODIFICATIONS AND SUBMIT THEM TO THE
3 SECRETARY OF THE SENATE AND THE CLERK OF THE HOUSE OF
4 REPRESENTATIVES WITHIN 90 DAYS. THE REVISED MODIFICATIONS ARE
5 SUBJECT TO THE REQUIREMENTS OF SUBSECTIONS (1), (2), AND (3). UNTIL
6 THE LEGISLATURE ENACTS MODIFICATIONS TO THE SENTENCING GUIDELINES
7 INTO LAW, THE COMMISSION SHALL CONTINUE TO REVISE AND RESUBMIT THE
8 MODIFICATIONS TO THE LEGISLATURE UNDER THE SCHEDULE PROVIDED IN
9 THIS SUBSECTION.