

Legislative Analysis



PROBATION SWIFT AND SURE SANCTIONS ACT

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 1141 (Substitute H-1)

Senate Bill 1179 (Substitute H-1)

(Enacted as Public Acts 616 and 617 of 2012)

Sponsor: Sen. John Proos

House Committee: Judiciary

Senate Committee: Appropriations

Complete to 12-10-12

A SUMMARY OF SENATE BILLS 1141 & 1179 AS REPORTED BY HOUSE COMMITTEE

Senate Bill 1141 would create the Probation Swift and Sure Sanctions Act, a voluntary program to fund "swift and sure" probation supervision at the local level, with objectives such as probationers being aware of probation terms and sanctions for violations, close monitoring, arrest upon violating probation terms with timely appearance before a judge, and immediate sanctions for probation violations.

Senate Bill 1179 would provide funding for swift and sure probation programs from certain filing and copying fees with the Michigan Court of Appeals.

The bills are tie-barred to each other, meaning that neither could take effect unless both were enacted into law.

Senate Bill 1141 would create the "Probation Swift and Sure Sanctions Act" as Chapter XIA in the Code of Criminal Procedure, expressing legislative intent to create a state program at the local level based on immediate detection of probation violations and imposing sanctions and remedies addressing those violations. "Probationer" would be defined to mean an individual placed on probation for committing a felony.

Under Michigan law, probation may be imposed for either misdemeanor or felony offenses, with some exceptions such as murder, armed robbery, criminal sexual conduct in the first- or third-degree, certain controlled substance offenses, and use of a firearm in the commission of a felony. In general, the sentencing court imposes the conditions of probation. The bill, however, would only apply to probationers convicted of a felony.

The State Swift and Sure Sanctions Program would have the following objectives:

- Probationers (the participants in the program) are to be sentenced with prescribed terms of probation meeting the objectives of the act. Probationers are to be aware of the terms of their probation as well as the consequences for violating those terms.
- Probationers are to be closely monitored and every detected violation promptly addressed by the court.

- Probationers are to be arrested as soon as a violation has been detected and promptly taken before a judge for a hearing on the violation.
- Continued violations are to be addressed by increasing sanctions and remedies as necessary to achieve results.
- To the extent possible, and considering local resources, probationers subject to swift and sure probation under the bill must be treated uniformly throughout the state.

Beginning January 1, 2013, the State Court Administrative Office (SCAO) would be required—under the supervision of the Michigan Supreme Court—to provide grants under the bill to fund programs of swift and sure probation supervision in the circuit court that met the stated program objectives and the requirements discussed below. Application for a grant would be by written application with SCAO as required by that office. The funding of all grants under Chapter XIA would be subject to appropriation.

A program funded under the bill would be required to do all of the following:

- Require the court to inform a probationer in person of the requirements of his or her probation and the sanctions and remedies that may apply to probation violations.
- Provide for an appearance before the judge for any probation violation within 72 hours after the violation is reported to the court unless a departure is authorized for good cause as determined by criteria established by SCAO.
- Provide for immediate imposition of sanctions and remedies approved by SCAO to effectively address probation violations, including (but not limited to) temporary incarceration; additional reporting and compliance requirements; extension of probation; drug and alcohol testing; counseling and treatment for emotional or other mental health problems, including substance abuse; or revocation of probation.

In addition, the SCAO could, under supervision of the supreme court, establish general eligibility requirements for offender participation; require courts and offenders to enter into written participation agreements; create recommended and mandatory sanctions and remedies for use by participating courts; establish criteria for deviating from recommended and mandatory sanctions and remedies when necessary to address special circumstances; and establish a system for determining sanctions and remedies that should or could be imposed for recommended sanctions and for alternative sanctions and remedies for deviations.

SCAO could consult with the Department of Corrections when establishing initial programming and eligibility requirements. SCAO would be required to annually review programs funded by these grants for effectiveness and issue reports to the Legislature beginning March 1, 2013, and provide reports annually thereafter. The report would have to identify each court that applied for a grant, the amount requested, and the amount received. Further, programs funded the bill would be subject to audit by SCAO.

Senate Bill 1179 would amend the Revised Judicature Act (MCL 600.321) to require fees collected in Court of Appeals cases (for instance, for filing an appeal, entry of a motion, and making certified copies of court documents) to be used to fund swift and sure sanctions program grants. Currently, no specific purpose is designated for these funds.

FISCAL IMPACT:

Senate Bill 1141 would have an indeterminate fiscal impact on the judiciary. While some local courts already have established Swift and Sure Sanctions programs, the uniform rules created by the bill may lead to the establishment of additional programs. The cost of such programs would be borne by the local courts, though grants from the state may be awarded to qualifying courts, subject to such grants being awarded by SCAO and funded through appropriations by the Legislature.

For FY 2012-13, the Judiciary budget appropriates \$6.0 million gross (\$4.3 million GF/GP) for Swift and Sure Sanctions Grants. Of this amount, \$100,000 is reserved for use in SCAO's administration of the program.

Senate Bill 1179 would not have any fiscal impact on the state's enacted FY 2012-13 budget. The FY 2012-13 Judiciary budget appropriated Court of Appeals filing and motion fees for use in the Swift and Sure Sanctions grant program. In previous years, Court of Appeals filing and motion fee revenue had been used to fund Court of Appeals operations, but this fund source was replaced by GF/GP in the FY 2012-13 budget.

As background, the FY 2012-13 Judiciary budget appropriates \$1.7 million in Court of Appeals Filing and Motion fees (as well as some miscellaneous revenue) for Swift and Sure Sanctions Grants. However, the State Court Administrative Office has estimated that there will be a funding shortfall of approximately \$346,900 for these revenue sources. Thus, actual restricted fund revenue collected would be about \$1.4 million.

POSITIONS:

A representative of the State Court Administrative Office testified in support of Senate Bill 1141. (12-6-12)

The Michigan Judges Association indicted support for the bills. (12-6-12)

A BRIEF DISCUSSION OF THE BILLS:

The idea of a Swift and Sure Sanction Program for probation violators is not new; pilot projects in four Michigan counties (Isabella, Berrien, Barry, and Wayne) have been underway for about a year. Based on the early results of the state's pilot projects and similar programs in other states, the swift and sure probation programs are believed to have the potential to save the state money. As an example, a study of the Hawaii Opportunity Probation with Enforcement (HOPE) program conducted by the Pew Center on the States, entitled *The Impact of Hawaii's Hope Program on Drug Use, Crime and*

Recidivism found that in a one-year, randomized controlled trial, HOPE probationers were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61 percent less likely to skip appointments with probation agents, and 53 percent less likely to have their probation revoked. This resulted in probationers in the study serving or being sentenced to, on average, 48 percent fewer days of incarceration than the control group.

If using Court of Appeals filing and motion fees to fund the expansion of swift and sure probation programs led to similar reductions in recidivism, shortened jail stays, less drug use, and fewer returns to jail for probation violations, then the bills could result in long-term savings to the Department of Corrections. In addition, if the closer monitoring of probationers reduced the number of new crimes being committed, then public safety would also be increased. The closer supervision may also be the impetus needed by some offenders to truly get their lives back on track—a win-win proposition for all.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Erik Jonasson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.