

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5928

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER IX

2

SEC. 32A. (1) A CRIMINAL JUSTICE POLICY COMMISSION IS CREATED

3

IN THE LEGISLATIVE COUNCIL. BEFORE MARCH 1, 2015, THE GOVERNOR

4

SHALL APPOINT THE COMMISSION MEMBERS DESCRIBED IN SUBDIVISIONS (D)

5

TO (O). THE COMMISSION CONSISTS OF THE ALL OF THE FOLLOWING

6

MEMBERS:

7

(A) TWO INDIVIDUALS WHO ARE MEMBERS OF THE SENATE SUBMITTED BY

8

THE SENATE MAJORITY LEADER, 1 INDIVIDUAL FROM EACH CAUCUS.

1 (B) TWO INDIVIDUALS WHO ARE MEMBERS OF THE HOUSE OF
2 REPRESENTATIVES SUBMITTED BY THE SPEAKER OF THE HOUSE OF
3 REPRESENTATIVES, 1 INDIVIDUAL FROM EACH CAUCUS.

4 (C) THE ATTORNEY GENERAL, OR HIS OR HER DESIGNEE.

5 (D) ONE INDIVIDUAL WHO IS A CIRCUIT COURT JUDGE, APPOINTED
6 FROM A LIST OF 3 NAMES SUBMITTED BY THE MICHIGAN JUDGES
7 ASSOCIATION.

8 (E) ONE INDIVIDUAL WHO IS A DISTRICT COURT JUDGE, APPOINTED
9 FROM A LIST OF 3 NAMES SUBMITTED BY THE MICHIGAN DISTRICT JUDGES
10 ASSOCIATION.

11 (F) ONE INDIVIDUAL WHO REPRESENTS THE PROSECUTING ATTORNEYS OF
12 THIS STATE, APPOINTED FROM A LIST OF 3 NAMES SUBMITTED BY THE
13 PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN.

14 (G) ONE INDIVIDUAL WHO REPRESENTS CRIMINAL DEFENSE ATTORNEYS,
15 APPOINTED FROM A LIST OF 3 NAMES SUBMITTED BY THE CRIMINAL DEFENSE
16 ATTORNEYS OF MICHIGAN.

17 (H) ONE INDIVIDUAL APPOINTED FROM A LIST OF 3 NAMES SUBMITTED
18 BY THE MICHIGAN SHERIFF'S ASSOCIATION.

19 (I) ONE INDIVIDUAL APPOINTED FROM A LIST OF 3 NAMES SUBMITTED
20 BY THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF CORRECTIONS.

21 (J) ONE INDIVIDUAL WHO REPRESENTS ADVOCATES OF ALTERNATIVES TO
22 INCARCERATION.

23 (K) ONE INDIVIDUAL WHO WORKS IN THE MENTAL OR BEHAVIORAL
24 HEALTH CARE FIELD.

25 (L) ONE INDIVIDUAL APPOINTED FROM A LIST OF 3 NAMES SUBMITTED
26 BY THE MICHIGAN ASSOCIATION OF COUNTIES.

27 (M) ONE INDIVIDUAL WHO REPRESENTS MICHIGAN ASSOCIATION OF

1 COMMUNITY CORRECTIONS ADVISORY BOARDS.

2 (N) ONE INDIVIDUAL APPOINTED FROM A LIST OF 3 NAMES SUBMITTED
3 BY THE MICHIGAN COALITION TO END DOMESTIC AND SEXUAL VIOLENCE.

4 (O) ONE MEMBER OF THE PUBLIC WHO IS NEITHER AFFILIATED WITH
5 NOR EMPLOYED BY A DEPARTMENT, OFFICE, OR ENTITY DESCRIBED IN THIS
6 SUBSECTION, BY THE COMMISSION CREATED UNDER THIS SUBSECTION, OR BY
7 ANY ENTITY EMPLOYED OR HIRED BY THE COMMISSION CREATED UNDER THIS
8 SUBSECTION.

9 (2) THE MEMBER OF THE PUBLIC APPOINTED BY THE GOVERNOR UNDER
10 SUBSECTION (1) (O) SHALL SERVE AS THE CHAIRPERSON OF THE CRIMINAL
11 JUSTICE POLICY COMMISSION.

12 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
13 COMMISSION MEMBERS SHALL BE APPOINTED FOR TERMS OF 4 YEARS. OF THE
14 MEMBERS FIRST APPOINTED UNDER SUBSECTION (1) (D) TO (O), 4 MEMBERS
15 SHALL SERVE FOR 2 YEARS, 4 MEMBERS SHALL SERVE FOR 3 YEARS, AND 4
16 MEMBERS SHALL SERVE FOR 4 YEARS. THE MEMBERS OF THE COMMISSION
17 APPOINTED UNDER SUBSECTION (1) (A) AND (B) SHALL BE APPOINTED FOR
18 TERMS OF 2 YEARS.

19 (4) A VACANCY ON THE COMMISSION CAUSED BY THE EXPIRATION OF A
20 TERM OR A RESIGNATION OR DEATH SHALL BE FILLED IN THE SAME MANNER
21 AS THE ORIGINAL APPOINTMENT. A MEMBER APPOINTED TO FILL A VACANCY
22 CAUSED BY A RESIGNATION OR DEATH SHALL BE APPOINTED FOR THE BALANCE
23 OF THE UNEXPIRED TERM.

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

1 (6) THE COMMISSION MAY ESTABLISH SUBCOMMITTEES THAT MAY
2 CONSIST OF INDIVIDUALS WHO ARE NOT MEMBERS OF THE COMMISSION,
3 INCLUDING, BUT NOT LIMITED TO, EXPERTS IN MATTERS OF INTEREST TO
4 THE COMMISSION.

5 (7) THE COMMISSION'S BUSINESS SHALL BE CONDUCTED AT PUBLIC
6 MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA
7 267, MCL 15.261 TO 15.275.

8 (8) A QUORUM CONSISTS OF A MAJORITY OF THE MEMBERS OF THE
9 SENTENCING COMMISSION. ALL COMMISSION BUSINESS SHALL BE CONDUCTED
10 BY NOT LESS THAN A QUORUM. A VOTE OF THE MAJORITY OF THE MEMBERS OF
11 THE COMMISSION PRESENT AND SERVING IS REQUIRED FOR THE OFFICIAL
12 ACTION OF THE COMMISSION.

13 (9) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR
14 RETAINED BY THE COMMISSION IN THE PERFORMANCE OF AN OFFICIAL
15 FUNCTION SHALL BE MADE AVAILABLE TO THE PUBLIC IN COMPLIANCE WITH
16 THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

17 (10) THE LEGISLATIVE COUNCIL SHALL PROVIDE THE COMMISSION WITH
18 SUITABLE OFFICE SPACE, STAFF, AND NECESSARY EQUIPMENT.

19 SEC. 33A. (1) THE CRIMINAL JUSTICE POLICY COMMISSION SHALL DO
20 ALL OF THE FOLLOWING:

21 (A) COLLECT, PREPARE, ANALYZE, AND DISSEMINATE INFORMATION
22 REGARDING STATE AND LOCAL SENTENCING AND PROPOSED RELEASE POLICIES
23 AND PRACTICES FOR FELONIES AND THE USE OF PRISONS AND JAILS.

24 (B) COLLECT AND ANALYZE INFORMATION CONCERNING HOW MISDEMEANOR
25 SENTENCES AND THE DETENTION OF DEFENDANTS PENDING TRIAL AFFECT
26 LOCAL JAILS.

27 (C) CONDUCT ONGOING RESEARCH REGARDING THE EFFECTIVENESS OF

1 THE SENTENCING GUIDELINES IN ACHIEVING THE PURPOSES SET FORTH IN
2 SUBDIVISION (F) .

3 (D) IN COOPERATION WITH THE DEPARTMENT OF CORRECTIONS,
4 COLLECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS REGARDING
5 THE POPULATIONS AND CAPACITIES OF STATE AND LOCAL CORRECTIONAL
6 FACILITIES, THE IMPACT OF THE SENTENCING GUIDELINES AND OTHER LAWS,
7 RULES, AND POLICIES ON THOSE POPULATIONS AND CAPACITIES, AND THE
8 EFFECTIVENESS OF EFFORTS TO REDUCE RECIDIVISM. MEASUREMENT OF
9 RECIDIVISM SHALL INCLUDE, AS APPLICABLE, ANALYSIS OF ALL OF THE
10 FOLLOWING:

11 (i) REARREST RATES, RESENTENCE RATES, AND RETURN TO PRISON
12 RATES.

13 (ii) ONE-, 2-, AND 3-YEAR INTERVALS AFTER EXITING PRISON OR
14 JAIL AND AFTER ENTERING PROBATION.

15 (iii) THE STATEWIDE LEVEL, AND BY LOCALITY AND DISCRETE PROGRAM,
16 TO THE EXTENT PRACTICABLE.

17 (E) IN COOPERATION WITH THE STATE COURT ADMINISTRATOR,
18 COLLECT, ANALYZE, AND COMPILE DATA REGARDING THE EFFECT OF
19 SENTENCING GUIDELINES ON THE CASELOAD, DOCKET FLOW, AND CASE
20 BACKLOG OF THE TRIAL AND APPELLATE COURTS OF THIS STATE.

21 (F) DEVELOP MODIFICATIONS TO THE SENTENCING GUIDELINES FOR
22 RECOMMENDATION TO THE LEGISLATURE. ANY MODIFICATIONS TO THE
23 SENTENCING GUIDELINES SHALL ACCOMPLISH ALL OF THE FOLLOWING:

24 (i) PROVIDE FOR THE PROTECTION OF THE PUBLIC.

25 (ii) CONSIDER OFFENSES INVOLVING VIOLENCE AGAINST A PERSON OR
26 SERIOUS AND SUBSTANTIAL PECUNIARY LOSS AS MORE SEVERE THAN OTHER
27 OFFENSES.

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

3 (iv) REDUCE SENTENCING DISPARITIES BASED ON FACTORS OTHER THAN
4 OFFENSE CHARACTERISTICS AND OFFENDER CHARACTERISTICS AND ENSURE
5 THAT OFFENDERS WITH SIMILAR OFFENSE AND OFFENDER CHARACTERISTICS
6 RECEIVE SUBSTANTIALLY SIMILAR SENTENCES.

7 (v) SPECIFY THE CIRCUMSTANCES UNDER WHICH A TERM OF
8 IMPRISONMENT IS PROPER AND THE CIRCUMSTANCES UNDER WHICH
9 INTERMEDIATE SANCTIONS ARE PROPER.

10 (vi) ESTABLISH SENTENCE RANGES FOR IMPRISONMENT THAT ARE WITHIN
11 THE MINIMUM AND MAXIMUM SENTENCES ALLOWED BY LAW FOR THE OFFENSES
12 TO WHICH THE RANGES APPLY.

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

18 (viii) ESTABLISH SENTENCE RANGES THAT THE COMMISSION CONSIDERS
19 APPROPRIATE.

20 (ix) RECOGNIZE THE AVAILABILITY OF BEDS IN THE LOCAL
21 CORRECTIONS SYSTEM AND THAT THE LOCAL CORRECTIONS SYSTEM IS AN
22 EQUAL PARTNER IN CORRECTIONS POLICY, AND PRESERVE ITS FUNDING
23 MECHANISMS.

24 (G) CONSIDER THE SUITABILITY AND IMPACT OF OFFENSE VARIABLE
25 SCORING WITH REGARD TO PHYSICAL AND PSYCHOLOGICAL INJURY TO VICTIMS
26 AND VICTIMS' FAMILIES.

27 (2) IN DEVELOPING PROPOSED MODIFICATIONS TO THE SENTENCING

1 GUIDELINES, THE COMMISSION SHALL SUBMIT TO THE LEGISLATURE A PRISON
2 AND JAIL IMPACT REPORT RELATING TO ANY MODIFICATIONS TO THE
3 SENTENCING GUIDELINES. THE REPORT SHALL INCLUDE THE PROJECTED
4 IMPACT ON TOTAL CAPACITY OF STATE AND LOCAL CORRECTIONAL
5 FACILITIES.

6 (3) PROPOSED MODIFICATIONS TO SENTENCING GUIDELINES SHALL
7 INCLUDE RECOMMENDED INTERMEDIATE SANCTIONS FOR EACH CASE IN WHICH
8 THE UPPER LIMIT OF THE RECOMMENDED MINIMUM SENTENCE RANGE IS 18
9 MONTHS OR LESS.

10 (4) THE COMMISSION MAY RECOMMEND MODIFICATIONS FOR SUBMISSION
11 TO THE LEGISLATURE TO ANY LAW, ADMINISTRATIVE RULE, OR POLICY THAT
12 AFFECTS SENTENCING OR THE USE AND LENGTH OF INCARCERATION. THE
13 RECOMMENDATIONS SHALL REFLECT ALL OF THE FOLLOWING POLICIES:

14 (A) TO RENDER SENTENCES IN ALL CASES WITHIN A RANGE OF
15 SEVERITY PROPORTIONATE TO THE GRAVITY OF OFFENSES, THE HARMS DONE
16 TO CRIME VICTIMS, AND THE BLAMEWORTHINESS OF OFFENDERS.

17 (B) WHEN REASONABLY FEASIBLE, TO ACHIEVE OFFENDER
18 REHABILITATION, GENERAL DETERRENCE, INCAPACITATION OF DANGEROUS
19 OFFENDERS, RESTORATION OF CRIME VICTIMS AND COMMUNITIES, AND
20 REINTEGRATION OF OFFENDERS INTO THE LAW-ABIDING COMMUNITY.

21 (C) TO RENDER SENTENCES NO MORE SEVERE THAN NECESSARY TO
22 ACHIEVE THE APPLICABLE PURPOSES IN SUBDIVISIONS (A) AND (B).

23 (D) TO PRESERVE JUDICIAL DISCRETION TO INDIVIDUALIZE SENTENCES
24 WITHIN A FRAMEWORK OF LAW.

25 (E) TO PRODUCE SENTENCES THAT ARE UNIFORM IN THEIR REASONED
26 PURSUIT OF THE OBJECTIVES DESCRIBED IN SUBSECTION (1).

27 (F) TO ELIMINATE INEQUITIES IN SENTENCING AND LENGTH OF

1 INCARCERATION ACROSS POPULATION GROUPS.

2 (G) TO ENCOURAGE THE USE OF INTERMEDIATE SANCTIONS.

3 (H) TO ENSURE THAT ADEQUATE RESOURCES ARE AVAILABLE FOR
4 CARRYING OUT SENTENCES IMPOSED AND THAT RATIONAL PRIORITIES ARE
5 ESTABLISHED FOR THE USE OF THOSE RESOURCES.

6 (I) TO PROMOTE RESEARCH ON SENTENCING POLICY AND PRACTICES,
7 INCLUDING ASSESSMENTS OF THE EFFECTIVENESS OF CRIMINAL SANCTIONS AS
8 MEASURED AGAINST THEIR PURPOSES.

9 (J) TO INCREASE THE TRANSPARENCY OF THE SENTENCING AND
10 CORRECTIONS SYSTEM, ITS ACCOUNTABILITY TO THE PUBLIC, AND THE
11 LEGITIMACY OF ITS OPERATIONS.

12 (5) THE COMMISSION SHALL SUBMIT ANY RECOMMENDED MODIFICATIONS
13 TO THE SENTENCING GUIDELINES OR TO OTHER LAWS, ADMINISTRATIVE
14 RULES, OR POLICIES TO THE SENATE MAJORITY LEADER, THE SPEAKER OF
15 THE HOUSE OF REPRESENTATIVES, AND THE GOVERNOR.

16 (6) THIS SECTION AND SECTION 32A OF THIS CHAPTER ARE REPEALED
17 4 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
18 THIS SECTION.

19 Enacting section 1. This amendatory act takes effect December
20 31, 2014.