

HOUSE BILL No. 5928

November 6, 2014, Introduced by Rep. Haveman and referred to the Committee on Appropriations.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 1a, 1l, 34, and 35 of chapter IX (MCL 769.1a, 769.1l, 769.34, and 769.35), section 1a as amended by 2009 PA 27, section 1l as added by 2005 PA 325, section 34 as amended by 2002 PA 666, and section 35 as added by 1998 PA 317, and by adding sections 32a and 33a to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

Sec. 1a. (1) As used in this section:

(a) "Crime victim services commission" means that term as described in section 2 of 1976 PA 223, MCL 18.352.

(b) "Victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of

1 the commission of a felony, misdemeanor, or ordinance violation.
2 For purposes of subsections (2), (3), (6), (8), (9), and (13),
3 victim includes a sole proprietorship, partnership, corporation,
4 association, governmental entity, or any other legal entity that
5 suffers direct physical or financial harm as a result of a felony,
6 misdemeanor, or ordinance violation.

7 (2) Except as provided in subsection (8), when sentencing a
8 defendant convicted of a felony, misdemeanor, or ordinance
9 violation, the court shall order, in addition to or in lieu of any
10 other penalty authorized by law or in addition to any other penalty
11 required by law, that the defendant make full restitution to any
12 victim of the defendant's course of conduct that gives rise to the
13 conviction or to the victim's estate.

14 (3) If a felony, misdemeanor, or ordinance violation results
15 in damage to or loss or destruction of property of a victim of the
16 felony, misdemeanor, or ordinance violation or results in the
17 seizure or impoundment of property of a victim of the felony,
18 misdemeanor, or ordinance violation, the order of restitution may
19 require that the defendant do 1 or more of the following, as
20 applicable:

21 (a) Return the property to the owner of the property or to a
22 person designated by the owner.

23 (b) If return of the property under subdivision (a) is
24 impossible, impractical, or inadequate, pay an amount equal to the
25 greater of subparagraph (i) or (ii), less the value, determined as of
26 the date the property is returned, of that property or any part of
27 the property that is returned:

1 (i) The fair market value of the property on the date of the
2 damage, loss, or destruction. However, if the fair market value of
3 the property cannot be determined or is impractical to ascertain,
4 then the replacement value of the property shall be utilized in
5 lieu of the fair market value.

6 (ii) The fair market value of the property on the date of
7 sentencing. However, if the fair market value of the property
8 cannot be determined or is impractical to ascertain, then the
9 replacement value of the property shall be utilized in lieu of the
10 fair market value.

11 (c) Pay the cost of the seizure or impoundment, or both.

12 (4) If a felony, misdemeanor, or ordinance violation results
13 in physical or psychological injury to a victim, the order of
14 restitution may require that the defendant do 1 or more of the
15 following, as applicable:

16 (a) Pay an amount equal to the cost of actual medical and
17 related professional services and devices relating to physical and
18 psychological care.

19 (b) Pay an amount equal to the cost of actual physical and
20 occupational therapy and rehabilitation.

21 (c) Reimburse the victim or the victim's estate for after-tax
22 income loss suffered by the victim as a result of the felony,
23 misdemeanor, or ordinance violation.

24 (d) Pay an amount equal to the cost of psychological and
25 medical treatment for members of the victim's family that has been
26 incurred as a result of the felony, misdemeanor, or ordinance
27 violation.

1 (e) Pay an amount equal to the cost of actual homemaking and
2 child care expenses incurred as a result of the felony,
3 misdemeanor, or ordinance violation.

4 (5) If a felony, misdemeanor, or ordinance violation resulting
5 in bodily injury also results in the death of a victim, the order
6 of restitution may require that the defendant pay an amount equal
7 to the cost of actual funeral and related services.

8 (6) If the victim or the victim's estate consents, the order
9 of restitution may require that the defendant make restitution in
10 services in lieu of money.

11 (7) If the victim is deceased, the court shall order that the
12 restitution be made to the victim's estate.

13 (8) The court shall order restitution to the crime victim
14 services commission or to any individuals, partnerships,
15 corporations, associations, governmental entities, or other legal
16 entities that have compensated the victim or the victim's estate
17 for a loss incurred by the victim to the extent of the compensation
18 paid for that loss. The court shall also order restitution for the
19 costs of services provided to persons or entities that have
20 provided services to the victim as a result of the felony,
21 misdemeanor, or ordinance violation. Services that are subject to
22 restitution under this subsection include, but are not limited to,
23 shelter, food, clothing, and transportation. However, an order of
24 restitution shall require that all restitution to a victim or a
25 victim's estate under the order be made before any restitution to
26 any other person or entity under that order is made. The court
27 shall not order restitution to be paid to a victim or victim's

1 estate if the victim or victim's estate has received or is to
2 receive compensation for that loss, and the court shall state on
3 the record with specificity the reasons for its action. If an
4 entity entitled to restitution under this subsection for
5 compensating the victim or the victim's estate cannot or refuses to
6 be reimbursed for that compensation, the restitution paid for that
7 entity shall be deposited by the state treasurer in the crime
8 victim's rights fund created under section 4 of 1989 PA 196, MCL
9 780.904, or its successor fund.

10 (9) Any amount paid to a victim or a victim's estate under an
11 order of restitution shall be set off against any amount later
12 recovered as compensatory damages by the victim or the victim's
13 estate in any federal or state civil proceeding and shall reduce
14 the amount payable to a victim or a victim's estate by an award
15 from the crime victim services commission made after an order of
16 restitution under this section.

17 (10) If not otherwise provided by the court under this
18 subsection, restitution shall be made immediately. However, the
19 court may require that the defendant make restitution under this
20 section within a specified period or in specified installments.

21 (11) If the defendant is placed on probation or paroled or the
22 court imposes a conditional sentence under section 3 of this
23 chapter, any restitution ordered under this section shall be a
24 condition of that probation, parole, or sentence. The court may
25 revoke probation or impose imprisonment under the conditional
26 sentence and the parole board may revoke parole if the defendant
27 fails to comply with the order and if the defendant has not made a

1 good-faith effort to comply with the order. In determining whether
2 to revoke probation or parole or impose imprisonment, the court or
3 parole board shall consider the defendant's employment status,
4 earning ability, and financial resources, the willfulness of the
5 defendant's failure to pay, and any other special circumstances
6 that may have a bearing on the defendant's ability to pay.

7 (12) A defendant who is required to pay restitution and who is
8 not in willful default of the payment of the restitution may at any
9 time petition the sentencing judge or his or her successor to
10 modify the method of payment. If the court determines that payment
11 under the order will impose a manifest hardship on the defendant or
12 his or her immediate family, the court may modify the method of
13 payment.

14 (13) An order of restitution entered under this section
15 remains effective until it is satisfied in full. An order of
16 restitution is a judgment and lien against all property of the
17 defendant for the amount specified in the order of restitution. The
18 lien may be recorded as provided by law. An order of restitution
19 may be enforced by the prosecuting attorney, a victim, a victim's
20 estate, or any other person or entity named in the order to receive
21 the restitution in the same manner as a judgment in a civil action
22 or a lien.

23 (14) Notwithstanding any other provision of this section, a
24 defendant shall not be imprisoned, jailed, or incarcerated for a
25 violation of probation or parole or otherwise for failure to pay
26 restitution as ordered under this section unless the court or
27 parole board determines that the defendant has the resources to pay

1 the ordered restitution and has not made a good-faith effort to do
2 so.

3 (15) In each case in which payment of restitution is ordered
4 as a condition of probation, the probation officer assigned to the
5 case shall review the case not less than twice yearly to ensure
6 that restitution is being paid as ordered. The final review shall
7 be conducted not less than 60 days before the probationary period
8 expires. If the probation officer determines that restitution is
9 not being paid as ordered, the probation officer shall file a
10 written report of the violation with the court on a form prescribed
11 by the state court administrative office. The report shall include
12 a statement of the amount of the arrearage and any reasons for the
13 arrearage known by the probation officer. The probation officer
14 shall immediately provide a copy of the report to the prosecuting
15 attorney. If a motion is filed or other proceedings are initiated
16 to enforce payment of restitution and the court determines that
17 restitution is not being paid or has not been paid as ordered by
18 the court, the court shall promptly take action necessary to compel
19 compliance.

20 (16) If a defendant who is ordered to pay restitution under
21 this section is remanded to the jurisdiction of the department of
22 corrections, the court shall provide a copy of the order of
23 restitution to the department of corrections when the defendant is
24 ordered remanded to the department's jurisdiction.

25 **(17) IT IS THE INTENT OF THE LEGISLATURE THAT THE MICHIGAN**
26 **SUPREME COURT IMPLEMENT MEASUREMENT OF RESTITUTION ASSESSMENT AND**
27 **COLLECTION AS A COURT PERFORMANCE MEASURE FOR CIRCUIT COURTS AND**

1 **DISTRICT COURTS.**

2 Sec. 1l. If a prisoner under the jurisdiction of the department
3 of corrections has been ordered to pay any sum of money as
4 described in section 1k and the department of corrections receives
5 an order from the court on a form prescribed by the state court
6 administrative office, the department of corrections shall deduct
7 50% of the funds received by the prisoner in a month over \$50.00
8 and promptly forward a payment to the court as provided in the
9 order when the amount exceeds \$100.00, or the entire amount if the
10 prisoner is paroled, is transferred to community programs, or is
11 discharged on the maximum sentence. The department of corrections
12 shall give an order of restitution under section 20h of the
13 corrections code of 1953, 1953 PA 232, MCL 791.220h, or the **WILLIAM**
14 **VAN REGENMORTER** crime victim's rights act, 1985 PA 87, MCL 780.751
15 to 780.834, priority over an order received under this section. **THE**
16 **DEPARTMENT OF CORRECTIONS SHALL TRACK AND REPORT PRISONER**
17 **RESTITUTION COLLECTION AS A PERFORMANCE MEASURE.**

18 **SEC. 32A. (1) A CRIMINAL JUSTICE POLICY COMMISSION IS CREATED**
19 **IN THE LEGISLATIVE COUNCIL. BEFORE MARCH 1, 2015, THE GOVERNOR**
20 **SHALL APPOINT THE COMMISSION MEMBERS DESCRIBED IN SUBDIVISIONS (D)**
21 **TO (M). THE COMMISSION CONSISTS OF THE ALL OF THE FOLLOWING**
22 **MEMBERS:**

23 **(A) TWO INDIVIDUALS WHO ARE MEMBERS OF THE SENATE, CONSISTING**
24 **OF THE CHAIRPERSON AND THE MINORITY VICE-CHAIRPERSON OF THE SENATE**
25 **JUDICIARY COMMITTEE OR THE CHAIRPERSON'S OR MINORITY VICE-**
26 **CHAIRPERSON'S DESIGNEE, WHO MUST BE MEMBERS OF THAT COMMITTEE.**

27 **(B) TWO INDIVIDUALS WHO ARE MEMBERS OF THE HOUSE OF**

1 REPRESENTATIVES, CONSISTING OF THE CHAIRPERSON AND THE MINORITY
2 VICE-CHAIRPERSON OF THE HOUSE OF REPRESENTATIVES JUDICIARY
3 COMMITTEE OR THE CHAIRPERSON'S OR MINORITY VICE-CHAIRPERSON'S
4 DESIGNEE, WHO MUST BE MEMBERS OF THAT COMMITTEE.

5 (C) THE ATTORNEY GENERAL, OR HIS OR HER DESIGNEE, REPRESENTING
6 CRIME VICTIMS.

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

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

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

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

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

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

23 (J) ONE INDIVIDUAL WHO REPRESENTS ADVOCATES OF ALTERNATIVES TO
24 INCARCERATION.

25 (K) ONE INDIVIDUAL WHO IS A MENTAL HEALTH EXPERT.

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

1 (M) ONE INDIVIDUAL WHO REPRESENTS COMMUNITY CORRECTIONS
2 AGENCIES.

3 (2) THE GOVERNOR SHALL DESIGNATE 1 MEMBER OF THE CRIMINAL
4 JUSTICE POLICY COMMISSION AS CHAIRPERSON.

5 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
6 COMMISSION MEMBERS SHALL BE APPOINTED FOR TERMS OF 4 YEARS. OF THE
7 MEMBERS FIRST APPOINTED UNDER SUBSECTION (1) (C) TO (M), 4 MEMBERS
8 SHALL SERVE FOR 2 YEARS, 4 MEMBERS SHALL SERVE FOR 3 YEARS, AND 3
9 MEMBERS SHALL SERVE FOR 4 YEARS. THE MEMBERS OF THE COMMISSION
10 APPOINTED UNDER SUBSECTION (1) (A) AND (B) SHALL BE APPOINTED FOR
11 TERMS OF 2 YEARS.

12 (4) A VACANCY ON THE COMMISSION CAUSED BY THE EXPIRATION OF A
13 TERM OR A RESIGNATION OR DEATH SHALL BE FILLED IN THE SAME MANNER
14 AS THE ORIGINAL APPOINTMENT. A MEMBER APPOINTED TO FILL A VACANCY
15 CAUSED BY A RESIGNATION OR DEATH SHALL BE APPOINTED FOR THE BALANCE
16 OF THE UNEXPIRED TERM.

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

21 (6) THE COMMISSION MAY ESTABLISH SUBCOMMITTEES THAT MAY
22 CONSIST OF INDIVIDUALS WHO ARE NOT MEMBERS OF THE COMMISSION,
23 INCLUDING, BUT NOT LIMITED TO, EXPERTS IN MATTERS OF INTEREST TO
24 THE COMMISSION.

25 (7) THE COMMISSION'S BUSINESS SHALL BE CONDUCTED AT PUBLIC
26 MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA
27 267, MCL 15.261 TO 15.275.

1 (8) A QUORUM CONSISTS OF A MAJORITY OF THE MEMBERS OF THE
2 SENTENCING COMMISSION. ALL COMMISSION BUSINESS SHALL BE CONDUCTED
3 BY NOT LESS THAN A QUORUM.

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

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

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

12 (A) COLLECT, PREPARE, ANALYZE, AND DISSEMINATE INFORMATION
13 REGARDING STATE AND LOCAL SENTENCING AND RELEASE POLICIES AND
14 PRACTICES FOR FELONIES AND THE USE OF PRISONS AND JAILS.

15 (B) COLLECT AND ANALYZE INFORMATION CONCERNING HOW MISDEMEANOR
16 SENTENCES AND THE DETENTION OF DEFENDANTS PENDING TRIAL AFFECT
17 LOCAL JAILS.

18 (C) CONDUCT ONGOING RESEARCH REGARDING THE EFFECTIVENESS OF
19 THE SENTENCING GUIDELINES IN ACHIEVING THE PURPOSES SET FORTH IN
20 SUBDIVISION (F).

21 (D) IN COOPERATION WITH THE DEPARTMENT OF CORRECTIONS,
22 COLLECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS REGARDING
23 THE POPULATIONS AND CAPACITIES OF STATE AND LOCAL CORRECTIONAL
24 FACILITIES, THE IMPACT OF THE SENTENCING GUIDELINES AND OTHER LAWS,
25 RULES, AND POLICIES ON THOSE POPULATIONS AND CAPACITIES, AND THE
26 EFFECTIVENESS OF EFFORTS TO REDUCE RECIDIVISM. MEASUREMENT OF
27 RECIDIVISM SHALL INCLUDE, AS APPLICABLE, ANALYSIS OF ALL OF THE

1 FOLLOWING:

2 (i) REARREST RATES, RESENTENCE RATES, AND RETURN TO PRISON
3 RATES.

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

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

8 (E) 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 (F) DEVELOP MODIFICATIONS TO THE SENTENCING GUIDELINES. ANY
13 MODIFICATIONS TO THE SENTENCING GUIDELINES SHALL ACCOMPLISH ALL OF
14 THE FOLLOWING:

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

16 (ii) CONSIDER OFFENSES INVOLVING VIOLENCE AGAINST A PERSON OR
17 SERIOUS AND SUBSTANTIAL PECUNIARY LOSS AS MORE SEVERE THAN OTHER
18 OFFENSES.

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

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

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

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

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

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

11 (ix) CONSIDER THE NECESSITY FOR LOCAL CORRECTIONS SYSTEM
12 CAPACITY AND MAINTAIN FUNDING TO ENSURE THAT CAPACITY.

13 (G) CONSIDER THE SUITABILITY AND IMPACT OF OFFENSE VARIABLE
14 SCORING WITH REGARD TO PHYSICAL AND PSYCHOLOGICAL INJURY TO VICTIMS
15 AND VICTIMS' FAMILIES.

16 (2) IN DEVELOPING MODIFICATIONS TO THE SENTENCING GUIDELINES,
17 THE COMMISSION SHALL SUBMIT TO THE LEGISLATURE A PRISON AND JAIL
18 IMPACT REPORT RELATING TO ANY MODIFICATIONS TO THE SENTENCING
19 GUIDELINES. THE REPORT SHALL INCLUDE THE PROJECTED IMPACT ON TOTAL
20 CAPACITY OF STATE AND LOCAL CORRECTIONAL FACILITIES.

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

25 (4) THE COMMISSION MAY RECOMMEND MODIFICATIONS TO ANY LAW,
26 ADMINISTRATIVE RULE, OR POLICY THAT AFFECTS SENTENCING OR THE USE
27 AND LENGTH OF INCARCERATION. THE RECOMMENDATIONS SHALL REFLECT ALL

1 OF THE FOLLOWING POLICIES:

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

5 (B) WHEN REASONABLY FEASIBLE, TO ACHIEVE OFFENDER
6 REHABILITATION, GENERAL DETERRENCE, INCAPACITATION OF DANGEROUS
7 OFFENDERS, RESTORATION OF CRIME VICTIMS AND COMMUNITIES, AND
8 REINTEGRATION OF OFFENDERS INTO THE LAW-ABIDING COMMUNITY.

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

11 (D) TO PRESERVE JUDICIAL DISCRETION TO INDIVIDUALIZE SENTENCES
12 WITHIN A FRAMEWORK OF LAW.

13 (E) TO PRODUCE SENTENCES THAT ARE UNIFORM IN THEIR REASONED
14 PURSUIT OF THE PURPOSES IN SUBSECTION (1).

15 (F) TO ELIMINATE INEQUITIES IN SENTENCING AND LENGTH OF
16 INCARCERATION ACROSS POPULATION GROUPS.

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

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

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

24 (J) TO INCREASE THE TRANSPARENCY OF THE SENTENCING AND
25 CORRECTIONS SYSTEM, ITS ACCOUNTABILITY TO THE PUBLIC, AND THE
26 LEGITIMACY OF ITS OPERATIONS.

27 (5) THE COMMISSION SHALL SUBMIT ANY RECOMMENDED MODIFICATIONS

1 TO THE SENTENCING GUIDELINES OR TO OTHER LAWS, ADMINISTRATIVE
2 RULES, OR POLICIES TO THE SENATE MAJORITY LEADER, THE SPEAKER OF
3 THE HOUSE OF REPRESENTATIVES, AND THE GOVERNOR.

4 (6) BY DECEMBER 1, 2015, THE COMMISSION SHALL SUBMIT TO THE
5 LEGISLATURE, THE GOVERNOR, AND THE MICHIGAN SUPREME COURT A REPORT
6 ON THE IMPLEMENTATION OF LEGISLATIVE POLICIES ADOPTED IN 2014
7 AFFECTING THE CRIMINAL JUSTICE SYSTEM. THE REPORT SHALL INCLUDE,
8 BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:

9 (A) EDUCATION OF PRACTITIONERS ON CHANGES IN LEGISLATIVE
10 POLICY.

11 (B) THE LENGTH OF PROBATION SUPERVISION TERMS IMPOSED.

12 (C) THE NUMBER OF PROBATIONERS SUBJECT TO SWIFT AND SURE
13 SANCTIONS PROBATION.

14 (D) THE NUMBER OF NONCOMPLIANCE, RISK, AND MAJOR RISK
15 SANCTIONS IMPOSED ON THE PROBATION POPULATION.

16 (E) NONCOMPLIANCE AND RISK SANCTIONS IMPOSED ON THE PAROLE
17 SUPERVISION POPULATION.

18 (F) PAROLE GUIDELINE DECISIONS.

19 (G) VICTIM RESTITUTION COLLECTION DATA IN THE COURTS AND THE
20 DEPARTMENT OF CORRECTIONS.

21 (H) IMPLEMENTATION OF REVISIONS TO THE COMMUNITY CORRECTIONS
22 ACT, 1988 PA 511, MCL 791.401 TO 791.414.

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

26 (2) Except as otherwise provided in this subsection or for a
27 departure from the appropriate minimum sentence range provided for

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

7 (a) If a statute mandates a minimum sentence for an individual
8 sentenced to the jurisdiction of the department of corrections, the
9 court shall impose sentence in accordance with that statute.

10 Imposing a mandatory minimum sentence is not a departure under this
11 section. If a statute mandates a minimum sentence for an individual
12 sentenced to the jurisdiction of the department of corrections and
13 the statute authorizes the sentencing judge to depart from that
14 minimum sentence, imposing a sentence that exceeds the recommended
15 sentence range but is less than the mandatory minimum sentence is
16 not a departure under this section. If the Michigan vehicle code,
17 1949 PA 300, MCL 257.1 to 257.923, mandates a minimum sentence for
18 an individual sentenced to the jurisdiction of the department of
19 corrections and the Michigan vehicle code, 1949 PA 300, MCL 257.1
20 to 257.923, authorizes the sentencing judge to impose a sentence
21 that is less than that minimum sentence, imposing a sentence that
22 exceeds the recommended sentence range but is less than the
23 mandatory minimum sentence is not a departure under this section.

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

26 (3) A court may depart from the appropriate sentence range
27 established under the sentencing guidelines set forth in chapter

1 XVII if the court has a substantial and compelling reason for that
2 departure and states on the record the reasons for departure. All
3 of the following apply to a departure:

4 (a) The court shall not use an individual's gender, race,
5 ethnicity, alienage, national origin, legal occupation, lack of
6 employment, representation by appointed legal counsel,
7 representation by retained legal counsel, appearance in propria
8 persona, or religion to depart from the appropriate sentence range.

9 (b) The court shall not base a departure on an offense
10 characteristic or offender characteristic already taken into
11 account in determining the appropriate sentence range unless the
12 court finds from the facts contained in the court record, including
13 the presentence investigation report, that the characteristic has
14 been given inadequate or disproportionate weight.

15 (4) Intermediate sanctions shall be imposed under this chapter
16 as follows:

17 (a) If the upper limit of the recommended minimum sentence
18 range for a defendant determined under the sentencing guidelines
19 set forth in chapter XVII is 18 months or less, the court shall
20 impose an intermediate sanction unless the court states on the
21 record a substantial and compelling reason to sentence the
22 individual to the jurisdiction of the department of corrections. An
23 intermediate sanction may include a jail term that does not exceed
24 the upper limit of the recommended minimum sentence range or 12
25 months, whichever is less, **AND A SUBSEQUENT TERM OF PROBATION**
26 **SUPERVISION AT LEAST EQUAL TO THE JAIL TERM.**

27 (b) If an attempt to commit a felony designated in offense

1 class H in part 2 of chapter XVII is punishable by imprisonment for
2 more than 1 year, the court shall impose an intermediate sanction
3 upon conviction of that offense absent a departure.

4 (c) If the upper limit of the recommended minimum sentence
5 exceeds 18 months and the lower limit of the recommended minimum
6 sentence is 12 months or less, the court shall sentence the
7 offender as follows absent a departure:

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

9 (ii) To an intermediate sanction that may include a term of
10 imprisonment of not more than 12 months **AND A SUBSEQUENT TERM OF**
11 **PROBATION SUPERVISION AT LEAST EQUAL TO THE TERM OF IMPRISONMENT.**

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

15 (6) As part of the sentence, the court may also order the
16 defendant to pay any combination of a fine, **ALLOWABLE** costs, or
17 applicable assessments. The court shall order payment of
18 restitution as provided by law.

19 (7) If the trial court imposes on a defendant a minimum
20 sentence that is longer or more severe than the appropriate
21 sentence range, as part of the court's advice of the defendant's
22 rights concerning appeal, the court shall advise the defendant
23 orally and in writing that he or she may appeal the sentence as
24 provided by law on grounds that it is longer or more severe than
25 the appropriate sentence range.

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

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

2 (b) The presentence investigation report. Any portion of the
3 presentence investigation report exempt from disclosure by law
4 shall not be a public record.

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

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

9 (10) If a minimum sentence is within the appropriate
10 guidelines sentence range, the court of appeals shall affirm that
11 sentence and shall not remand for resentencing absent an error in
12 scoring the sentencing guidelines or inaccurate information relied
13 upon in determining the defendant's sentence. A party shall not
14 raise on appeal an issue challenging the scoring of the sentencing
15 guidelines or challenging the accuracy of information relied upon
16 in determining a sentence that is within the appropriate guidelines
17 sentence range unless the party has raised the issue at sentencing,
18 in a proper motion for resentencing, or in a proper motion to
19 remand filed in the court of appeals.

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

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

27 Sec. 35. (1) The department of corrections shall operate a

1 jail reimbursement program that provides funding to counties for
2 housing **FELONY** offenders in county jails who otherwise would have
3 been sentenced to prison **AND UNDER BOTH OF THE FOLLOWING:**

4 (A) SECTION 4(1)(B) AND (C) OF CHAPTER XI.

5 (B) SECTION 40A OF THE CORRECTIONS CODE OF 1953, 1953 PA 232,
6 MCL 791.240A.

7 (2) ~~The criteria for reimbursement, including but not limited~~
8 ~~to criteria for determining those offenders who otherwise would~~
9 ~~have been sentenced to prison, and the rate of reimbursement shall~~
10 be established in the annual appropriations acts for the department
11 of corrections **AND SHALL NOT BE LESS THAN \$35.00 PER DIEM PER**
12 **OFFENDER SERVING A SANCTION FOR A PAROLE OR PROBATION VIOLATION.**
13 **THE DEPARTMENT OF CORRECTIONS SHALL SUBMIT TO THE LEGISLATURE A**
14 **PROJECTED BUDGET TO ADDRESS COUNTY EXPENSES FOR HOUSING FELONY**
15 **OFFENDERS IN COUNTY JAILS, AND THE LEGISLATURE SHALL FUND THE**
16 **BUDGET AS PROVIDED BY LAW.**

17 Enacting section 1. This amendatory act does not take effect
18 unless Senate Bill No. ____ or House Bill No. 5930 (request no.
19 06303'14) of the 97th Legislature is enacted into law.