

HOUSE BILL No. 4137

February 4, 2015, Introduced by Reps. Howrylak, Heise, Kelly, Forlini, Webber and Pagel
and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 2, 4, and 14 of chapter XI and sections 2, 3,
and 5 of chapter XIA (MCL 771.2, 771.4, 771.14, 771A.2, 771A.3, and
771A.5), section 2 of chapter XI as amended by 2010 PA 351, section
4 of chapter XI as amended by 1998 PA 520, section 14 of chapter XI
as amended by 2012 PA 27, and sections 2, 3, and 5 of chapter XIA
as added by 2012 PA 616.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XI

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

in section 2a of this chapter, if the defendant is convicted of a felony, the probation period shall not exceed ~~5 years~~.~~THE~~

FOLLOWING, AS APPLICABLE:

(A) FIVE YEARS IF THE APPLICABLE PRIOR RECORD VARIABLE SCORE CALCULATED UNDER PART 5 OF CHAPTER XVII IS 25 OR GREATER OR IF SUBDIVISION (B) IS OTHERWISE INAPPLICABLE.

(B) TWO YEARS IF THE APPLICABLE PRIOR RECORD VARIABLE SCORE CALCULATED UNDER PART 5 OF CHAPTER XVII IS LESS THAN 25 AND NEITHER OF THE FOLLOWING APPLY:

(i) THE COURT DETERMINES THAT A PERIOD OF UP TO 5 YEARS IS NECESSARY BECAUSE OF VICTIM RESTITUTION ORDERED.

(ii) THE CONVICTION IS FOR ANY OF THE FOLLOWING:

(A) A FELONY UNDER CHAPTER LXXVI OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO 750.520N.

(B) A FELONY UNDER SECTION 411H, 411I, OR 411S OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.411H, 750.411I, AND 750.411S.

(C) A FELONY AS TO WHICH THE VICTIM AND THE DEFENDANT HAD A RELATIONSHIP DESCRIBED IN SECTION 81(2) OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81.

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

(3) A defendant who was placed on probation under section 1(4) of this chapter as it existed before March 1, 2003 for an offense committed before March 1, 2003 is subject to the conditions of

1 probation specified in section 3 of this chapter, including payment
2 of a probation supervision fee as prescribed in section 3c of this
3 chapter, and to revocation for violation of these conditions, but
4 the probation period shall not be reduced other than by a
5 revocation that results in imprisonment or as otherwise provided by
6 law.

7 (4) If an individual is placed on probation for a listed
8 offense ~~enumerated~~ **AS THAT TERM IS DEFINED** in section 2 of the sex
9 offenders registration act, 1994 PA 295, MCL 28.722, the
10 individual's probation officer shall register the individual or
11 accept the individual's registration as provided in that act.

12 (5) Subsection (1) does not apply to a juvenile placed on
13 probation and committed under section 1(3) or (4) of chapter IX to
14 an institution or agency described in the youth rehabilitation
15 services act, 1974 PA 150, MCL 803.301 to 803.309.

16 Sec. 4. (1) It is the intent of the legislature that the
17 ~~granting of probation is a matter of grace conferring no vested~~
18 ~~right to its continuance.~~ **PURPOSES OF PROBATION ARE TO HOLD**
19 **OFFENDERS ACCOUNTABLE FOR MAKING RESTITUTION TO ENSURE COMPLIANCE**
20 **WITH THE COURT'S JUDGMENT, TO EFFECTIVELY REHABILITATE OFFENDERS BY**
21 **DIRECTING THEM TO SPECIALIZED TREATMENT OR EDUCATION PROGRAMS, AND**
22 **TO PROTECT THE PUBLIC SAFETY.** If during ~~the~~ **A** probation period the
23 sentencing court ~~determines~~ **IS NOTIFIED** that the probationer ~~is~~
24 ~~likely again to engage in an offensive or criminal course of~~
25 ~~conduct or that the public good requires revocation of probation,~~
26 ~~the court may revoke probation. All probation orders are revocable~~
27 ~~in any manner the court that imposed probation considers applicable~~

1 ~~either for~~ **HAS COMMITTED** a violation or attempted violation of a
2 probation condition, ~~or for any other type of antisocial conduct or~~
3 ~~action on the probationer's part for which the court determines~~
4 ~~that revocation is proper in the public interest. Hearings~~ **THE**
5 **COURT MAY HOLD A HEARING ON SANCTION OR REVOCATION. THE HEARING** on
6 the **SANCTION OR** revocation ~~shall be summary and informal and IS~~ not
7 subject to the rules of evidence or of pleadings applicable in
8 criminal trials, **AND THE COURT SHALL CONDUCT THE HEARING IN A**
9 **SUMMARY AND INFORMAL MANNER.** In its probation order or by general
10 rule, the court may provide for the apprehension, detention, and
11 confinement of a probationer accused of violating a probation
12 condition or conduct inconsistent with the public good. The method
13 of hearing and presentation of charges are within the court's
14 discretion, except that the probationer is entitled to a written
15 copy of the charges constituting the claim that he or she violated
16 probation and to a probation **SANCTION OR** revocation hearing. The
17 court may investigate and enter a disposition of the probationer as
18 the court determines best serves the public interest, ~~—SUBJECT TO~~
19 **ALL OF THE FOLLOWING:**

20 (A) IF THE COURT DETERMINES THAT THE PROBATIONER HAS COMMITTED
21 OR ATTEMPTED A FIRST NONCOMPLIANCE VIOLATION, THE COURT SHALL
22 SANCTION THE PROBATIONER TO 1 OR MORE NONCONFINEMENT RESPONSES.

23 (B) IF THE COURT DETERMINES THAT THE PROBATIONER HAS COMMITTED
24 OR ATTEMPTED A SECOND THROUGH FIFTH NONCOMPLIANCE VIOLATION, THE
25 COURT MAY SANCTION THE PROBATIONER BY CONFINEMENT IN THE COUNTY
26 JAIL FOR UP TO 3 DAYS.

27 (C) IF THE COURT DETERMINES THAT THE PROBATIONER HAS COMMITTED

1 OR ATTEMPTED A RISK VIOLATION, THE COURT MAY SANCTION THE
 2 PROBATIONER BY CONFINEMENT IN THE COUNTY JAIL FOR UP TO 30 DAYS.

3 (D) If ~~a~~THE COURT DETERMINES THAT THE PROBATIONER HAS
 4 COMMITTED OR ATTEMPTED A THIRD RISK VIOLATION OR A MAJOR RISK
 5 VIOLATION, THE COURT MAY REVOKE THE probation order ~~is revoked, the~~
 6 ~~court may~~ AND sentence the probationer in the same manner and to
 7 the same penalty as the court might have done if the probation
 8 order had never been made. TIME SPENT IN CONFINEMENT UNDER THIS
 9 SECTION SHALL BE CREDITED TOWARD THE SENTENCE IMPOSED, AND IF THE
 10 PROBATIONER IS ON PROBATION FOR MULTIPLE JUDGMENTS, THE CREDIT
 11 SHALL BE APPLIED TO EACH SENTENCE.

12 (2) This section does not apply to a juvenile placed on
 13 probation and committed under section 1(3) or (4) of chapter IX to
 14 an institution or agency described in the youth rehabilitation
 15 services act, 1974 PA 150, MCL 803.301 to 803.309.

16 (3) ALL VIOLATIONS ALLEGED AT A SINGLE HEARING ON SANCTION OR
 17 REVOCATION CONSTITUTE 1 VIOLATION FOR PURPOSES OF DETERMINING THE
 18 SANCTION.

19 (4) AS USED IN THIS SECTION, "MAJOR RISK VIOLATION",
 20 "NONCOMPLIANCE VIOLATION", "NONCONFINEMENT VIOLATION",
 21 "NONCONFINEMENT RESPONSE", AND "RISK VIOLATION" MEAN THOSE TERMS AS
 22 DEFINED IN SECTION 2 OF CHAPTER XIA.

23 Sec. 14. (1) Before the court sentences a person charged with
 24 a felony, ~~or~~ a person who is a licensee or registrant under article
 25 15 of the public health code, 1978 PA 368, MCL 333.16101 to
 26 333.18838, as described in section 1(14) of chapter IX, ~~and, OR,~~ if
 27 directed by the court, ~~in any other case in which a person is~~

1 charged with a misdemeanor within the jurisdiction of the court,
2 the probation officer shall inquire into the antecedents,
3 character, and circumstances of the person, and shall report in
4 writing to the court.

5 (2) A presentence investigation report prepared under
6 subsection (1) shall not include ~~any~~ **AN** address or telephone number
7 for the home, workplace, school, or place of worship of ~~any~~ **A**
8 victim or witness, or a family member of any victim or witness,
9 unless an address is used to identify the place of the crime or to
10 impose conditions of release from custody that are necessary for
11 the protection of a named individual. Upon request, any other
12 address or telephone number that would reveal the location of a
13 victim or witness or a family member of a victim or witness shall
14 be exempted from disclosure unless an address is used to identify
15 the place of the crime or to impose conditions of release from
16 custody that are necessary for the protection of a named
17 individual. A presentence investigation report prepared under
18 subsection (1) shall include all of the following:

19 (a) An evaluation of and a prognosis for the person's
20 adjustment in the community based on factual information contained
21 in the report.

22 (b) If requested by a victim, ~~any~~ **A** written impact statement
23 submitted by the victim under the William Van Regenmorter crime
24 victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

25 (c) A specific written recommendation for ~~disposition based on~~
26 ~~the evaluation and other information as prescribed by the assistant~~
27 ~~director of the department of corrections in charge of probation.~~ **A**

1 **TERM AND THE APPROPRIATE CONDITIONS OF PROBATION SUPERVISION**
2 **FOLLOWING JAIL CONFINEMENT, IF APPLICABLE, OR THE APPROPRIATE**
3 **CONDITIONS OF PROBATION SUPERVISION, IF PROBATION IS GRANTED.**

4 (d) A statement prepared by the prosecuting attorney as to
5 whether consecutive sentencing is required or authorized by law.

6 (e) For a person to be sentenced under the sentencing
7 guidelines set forth in chapter XVII, all of the following:

8 (i) For each conviction for which a consecutive sentence is
9 authorized or required, the sentence grid in part 6 of chapter XVII
10 that contains the recommended minimum sentence range.

11 (ii) Unless otherwise provided in subparagraph (i), for each
12 crime having the highest crime class, the sentence grid in part 6
13 of chapter XVII that contains the recommended minimum sentence
14 range.

15 (iii) Unless otherwise provided in subparagraph (i), the
16 computation that determines the recommended minimum sentence range
17 for the crime having the highest crime class.

18 (iv) A specific statement as to the applicability of
19 intermediate sanctions, as defined in section 31 of chapter IX.

20 ~~—— (v) The recommended sentence.~~

21 (f) If a person is to be sentenced for a felony or for a
22 misdemeanor involving the illegal delivery, possession, or use of
23 alcohol or a controlled substance, a statement that the person is
24 licensed or registered under article 15 of the public health code,
25 1978 PA 368, MCL 333.16101 to 333.18838, if applicable.

26 (g) Diagnostic opinions that are available and not exempted
27 from disclosure under subsection (3).

1 (h) A statement as to whether the person has provided the
2 identification documents referenced in subsection (9)(b).

3 (3) The court may exempt from disclosure in the presentence
4 investigation report information or a diagnostic opinion that might
5 seriously disrupt a program of rehabilitation or sources of
6 information obtained on a promise of confidentiality. If a part of
7 the presentence investigation report is not disclosed, the court
8 shall state on the record the reasons for its action and inform the
9 defendant and his or her attorney that information has not been
10 disclosed. The action of the court in exempting information from
11 disclosure is subject to appellate review. Information or a
12 diagnostic opinion exempted from disclosure under this subsection
13 shall be specifically noted in the presentence investigation
14 report.

15 (4) If a prepared presentence investigation report is amended
16 or altered before sentencing by the supervisor of the probation
17 officer who prepared the report or by any other person who has the
18 authority to amend or alter a presentence investigation report, the
19 probation officer may request that the court strike his or her name
20 from the report and the court shall comply with that request.

21 (5) The court shall permit the prosecutor, the defendant's
22 attorney, and the defendant to review the presentence investigation
23 report before sentencing.

24 (6) At the time of sentencing, either party may challenge, on
25 the record, the accuracy or relevancy of any information contained
26 in the presentence investigation report. The court may order an
27 adjournment to permit the parties to prepare a challenge or a

1 response to a challenge. If the court finds on the record that the
2 challenged information is inaccurate or irrelevant, that finding
3 shall be made a part of the record, the presentence investigation
4 report shall be amended, and the inaccurate or irrelevant
5 information shall be stricken accordingly before the report is
6 transmitted to the department of corrections.

7 (7) A copy of the report described under subsection (5) and
8 the amended report described under subsection (6) shall be provided
9 to the prosecutor and the defendant's attorney or the defendant if
10 he or she is not represented by an attorney. The copy of the report
11 described under subsection (5) shall be provided not less than 2
12 business days before sentencing unless that period is waived by the
13 defendant. The prosecutor and the defendant's attorney or the
14 defendant if he or she is not represented by an attorney have the
15 right to retain a copy of the report and the amended report
16 provided under this subsection.

17 (8) On appeal, the defendant's attorney, or the defendant if
18 proceeding pro se, shall be provided with a copy of the presentence
19 investigation report and any attachments to the report with the
20 exception of any information exempted from disclosure by the court
21 under subsection (3).

22 (9) If the person is committed to a state correctional
23 facility, both of the following apply:

24 (a) A copy or amended copy of the presentence investigation
25 report and, if a psychiatric examination of the person has been
26 made for the court, a copy of the psychiatric report shall
27 accompany the commitment papers. If the person is sentenced by fine

1 or imprisonment or placed on probation or other disposition of his
2 or her case is made by the court, a copy or amended copy of the
3 presentence investigation report, including a psychiatric
4 examination report made in the case, shall be filed with the
5 department of corrections.

6 (b) The person shall be provided notification that provides an
7 explanation of the importance of obtaining an operator's license or
8 state personal identification card upon release from incarceration
9 and lists the personal identification documents described in
10 section 34c of the corrections code of 1953, 1953 PA 232, MCL
11 791.234c, necessary for obtaining an operator's license or state
12 personal identification card. The notification also shall contain a
13 request that the person obtain and provide those documents to the
14 department of corrections. The notification also shall state that
15 the department of corrections will retain in the file maintained
16 for the person any identification documents provided by the person
17 until he or she is released from secure confinement. Any
18 identification documents previously provided by the person shall
19 accompany the commitment papers.

20 (10) A prisoner under the jurisdiction of the department of
21 corrections shall be provided with a copy of any presentence
22 investigation report in the department's possession about that
23 prisoner, except for information exempted from disclosure under
24 subsection (3), not less than 30 days before a parole interview is
25 conducted under section 35 of the corrections code of 1953, 1953 PA
26 232, MCL 791.235.

27 CHAPTER XIA

1 Sec. 2. As used in this chapter:

2 (A) "ABSCONDING FROM SUPERVISION" MEANS BEING APPREHENDED BY A
3 LAW ENFORCEMENT OR PROBATION OFFICER, OR BEING ARRESTED FOR A NEW
4 CRIME OUTSIDE OF THIS STATE.

5 (B) ~~(a)~~—"Circuit OF THE CIRCUIT court" includes a unified
6 trial court ~~having~~ THAT HAS jurisdiction over probationers.

7 (C) "FAILURE TO REPORT" MEANS FAILURE TO REPORT TO THE
8 PROBATION OFFICER WHEN REQUIRED AND TO TURN HIMSELF OR HERSELF IN
9 WITHIN 7 DAYS AFTER A WARRANT FOR HIS OR HER APPREHENSION HAS BEEN
10 ISSUED.

11 (D) "MAJOR RISK VIOLATION" MEANS EITHER OF THE FOLLOWING:

12 (i) THE VIOLATION OF A PROTECTIVE ORDER.

13 (ii) AN OFFENSE AGAINST A PERSON THAT IS A VIOLATION OF SECTION
14 83, 84, 86, 88, 89, 317, 321, 349, 349A, 350, 397, 520B, 520C,
15 520D, 520G(1), 529, OR 529A OF THE MICHIGAN PENAL CODE, 1931 PA
16 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89, 750.317, 750.321,
17 750.349, 750.349A, 750.350, 750.397, 750.520B, 750.520C, 750.520D,
18 750.520G, 750.529, AND 750.529A.

19 (E) "NONCOMPLIANCE VIOLATION" MEANS A FAILURE TO REPORT OR
20 OTHER VIOLATION OF A CONDITION OF SUPERVISION THAT IS NOT A RISK
21 VIOLATION OR A MAJOR RISK VIOLATION.

22 (F) "NONCONFINEMENT RESPONSE" MEANS A VIOLATION RESPONSE THAT
23 DOES NOT RESULT IN IMPRISONMENT IN THE CUSTODY OF THE DEPARTMENT OR
24 THE COUNTY JAIL, INCLUDING ANY OF THE FOLLOWING:

25 (i) EXTENSION OF THE PERIOD OF SUPERVISION WITHIN THE PERIOD
26 PROVIDED BY LAW.

27 (ii) ADDITIONAL REPORTING AND COMPLIANCE REQUIREMENTS.

1 (iii) TESTING FOR THE USE OF DRUGS OR ALCOHOL.

2 (iv) COUNSELING OR TREATMENT FOR BEHAVIORAL HEALTH PROBLEMS,
3 INCLUDING FOR SUBSTANCE USE.

4 (G) ~~(b)~~ "Probationer" means an individual placed on probation
5 for committing a felony.

6 (H) "RISK VIOLATION" MEANS A VIOLATION OF A CONDITION OF
7 SUPERVISION THAT IS ANY OF THE FOLLOWING:

8 (i) CONTACT WITH A SPECIFICALLY PROHIBITED PERSON, OR PROXIMITY
9 TO A SPECIFICALLY PROHIBITED BUSINESS OR LOCATION.

10 (ii) AN ARREST FOR DOMESTIC VIOLENCE OR OTHER THREATENING,
11 STALKING, OR ASSAULTIVE BEHAVIOR THAT IS NOT A VIOLATION OF A
12 PROTECTIVE ORDER.

13 (iii) AN ARREST FOR AN UNADJUDICATED NEW FELONY THAT IS NOT A
14 MAJOR RISK VIOLATION.

15 (iv) ABSCONDING FROM SUPERVISION.

16 (v) THE PROBATIONER'S SIXTH OR SUBSEQUENT NONCOMPLIANCE
17 VIOLATION.

18 Sec. 3. It is the intent of the legislature ~~to create a~~
19 ~~voluntary state program to fund swift and sure probation~~
20 ~~supervision at the local level based upon~~ **ON** the immediate
21 detection of probation violations and **THE** prompt ~~the~~ imposition of
22 sanctions and remedies to address those violations. In furtherance
23 of this intent, the state swift and sure sanctions program ~~is~~
24 ~~created with the following objectives:~~ **SHALL BE IMPLEMENTED AND**
25 **MAINTAINED AS PROVIDED IN THIS CHAPTER AS FOLLOWS:**

26 (a) Probationers are to be sentenced with prescribed terms of
27 probation meeting the objectives of this chapter. Probationers are

1 to be aware of their probation terms as well as the consequences
2 for violating the terms of their probation.

3 (b) Probationers are to be closely monitored and every
4 detected violation is to be promptly addressed by the court.

5 (c) Probationers are to be arrested as soon as a violation has
6 been detected and are to be promptly taken before a judge for a
7 hearing on the violation **UNLESS THE VIOLATION IS A NONCOMPLIANCE**
8 **VIOLATION AND THE PROBATIONER WAIVES A HEARING AFTER BEING**
9 **PRESENTED WITH A VIOLATION REPORT.**

10 (d) Continued violations are to be addressed by increasing
11 sanctions and remedies as necessary to achieve results. **AT A**
12 **MINIMUM, PROBATIONERS MAY BE CONFINED FOR THE PERIOD DESIGNATED IN**
13 **THE VIOLATION REPORT, UP TO 3 DAYS, ON THE EXECUTION BY THE**
14 **PROBATIONER OF A WAIVER OF RIGHTS.**

15 (e) To the extent possible and considering local resources,
16 probationers subject to swift and sure probation under this chapter
17 shall be treated uniformly throughout ~~the~~ **THIS** state.

18 Sec. 5. (1) A ~~program of swift and sure probation supervision~~
19 ~~funded under section 4~~ **JUDGE** shall do all of the following **IF SWIFT**
20 **AND SURE PROBATION APPLIES TO A PROBATIONER:**

21 (a) ~~Require the court to inform~~ **INFORM** the probationer in
22 person of the requirements of his or her probation and the
23 sanctions and remedies that may apply to probation violations.

24 (b) Require the probationer to initially meet in person with a
25 probation agent or probation officer and as otherwise required by
26 the court.

27 (c) Provide for an appearance before the judge **OR ANOTHER**

1 **JUDGE** for any probation violation as soon as possible but within 72
2 hours after the violation is reported to the court unless **THE**
3 **PROBATIONER WAIVES A HEARING OR** a departure from the 72-hour
4 requirement is authorized for good cause as determined by criteria
5 established by the state court administrative office.

6 (d) Provide for the immediate imposition of sanctions and
7 remedies ~~approved by the state court administrative office to~~
8 ~~effectively address probation violations. The sanctions and~~
9 ~~remedies approved under this subdivision may include, but need not~~
10 ~~be limited to, 1 or more of the following.~~ **AS PROVIDED IN SECTION**
11 **4(1) OF CHAPTER XI.**

12 ~~—— (i) Temporary incarceration in a jail or other facility~~
13 ~~authorized by law to hold probation violators.~~

14 ~~—— (ii) Extension of the period of supervision within the period~~
15 ~~provided by law.~~

16 ~~—— (iii) Additional reporting and compliance requirements.~~

17 ~~—— (iv) Testing for the use of drugs and alcohol.~~

18 ~~—— (v) Counseling and treatment for emotional or other mental~~
19 ~~health problems, including for substance abuse.~~

20 ~~—— (vi) Probation revocation.~~

21 (2) The state court administrative office may, under the
22 supervision of the supreme court, do any of the following regarding
23 programs funded under this chapter:

24 (a) Establish general eligibility requirements for offender
25 participation.

26 (b) Require courts and offenders to enter into written
27 participation agreements.

1 (c) Create recommended and mandatory sanctions and remedies
2 for use by participating courts.

3 (d) Establish criteria for deviating from recommended and
4 mandatory sanctions and remedies ~~when~~**IF** necessary to address
5 special circumstances.

6 (e) Establish a system for determining sanctions and remedies
7 that should or may be imposed under subdivision (c) and for
8 alternative sanctions and remedies under subdivision (d).