

Legislative Analysis



PROBATION REVISIONS

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Senate Bill 13 (H-1) as reported from House committee
Sponsor: Sen. John Proos (Public Act 9 of 2017)

Analysis available at
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Senate Bill 15 (H-1) as reported from House committee
Sponsor: Sen. Rick Jones (Public Act 10 of 2017)

House Committee: Michigan Competitiveness
Senate Committee: Michigan Competitiveness
Complete to 3-6-17

BRIEF SUMMARY: Senate Bill 13 limits the days a probationer may be sentenced to temporary incarceration for a technical probation violation to a maximum of 30 days for each technical violation, which may be extended if the probationer meets one of the exceptions.

Senate Bill 15 allows the sentencing court to reduce the probation period for a felony probationer who has completed at least one-half of the period of probation.

The bills, which will take effect 90 days after enactment, are part of a larger package of legislation to implement corrections reforms that includes Senate Bills 5-12, 14, 16-24, and 50.

FISCAL IMPACT: Senate Bill 13 could have a fiscal impact on the state and on local units of government. Currently, individuals with technical probation violations could be sentenced to jail for up to 12 months in consecutive or nonconsecutive intervals over the course of their probation terms. Senate Bill 13 would limit the length of the jail term for a technical probation violation to not more than 30 days (or up to 90 days if treatment beds are not available). The 30-day limit would not apply to any individual with three or more technical violations. To the extent that the bill results in a reduction in the number of days probation violators spend in county jails, savings could be realized by local units of government. The cost of local incarceration in county jails varies by jurisdiction, so savings would depend on daily costs of housing inmates and numbers of days inmates are housed. However, if judges decide the limited 30-day term is insufficient and instead sentence violators back to prison, increased costs would occur for the state's correctional system.

The fiscal impact of Senate Bill 15 on the state and on local units of government is indeterminate. The number of probation periods that would be recommended for reduction by probation officers, and subsequently reduced by the courts, is unknown. Also, the number of days the probation periods would be reduced by is unknown. In FY 2016, the average cost to the state per offender for parole/probation supervision was roughly \$3,500, and the population of individuals with terms of supervision was 60,225 (15,234 parolees and 44,991 probationers). Please note, some of these offenders were under supervision for offenses that would not qualify for reduced terms under the bill.

THE CONTENT OF THE BILLS:

Senate Bill 13 adds Section 4b to the Code of Criminal Procedure. Currently, violating the terms of probation can result in the court imposing additional conditions, extending the length

of probation, or revoking the probation and sentencing the offender to up to the maximum sentence allowed for the crime for which probation had been imposed.

Under the bill, and beginning January 1, 2018, a probationer who commits a technical probation violation and is sentenced to temporary incarceration in a state or local correctional detention facility could be incarcerated for a maximum of 30 days. (A probationer may not be given credit for time served on a previous technical violation.) After serving the period of temporary incarceration, the probationer may be returned to probation under the terms of the original probation order or under a new one at the discretion of the court.

The bill defines a ***technical probation violation*** as a violation of the terms of a probationer's probation order that is not a violation of an order of the court requiring that the probationer have no contact with a named individual or that is not a violation of a law of this state or another state, a political subdivision of Michigan, the United States, or of Tribal law, and does not include the consumption of alcohol by a probationer who is on probation for a felony violation of certain substance abuse and driving offenses.

Exceptions to the 30-day limit

- The bill's 30-day limit on temporary incarceration does not apply to a probationer who has committed three or more technical probation violations during the course of the probation.
- The court also may extend the incarceration for a violation to up to 90 days if the probationer has been ordered to attend a treatment program as part of probation and a bed is not currently available.
- Further, the bill does not prohibit the court from revoking probation and sentencing the probationer under Section 4 of the Code for a probation violation including, but not limited to, a technical probation violation at any time during the course of probation.
- Finally, the 30-day limit does not apply when a probationer is on probation for certain domestic violence violations or certain stalking- or aggravated stalking-related offenses.

Senate Bill 15 amends the Code of Criminal Procedure (MCL 771.2). Generally speaking, probation may be imposed by the courts in both misdemeanor and felony sentences, though certain offenses, such as murder, treason, certain sexual conduct crimes, and certain controlled substance offenses do not allow probation. A period of probation is limited to no more than two years for a misdemeanor and five years for a felony. Though the court retains legal control over an offender's status, felony probationers are under the supervision of the Department of Corrections. The court also has discretion to set conditions or requirements of probation specific to an offender in addition to those required under statute for all probationers.

Currently, a court has statutory authority to amend an order of misdemeanor or felony probation in form or substance at any time; this includes reducing the probation period. The bill revises reductions to felony probationary periods as follows:

- Allows the Department of Corrections (DOC) to notify the sentencing court when a defendant completes one-half of the original felony probation period.

- Allows the court to reduce the term of probation by 100 percent or less, after a hearing to review the case and the defendant's conduct while on probation and the court's determination that the defendant's behavior warrants a reduction in the probationary term.
- Requires notification of the hearing to the victim and allows the victim to be given an opportunity to be heard.
- Requires the court to consider the impact to the victim and repayment of outstanding restitution caused by reducing the probationer's probationary term.
- Requires notification by the court to the prosecuting attorney, the defendant, and the defendant's attorney (if the defendant has an attorney). The notice must be made at least 28 days before the court reduces or terminates a period of probation.

Exceptions to probation revisions/reductions

The probation revisions listed above do not apply when a defendant is subject to a mandatory probation term. They also do not apply for defendants convicted of certain violations, including (1) assault or assault and battery in a domestic setting when the defendant already has two or more convictions for that offense; (2) assault with intent to do great bodily harm, or strangulation or suffocation; (3) second-degree criminal sexual conduct; or (4) fourth-degree criminal sexual conduct.

Additionally under the bill, the DOC must report annually no later than December 31 to the committees of the Senate and House of Representatives concerning the judiciary or criminal justice, with the report to contain the number of defendants referred to the court for a hearing under the bill's provisions.

The State Court Administrative Office (SCAO) must also report each year no later than December 31 to the same legislative committees the number of probationers who were released early from probation.

Finally, a court which reduces a term of probation must report to the DOC the period by which the term of probation was reduced under the bill's provisions.

HOUSE COMMITTEE ACTION:

The House's H-1 substitute to SB 13 adds the first, third, and fourth exceptions to the 30-day limit to a probation term, listed above. It also adds the provisions that "technical probation violations" do not apply to violations of a temporary restraining order or the consumption of alcohol by a probationer who is on probation for causing death or serious impairment of a bodily function of another person by operating a motor vehicle while intoxicated, visibly impaired, or under the influence of certain controlled substances.

The H-1 substitute for SB 15 substitute adds the exceptions from the probation revisions for certain offenses and for defendants subject to mandatory probation terms. Additionally, the bill as introduced required approval by a defendant's probation officer for a probation reduction; the substitute removes that requirement. Finally, it removes the requirement that a victim be notified at least 28 days before the court reduces or terminates a term of probation or before the court conducts the review.

ARGUMENTS:

For:

One important way to effect corrections reform, say proponents, is to ensure that offenders are not spending too much time incarcerated for minor offenses. SB 13 would keep a technical probation violation from landing an offender back in jail for an excessive term. SB 15 would allow a judge to reduce an offender's probation for "good behavior." Both of these are intended to keep minor offenders out of jail, to the extent practicable, and to expend corrections funds in the most responsible and impactful way possible.

Against:

As written, Senate Bill 13 applies to district courts, which are operated and run at a local level; some suggested that they should be excluded from the bill. Unlike circuit court judges, district court judges are not bound by sentencing guidelines and historically have had broad discretion in sentencing.¹

POSITIONS:

The following organizations support the bills

Michigan Catholic Conference (2-8-17)

Michigan Sheriffs Association (2-8-17)

Goodwill Industries of Greater Detroit (2-8-17)

The office of the Attorney General (3-1-17)

Grand Rapids Chamber (3-1-17)

The Michigan Association of Counties are currently reviewing the bills as reported. (2-8-17)

The Citizens Alliance on Prisons and Public Spending indicated neutrality. (3-1-17)

The following organizations oppose the bills

UAW Local 6000 (2-8-17)

The State Court Administrative Office (SCAO) opposes SB 15 (3-1-17)

The Michigan District Judges Association opposes SB 13 (3-1-17)

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

¹ District Court Sentencing, Michigan Institute of Continuing Legal Education,
<http://www.icle.org/modules/books/chapter.aspx?chapter=10&book=2010552067&lib=criminal§ions=2&from=store>