

# Legislative Analysis

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## PROBATION REVISIONS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**Senate Bill 13 as passed by the Senate**  
**Sponsor: Sen. John Proos**

Analysis available at  
<http://www.legislature.mi.gov>

**Senate Bill 15 as passed by the Senate**  
**Sponsor: Sen. Rick Jones**

**House Committee: Michigan Competitiveness**  
**Senate Committee: Michigan Competitiveness**  
**Complete to 2-7-17**

## SUMMARY:

Senate Bill 13 limits the days a probationer may be sentenced to temporary incarceration for a technical probation violation to no more than 30 days.

(A "technical probation violation" means a violation of the terms of a probationer's probation order that is not in and of itself a violation of a law of this state or another state, a political subdivision of Michigan, the United States, or of Tribal law.)

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 if the probation officer recommends such a reduction.

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.

A more detailed description of each bill follows.

**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 no more than 30 days. 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's 30-day limit on temporary incarceration does not apply to a probationer who has committed five or more technical probation violations.

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.

**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.
- *If* the probation officer in the case recommends a probation reduction, allows the court to reduce the term of probation by 100 percent or less. A hearing to review the case and the defendant's conduct while on probation would have to be held first, and the court would have to determine that the defendant's behavior warrants a reduction in the probationary term.
- Requires notification of the hearing to the victim in the same manner as described in subsection 3 of the bill. (Note: Subsection 3 pertains to certain reporting requirements of the DOC and the State Court Administrative Office to the Legislature, not to notifying crime victims.) The victim must be given an opportunity to be heard and the court must consider the impact to the victim caused by reducing the probationer's probationary term. The DOC must notify the victim at the victim's last known address not less than 28 days before the court reduces or terminates a period of probation or before the court conducts the review.
- 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 not less than 28 days before the court reduces or terminates a period of probation or before the court conducts the review.
- Requires the DOC to report annually no later than December 31 to the committees of the Senate and House of Representatives concerning the judiciary or criminal justice the number of defendants referred to the court for a hearing under the bill's provisions and the overall reduction of days supervised during the preceding year.

- Requires the State Court Administrative Office (SCAO) to report each year no later than December 31 to the same legislative committees the number of probationers who were released early from probation.
- Requires a court to report to the DOC the period by which a term of probation for a probationer was reduced under the bill's provisions.

#### **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. The 30-day limit would not apply to any individual with five 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.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Robin Risko

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