Legislative Analysis

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JAIL REDUCTION

Senate Bill 1046 (H-2) as reported from House committee
Sponsor: Sen. Roger Victory

Senate Bill 1047 (H-1) as reported from House committee
Sponsor: Sen. Jeff Irwin

Senate Bill 1048 as reported
Sponsor: Sen. Sylvia Santana

Senate Bill 1049 as reported
Sponsor: Sen. Stephanie Chang

Senate Bill 1050 (H-2) as reported
Sponsor: Sen. Michael D. MacDonald

Senate Bill 1051 (H-1) as reported
Sponsor: Sen. Ed McBroom

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 12-17-20

BRIEF SUMMARY:

Senate Bill 1046 would, in certain circumstances, allow issuance of an appearance ticket for certain misdemeanor or ordinance violations instead of arrest and being taken into custody.

Senate Bill 1047 would require issuance of a summons instead of a warrant in all cases (except assaultive crimes and domestic violence offenses), expedite arraignments on bench warrants when the person voluntarily reports, create a rebuttable presumption for failure to appear at a court hearing and give the person 48 hours to voluntarily appear before issuance of a bench warrant, and create a process regarding treatment of a person arrested on a bench warrant in a county other than the one originating the warrant.

Senate Bill 1048 would require a nonjail sentence to be imposed for a misdemeanor other than a serious misdemeanor, remove the possibility of jail for an intermediate sanction, and create a rebuttable presumption that a court impose a nonjail or nonprobation sentence.

Senate Bill 1049 would, beginning October 1, 2021, extend eligibility for assignment of youthful trainee status under the Holmes Youthful Trainee Act to an individual for offenses committed when he or she is 18 to 25 years of age. The bill would also require a prosecutor to consult with the victim regarding the appropriateness of youthful trainee status under certain circumstances.

Senate Bill 1050 would, with some exceptions, shorten the maximum probation period from five years to three years; revise provisions regarding early discharge from probation; disqualify a conviction for domestic violence, stalking, aggravated stalking, crimes requiring registration as a sex offender, human trafficking, and crimes for which a defense was asserted under Chapter 36 from eligibility for reduced probation; require probation conditions to be tailored to the probationer; and revise sanctions for technical probation violations.

Senate Bill 1051 would require conditions of parole to be individualized, including considering the needs of the victim.

DETAILED SUMMARY:

Senate Bill 1046 would amend Chapter IV (Arrests) of the Code of Criminal Procedure to do all of the following:

- Except as otherwise prohibited, allow a police officer to issue an appearance ticket when arresting a person without a warrant, in lieu of taking the person into custody, for any misdemeanor or ordinance violation. (This now applies only to violations for which the maximum penalty does not exceed 93 days in jail and/or a fine.) The appearance ticket, or other requested documentation, would have to be forwarded to the court, prosecuting attorney, or both, for review without delay.
- Except as otherwise prohibited, require a police officer to issue and serve an appearance ticket and release a person from custody who was arrested for a misdemeanor or ordinance violation that is punishable by not more than one year in jail and/or a fine.
- Specifically prohibit an appearance ticket to be issued to a person arrested for a ***serious misdemeanor***; an ***assaultive crime***; or an assault, assault and battery, or aggravated assault involving domestic violence or a violation involving domestic violence.
- Allow a police officer to take the arrested person into custody under one of the following circumstances regarding the arrested person:
  - The person refuses to follow the officer's reasonable instructions.
  - The person will not offer satisfactory evidence of identification.
  - There is a reasonable likelihood that the offense would resume or that another person or property would be endangered if the person were released from custody.
  - The person presents an immediate danger to self or requires immediate medical examination or medical care.
  - The person requests to be taken immediately before a magistrate.
  - Any other reason the officer considers reasonable to make an arrest, which would have to be articulated in the arrest report.
- If the person is taken into custody instead of being issued an appearance ticket for any of the above reasons, the officer would have to specify the reason in the arrest report or other documentation and forward it to the appropriate prosecuting authority for review without delay. The person would have to be charged or released from custody not later than 3 p.m. the next day on which arraignments may be performed.
- The bill would not create a right to the issuance of an appearance ticket in lieu of an arrest. An arrested person could appeal the legality of the arrest. However, the person would not have a claim for damages against an officer or law enforcement agency because of being arrested rather than issued an appearance ticket.
- In addition to information currently required to be on an appearance ticket, the bill would require a space for the defendant's cell phone number and email address.

Serious misdemeanor would mean that term as defined in section 61 of the William Van Regenmorter Crime Victim's Rights Act. That section defines the term to include a wide range of misdemeanor offenses and substantially similar local ordinances, such as domestic violence and assault and battery, breaking and entering, child abuse in the fourth degree, certain firearm violations, injuring a worker in a work zone, and certain drunk and drugged driving offenses, among other offenses.

Assaultive crime would include a wide range of misdemeanor and felony offenses that include assault, homicide, manslaughter, assaults against pregnant women, stalking,

child abuse, discharging a firearm from a vehicle, kidnapping, rape, armed robbery, terrorism, and violations involving bombs and explosives.

The bill would take effect April 1, 2021.

MCL 764.9c and 764.9f

Senate Bill 1047 would amend Chapter II (Courts), Chapter IV (Arrest), and Chapter V (Bail) of the Code of Criminal Procedure to do the following:

- Require, except in cases alleging an assaultive crime or domestic violence, that if a person wanted on a bench warrant or warrant of arrest voluntarily presents to a court within one year of its issuance, the court must arraign the person within two hours if a judicial officer is available (or recall the warrant and schedule a future arraignment) and must presume that the person is not a flight risk when setting bond or conditions of release. However, a court could deny this procedure if the person already benefitted from it on any pending charges.
- Apply provisions pertaining to issuing warrants also to issuing *summonses*. (A summons differs from a warrant in that a summons does not involve an arrest.)
- Require a summons, and not a warrant, to be issued except in the following circumstances:
  - The complaint is for an assaultive crime or an offense involving domestic violence.
  - There is reason to believe the person will not appear upon a summons.
  - Issuing a summons poses a risk to public safety.
  - The prosecutor requested a warrant.
- Require the summons to be in the same form as a warrant, include a specific date and time to appear before a court, and be served on the defendant personally, leaving it at the defendant's home with another resident, or by mail. A warrant could be issued if the defendant fails to appear in response to the summons.
- Create a rebuttable presumption that a first failure to appear for a court hearing requires a court to give the defendant 48 hours to voluntarily appear before issuing a bench warrant; the bench warrant would then have to be issued unless the court believes there is good reason to instead schedule the case for further hearing. This provision *would not apply* to an assaultive crime or a domestic violence offense. Further, the rebuttable presumption could be overcome and an immediate bench warrant be issued (with the reasons for doing so stated on the record) if the court has a specific articulable reason to suspect any of the following:
  - The defendant committed a new crime.
  - A person or property will be endangered if the bench warrant is not issued.
  - Prosecution witnesses have been summoned and are present for the proceeding.
  - The proceeding is to impose a sentence for the crime.
  - There are other compelling circumstances requiring the bench warrant to be immediately issued.
- Prohibit revocation of the release order or forfeiture of bail money or a surety bond if the court delays issuance of a warrant, and allow them to be revoked or forfeited only when an arrest warrant is issued.
- Require the district court and county jails to establish a communication protocol to enable swift processing of those detained on a warrant originating in another county, and require the district court to establish a hearing protocol using two-way interactive video technology for those individuals.
- Create a rebuttable presumption that the court must issue an order to show cause, rather than a warrant, if a defendant fails to appear for a court hearing on an appearance ticket as for a summons and allow the court to overcome this presumption if the defendant commits a new

crime, the failure to appear represents the willful intent to avoid or delay the adjudication of the case, or another person or property will be endangered if a warrant is not issued.

- Require a person detained on an arrest warrant in a county other than the one originating the warrant to be released if the originating county does not make arrangements within 48 hours to pick up the person or fails to pick the person up within 72 hours of when he or she was detained, and the releasing facility would have to contact the originating court and obtain a court date for the defendant to appear. This provision *would not apply* in a case alleging an assaultive crime or offense involving domestic violence.

The bill would take effect April 1, 2021.

MCL 764.1 et al.

Senate Bill 1048 would amend Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure. Under the act, if a statute provides that an offense is punishable by imprisonment and a fine, the court may impose either instead of both. If an offense is punishable by imprisonment or a fine, the court may impose both. The bill would add a rebuttable presumption that, if an individual is convicted of a misdemeanor other than a serious misdemeanor, the court must sentence the individual with a fine, community service, or other nonjail or nonprobation sentence. The court could depart from the presumption if it finds reasonable grounds for the departure and states them on the record.

A court could issue an order for a person found to be in noncompliance with his or her sentence to show cause why he or she should not be held in contempt of court. An additional sentence could be imposed, including jail or probation, if the person is held in contempt. If the finding of contempt is for nonpayment of fines, costs, or other legal financial obligations, the court would be required to find on the record that the person is able to comply with the payments without manifest hardship, and that he or she had not made a good-faith effort to do so, before imposing an additional sentence.

The act requires that an intermediate sanction be imposed under certain conditions. Currently, "intermediate sanction" means probation or any sanction other than imprisonment in a state prison or state reformatory that may be lawfully imposed. The bill would add that imprisonment in a county jail is not an intermediate sanction and would remove jail, probation with jail, jail with work or school release, and jail with or without authorization for day parole from the list of examples of intermediate sanctions.

Currently, imposition of an intermediate sanction is required if the upper limit of the recommended minimum sentence range for a defendant is 18 months or less unless the court states on the record *a substantial and compelling reason* to sentence the individual to the jurisdiction of the Department of Corrections (DOC). Under the bill, the court would instead have to state on the record *reasonable grounds* to sentence the individual to *incarceration in a county jail for not more than 12 months or* to the jurisdiction of the DOC *for any sentence over 12 months*.

Currently, the act specifies that an intermediate sanction may include a jail term that does not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever is less. The bill would eliminate this provision.

If the upper limit of the recommended minimum sentence exceeds 18 months and the lower limit is 12 months or less, the act requires imposition of an intermediate sanction. One of the sentencing options allows a court to impose an intermediate sanction that may include a term of imprisonment (prison) of not more than 12 months. The bill would revise this provision to instead allow the court to impose an intermediate sanction *with or without* a term of *jail incarceration* of not more than 12 months.

Other changes proposed by the bill include the following:

- Allow, rather than require, the minimum sentence imposed by a court for a felony enumerated in the sentencing guidelines to be within the sentence range in effect on the date the crime was committed.
- Allow a departure from the sentence range if the departure is *reasonable*, rather than requiring the court to have *a substantial and compelling reason* for the departure.
- Eliminate a provision requiring the Court of Appeals, if it found the trial court did not have a substantial and compelling reason for departing from the appropriate sentence range, to remand the matter to the sentencing judge or another trial court judge for resentencing.

MCL769.5, 769.31, and 769.34

Senate Bill 1049 would amend Chapter II (Courts) of the Code of Criminal Procedure. Currently, youthful offenders, those at least 17 years of age but less than 24, who plead guilty to certain offenses may be assigned youthful trainee status under the Holmes Youthful Trainee Act (HYTA). Under the bill, this would apply until October 1, 2021. Beginning October 1, 2021, when 100 PA 2019 takes effect,[1] if an individual pleads guilty to a criminal offense committed when he or she is 18 to 25 years of age, a court could, without entering a judgment of conviction and with the individual's consent, consider and assign the individual to youthful trainee status except as otherwise prohibited. Consent of the prosecuting attorney would be required if the offense was committed when the individual was 21 to 25 years of age.

The prosecutor would have to consult with the victim regarding the applicability of assignment to youthful trainee status if the defendant (1) is charged with an offense for which youthful trainee status does not apply (e.g., a felony that carries a life sentence, a major controlled substance offense, a traffic offense, or criminal sexual conduct offenses) and he or she pleads guilty to any other offense, or (2) is charged with an offense for which registration is required under the Sex Offender Registration Act and meets the standard of proof that he or she would not likely engage in further listed offenses. [Note: The bill does not specify whether this provision pertains only if the crime was committed by a person at least 21 years of age, or by any youthful offender who is 18 to 25 years of age.]

(Under the HYTA, although an eligible individual must plead guilty to the criminal charge, he or she may have that charge dismissed upon successful completion of any sentence or conditions of probation imposed by the court. Youthful trainee status allows a young person to avoid having a criminal conviction on his or her record.)

MCL 762.11

[1] 2019 PA 100 is part of the Raise the Age legislative package, which raised the minimum age for a person to be automatically tried as an adult in a criminal case so to include seventeen-year-olds as juveniles. http://legislature.mi.gov/doc.aspx?2019-HB-4135

Senate Bill 1050 would amend Chapter XI (Probation) of the Code of Criminal Procedure to do the following:

- Shorten the maximum period of probation for a most felony convictions from five years to three years and allow up to two extensions of an additional year for each extension if a specific rehabilitation goal has not yet been achieved or for a specific, articulable, and ongoing risk of harm to a victim that can be mitigated only with continued probation supervision.
- Revise the requirements pertaining to early discharge from a felony probation period and instead provide, with some exceptions, for a defendant who has completed half of the original felony or misdemeanor probation period to be eligible for early discharge. He or she would have to be notified at sentencing of his or her eligibility and the requirements for early discharge from probation and the procedure (described below) to notify the court of his or her eligibility.
- Allow the probation department to notify the sentencing court that a probationer who has completed all required programming may be eligible for early discharge, and allow the probationer to do so if he or she has not violated probation in the preceding three months and the probation department did not make the notification to the court. The court could also consider a probationer for early discharge at its own discretion.
- Allow a probationer to still be considered for early discharge if he or she was unable to pay for the conditions of his or her probation, or for court-ordered fines, fees, costs, or costs, as long as he or she made good-faith efforts to make payments. However, this provision would not relieve a probationer from court-ordered financial obligations after discharge from probation.
- Allow, but not require, a court to review the case and the probationer's conduct while on probation to determine whether an early discharge is warranted. An early discharge from probation could be granted without a hearing. Before granting early discharge to a probationer who owes outstanding restitution, the court would have to consider the impact of early discharge on the victim and the payment of outstanding restitution. If a probationer has made a good-faith effort to pay restitution and is eligible for early discharge, the court could grant it or keep the probationer on probation up to the maximum allowable probation term for the offense, with the sole condition of continuing restitution payments.
- Require a court to hold a hearing if the court determines the probationer's behavior does not warrant early discharge in order for the probationer to present his or her case for the early discharge and also for the court to find on the record any specific rehabilitation goal not yet achieved or specific, articulable, and ongoing risk of harm to a victim that could only be mitigated with continued probation supervision.
- A hearing would also have to be held if the probation is for a felony offense eligible for early discharge that involves a victim who has requested notification under the William Van Regenmorter Crime Victim's Rights Act of the defendant's status of incarceration and/or probation or for a misdemeanor for assault or assault and battery, aggravated assault, or child abuse that is eligible for early discharge. As above, the impact of early discharge on the payment of outstanding restitution would have to be considered. The court could grant the early discharge or continue the probation up to the maximum allowable probation term for the offense, with the sole condition of continuing restitution payments. The victim would have to be notified of the date and time of the hearing and given an opportunity to be heard.
- Revise the annual reporting requirements to legislative committees concerning the judiciary or criminal justice regarding early discharge to instead require the DOC, instead of the State

Court Administrative Office, to annually report, by December 31 of each year, the number of felony probationers released early from probation and any available recidivism data.

- Disqualify a defendant convicted of any domestic violence related assault or assault and battery or aggravated assault, or an offense involving domestic violence, from eligibility for reduced probation. Currently, only a third or subsequent domestic violence assault or assault and battery violation, or a third or subsequent violation against a pregnant woman, disqualifies a defendant.
- Add the following to the list of crimes for which a conviction would disqualify a defendant from eligibility for reduced probation:
  - Stalking and aggravated stalking.
  - An offense for which a defense was asserted under section 36 of Chapter VIII (Trials) of the act.
  - An offense for which registration is required under the Sex Offender Registration Act.
  - A violation of Chapter LXVIIA (Human Trafficking) of the Michigan Penal Code.
- In general, allow a court to place an individual convicted of a violent felony on probation for up to five years.
- Require, as part of the order of probation, a court to fix and determine rehabilitation goals.
- Allow a probationer to report virtually to the probation officer.
- Allow a court to sanction a probationer to jail for failing to pay costs as a condition of probation if he or she has the ability to pay. Currently, a court may only revoke the probation.
- Require conditions of probation to be individually tailored to the probationer, specifically address his or her assessed risks and needs, be designed to reduce recidivism, and be adjusted if adjustments are determined to be appropriate. The input of the victim must be considered and the harm caused to the victim, as well as the victim's safety needs and other concerns (including protective orders or restitution), must be addressed.
- Specify, as a legislative intent, that revocation of probation, and subsequent incarceration, should be imposed only for repeated technical violations, new criminal behavior, or as otherwise allowed in section 4b of Chapter XI, or upon request of the probationer.
- Eliminate current provisions regarding incarceration for technical violations of probation and replace them with penalties based on whether the probation is for a misdemeanor or a felony and specify a maximum period of jail incarceration based on whether the technical violation is a first, second, third, or fourth or subsequent violation. This provision would not apply to a probationer on probation for assault or assault and battery or aggravated assault involving domestic violence, an offense involving domestic violence, or for stalking or aggravated stalking. A jail sanction could be extended to not more than 45 days if the probationer is awaiting placement in a treatment facility and does not have a safe alternative location to await treatment.
- Probation could not be revoked based on a ***technical probation violation*** unless the probationer has been sanctioned for three or more technical probation violations and commits a new one.
- Create a rebuttable presumption that the court could not issue a warrant for arrest for a technical probation violation and would have to issue a summons or order to show cause instead. The presumption could be overcome and a warrant issued if the court states on the record a specific reason to suspect that one or more of the following apply:
  - The probationer presents an immediate danger to himself or herself, another person, or the public.

- The probationer has left court-ordered inpatient treatment without the court's or the treatment facility's permission.
- A summons or order to show cause has already been issued for the technical probation violation and the probationer failed to appear as ordered.

- If a hearing for a probationer arrested and detained for a technical probation violation is not held within the applicable and permissible jail sanction, he or she would have to be returned to community supervision.

Technical probation violation would mean a violation of the terms of a probation order, including missing or failing a drug test, but not including the following:

- A violation of the court requiring the probationer to not have contact with a named individual.
- A violation of a law of this state, a political subdivision of this state, another state, or the U.S. or tribal law, whether or not a new criminal offense is charged.
- The consumption of a alcohol by a probationer who is on probation for a felony violation of the drunk and drugged driving laws.
- ***Absconding***.

Absconding would mean the intentional failure of a probationer to report to his or her supervising agent or to advise the agent of his or her whereabouts for a continuous period of at least 60 days.

The bill would take effect April 1, 2021.

MCL 771.2 et al.

Senate Bill 1051 would amend the Corrections Code to allow a parole order to be amended to adjust conditions as the parole board determines appropriate. Further, the bill would require conditions of parole to be individualized, specifically address the assessed risks and needs of the parolee, and be designed to reduce recidivism. The conditions of parole would also have to consider the needs of the victim, if applicable, including the safety needs of the victim or a request by the victim for protective conditions.

MCL 791.236

FISCAL IMPACT:

Senate Bill 1046 would have no fiscal impact on the state, but would have an indeterminate fiscal impact on local units of government. Depending on the number of individuals arrested, issued appearance tickets, and released from custody, there could be reduced costs related to county jails. The costs of local incarceration in county jails, and how those costs are financed, vary by jurisdiction.

Senate Bill 1047 would have an indeterminate fiscal impact on the state and on local units of government. Issuance of summons rather than warrants and issuance of orders to show cause rather than warrants could result in reduced costs for local county jails. The costs of local incarceration in county jails, and how those costs are financed, vary by jurisdiction. Also, under the bill, the district court and county jails would be required to establish communications

protocols for swift processing of individuals detained on warrants that originated in other counties, the district court would be required to establish hearing protocols for individuals detained on warrants that originated in other counties, and these protocols would be required to include use of two-way interactive video technology. Depending on current communication systems, and any changes needed to implement provisions of the bill, there could be costs to the state, to local judicial districts and to county jails.

Senate Bill 1048 would have an indeterminate fiscal impact on the state and on local units of government. A rebuttable presumption that authorizes courts to sentence individuals convicted of misdemeanors, other than serious misdemeanors, with fines, community service, or other nonjail or non-probation sentences could result in reduced costs related to state correctional facilities, county jails, and/or probation supervision and a loss of fee and fine revenue. In fiscal year 2019, the average cost of prison incarceration in a state facility was roughly $39,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for probation supervision averaged about $3,800 per supervised offender in the same year. These costs are financed with state general fund. The costs of local incarceration in county jails and local probation supervision, and how those costs are financed, vary by jurisdiction. Also under the bill, courts would be required to make sure individuals in contempt for not paying fines, costs, or other legal financial obligations are able to pay before imposing additional sentences. Local courts could experience additional costs for additional duties required under the bill and courts could experience a loss of fee and fine revenue depending on the number of individuals found not able to comply with payments without causing hardship.

Senate Bill 1049 would have an indeterminate fiscal impact on the state and on local units of government. Under provisions of the bill, courts would be authorized to allow individuals who plead guilty to criminal offenses committed when they were 18 to 25 years of age, without entering judgments of conviction, to consider and assign these individuals to the status of youthful trainees. This could result in reduced costs related to state correctional facilities, county jails, and/or probation supervision. In fiscal year 2019, the average cost of prison incarceration in a state facility was roughly $39,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for probation supervision averaged about $3,800 per supervised offender in the same year. These costs are financed with state general fund. The costs of local incarceration in county jails and local probation supervision, and how those costs are financed, vary by jurisdiction.

Senate Bill 1050 would have an indeterminate fiscal impact on the state and on local units of government. Early discharges from probation would result in savings to the state and/or local units. Extended terms of probation would result in additional costs to the state and/or local units. In fiscal year 2019, state costs for probation supervision averaged about $3,800 per supervised offender. These costs are financed with state general fund. The costs of local probation supervision, and how those costs are financed, vary by jurisdiction. Under the bill, probationers could not be considered ineligible for early discharge because of inability to pay for conditions of probation, or for outstanding court-ordered fines, fees, or costs. Before granting early discharge to probationers who owe outstanding restitution, courts would be required to consider the impact of early discharge on victims and the payment of outstanding restitution. Hearings would be required before granting early discharges. Local courts could experience additional costs for additional duties required under the bill. Also, under the bill, there would be a rebuttable presumption that authorizes courts to issue summons or orders to show cause instead of issuing warrants for arrest for individuals with technical probation violations. This could

result in reduced costs related to county jails and/or state correctional facilities. In fiscal year 2019, the average cost of prison incarceration in a state facility was roughly $39,400 per prisoner, a figure that includes various fixed administrative and operational costs. These costs are financed with state general fund. The costs of local incarceration in county jails, and how those costs are financed, vary by jurisdiction.

Senate Bill 1051 would have no fiscal impact on the state or on local units of government.

POSITIONS:

A representative of the Joint Task Force on Jail and Pretrial Reform testified in support of the bill. (12-16-20)

The following entities indicated support for the bills (12-16-20):

Safe and Just Michigan
Wayne County
Criminal Defense Attorneys of Michigan
ACLU of Michigan
Michigan Catholic Conference
League of Women Voters

Americans for Prosperity indicated support for SBs 1046, 1047, 1048, 1050, and 1051. (12-16-20)

Reform Alliance indicated support for SBs 1048, 1050, and 1051. (12-16-20)

The Michigan Coalition to End Domestic and Sexual Violence testified in support of SBs 1048 and 1049, indicated no position on SB 1047, and indicated opposition to SBs 1046, 1050, and 1051. (12-16-20)

The Michigan Domestic and Sexual Violence Prevention and Treatment Board indicated support for SB 1049, a neutral position on SBs 1046, 1047, and 1051, and opposition to SBs 1048 and 1050, as passed by the Senate. (12-16-20)

The Michigan Association of Counties indicated support for SBs 1047, 1049, 1050, and 1051 and a neutral position on SBs 1046 and 1048. (12-16-20)

Legislative Analyst: Susan Stutzky
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