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BILL ANALYSIS

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Senate Bills 1046 through 1051 (as introduced 7-23-20)
Sponsor: Senator Roger Victory (S.B. 1046)
Senator Jeff Irwin (S.B. 1047)
Senator Sylvia Santana (S.B. 1048)
Senator Stephanie Chang (S.B. 1049)
Senator Michael D. MacDonald (S.B. 1050)
Senator Ed McBroom (S.B. 1051)
Committee: Judiciary and Public Safety

Date Completed: 9-23-20

CONTENT

Senate Bill 1046 would amend the Code of Criminal Procedure to do the following:

-- **Modify a provision allowing a police officer to issue and serve upon a person an appearance ticket and release them from custody if he or she has been arrested without a warrant for a misdemeanor or ordinance violence, for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both, to refer to any misdemeanor or ordinance violation.**
-- **Require a police officer to issue to and serve upon a person an appearance ticket and release the person from custody if he or she had been arrested for certain misdemeanors or ordinance violations.**
-- **Allow a police officer to arrest the person instead of issuing an appearance ticket if one or more specified circumstances applied.**
-- **Require a police officer to specify the reason for not issuing a citation in an arrest report if he or she determined that one of the specified circumstances applied and he or she arrested a person instead of issuing an appearance ticket.**

Senate Bill 1047 would amend the Code of Criminal Procedure to do the following:

-- **Allow a person who was wanted on a bench warrant or an arrest warrant to appear in court, physically or electronically, except in certain cases.**
-- **Require a prosecuting attorney to request a summons instead of an arrest warrant, except in certain cases, unless the prosecuting attorney had reason to believe a summons would not be sufficient to ensure court appearance or protect the community.**
-- **Specify that, if a defendant failed to appear for a court hearing and it was his or her first failure to appear in the case, there would be a rebuttable presumption that the court would have to issue an order to show cause why the defendant failed to appear rather than a bench warrant or an arrest warrant.**
-- **Allow a court to overcome the rebuttable presumption and issue a warrant if it had a specific, articulable reason to suspect that certain conditions applied.**
-- **Specify that there would be a rebuttable presumption to require a court to issue an order to show cause why a defendant failed to appear rather than issue a bench warrant or an arrest warrant, if a defendant failed to appear for a court**

hearing at the time an appearance ticket was returnable and it was the defendant's first failure to appear in the case.

-- Allow a court to depart from the rebuttable presumption and issue a warrant if it had a specific, articulable reason to suspect that one or more specified conditions applied.

Senate Bill 1048 would amend the Code of Criminal Procedure to do the following:

-- Specify that there would be a rebuttable that a court would have to sentence an individual convicted of a misdemeanor, other than a serious misdemeanor, with a fine, community service, or other nonjail or nonprobation sentence.
-- Allow a court to depart from the presumption if it found reasonable grounds for the departure and stated on the record the grounds for the departure.
-- Require a ground for the departure from the rebuttable presumption to include a specific rehabilitation goal or an articulable risk of harm to a victim if a court imposed a probationary sentence.
-- Modify provisions allowing a court to depart from a sentence range established under the sentencing guidelines of Chapter 17 (Sentencing Guidelines) of the Code if it has substantial and compelling reason for that departure to refer to a *reasonable* departure instead of a substantial and compelling reason.

Senate Bill 1049 would amend the Code of Criminal Procedure to modify provisions allowing individuals who plead guilty to criminal offenses committed at certain specified ages to be assigned youthful trainee status.

Senate Bill 1050 would amend the Code of Criminal Procedure to do the following:

-- Modify provisions allowing a defendant who has completed one-half of his or her probation period to be eligible for early discharge.
-- Specify that a probationer could not be considered ineligible for early release because of an inability to pay the conditions of his or her probation, or for outstanding court-ordered financial obligations so long as he or she had made good-faith efforts to make payments.
-- Require the sentencing court to hold a hearing before granting early discharge to a probationer serving a term of probation for certain felonies and misdemeanors.
-- Modify and delete certain reporting provisions.
-- Prohibit a court from revoking probation or sanctioning a probationer to jail if he or she failed to comply with an order to pay costs as part of a sentence of probation, but allow the court to impose other sanctions, as appropriate.
-- Delete certain provisions pertaining to a technical probation violation.
-- Specify that a probationer who committed a technical violation would be subject to certain periods of incarceration in jail as a sanction.
-- Allow a jail sanction to be extended by a maximum of 45 days if the probationer were awaiting placement in a treatment facility and did not have a safe alternative location to await treatment.
-- Prohibit a court from revoking probation on the basis of a technical probation violation unless a probationer had already been sanctioned for three or more technical probation violations and committed a new technical probation violation, subject to exceptions.
-- Specify that there would be a rebuttable presumption that the court could not issue a warrant for arrest for a technical probation violation and, instead, would have to issue to the probationer a summons or other order to show cause.

<u>Senate Bill 1051</u> would amend the Corrections Code to do the following:

-- Allow a parole order to be amended to adjust conditions as the Parole Board determined was appropriate.
-- Require the conditions of parole to be individualized, be the least restrictive conditions necessary to address the assessed risks and needs of the parolee, and be designed to reduce recidivism.

<u>Senate Bill 1046</u>

Under Chapter 4 (Arrest) of the Code of Criminal Procedure, except as otherwise provided, if a police officer has arrested a person without a warrant for a misdemeanor or ordinance violence, for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both, instead of taking the person before a magistrate and promptly filing a complaint, the officer may issue and serve upon the person an appearance ticket and release the person from custody.

The bill would delete the reference to "for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both". Additionally, the police report created in connection with the issuance of an appearance ticket would have to be forwarded to the appropriate prosecuting authority within 48 hours after the issuance of the ticket if it were issued on a weekday, or within 72 hours after the issuance of the ticket if it were issued on a weekend day or a holiday.

Chapter 4 prohibits an appearance ticket from being issued to a person subject to detainment for violating a personal protection order or to a person subject to a mandatory period of confinement, condition of bond, or other conditions of release until he or she has served that period of confinement or meets that requirement of bond or other condition of release.

An appearance ticket also may not be issued to a person arrested for a violation of Section 81 or 81a of the Michigan Penal Code (which prescribe the offenses of assault and battery and aggravated assault, respectively), or a local ordinance substantially corresponding to Section 81 if the victim of the assault is the offender's spouse, former spouse, an individual who has had a child in common with the offender, an individual who has or had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender. "Dating relationship" means frequent, intimate associations characterized primarily by the expectation of affectional involvement. The term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social setting. The bill would delete these provisions. Instead, an appearance ticket could not be issued to a person arrested for an offense involving domestic violence as that term is defined in Section 1 of the domestic violence prevention and treatment Act. (That section defines "domestic violence" as the occurrence of any of the following acts by a person that is not an act of self-defense:

-- Causing or attempting to cause physical or mental harm to a family or household member.
-- Placing a family or household member in fear of physical or mental harm.
-- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
-- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.)

Additionally, the bill would require a police officer to issue to and serve upon a person an appearance ticket and release the person from custody if the person had been arrested for one of the following:

-- A misdemeanor or ordinance violation that had a maximum permissible penalty that did not exceed 93 days in jail or a fine, or both, and was not an offense involving domestic violence.
-- A misdemeanor or ordinance violation that involved property theft or property damage.
-- A misdemeanor or ordinance violation that involved the use of a controlled substance.

The officer could arrest the person instead of issuing an appearance ticket if one of the following circumstances were present:

-- The detained person refused to follow the officer's reasonable instructions.
-- The detained person would not offer satisfactory evidence of identification.
-- There was a reasonable likelihood that the offense would continue or resume, or that another person or property would be endangered if the person were not arrested and taken into custody.
-- The detained person required immediate medical examination or care.
-- The detained person requested to be taken before a magistrate immediately.

If an officer determined that one of the above circumstances applied and he or she arrested a person instead of issuing an appearance ticket, the officer would have to specify the reason for not issuing a citation in the arrest report.

The Code defines "appearance ticket" as a complaint or written notice issued and subscribed by a police officer or other public servant authorized by law or ordinance to issue it directing a designated person to appear in a designated local criminal court at a designated future time in connection with his or her alleged commission of a designated violation or violations of State law or local ordinance, for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both. The bill would delete reference to "for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both".

The Code requires appearance tickets to be number consecutively, be in a form required by the Attorney General, the State Court Administrator, and the Director of the Department of State Police, and to consist of certain parts. Under the bill, the appearance ticket also would have to provide a space for the defendant's cellular phone number, if applicable.

Senate Bill 1047

Definitions

"Assaultive crime" would mean that term as defined in Section 9a of Chapter 10 (New Trials, Writs of Error and Bills of Exceptions) of the Code: an offense against a person described in Section 81c(3), 82, 83, 84, 86, 87, 88, 89, 90a, 90b(a) or (b), 91, 200 to 212a, 316, 317, 321, 349, 349a, 350, 397, 411h(2)(b) or (3), 411i, 520b, 520c, 520d, 520e, 520g, 529, 529a, 530, or 543a to 543z of the Michigan Penal Code. (Those sections prohibit the following conduct, respectively: assault or assault and battery against a Family Independence Agency employee, felonious assault, assault with intent to commit murder, assault with intent to do great bodily harm less than murder, assault with intent to maim, assault with intent to commit burglary or any other felony, assault with intent to rob and steal (unarmed or armed), intentional assault of a pregnant woman, intentional assault of a pregnant woman that results in miscarriage or stillbirth or great bodily harm to an embryo or fetus, attempted murder, offenses involving explosives or bombs, first- and second-degree murder, manslaughter, kidnapping, prisoner taking person as hostage, leading or carrying away a child under 14, mayhem (intentional disfigurement), stalking a person under 18 years of age, contacting the stalking victim while on probation, first-, second-, third- , and fourth-degree criminal sexual conduct (CSC), assault with intent to commit CSC, larceny and aggravated assault with a

dangerous weapon, carjacking, larceny by violence or assault, and committing various acts of terrorism.)

"Domestic violence" would mean that term as defined in Section 1 of the domestic violence prevention and treatment Act.

Appearance in Court

Under the bill, except in cases in which the person was alleged to have committed an assaultive crime, an offense involving domestic violence, or a violation of Sections 411h or 411i of the Michigan Penal Code, which prohibit stalking and aggravated stalking, respectively, a person who was wanted on a bench warrant or an arrest warrant could appear in court, physically or electronically, if the court had the capacity to conduct remote hearings, to answer for the warrant and for the scheduling of his or her next court appearance without the warrant being executed if he or she did so within one year of the warrant being issued. After scheduling the next court appearance, the court would have to cancel the existing warrant.

Arrest Warrants

Under the bill, notwithstanding any provision of law to the contrary and except in cases in which the complaint was for an assaultive crime, an offense involving domestic violence, or a violation of Sections 411h or 411i of the Penal Code, upon presentation of a complaint to a judicial officer, a prosecuting attorney would have to request a summons instead of an arrest warrant, unless the prosecuting attorney had reason to believe a summons would not be sufficient to ensure court appear or protect the community.

Notwithstanding any provision of law to the contrary and except in cases in which the complaint was for an assaultive crime, an offense involving domestic violence, or a violation of Sections 411h or 411i of the Penal Code, in the event that a defendant failed to appear for a court hearing and it was his or her first failure to appear in the case, there would be a rebuttable presumption that the court would have to issue an order to show cause why the defendant failed to appear rather than a bench warrant or an arrest warrant.

The court could overcome the presumption and issue a warrant if it had a specific, articulable reason to suspect that one of more of the following applied:

-- The defendant had committed a new crime.
-- The defendant's failure to appear was the result of a willful intent to avoid or delay the adjudication of the case.
-- Another person or property would be endangered if the warrant were not issued.
-- The failure to appear occurred on a date set for trial.

If the court departed from the presumption and issued a warrant, it would have to state on the record its reason for doing so.

If the court intended to issue a warrant solely because it had reason to believe that the defendant's failure to appear was the result of a willful intent to avoid or delay the adjudication of the case, the court could provide for a 48-hour period allowing the defendant to appear voluntarily before issuing the bench warrant.

Detention on Arrest Warrant

The bill would require each district court and county jail to establish a communication protocol

to enable the swift processing of individuals detained on an arrest warrant that originated in another county.

Each district could would have to establish a hearing protocol for individuals detained on an arrest warrant that originated in another county. The protocol would have to include the use of two-way interactive video technology, when appropriate.

Failure to Appear

Under the Code, if after the service of an appearance ticket and the filing of a complaint for the offense designate on the ticket the defendant does not appear in the designated local criminal court at the time the ticket is returnable, the court may issue a summons or an arrest warrant based on the complaint filed.

Under the bill, the court, instead, could issue a summons or arrest warrant as provided below. Notwithstanding any provision of law to the contrary, if a defendant failed to appear for a court hearing at the time the appearance ticket was returnable and it was the defendant's first failure to appear in the case, there would be a rebuttable presumption that the court would have to issue an order to show cause why the defendant failed to appear instead of a bench warrant or an arrest warrant.

The court could depart from the presumption and issue a warrant if it had a specific, articulable reason to suspect that one of the following applied:

-- The defendant had committed a new crime.
-- The defendant's failure to appear was the result of a willful intent to avoid or delay the adjudication of the case.
-- Another person or property would be endangered if the warrant were not issued.
-- The failure to appear occurred on a date set for trial.

If the court departed from the presumption and issued a warrant, it would have to state on the record its reason for doing so.

If the court had reason to believe that the defendant's failure to appear was the result of a willful intent to avoid or delay adjudication of the case, but not that the person or property would be endangered if a warrant were not issued, and the failure to appear had not occurred on a date set for trial, rather than immediately issuing a warrant, the court could provide for a 48-hour period allowing the defendant to appear voluntarily, either for the hearing or to reschedule the hearing, before issuing the warrant.

Release from Custody

Under the bill, except in cases in which a person is alleged to have committed an assaultive crime, an offense involving domestic violence, or a violation of Sections 4111h or 411i of the Michigan Penal Code, a person who is detained on warrant of arrest in a county other than the county from which the warrant originated would have to be released from custody if the county from which the warrant originated did not make arrangements within 48 hours from the time the person was detained to pick up the person and did not in fact pick up the person within 72 hours after the time he or she was detained. If a person were released from custody, the releasing facility would have to contact the originating court and obtain a court date for the defendant to appear.

Rebuttable Presumption

Under Chapter 9 (Judgment and Sentence) of the Code of Criminal Procedure, if a statute provides that an offense is punishable by imprisonment and a fine, the court may impose imprisonment without the fine or the fine without imprisonment. If a statute provides that an offense is punishable by fine or imprisonment, the court may impose both the fine and imprisonment in its discretion.

Under the bill, both provisions would be subject to a rebuttable presumption that the court would have to sentence an individual convicted of a misdemeanor, other than a serious misdemeanor, with a fine, community service, or other nonjail or nonprobation sentence. "Serious misdemeanor" would mean that term as defined in Section 61 of the Crime Victim's Rights Act. That section defines "serious misdemeanor" as a violation of one or more of the following: Sections 81, 81a, 115, 136b(7), 145, 145d, 233, 234, 235, 446, or 411h of the Michigan Penal Code or Sections 601b(2), 617a, or 625 of the Michigan Vehicle Code. (Those sections prohibit the following conduct, respectively: assault and battery, aggravated assault, breaking and entering, fourth-degree child abuse, contributing to the neglect or delinquency of a minor, using the internet or computer to make a prohibited communications, intentionally aiming a firearm without malice, discharge of a firearm intentionally aimed at a person, discharge of an intentionally aimed firearm resulting in injury, indecent exposure, stalking, injuring a worker in a work zone, leaving the scene of a car accident, and operating under the influence.)

The court could depart from the presumption if it found reasonable grounds for the departure and stated those grounds on the record. If the court imposed a probationary sentence, the ground for the departure would have to include a specific rehabilitation goal or an articulable risk of harm to a victim. If the court imposed a sentence that included a jail term, the ground for the departure would have to include specific and articulable risk of harm to a victim.

Sentencing Guidelines

Under the Code, the sentencing guidelines promulgated by Michigan Supreme Court order do not apply to felonies enumerated in Part 2 (Included Felonies) of Chapter 17 committed on or after January 1, 1999.

A court may depart from the appropriate sentence range established under the sentencing guidelines set forth in Chapter 17 if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure. The bill would refer to *reasonable* departure instead of a substantial and compelling reason for that departure.

The Code requires intermediate sanctions to be imposed under certain circumstances, including if the upper limit of the recommended minimum sentence range for a defendant determined under the sentencing guidelines is 18 months or less. "Intermediate sanction" means probation or any sanction, other than imprisonment in a State prison or State reformatory, that may lawfully be imposed.

The provision applies unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the Department of Corrections. 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 delete these provisions. Instead, under the bill, there would a presumption that an individual who was eligible for an intermediate sanction would have to be sentenced to a term of probation,

a fine, or both, with no jail term. A court could depart from the presumption if it found reasonable grounds for the departure and stated on the record the grounds for the record. The grounds for departure would have to include a specific and articulable risk of harm to a victim or to the public.

The Code specifies that if, upon a review of the record, the Court of Appeals finds the trial court did not have a substantial and compelling reason for departing from the appropriate sentence range, the Court must remand the matter to the sentencing judge or another trial court judge for resentencing. The bill would delete this provision.

Senate Bill 1049

Under Chapter 2 (Courts) of the Code of Criminal Procedure, except as otherwise provided, if an individual pleads guilty to a criminal offense, committed on or after his or her 18th birthday but before his or her 24th birthday, the court of record having jurisdiction of the criminal offense may, without entering a judgment of conviction and with the consent of that individual, consider and assign that individual to the status of youthful trainee. If the offense was committed on or after the individual's 21st birthday but before his or her 24th birthday, the individual may not be assigned youthful training status without the consent of the prosecuting attorney. Under the bill, these provisions would apply until October 1, 2021. The bill also would refer to the individual's 17th instead of 18th birthday.

Beginning October 1, 2021, except as otherwise provided, if an individual pleaded guilty to a criminal offense, committed on or after his or her 18th birthday but before this or her 26th birthday, the court of record having jurisdiction of the criminal offense could, without entering a judgment of conviction and with the consent of that individual, consider and assign that individual to the status of youthful trainee. If the offense were committed on or after the individual's 21st birthday but before his or her 26th birthday, the individual could not be assigned youthful training status without the consent of the prosecuting attorney.

Designation of youthful trainee status under either circumstance described above would not apply to an individual who committed any of the following:

-- A felony for which the maximum penalty is imprisonment for life.
-- A major controlled substance offense.
-- A traffic violation.
-- A violation, attempted violation, or conspiracy to violate Section 520b, 520c, 520d, or 520e of the Michigan Penal Code, other than Sections 520d(1)(a) or 520e(1)(a).

(Section 520d(1)(a) prescribes the offense of third-degree CSC involving a person at least 13 years of age and under 16 years of age. Section 520e(1)(a) prescribes the offense of fourth-degree CSC involving a person at least 13 years of age and under 16 years of age.)

Senate Bill 1050

Probation Term

Under the Code of Criminal Procedure, except as otherwise provided, if a defendant is convicted of an offense that is not a felony, the probation period may not exceed two years. Except as otherwise provided, if the defendant is convicted of a felony, the probation period may not exceed five years. The bill would reduce from five years to three years the probation period for a felony conviction. However, the probation term for a felony could be extended a single time for an additional year if the court found that there was a specific rehabilitation

goal that had not yet been achieved, or a specific, articulable, and ongoing risk of harm to a victim that could be mitigated only with continued probation supervision.

The Code specifies that, except as otherwise provided, after a defendant has completed one-half of the original felony probation period, the Michigan Department of Corrections (MDOC) or probation department may notify the sentencing court. if, after a hearing to review the case, the court determines that the probationer's behavior warrants a reduction in the probationary term, it may reduce that term by 100% or less. The victim must be notified of the date and time of the hearing and be given an opportunity to be heard. The court must consider the impact on the victim and repayment of outstanding restitution caused by reducing the defendant's probationary term. At least 28 days before reducing or terminating a period of probation or conducting a review of the case, the court must notify the prosecuting attorney, the defendant or, if the defendant has an attorney, the defendant's attorney. However, this provision does not apply to a defendant who is subject to a mandatory probation term. The bill would delete these provisions.

Instead, under the bill, except as otherwise provided, after a defendant had completed one-half of the original felony or misdemeanor probation period, he or she may be eligible for early discharge.

If a probationer had completed all required programming and had had no probation violations in the immediately preceding three months, at least 30 days before he or she became eligible for early discharge from probation the probationer's supervising agent would have to notify the court and the prosecutor of the case.

A probationer could not be considered ineligible for early discharge because of an inability to pay the conditions of his or her probation, or for outstanding court-ordered financial obligations, including fines, fees, costs, or restitution, so long as he or she had made good-faith efforts to make payments. However, nothing in this provision would relieve a probationer from his or her court-ordered financial obligations, including restitution, after discharge from probation.

The sentencing court could review the case and the probationer's conduct while on probation to determine whether the probationer's behavior warranted an early discharge. Except as otherwise provided, the court would not be required to hold a hearing before making a determination regarding early discharge.

The sentencing court would have to hold a hearing before granting early discharge to a probationer serving a term of probation for a felony offense involving a victim who had requested to receive notice under the Crime Victim's Rights Act, or for a misdemeanor violation of Sections 81, 81a, 136b, 411h, or 520e of the Michigan Penal Code. If a hearing were to be held, the victim would have to be notified of the date and time of the hearing and be given an opportunity to be heard.

If, after reviewing the case, including conducting a hearing if one were requested, the court determined that the probationer's behavior warranted a reduction in the probationary term, it could grant an early discharge from probation, beginning as soon as the probationer was eligible. The court could determine that the probationer's behavior did not warrant a reduction in his or her probationary term only if it did both of the following in reaching that determination:

-- Conducted a hearing to allow the probationer to present his or her case for an early discharge.

-- Found and stated on the record a specific rehabilitation goal that had not yet been achieved or a specific, articulable, and ongoing risk of harm to a victim that could be mitigated only with continued probation supervision.

The court must, by order to be entered in the case as the court directs by general rule or in each case, fix and determine the period and conditions of probation. Under the bill, the court also would have to fix and determine the rehabilitation goals of probation.

Report to Legislature

The MDOC must report, no later than December 31 of each year, 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 to determine whether a probationer's behavior warranted a reduction in term. The bill, instead, would require the MDOC to report, no later than December 31 each year, to the Senate and House committees concerning the judiciary or criminal justice the number of probationer's on a felony probation evaluated by the sentencing court for early discharge, including the number of felony probationers for which a hearing was held to determining whether early discharge should be granted to a probationer and the number of felony probationers who were discharged early from probation.

The State Court Administrative Office must report, no later than December 31 of each year, to the Senate and House committees concerning the judiciary the number of probations who were released early from probation. The bill would delete this provision.

Specific Probation Terms

Stalking. The Code allows a court to place an individual convicted of violating Section 411h of the Michigan Penal Code, which prohibits stalking, on probation for not more than five years. The bill would reduce, from five to three, years the probation term; however, the probation term would be subject to extension as described in the bill.

Under the Code, the probation is subject to revocation for any violation of a condition of that probation. The bill would delete this provision.

Aggravated Stalking. The Code allows a court to place an individual convicted of violating Section 411i of the Penal Code, which prohibits aggravated stalking, on probation for any term of years, but at least five years. The sentence is subject to the conditions set forth in Section 411i(4) of the Penal Code, which prescribes the same probation term, and under the Code. The probation is subject to revocation for any violation of a condition of that probation.

The bill would delete these provisions.

Child Abuse. The Code allows the court to place an individual convicted of a violation of Section 136b of the Penal Code, which prohibits child abuse, that is designated as a misdemeanor on probation for not more than five years. The bill would reduce, from five to three, years the probation term; however, the probation term would be subject to extension as described in the bill.

Payment of Costs of Probation

Under the Code, if a probationer is ordered to pay costs as part of a sentence of probation, compliance with the order must be a condition of probation.

The court may revoke probation if the probationer fails to comply with the order and if the probationer has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court must consider the probationer's employment status, earning ability, and financial resources, the willfulness of the probationer's failure to pay, and any other special circumstances that may have a bearing on the probationer's ability to pay. The proceedings provided for above are in addition to those provided in Chapter 11. The bill would delete these provisions.

Instead, under the bill, a court could not revoke probation or sanction a probationer to jail if he or she failed to comply with the order but the court could impose other sanctions, as appropriate.

Delay & Deferment of Sentencing

Under the Code, if entry of judgment is deferred in a circuit court, the court must require the individual to pay a supervision fee in the same manner as prescribed for a delayed sentence, must require the individual to pay the minimum State costs prescribed in Chapter 9, and may impose, as applicable the conditions of probation described in the Code.

If sentencing is delayed or entry of judgment is deferred in the district court or in a municipal court, the court must require the individual to pay the minimum State costs prescribed in Chapter 9 and may impose, as applicable, the condition of probation described in the Code.

Under the bill, the conditions of probation imposed by the court under either circumstance described above would have to be individually tailored to the probationers, be the least restrictive conditions necessary to address the assessed risks and needs of the probationer, be designed to reduce recidivism, and be adjusted if the court determined adjustments were appropriate.

Legislative Intent

The Code specifies the following:

> It is the intent of the legislature that the granting of probation is a matter of grace conferring no vested right to its continuance. If during the probation period the sentencing court determines that the probationer is likely again to engage in an offensive or criminal course of conduct or that the public good requires revocation of probation, the court may revoke probation. All probation orders are revocable in any manner the court that imposed probation considers applicable either for a violation or attempted violation of a probation condition or for any other type of antisocial conduct or action on the probationer's part for which the court determines that revocation is proper in the public interest.

The bill would delete these provisions. Instead, the bill states the following:

> It is the intent of the legislature that revocation of probation, and subsequent incarceration, should be imposed only for serious and repeated technical violations, or for new criminal behavior. All probation orders are revocable subject to the requirements of section 4b of [Chapter 11].

The Code also specifies that in its probation order or by general rule, the court may provide for the apprehension, detention, and confinement of a probationer accused of violating a probation condition or conduct inconsistent with the public good. The bill would delete reference to conduct inconsistent with the public good.

Additionally, the Code states that the court may investigate and enter a disposition of the probationer as the court determines best serves the public interest. Under the bill, this provision would be subject to the requirements of Section 4b.

Technical Probation Violation

Under the Section 4b of Chapter 11, except as otherwise provided in this section, beginning on January 1, 2018, a probationer who commits a technical probation violation and is sentenced to temporary incarceration in a State or local correctional or detention facility may be incarcerated for a maximum of 30 days for each technical violation. A probationer may not be given credit for any time served on a previous technical violation. After a probationer serves the period of temporary incarceration, he or she may be returned to probation under the terms of his or her original probation order or under a new probation order at the discretion of the court.

The limit on temporary incarceration does not apply to a probationer who has committed three or more technical probation violations during the course of his or her probation.

The court may extend the period of temporary incarceration a maximum of 90 days if a probationer has been ordered to attend a treatment program as part of his or her probation but for which a treatment bed is not currently available; however, the period of temporary incarceration imposed may not extend beyond 90 days.

Section 4b does not prohibit the court from revoking a probationer's probation and sentencing the probationer for a probation violation, including, a technical probation violation at any time during the course of probation.

The bill would delete these provisions. Instead, except as provided in Section 4b, a probationer who committed a technical probation violation would be subject to the use of jail as a sanction as described in the following provisions. For a technical violation committed by an individual who was on probation because he or she was convicted of or pleaded guilty to a misdemeanor:

-- For a first sanction, jail incarceration for not more than five days.
-- For a second sanction, jail incarceration for not more than 10 days.
-- For a third sanction, jail incarceration for not more than 15 days.
-- For a fourth or subsequent sanction, jail incarceration for any number of days, but not exceeding the total of the remaining eligible jail sentence.

For a technical violation committed by an individual who was on probation because he or she was convicted of or pleaded guilty to a felony:

-- For a first sanction, jail incarceration for not more than 15 days.
-- For a second sanction, jail incarceration for not more than 30 days.
-- For a third sanction, jail incarceration for not more than 45 days.
-- For a fourth or subsequent sanction, jail incarceration for any number of days, but not exceeding the total of the remaining eligible jail or prison sentence.

A jail sanction could be extended by a maximum of 45 days if the probationer were awaiting placement in a treatment facility and did not have a safe alternative location to await treatment.

Subject to the following prohibition, the court could not revoke probation on the basis of a technical probation violation unless a probationer had already been sanctioned for three or more technical probation violations and committed a new technical probation violation.

The court could not impose a jail sanction or revoke probation for any of the following technical probation violations:

-- Failure to seek or maintain employment.
-- Failure to pay court-ordered fines, fees, or the costs of court-ordered treatment or programming.
-- Failure to report a change in residence.

Except as otherwise provided under the bill, there would be 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 other order to show cause to the probationer instead. The court could overcome the presumption and issue a warrant if it stated on the record a specific reason to suspect that one or more of the following applied:

-- The probationer presented an immediate danger to himself or herself, another person, or the public.
-- The probationer had left court-ordered inpatient treatment without the court's or the treatment facility's permission.
-- A summons or order to show cause had already been issued for the technical probation violation and the probationer failed to appear as ordered.

A probationer who was arrested and detained for a technical probation violation would have to be brought to a hearing on the technical probation violation as soon as was possible. If the hearing were not held within the applicable and permissible jail sanction, as determined under the bill, the probationer would have to be returned to community supervision.

As used in Section 4b, "technical probation violation" means 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 Michigan law; a political subdivision of the State, another state, or the United States; or of tribal law, and does not include the consumption of alcohol by a probationers who is on probation for a felony violation of Section 625 of the Michigan Vehicle Code, which prescribes the offense of operating while intoxicated.

Instead, under the bill, the term would mean a violation of the term of a probationer's probation other than one of the following:

-- A violation of an order of the court requiring that the probationer have no contact with a named individual.
-- A violation of Michigan law; a political subdivision of the State, another state, or the United States; or of tribal law, whether or not a new criminal offense is charged; however, a violation involving the use of a controlled substance, the evidence of which is obtained because of a required drug test, is a technical violation of Section 4b.
-- Absconding.

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

The Corrections Code specifies that all paroles must be ordered by the Parole Board and must be signed by the chairperson.

A parole order may be amended at the discretion of the Board for cause. Under the bill, a parole order also could be amended to adjust conditions as the Board determined was appropriate.

Under the Code, when a parole order is issued, the order must contain the conditions of the parole and must specifically provide proper means of supervising the paroled prisoner in accordance with the rules of the Field Operations Administration. The bill would require the conditions of parole to be individualized, be the least restrictive conditions necessary to address the assessed risks and needs of the parolee, and be designed to reduce recidivism.

MCL 764.9c & 764.9f (S.B. 1046)
764.9e et al. (S.B. 1047)
769.5 & 769.34 (S.B. 1048)
762.11 (S.B. 1049)
771.2 et al. (S.B. 1050)
791.236 (S.B. 1051)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bills would have a negative fiscal impact on the State and local courts in the short-term, but likely would have positive fiscal impact in the long-term. Senate Bill 1046 would have a minimal fiscal impact on State and local police agencies.

The bills are part of a larger reform package based upon the recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration. On January 10, 2020, the Task Force issued its recommendations intended to reduce pretrial jail incarceration rates and eliminate jail time for certain nonviolent offenders who are also not a flight risk.[1]

If enacted, there likely would be indeterminate costs associated with restructuring procedures and implementing the reforms; there also could be reduced revenue. Michigan Compiled Laws 801.83 authorizes counties to charge no more than $60 per day to house a prisoner overnight. While county jails are authorized to charge jail inmates for overnight stays, and many do, jails are most often unable to recoup their expenses from these fees typically because jail inmates are often indigent and cannot afford to pay them. According to a June 2018 survey by the Mackinac Center for Public Policy,[2] most counties were unable to collect even 10 percent of housing fees assessed for overnight jail stays. The only exception noted in the survey was Ingham County, which managed to collect 48% of assessed fees.

Senate Bills 1048 and 1049 could result in a decrease in the number of individuals sentenced to a MDOC facility. As a result, the Department could incur lower costs; however, it is unknown how many people would be affected under the bill's provisions. The average cost to State government for felony probation supervision is approximately $3,100 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately $5,400 per prisoner per year.

[1] Michigan Joint Task Force on Jail and Pretrial Incarceration, "Report and Recommendations", 1-10-2020.
[2] Riley, Kahryn, "Neither Inmates Nor Counties Get Out of Jail Free", *Viewpoint on Public Issues*, Mackinac Center for Public Policy, www.mackinac.org, 7-9-2018. Retrieved on 9-22-2020.

In the long-term, decreased pretrial incarceration rates would mean reduced operating costs for jails and an indirect benefit to communities through reduced job losses for offenders awaiting trial. According to the Task Force, operating costs for county jails and corrections were $478.0 million in 2017, a figure that does not include spending on capital projects, such as construction of new jail facilities.[3] According to the Task Force, jails account for nearly a quarter of county-level spending on public safety and justice systems, which together are the third largest expenditure at the county level, behind health care and public works.[4]

Within the past decade alone, multiple scholarly articles have been published citing the financial benefits, including indirect benefits, that may result for states that reduce pretrial incarceration rates and times.[5] While a direct cost of incarceration to a detainee may include a loss of income or property, the indirect costs to State and local government include such items as lost tax revenue. The *Boston University Law Review* article cites several figures that can be informative; for example, the average annual state tax lost for each incarcerated individual, per year, is $1,249.[6]

With a variety of factors that would influence direct, indirect, short-term, and long-term costs and benefits, the fiscal impact on State and local units of government is largely indeterminate; though it is likely that lost revenue and slightly increased costs may be quantifiable in the short term, the overall fiscal impact to State and local government long term likely would be positive.

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[3] Note 1, p. 18.
[4] *Id*.
[5] See, e.g., Baughman, Shima, "Costs of Pretrial Detention", *Boston University Law Review*, p. 1, 2017.
[6] *Id*. at 17. This figure is based on a 1997 study of inmates in the Northern District of California.

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