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BILL ANALYSIS

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Senate Bills 1046 through 1051 (as enacted) **PUBLIC ACTS 393-398 of 2020**
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)
Senate Committee: Judiciary and Public Safety
House Committee: Judiciary

Date Completed: 4-22-21

CONTENT

Senate Bill 1046 amended 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 the person 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.**
- **Specify that an appearance ticket may not be issued for a person arrested for a serious misdemeanor or a person arrested for any other assaultive crime.**
- **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 has been arrested for certain misdemeanors or ordinance violations.**
- **Allow a police officer to take the arrested person before a magistrate instead of issuing an appearance ticket if one or more specified circumstances applies.**
- **Require a police officer to specify the reason for not issuing a citation in an arrest report if he or she determines that one of the specified circumstances applies and he or she arrests a person instead of issuing an appearance ticket, and require the officer to forward the report to the appropriate prosecuting authority for review.**
- **Require an arrested person taken into custody instead of being issued an appearance ticket to be charged or released by 3 PM the immediately following day during which arraignment may be performed.**
- **Specify that the bill does not create a right to the issuance of an appearance ticket in lieu of arrest.**
- **Allow an arrested person to appeal the legality of his or her arrest**

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

- **Require a court to arraign a person and set his or her case for the next step of criminal proceeding if a judicial officer is available to arraign the person on a warrant within two hours of his or her appearance, and require the court to recall the warrant and schedule the case for future arraignment if a judicial officer is not available within that time.**

-- Require a clerk or magistrate to issue a summons instead of a warrant in certain circumstances.
-- Specify that, if a defendant fails to appear for a court hearing and it is his or her first failure to appear in the case, there is a rebuttable presumption that the court must wait 48 hours before issuing a bench warrant to allow the defendant to appear voluntarily.
-- Prohibit a court from revoking a release order or declaring bail or a surety bond forfeited when it delays the issuance of a warrant.
-- Allow a court to overcome the rebuttable presumption and issue an immediate bench warrant if it has a specific, articulable reason to suspect that certain conditions apply.
-- Specify that there is 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 fails to appear for a court hearing within the time an appearance ticket is returnable and it is the defendant's first failure to appear in the case.
-- Allow a court to overcome from the rebuttable presumption and issue a warrant if it has a specific, articulable reason to suspect that one or more specified conditions apply.

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

-- Specify that there is a rebuttable presumption that a court must 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 finds reasonable grounds for the departure and states on the record the grounds for the departure.
-- Allow a court to issue an order for a person to show cause why he or she should not be held in contempt for not comply with a sentence, if it finds that the person has not complied with his or her 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 amended Chapter 2 (Courts) of 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 amended 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 may 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 has made good-faith efforts to make payments.
-- Allow a court to grant an early discharge from probation without holding a hearing, except as otherwise provided, if it determines that the probationer's behavior warrants a reduction in the probationary term.
-- Require a court to hold a hearing if it determines that the probationer's behavior does not warrant an early discharge and allow the probationer to present his or her case on the record.
-- Modify and delete certain reporting provisions.

-- Include certain crimes for which a defendant is not eligible for reduced probation.
-- Allow a court to sanction a probationer to jail or revoke the probation if the probationer has the ability to pay and has not made a good-faith effort to comply with the order.
-- Specify that a probationer who commits a technical violation is subject to certain periods of incarceration in jail as a sanction.
-- Allow a jail sanction to be extended up to 45 days if the probationer is awaiting placement in a treatment facility and does 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 has already been sanctioned for three or more technical probation violations and commits a new technical probation violation, subject to exceptions.
-- Specify that there is a rebuttable presumption that the court may not issue a warrant for arrest for a technical probation violation and, instead, must issue to the probationer a summons or other order to show cause.

Senate Bill 1051 amended the Corrections Code to do the following:

-- Allow a parole order to be amended to adjust conditions as the Parole Board determines is appropriate.
-- Require the conditions of parole be individualized, specifically address the assessed risks and needs of the parolee, be designed to reduce recidivism, and consider the needs of the victim, if applicable, including the safety needs of the victim or a request by the victim for protective conditions.

Senate Bills 1048, 1059, and 1051 took effect on March 24, 2021. Senate Bills 1046, 1047, and 1050 took effect on April 1, 2021.

Senate Bill 1046

Previously, under Chapter 4 (Arrest) of the Code of Criminal Procedure, except as otherwise provided, if a police officer had arrested a person without a warrant for a misdemeanor or ordinance violation, for which the maximum permissible penalty did 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 could issue and serve upon the person an appearance ticket and release the person from custody.

The bill deletes the reference to "for which the maximum permissible penalty did not exceed 93 days in jail or a fine, or both". Additionally, the appearance ticket, or other documentation as requested, must be forwarded to the court, appropriate prosecuting authority, or both, for review.

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.

Previously, an appearance ticket also could 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 was the offender's spouse, former spouse, an individual who had had a child in common with the offender, an individual who

had or had had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender. "Dating relationship" meant frequent, intimate associations characterized primarily by the expectation of affectional involvement. The term did not include a casual relationship or an ordinary fraternization between two individuals in a business or social setting. The bill deletes these provisions.

Instead, an appearance ticket may not be issued to a person arrested for a domestic violence violation of Sections 81 or 81a or a local ordinance substantially corresponding to a domestic violence violation of Sections 81 or 81 or 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.)

An appearance ticket also may not be issued for either of the following:

-- A person arrested for a serious misdemeanor.
-- A person arrested for any other assaultive crime.

"Serious misdemeanor" means 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.)

"Assaultive crime" means that term as defined in Section 9a of Chapter X of the Code. Section 9a defines "assaultive crime" as 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.)

Additionally, under the bill, except as otherwise provided, a police officer must issue to and serve upon a person an appearance ticket and release the person from custody if the person has been arrested for a misdemeanor or ordinance violation that has a maximum permissible penalty that does not exceed one year in jail or a fine, or both, and is not an domestic violence violation of Sections 81 or 81a of the Penal Code, a local ordinance substantially corresponding to a domestic violence violation of Sections 81 or 81a, or an offense involving domestic violence as that term is defined in Section 1 of the domestic violence prevention and treatment Act.

The officer may take the arrested person before a magistrate and promptly file a complaint instead of issuing an appearance ticket if one of the following circumstances is present:

-- The arrested person refuses to follow the officer's reasonable instructions.
-- The arrested person will not offer satisfactory evidence of identification.
-- There is a reasonable likelihood that the offense would continue or resume, or that another person or property would be endangered if the arrested person is released from custody.
-- The arrested person presents an immediate danger to himself or herself or requires immediate medical examination or care.
-- The arrested person requests to be taken before a magistrate immediately.
-- Any other reason that the officer may deem reasonable to arrest the person which must be articulated in the arrest report.

If an officer determines that one of the above circumstances applies and he or she takes an arrested person before a magistrate and promptly files a complaint instead of issuing an appearance ticket, the officer must specify the reason for not issuing a citation in the arrest report or other documentation, as applicable, and must forward the arrest report or other documentation, as requested, to the appropriate prosecuting authority for review without delay.

An arrested person who is taken into custody instead of being issued an appearance ticket must be charged by the appropriate prosecuting authority or released from custody by 3 PM the immediately following day during which arraignments may be performed.

These provisions do not create a right to the issuance of an appearance ticket in lieu of arrest. An arrested person may appeal the legality of his or her arrest as provided by law. However, an arrested person does not have a claim for damages against a police officer or law enforcement agency because he or she was arrested rather than issued an appearance ticket.

The bill 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. Previously, the Code referred to a local ordinance "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 must provide a space for the defendant's cellular telephone number and email address, if applicable.

Senate Bill 1047

Definitions

Under the bill, "assaultive crime" includes any of the following:

-- A violation of Section 9a of Chapter 10 (New Trials, Writs of Error and Bills of Exceptions) of the Code of Criminal Procedure.
-- A violation of Chapter 11 of the Michigan Penal Code.
-- A violation of Sections 110a, 136b, 234a, 234b, 234c, 349b, or 411h or the Penal Code.
-- A violation of the law of another state or of a political subdivision of Michigan or of another state that substantially corresponds to a violation described above.

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

"Violent felony" means that term as defined in Section 36 of the Corrections Code: an offense against a person in violation of section 82, 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520e, 520g, 529, 529a, or 530 of the Penal Code

Appearance in Court

Under the bill, except in cases in which the person is alleged to have committed an assaultive crime or an offense involving domestic violence, a person who is wanted on a bench warrant or an arrest warrant who voluntarily presents himself or herself to the court that issued the warrant within one year of the issuance of the warrant must be processed by the court according to the bill.

If a judicial officer is available to arraign the person on the warrant within two hours of his or her appearance, the court must arraign the person and set his or her case for the next step of criminal proceedings. It is presumed that the person is not a flight risk when the court sets bond or other conditions of release at an arraignment.

If a judicial officer is not available to arraign the person on the warrant within two hours of his or her appearance, the court must recall the warrant and schedule the case for future arraignment.

A court may deny a person the benefit of the procedure described above if he or she has already benefitted from the procedure on any pending criminal charges.

Arrest Warrants; Summons

Sections 1 and 1a of the Chapter 4 (Arrest) of the Code generally prescribe the process for authorizing the issuance of a warrant. The bill refers to a warrant or a summons.

Under the bill, except in cases in which any of the following circumstances applied, a magistrate or clerk must issue a summons rather than a warrant:

-- The complaint is for an assaultive crime or an offense involving domestic violence.
-- The clerk or magistrate has reason to believe from the presentation of the complaint that the person against whom the complaint is made will not appear upon a summons.
-- The issuance of a summons poses a risk to public safety.
-- The prosecutor has requested a warrant.

A summon must be in the same form as a warrant except that it must summon the defendant to appear before a court at a stated date and time. The summons must be served upon a defendant by delivering a copy to him or her personally, by leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion residing at that place, or by mailing it to the defendant's last known address. If a defendant fails to appear in response to the summons, a warrant may be issued.

Rebuttable Presumption

Under the bill, notwithstanding any provision of law to the contrary and except in cases in which the complaint is for an assaultive crime or an offense involving domestic violence, in the event that a defendant fails to appear for a court hearing and it is his or her first failure to appear in the case, there is a rebuttable presumption that the court must wait 48 hours before issuing a bench warrant to allow the defendant to appear voluntarily. If the defendant does not appear within 48 hours, the court must issue a bench warrant unless it believes there is good reason to instead schedule the case for further hearing.

When a court delays the issuance of a warrant, it may not revoke the release order or declare bail money deposited or the surety bond, if any, forfeited. Upon the issuance of an arrest warrant, the court then may enter an order revoking the release order and declaring the bail money deposited, personal recognizance bond, surety bond, or 10% bond, if any, forfeited.

The court may overcome the presumption and issue an immediate bench warrant for the defendant's failure to appear if it has a specific, articulable reason to suspect that any of the following apply:

-- The defendant has committed a new crime.
-- A person or property will be endangered if the warrant is not issued.
-- Prosecution witnesses has been summoned and are present for the proceeding.
-- The proceeding is to impose a sentence for the crime.
-- There are other compelling circumstances that require the immediate issuance of a bench warrant.

If the court departs from the presumption and issues an immediate bench warrant, it must state on the record its reason for doing so.

Detention on Arrest Warrant

The bill requires 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 must establish a hearing protocol for individuals detained on an arrest warrant that originated in another county. The protocol must include the use of two-way interactive video technology, when appropriate.

Failure to Appear

Previously, 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 did not appear in the designated local criminal court at the time the ticket was returnable, the court could issue a summons or an arrest warrant based on the complaint filed.

Under the bill, the court, instead, may issue a summons or arrest warrant as provided below. Notwithstanding any provision of law to the contrary, if a defendant fails to appear for a court hearing within the time the appearance ticket is returnable there is a rebuttable presumption that the court must issue an order to show cause why the defendant failed to appear instead of issuing a warrant.
The court may overcome the presumption and issue a warrant if it has a specific articulable reason to suspect that any of the following apply:

-- The defendant has committed a new crime.
-- The defendant's failure to appear is the result of a willful intent to avoid or delay the adjudication of the case.
-- Another person or property will be endangered if the warrant is not issued.

If the court overcomes the presumption and issues a warrant, it must state on the record its reasons for doing so.

Release from Custody

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

Senate Bill 1048

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 are subject to a rebuttable presumption that the court must 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" means that term as defined in Section 61 of the Crime Victim's Rights Act.

The court may depart from the presumption if it finds reasonable grounds for the departure and states those grounds on the record. If the court finds that the sentenced person has not complied with his or her sentence, including a nonjail or nonprobation sentence, it may issue an order for the person to show cause why he or she should not be held in contempt of court for not complying with the sentence. If the court finds the person in contempt, it may impose an additional sentence, including jail or probation if appropriate.

If the finding of contempt of court is for nonpayment of fines, costs, or other legal financial obligations, the court must find on the record that the person is able to comply with the payments without manifest hardship, and that the person has not made a good-faith effort to do so, before imposing an additional sentence.

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.

Previously, a court could depart from the appropriate sentence range established under the sentencing guidelines set forth in Chapter 17 if it had a substantial and compelling reason for

that departure and stated on the record the reasons for departure. The bill refers 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. Previously, intermediate sanction included, among other things, probation with jail, jail, jail with work or school release, and jail, with or without authorization for day parole. The bill deletes those references.

Previously, this provision applied unless the court stated on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the MDOC. An intermediate sanction could include a jail term that did not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever was less. The bill deletes these provisions. Instead, under the bill, the provision applies unless the court states on the record reasonable grounds to sentence the individual to incarceration in a county jail for up to 12 months or to the jurisdiction of the Department for any sentence over 12 months.

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

Senate Bill 1049

Under the bill, except as otherwise provided, if an individual pleads guilty to a criminal offense, committed on or after his or her 17th 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. These provisions apply until October 1, 2021. The Code previously referred to the individual's 18th instead of 17th birthday.

Beginning October 1, 2021, 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 26th 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 26th birthday, the individual may not be assigned youthful training status without the consent of the prosecuting attorney. If a defendant is charged with an offense listed below and the defendant pleads guilty to any other offense or is eligible for the statute of youthful trainee, the prosecutor must consult with the victim regarding the applicability of these provisions.

Designation of youthful trainee status under either circumstance described above does not apply to 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.

Previously, except as otherwise provided, if the defendant was convicted of a felony, the probation period could not exceed five years. The bill reduces from five years to three years the probation period for a felony conviction. However, the probation term for a felony may be extended not more than two times for not more than one additional year for each extension if the court finds that there is a specific rehabilitation goal that has not yet been achieved, or a specific, articulable, and ongoing risk of harm to a victim that may be mitigated only with continued probation supervision.

The Code previously specified that, except as otherwise provided, after a defendant had completed one-half of the original felony probation period, the MDOC or probation department could notify the sentencing court. If, after a hearing to review the case, the court determined that the probationer's behavior warranted a reduction in the probationary term, it could reduce that term by 100% or less. The victim had to be notified of the date and time of the hearing and be given an opportunity to be heard. The court had to 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 had to notify the prosecuting attorney, the defendant or, if the defendant had an attorney, the defendant's attorney. However, this provision did not apply to a defendant who was subject to a mandatory probation term. The bill deletes these provisions.

Instead, under the bill, except as otherwise provided, after a defendant has completed one-half of the original felony or misdemeanor probation period, he or she may be eligible for early discharge. The defendant must be notified at sentencing of his or her eligibility and the requirements for early discharge from probation, and the procedure to notify the court of his or her eligibility.

If a probationer has completed all required programming, the probation department may notify the sentencing court that he or she may be eligible for early discharge from probation. If the probation department does not notify the sentencing court as required under the bill and the probation has not violated probation in the immediately preceding three months, the probationer may notify the court that he or she may be eligible for early discharge from probation on a form provided by the State Court Administrator Office. This provision does not prohibit the court from considering a probationer for early discharge from probation at the court's discretion.

A probationer may 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 fines, fees, or costs, so long as he or she had made good-faith efforts to make payments. However, nothing in this provision relieves a probationer from his or her court-ordered financial obligations, including restitution, after discharge from probation.

Upon notification that a probationer may be eligible for early discharge from probation, the sentencing court may review the case and the probationer's conduct while on probation to determine whether the probationer's behavior warrants an early discharge. Except as otherwise provided, if the court determines that the probationer's behavior warrants a reduction in the probationary term, it may grant an early discharge from probation without holding a hearing. Before granting early discharge to a probationer who owes outstanding restitution, the court must 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 otherwise eligible for early discharge, the court may grant early discharge or retain the probationer on probation up to the maximum allowable probation term for the offense, with the sole condition of continuing restitution payments.

If after review the case, the court determines that the probationer's behavior does not warrant an early discharge, it must conduct a hearing to allow the probationer to present his or her case for an early discharge and find on the record any specific rehabilitation goal that has not yet been achieved or a specific, articulable, and ongoing risk of harm to a victim that may be mitigated only with continued probation supervision.

The sentencing court must hold a hearing before granting early discharge to a probationer serving a term of probation for a felony offense eligible for early discharge that involves a victim who has requested to receive notice under the Crime Victim's Rights Act, or for a misdemeanor violation of Sections 81, 81a, or 136b of the Michigan Penal Code, that is eligible for early discharge. If a probationer owes outstanding restitution, the court must consider the impact of early discharge on payment of outstanding restitution and may grant early discharge or retain the probationer on probation up to the maximum allowable probation term for the offense, with the sole condition of continuing restitution payments.

If a hearing is to be held, the prosecutor must notify the victim of the date and time of the hearing and the victim must be given an opportunity to be heard.

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

Report to Legislature

Previously, the Code required the MDOC to 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, requires 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 felony probationers who were discharged early from probation and any available recidivism data.

Previously, the State Court Administrative Office had to 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 deletes this provision.

Ineligibility for Reduced Probation

Previously, the Code specified that a defendant who was convicted of one or more of the following crimes was not eligible for reduced probation:

-- A violation of Section 81(5) of the Michigan Penal Code.

-- A violation of Section 84 of the Penal Code.
-- A violation of Section 520c of the Penal Code.
-- A violation of Section 520e of the Penal Code.

Instead, under the bill, a defendant who was convicted of one or more of the following crimes is not eligible for reduced probation:

-- A domestic violence related violation of Sections 81 or 81a of the Penal Code or and offense involving domestic violence as that term is defined in Section 1 of the domestic violence prevention and treatment Act of 1978.
-- A violation of Section 84 of the Penal Code.
-- A violation of Section 411h of the Penal Code.
-- A violation of Section 411i of the Penal Code.
-- A violation of Section 520c of the Penal Code.
-- A violation of Section 520e of the Penal Code.
-- An offense for which a defense was asserted under Section 36 of Chapter 8 of the Code of Criminal Procedure.
-- A violation of Chapter 67A (Human Trafficking) of the Penal Code.
-- A listed offense.

"Listed offense" means that term as defined in the Sex Offenders Registration Act: a tier I, tier II, or tier III offense.

Specific Probation Terms; Violent Felony

Under the bill, except as otherwise provided, the court may place an individual convicted of a violent felony on probation for up to five years. "Violent felony" means that term as defined in the Corrections Code.

Terms of Probation

The Code requires a sentence of probation to include certain conditions, including that the probationer must report to the probation officer, either in person or in writing, monthly or as often as the probation officer requires. Under the bill, a probationer also may report to his or her probation officer virtually.

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.

Previously, the court could revoke probation if the probationer failed to comply with the order and if the probationer had not made a good faith effort to comply with the order. In determining whether to revoke probation, the court had to 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 could have had a bearing on the probationer's ability to pay. The proceedings provided for above were in addition to those provided in Chapter 11.

Instead, under the bill, subject to the requirements of Section 4b, a court may sanction a probationer to jail or revoke the probation of a probationer who fails to comply with the order only if the probationer has the ability to pay and has not made a good-faith effort to comply with the order. The bill retains the provisions pertaining to determining to revoke probation and the proceedings.

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 must be individually tailored to the probationers, to specifically address the assessed risks and needs of the probationer, be designed to reduce recidivism, consider the needs of the victim if applicable, and must be adjusted if the court determined adjustments were appropriate. The court also must consider the input of the victim and must specifically address the harm caused to the victim, as well as the victim's safety needs and other concerns, including any request for protective conditions or restitution.

Legislative Intent

Previously, the Code stated 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 deletes these provisions. Instead, the bill states the following:

> It is the intent of the legislature that the granting of probation is a matter of grace requiring the agreement of the probationer to its granting and continuance.
>
> All probation orders are revocable subject to the requirement of Section 4b of [Chapter 11], but revocation of probation, and subsequent incarceration should be imposed only for repeated technical violations, for new criminal behavior, as otherwise allowed in Section 4b of [Chapter 11], or upon request of the probationer.

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 is subject to the requirements of Section 4b.

Technical Probation Violation

Previously, under the Section 4b of Chapter 11, except as otherwise provided, beginning on January 1, 2018, a probationer who committed a technical probation violation and was sentenced to temporary incarceration in a State or local correctional or detention facility could

have been be incarcerated for a maximum of 30 days for each technical violation. A probationer could 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 could have been returned to probation under the terms of his or her original probation order or under a new probation order at the court's discretion.

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

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

Section 4b did 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 deletes these provisions. Instead, except as provided in Section 4b, a probationer who commits a technical probation violation and is sentenced to temporary incarceration may be incarcerated for each technical violation as described in the following provisions. For a technical violation committed by an individual who is on probation because he or she was convicted of or pleaded guilty to a misdemeanor:

-- For a first violation, jail incarceration for up to five days.
-- For a second violation, jail incarceration for up to 10 days.
-- For a third violation, jail incarceration for up to 15 days.
-- For a fourth or subsequent violation, 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 is on probation because he or she was convicted of or pleaded guilty to a felony:

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

A probationer may acknowledge a technical probation violation in writing without a hearing before the court being required.

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

Subject to the exception described below, the court may not revoke probation on the basis of a technical probation violation unless a probationer has already been sanctioned for three or more technical probation violations and commits a new technical probation violation.

The above provisions do not apply to a probationer who is on probation for a domestic violence violation of Section 81 or 81a, an offense involving domestic violence as that term is defined in Section 1, or a violation of Section 411h or 411i of the Michigan Penal Code.

Except as otherwise provided under the bill, there is a rebuttable presumption that the court may not issue a warrant for arrest for a technical probation violation and must issue a summons or other order to show cause to the probationer instead. The court may overcome the presumption and issue a warrant if it 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.

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

Previously, as used in Section 4b, "technical probation violation" meant 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 means a violation of the term of a probationer's probation order that is not listed below, including missing or failing a drug test. Technical probation violation does not include the following:

-- A violation of an order of the court requiring that the probationer have no contact with a named individual.
-- A violation of a law of Michigan, 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.
-- Absconding.

"Absconding" means 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.

Senate Bill 1051

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 may be amended to adjust conditions as the Board determines is appropriate.

The Code specifies that, 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. Under the bill, the conditions of parole must be individualized, must specifically address the assessed risks and needs of the parolee, must be designed to reduce recidivism, and must 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 764.9c & 764.9f (S.B. 1046)
764.1 et al. (S.B. 1047)
769.5 et al. (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 will have a negative fiscal impact on the State and local courts in the short-term, but likely will have positive fiscal impact in the long-term. Senate Bill 1046 will 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]

There likely will be indeterminate costs associated with restructuring procedures and implementing the reforms; there also may 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% 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 an MDOC facility. As a result, the Department could incur lower costs; however, it is unknown how many people will 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.

In the long-term, decreased pretrial incarceration rates means 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]

[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.
[3] Note 1, p. 18.
[4] *Id*.

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 will 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 will be positive.

Fiscal Analyst: Bruce Baker
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[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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