

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1050

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 2, 2a, 3, 4, and 4b of chapter XI (MCL 771.2,
771.2a, 771.3, 771.4, and 771.4b), section 2 of chapter XI as
amended by 2017 PA 10, section 2a of chapter XI as amended by 2006
PA 507, section 3 of chapter XI as amended by 2012 PA 612, section
4 of chapter XI as amended by 1998 PA 520, and section 4b of
chapter XI as added by 2017 PA 9.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XI
2 Sec. 2. (1) Except as provided in section 2a of this chapter
3 and section 36 of chapter VIII, if the defendant is convicted of an
4 offense that is not a felony, the probation period ~~shall~~**must** not



1 exceed 2 years. Except as provided in section 2a of this chapter
 2 and section 36 of chapter VIII, if the defendant is convicted of a
 3 felony, the probation period ~~shall~~**must** not exceed ~~5~~**3** years.

4 **However, the probation term for a felony under this subsection may**
 5 **be extended not more than 2 times for not more than 1 additional**
 6 **year for each extension if the court finds that there is a specific**
 7 **rehabilitation goal that has not yet been achieved, or a specific,**
 8 **articulable, and ongoing risk of harm to a victim that can be**
 9 **mitigated only with continued probation supervision.**

10 (2) Except as provided in subsection ~~(4)~~, **(10)**, section 2a of
 11 this chapter, and section 36 of chapter VIII, after the defendant
 12 has completed 1/2 of the original felony **or misdemeanor** probation
 13 period, ~~of his or her felony probation, the department or probation~~
 14 ~~department may notify the sentencing court. If, after a hearing to~~
 15 ~~review the case and the defendant's conduct while on probation, the~~
 16 ~~court determines that the defendant's behavior warrants a reduction~~
 17 ~~in the probationary term, the court may reduce that term by 100% or~~
 18 ~~less. The victim must be notified of the date and time of the~~
 19 ~~hearing and be given an opportunity to be heard. The court shall~~
 20 ~~consider the impact on the victim and repayment of outstanding~~
 21 ~~restitution caused by reducing the defendant's probationary term.~~
 22 ~~Not less than 28 days before reducing or terminating a period of~~
 23 ~~probation or conducting a review under this section, the court~~
 24 ~~shall notify the prosecuting attorney, the defendant or, if the~~
 25 ~~defendant has an attorney, the defendant's attorney. However, this~~
 26 ~~subsection does not apply to a defendant who is subject to a~~
 27 ~~mandatory probation term.~~**he or she may be eligible for early**
 28 **discharge as provided in this section. The defendant must be**
 29 **notified at sentencing of his or her eligibility and the**



1 requirements for early discharge from probation, and the procedure
2 provided under subsection (3) to notify the court of his or her
3 eligibility.

4 (3) If a probationer has completed all required programming,
5 the probation department may notify the sentencing court that the
6 probationer may be eligible for early discharge from probation. If
7 the probation department does not notify the sentencing court as
8 required under this subsection and the probationer has not violated
9 probation in the immediately preceding 3 months, the probationer
10 may notify the court that he or she may be eligible for early
11 discharge from probation on a form provided by the state court
12 administrative office. This subsection does not prohibit the court
13 from considering a probationer for early discharge from probation
14 at the court's discretion.

15 (4) A probationer must not be considered ineligible for early
16 discharge because of an inability to pay for the conditions of his
17 or her probation, or for outstanding court-ordered fines, fees, or
18 costs, so long as the probationer has made good-faith efforts to
19 make payments. However, nothing in this subsection relieves a
20 probationer from his or her court-ordered financial obligations
21 after discharge from probation.

22 (5) Upon notification as provided under subsection (3), the
23 sentencing court may review the case and the probationer's conduct
24 while on probation to determine whether the probationer's behavior
25 warrants an early discharge. Except as provided in subsection (7),
26 if the court determines that the probationer's behavior warrants a
27 reduction in the probationary term, the court may grant an early
28 discharge from probation without holding a hearing. Before granting
29 early discharge to a probationer who owes outstanding restitution,



1 the court must consider the impact of early discharge on the victim
2 and the payment of outstanding restitution. If a probationer has
3 made a good-faith effort to pay restitution and is otherwise
4 eligible for early discharge, the court may grant early discharge
5 or retain the probationer on probation up to the maximum allowable
6 probation term for the offense, with the sole condition of
7 continuing restitution payments.

8 (6) If after reviewing the case under subsection (5), the
9 court determines that the probationer's behavior does not warrant
10 an early discharge, the court must conduct a hearing to allow the
11 probationer to present his or her case for an early discharge and
12 find on the record any specific rehabilitation goal that has not
13 yet been achieved or a specific, articulable, and ongoing risk of
14 harm to a victim that can only be mitigated with continued
15 probation supervision.

16 (7) The sentencing court shall hold a hearing before granting
17 early discharge to a probationer serving a term of probation for a
18 felony offense eligible for early discharge that involves a victim
19 who has requested to receive notice under section 18b, 19, 19a, 20,
20 or 20a of the William Van Regenmorter crime victim's rights act,
21 1985 PA 87, MCL 780.768b, 780.769, 780.769a, 780.770, and 780.770a,
22 or for a misdemeanor violation of section 81, 81a, or 136b of the
23 Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and
24 750.136b, that is eligible for early discharge. If a probationer
25 owes outstanding restitution, the court must consider the impact of
26 early discharge on the payment of outstanding restitution and may
27 grant early discharge or retain the probationer on probation up to
28 the maximum allowable probation term for the offense, with the sole
29 condition of continuing restitution payments.



(8) If a hearing is to be held under subsection (7), the prosecutor shall notify the victim of the date and time of the hearing and the victim must be given an opportunity to be heard.

(9) ~~(3)~~—The department of corrections shall report, no later than December 31 of each year, ~~after the effective date of the amendatory act that added this subsection,~~ to the committees of the senate and house of representatives concerning the judiciary or criminal justice the number of ~~defendants referred to the court for a hearing under subsection (2).~~ The state court administrative office shall report, no later than December 31 of each year after the effective date of the amendatory act that added this subsection, to the committees of the senate and house of representatives concerning the judiciary the number of **felony** probationers who were released early from probation under subsection (2). **this section and any available recidivism data.**

(10) ~~(4)~~—A defendant who was convicted of 1 or more of the following crimes is not eligible for reduced probation under subsection (2): **this section:**

(a) A **domestic violence related** violation of section ~~81(5)~~ **81 or 81a** of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or an offense involving domestic violence as that term is defined in section 1 of 1978 PA 389, MCL 400.1501.

(b) A violation of section 84 of the Michigan penal code, 1931 PA 328, MCL 750.84.

(c) A violation of section 411h of the Michigan penal code, 1931 PA 328, MCL 750.411h.

(d) A violation of section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i.

(e) ~~(e)~~—A violation of section 520c of the Michigan penal



code, 1931 PA 328, MCL 750.520c.

(f) ~~(d)~~ A violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e.

(g) A listed offense.

(h) An offense for which a defense was asserted under section 36 of chapter VIII.

(i) A violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h, or former section 462i or 462j of that act.

(11) ~~(5)~~ The court shall, 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,~~ **and rehabilitation goals** of probation. The order is part of the record in the case. The court may amend the order in form or substance at any time. If the court reduces a defendant's probationary term under ~~subsection (2),~~ **this section**, the period by which that term was reduced must be reported to the department of corrections.

(12) ~~(6)~~ A defendant who was placed on probation under section 1(4) of this chapter as it existed before March 1, 2003 for an offense committed before March 1, 2003 is subject to the conditions of probation specified in section 3 of this chapter, including payment of a probation supervision fee as prescribed in section 3c of this chapter, and to revocation for violation of these conditions, but the probation period must not be reduced other than by a revocation that results in imprisonment or as otherwise provided by law.

(13) ~~(7)~~ If an individual is placed on probation for a listed offense as that term is defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the individual's



1 probation officer shall register the individual or accept the
2 individual's registration as provided in that act.

3 **(14) ~~(8)~~**—Subsection (1) does not apply to a juvenile placed on
4 probation and committed under section 1(3) or (4) of chapter IX to
5 an institution or agency described in the youth rehabilitation
6 services act, 1974 PA 150, MCL 803.301 to 803.309.

7 **(15) As used in this section, "listed offense" means that term**
8 **as defined in section 2 of the sex offenders registration act, 1994**
9 **PA 295, MCL 28.722.**

10 Sec. 2a. (1) The court may place an individual convicted of
11 violating section 411h of the Michigan penal code, 1931 PA 328, MCL
12 750.411h, on probation for not more than 5 years. The sentence is
13 subject to the conditions of probation set forth in section 411h(3)
14 of the Michigan penal code, 1931 PA 328, MCL 750.411h, and section
15 3 of this chapter. The probation is subject to revocation for any
16 violation of a condition of that probation.

17 (2) The court may place an individual convicted of violating
18 section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i,
19 on probation for any term of years, but not less than 5 years. The
20 sentence is subject to the conditions of probation set forth in
21 section 411i(4) of the Michigan penal code, 1931 PA 328, MCL
22 750.411i, and section 3 of this chapter. The probation is subject
23 to revocation for any violation of a condition of that probation.

24 (3) The court may place an individual convicted of a violation
25 of section 136b of the Michigan penal code, 1931 PA 328, MCL
26 750.136b, that is designated as a misdemeanor on probation for not
27 more than 5 years.

28 **(4) Except as provided in subsections (2) and (6), the court**
29 **may place an individual convicted of a violent felony on probation**



1 **for not more than 5 years.**

2 (5) ~~(4)~~—The court shall by order, to be filed or entered in
3 the cause as the court directs by general rule or in each case, fix
4 and determine the period, ~~and conditions,~~ **and rehabilitation goals**
5 of probation. The order is part of the record in the cause. The
6 court may amend the order in form or substance at any time.

7 (6) ~~(5)~~—Subsections (1), (2), (3), ~~and (4),~~ **and (5)** do not
8 apply to a juvenile placed on probation and committed under section
9 1(3) or (4) of chapter IX to an institution or agency described in
10 the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
11 803.309.

12 (7) ~~(6)~~—Except as otherwise provided by law, the court may
13 place an individual convicted of a listed offense on probation
14 subject to the requirements of this subsection and subsections ~~(7)~~
15 **(8)** through ~~(12)~~ **(13)** for any term of years but not less than 5
16 years.

17 (8) ~~(7)~~—Except as otherwise provided in subsections ~~(8)~~ **(9)** to
18 ~~(12)~~ **(13)**, if an individual is placed on probation under
19 subsection ~~(6)~~ **(7)**, the court shall order the individual not to do
20 any of the following:

- 21 (a) Reside within a student safety zone.
- 22 (b) Work within a student safety zone.
- 23 (c) Loiter within a student safety zone.

24 (9) ~~(8)~~—The court shall not impose a condition of probation
25 described in subsection ~~(7)(a)~~ **(8)(a)** if any of the following
26 apply:

- 27 (a) The individual is not more than 19 years of age and
28 attends secondary school or postsecondary school, and resides with
29 his or her parent or guardian. However, an individual described in



1 this subdivision ~~shall~~**must** be ordered not to initiate or maintain
 2 contact with a minor within that student safety zone. The
 3 individual ~~shall~~**must** be permitted to initiate or maintain contact
 4 with a minor with whom he or she attends secondary school or
 5 postsecondary school in conjunction with that school attendance.

6 (b) The individual is not more than 26 years of age, attends a
 7 special education program, and resides with his or her parent or
 8 guardian or in a group home or assisted living facility. However,
 9 an individual described in this subdivision ~~shall~~**must** be ordered
 10 not to initiate or maintain contact with a minor within that
 11 student safety zone. The individual ~~shall~~**must** be permitted to
 12 initiate or maintain contact with a minor with whom he or she
 13 attends a special education program in conjunction with that
 14 attendance.

15 (c) The individual was residing within that student safety
 16 zone ~~at the time the amendatory act that added this subdivision was~~
 17 ~~enacted into law.~~ **on January 1, 2006.** However, if the individual
 18 was residing within the student safety zone ~~at the time the~~
 19 ~~amendatory act that added this subdivision was enacted into law,~~ **on**
 20 **January 1, 2006,** the court shall order the individual not to
 21 initiate or maintain contact with any minors within that student
 22 safety zone. This subdivision does not prohibit the court from
 23 allowing contact with any minors named in the probation order for
 24 good cause shown and as specified in the probation order.

25 **(10) ~~(9)~~** An order issued under subsection ~~(7) (a)~~ **shall ~~(8) (a)~~**
 26 **must** not prohibit an individual from being a patient in a hospital
 27 or hospice that is located within a student safety zone. However,
 28 this exception does not apply to an individual who initiates or
 29 maintains contact with a minor within that student safety zone.



1 **(11)** ~~(10)~~—The court shall not impose a condition of probation
 2 described in subsection ~~(7) (b)~~ **(8) (b)** if the individual was working
 3 within the student safety zone ~~at the time the amendatory act that~~
 4 ~~added this subsection was enacted into law.~~ **on January 1, 2006.**

5 However, if the individual was working within the student safety
 6 zone ~~at the time the amendatory act that added this subsection was~~
 7 ~~enacted into law,~~ **on January 1, 2006,** the court shall order the
 8 individual not to initiate or maintain contact with any minors in
 9 the course of his or her employment within that student safety
 10 zone. This subsection does not prohibit the court from allowing
 11 contact with any minors named in the probation order for good cause
 12 shown and as specified in the probation order.

13 **(12)** ~~(11)~~—The court shall not impose a condition of probation
 14 described in subsection ~~(7) (b)~~ **(8) (b)** if the individual only
 15 intermittently or sporadically enters a student safety zone for
 16 purposes of work. If the individual intermittently or sporadically
 17 works within a student safety zone, the court shall order the
 18 individual not to initiate or maintain contact with any minors in
 19 the course of his or her employment within that safety zone. This
 20 subsection does not prohibit the court from allowing contact with
 21 any minors named in the probation order for good cause shown and as
 22 specified in the probation order.

23 **(13)** ~~(12)~~—The court may exempt an individual from probation
 24 under subsection ~~(6)~~ **(7)** if any of the following apply:

25 (a) The individual has successfully completed his or her
 26 probationary period under sections 11 to 15 of chapter II for
 27 committing a listed offense and has been discharged from youthful
 28 trainee status.

29 (b) The individual was convicted of committing or attempting



1 to commit a violation solely described in section 520e(1)(a) of the
 2 Michigan penal code, 1931 PA 328, MCL 750.520e, and at the time of
 3 the violation was 17 years of age or older but less than 21 years
 4 of age and is not more than 5 years older than the victim.

5 **(14)** ~~(13)~~ As used in this section:

6 (a) "Listed offense" means that term as defined in section 2
 7 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

8 (b) "Loiter" means to remain for a period of time and under
 9 circumstances that a reasonable person would determine is for the
 10 primary purpose of observing or contacting minors.

11 (c) "Minor" means an individual less than 18 years of age.

12 (d) "School" means a public, private, denominational, or
 13 parochial school offering developmental kindergarten, kindergarten,
 14 or any grade from 1 through 12. School does not include a home
 15 school.

16 (e) "School property" means a building, facility, structure,
 17 or real property owned, leased, or otherwise controlled by a
 18 school, other than a building, facility, structure, or real
 19 property that is no longer in use on a permanent or continuous
 20 basis, to which either of the following applies:

21 (i) It is used to impart educational instruction.

22 (ii) It is for use by students not more than 19 years of age
 23 for sports or other recreational activities.

24 (f) "Student safety zone" means the area that lies 1,000 feet
 25 or less from school property.

26 **(g) "Violent felony" means that term as defined in section 36**
 27 **of the corrections code of 1953, 1953 PA 232, MCL 791.236.**

28 Sec. 3. (1) The sentence of probation ~~shall~~**must** include all
 29 of the following conditions:



1 (a) During the term of his or her probation, the probationer
2 shall not violate any criminal law of this state, the United
3 States, or another state or any ordinance of any municipality in
4 this state or another state.

5 (b) During the term of his or her probation, the probationer
6 shall not leave the state without the consent of the court granting
7 his or her application for probation.

8 (c) The probationer shall report to the probation officer,
9 ~~either~~ in person, **virtually**, or in writing, monthly or as often as
10 the probation officer requires. This subdivision does not apply to
11 a juvenile placed on probation and committed under section 1(3) or
12 (4) of chapter IX to an institution or agency described in the
13 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
14 803.309.

15 (d) If sentenced in circuit court, the probationer shall pay a
16 probation supervision fee as prescribed in section 3c of this
17 chapter.

18 (e) The probationer shall pay restitution to the victim of the
19 defendant's course of conduct giving rise to the conviction or to
20 the victim's estate as provided in chapter IX. An order for payment
21 of restitution may be modified and ~~shall~~ **must** be enforced as
22 provided in chapter IX.

23 (f) The probationer shall pay an assessment ordered under
24 section 5 of 1989 PA 196, MCL 780.905.

25 (g) The probationer shall pay the minimum state cost
26 prescribed by section 1j of chapter IX.

27 (h) If the probationer is required to be registered under the
28 sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736,
29 the probationer shall comply with that act.



1 (2) ~~As~~ **Subject to subsection (11), as** a condition of
 2 probation, the court may require the probationer to do 1 or more of
 3 the following:

4 (a) Be imprisoned in the county jail for not more than 12
 5 months at the time or intervals that may be consecutive or
 6 nonconsecutive, within the probation as the court determines.
 7 However, the period of confinement ~~shall~~ **must** not exceed the
 8 maximum period of imprisonment provided for the offense charged if
 9 the maximum period is less than 12 months. The court may permit day
 10 parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The
 11 court may, subject to sections 3d and 3e of this chapter, permit
 12 the individual to be released from jail to work at his or her
 13 existing job or to attend a school in which he or she is enrolled
 14 as a student. This subdivision does not apply to a juvenile placed
 15 on probation and committed under section 1(3) or (4) of chapter IX
 16 to an institution or agency described in the youth rehabilitation
 17 services act, 1974 PA 150, MCL 803.301 to 803.309.

18 (b) Pay immediately or within the period of his or her
 19 probation a fine imposed when placed on probation.

20 (c) Pay costs pursuant to subsection (5).

21 (d) Pay any assessment ordered by the court other than an
 22 assessment described in subsection (1)(f).

23 (e) Engage in community service.

24 (f) Agree to pay by wage assignment any restitution,
 25 assessment, fine, or cost imposed by the court.

26 (g) Participate in inpatient or outpatient drug treatment, ~~or,~~
 27 ~~beginning January 1, 2005, participate in~~ **or** a drug treatment court
 28 under chapter 10A of the revised judicature act of 1961, 1961 PA
 29 236, MCL 600.1060 to 600.1084.



- 1 (h) Participate in mental health treatment.
- 2 (i) Participate in mental health or substance abuse
3 counseling.
- 4 (j) Participate in a community corrections program.
- 5 (k) Be under house arrest.
- 6 (l) Be subject to electronic monitoring.
- 7 (m) Participate in a residential probation program.
- 8 (n) Satisfactorily complete a program of incarceration in a
9 special alternative incarceration unit as provided in section 3b of
10 this chapter.
- 11 (o) Be subject to conditions reasonably necessary for the
12 protection of 1 or more named persons.
- 13 (p) Reimburse the county for expenses incurred by the county
14 in connection with the conviction for which probation was ordered
15 as provided in the prisoner reimbursement to the county act, 1984
16 PA 118, MCL 801.81 to 801.93.
- 17 (q) Complete his or her high school education or obtain the
18 equivalency of a high school education in the form of a general
19 education development (GED) certificate.
- 20 (3) ~~The~~ **Subject to subsection (11), the** court may impose other
21 lawful conditions of probation as the circumstances of the case
22 require or warrant or as in its judgment are proper.
- 23 (4) If an order or amended order of probation contains a
24 condition for the protection of 1 or more named persons as provided
25 in subsection (2)(o), the court or a law enforcement agency within
26 the court's jurisdiction shall enter the order or amended order
27 into the law enforcement information network. If the court rescinds
28 the order or amended order or the condition, the court shall remove
29 the order or amended order or the condition from the law



1 enforcement information network or notify that law enforcement
2 agency and the law enforcement agency shall remove the order or
3 amended order or the condition from the law enforcement information
4 network.

5 (5) If the court requires the probationer to pay costs under
6 subsection (2), the costs ~~shall~~**must** be limited to expenses
7 specifically incurred in prosecuting the defendant or providing
8 legal assistance to the defendant and supervision of the
9 probationer.

10 (6) If the court imposes costs under subsection (2) as part of
11 a sentence of probation, all of the following apply:

12 (a) The court shall not require a probationer to pay costs
13 under subsection (2) unless the probationer is or will be able to
14 pay them during the term of probation. In determining the amount
15 and method of payment of costs under subsection (2), the court
16 shall take into account the probationer's financial resources and
17 the nature of the burden that payment of costs will impose, with
18 due regard to his or her other obligations.

19 (b) A probationer who is required to pay costs under
20 subsection (1)(g) or (2)(c) and who is not in willful default of
21 the payment of the costs may petition the sentencing judge or his
22 or her successor at any time for a remission of the payment of any
23 unpaid portion of those costs. If the court determines that payment
24 of the amount due will impose a manifest hardship on the
25 probationer or his or her immediate family, the court may remit all
26 or part of the amount due in costs or modify the method of payment.

27 (7) If a probationer is required to pay costs as part of a
28 sentence of probation, the court may require payment to be made
29 immediately or the court may provide for payment to be made within



1 a specified period of time or in specified installments.

2 (8) If a probationer is ordered to pay costs as part of a
 3 sentence of probation, compliance with that order ~~shall~~**must** be a
 4 condition of probation. ~~The~~**Subject to the requirements of section**
 5 **4b of this chapter, the** court may **only sanction a probationer to**
 6 **jail or** revoke ~~the~~ probation ~~if the~~**of a** probationer **who** fails to
 7 comply with the order ~~and~~ if the probationer has **the ability to pay**
 8 **and has** not made a ~~good faith~~**good-faith** effort to comply with the
 9 order. In determining whether to revoke probation, the court shall
 10 consider the probationer's employment status, earning ability, and
 11 financial resources, the willfulness of the probationer's failure
 12 to pay, and any other special circumstances that may have a bearing
 13 on the probationer's ability to pay. The proceedings provided for
 14 in this subsection are in addition to those provided in section 4
 15 of this chapter.

16 (9) If entry of judgment is deferred in the circuit court, the
 17 court shall require the individual to pay a supervision fee in the
 18 same manner as is prescribed for a delayed sentence under section
 19 1(3) of this chapter, shall require the individual to pay the
 20 minimum state costs prescribed by section 1j of chapter IX, and may
 21 impose, as applicable, the conditions of probation described in
 22 ~~subsections~~**subsection (1), and subject to subsection (11), the**
 23 **conditions of probation described in subsections (2) ,—and (3).**

24 (10) If sentencing is delayed or entry of judgment is deferred
 25 in the district court or in a municipal court, the court shall
 26 require the individual to pay the minimum state costs prescribed by
 27 section 1j of chapter IX and may impose, as applicable, the
 28 conditions of probation described in ~~subsections~~**subsection (1),**
 29 **and subject to subsection (11), the conditions of probation**



described in subsections (2) ~~and~~ (3).

(11) The conditions of probation imposed by the court under subsections (2) and (3) must be individually tailored to the probationer, must specifically address the assessed risks and needs of the probationer, must be designed to reduce recidivism, and must be adjusted if the court determines adjustments are appropriate. The court shall also consider the input of the victim and shall specifically address the harm caused to the victim, as well as the victim's safety needs and other concerns, including, but not limited to, any request for protective conditions or restitution.

Sec. 4. (1) 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. requiring the agreement of the probationer to its~~ granting and continuance.

(2) 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. subject to the requirements of section 4b of this~~ chapter, 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 this chapter, or upon request of the probationer. Hearings on the revocation ~~shall~~ **must** be summary and informal and not subject to



1 the rules of evidence or of pleadings applicable in criminal
2 trials.

3 (3) In its probation order or by general rule, the court may
4 provide for the apprehension, detention, and confinement of a
5 probationer accused of violating a probation condition. ~~or conduct~~
6 ~~inconsistent with the public good.~~

7 (4) The method of hearing and presentation of charges are
8 within the court's discretion, except that the probationer is
9 entitled to a written copy of the charges constituting the claim
10 that he or she violated probation and to a probation revocation
11 hearing. The

12 (5) **Subject to the requirements of section 4b of this chapter,**
13 **the** court may investigate and enter a disposition of the
14 probationer as the court determines best serves the public
15 interest. If a probation order is revoked, the court may sentence
16 the probationer in the same manner and to the same penalty as the
17 court might have done if the probation order had never been made.

18 (6) This section does not apply to a juvenile placed on
19 probation and committed under section 1(3) or (4) of chapter IX to
20 an institution or agency described in the youth rehabilitation
21 services act, 1974 PA 150, MCL 803.301 to 803.309.

22 Sec. 4b. (1) Except as otherwise provided in this section,
23 ~~beginning on January 1, 2018,~~ a probationer who commits a technical
24 probation violation and is sentenced to temporary incarceration ~~in~~
25 ~~a state or local correctional or detention facility~~ may be
26 incarcerated ~~for a maximum of 30 days~~ for each technical violation
27 ~~. A probationer must not be given credit for any time served on a~~
28 ~~previous technical violation. After a probationer serves the period~~
29 ~~of temporary incarceration under this section, 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.~~

~~(2) The limit on temporary incarceration under subsection (1) does not apply to a probationer who has committed 3 or more technical probation violations during the course of his or her probation.~~

~~(3) The court may extend the period of temporary incarceration under subsection (1) to not more than 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 under subsection (1) must not extend beyond 90 days.~~

~~(4) This section does not prohibit the court from revoking a probationer's probation and sentencing the probationer under section 4 for a probation violation, including, but not limited to, a technical probation violation at any time during the course of probation.~~ **as follows:**

(a) 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:

(i) For a first violation, jail incarceration for not more than 5 days.

(ii) For a second violation, jail incarceration for not more than 10 days.

(iii) For a third violation, jail incarceration for not more than 15 days.

(iv) For a fourth or subsequent violation, jail incarceration for any number of days, but not exceeding the total of the



1 remaining eligible jail sentence.

2 (b) For a technical violation committed by an individual who
3 is on probation because he or she was convicted of or pleaded
4 guilty to a felony:

5 (i) For a first violation, jail incarceration for not more than
6 15 days.

7 (ii) For a second violation, jail incarceration for not more
8 than 30 days.

9 (iii) For a third violation, jail incarceration for not more
10 than 45 days.

11 (iv) For a fourth or subsequent violation, jail or prison
12 incarceration for any number of days, but not exceeding the total
13 of the remaining eligible jail or prison sentence.

14 (2) A probationer may acknowledge a technical probation
15 violation in writing without a hearing before the court being
16 required.

17 (3) A jail sanction under subsection (1)(a) or (b) may be
18 extended to not more than 45 days if the probationer is awaiting
19 placement in a treatment facility and does not have a safe
20 alternative location to await treatment.

21 (4) Subject to the exception in subsection (6), the court
22 shall not revoke probation on the basis of a technical probation
23 violation unless a probationer has already been sanctioned for 3 or
24 more technical probation violations and commits a new technical
25 probation violation.

26 (5) If more than 1 technical probation violation arises out of
27 the same transaction, the court shall treat the technical probation
28 violations as a single technical probation violation for purposes
29 of this section.



(6) Subsection (1) does 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 of 1978 PA 389, MCL 400.1501, or a violation of section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.411h, and 750.411i.

(7) Except as otherwise provided in this subsection, there is a rebuttable presumption that the court shall not issue a warrant for arrest for a technical probation violation and shall issue a summons or 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 1 or more of the following apply:

(a) The probationer presents an immediate danger to himself or herself, another person, or the public.

(b) The probationer has left court-ordered inpatient treatment without the court's or the treatment facility's permission.

(c) A summons or order to show cause has already been issued for the technical probation violation and the probationer failed to appear as ordered.

(8) 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 subsection (1) (a) or (b), the probationer must be returned to community supervision.

(9) ~~(7)~~ As used in this section: ~~"technical~~

(a) "Absconding" means the intentional failure of a probationer to report to his or her supervising agent or to advise



1 his or her supervising agent of his or her whereabouts for a
2 continuous period of not less than 60 days.

3 (b) "Technical probation violation" means a violation of the
4 terms of a probationer's probation order that is not listed below,
5 including missing or failing a drug test, subparagraph (ii)
6 notwithstanding. Technical probation violations do not include the
7 following:

8 (i) ~~A violation of the terms of a probationer's probation an~~
9 ~~order that is not a violation of an order of the court requiring~~
10 ~~that the probationer have no contact with a named individual. ~~or~~~~
11 ~~that is not a~~

12 (ii) A violation of a law of this state, a political
13 subdivision of this state, another state, or the United States or
14 of tribal law, ~~and does not include the whether or not a new~~
15 **criminal offense is charged.**

16 (iii) The consumption of alcohol by a probationer who is on
17 probation for a felony violation of section 625 of the Michigan
18 vehicle code, 1949 PA 300, MCL 257.625.

19 (iv) **Absconding.**

20 Enacting section 1. This amendatory act takes effect April 1,
21 2021.

