

SENATE BILL NO. 1050

July 23, 2020, Introduced by Senators MACDONALD, SANTANA, CHANG, WOJNO, BULLOCK, BAYER, IRWIN, ALEXANDER, MOSS, MCMORROW, GEISS, MCCANN, BRINKS, POLEHANKI, HERTEL and DALEY and referred to the Committee on Judiciary and Public Safety.

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

1 Sec. 2. (1) Except as provided in section 2a of this chapter
2 and section 36 of chapter VIII, if the defendant is convicted of an
3 offense that is not a felony, the probation period ~~shall~~**must** not
4 exceed 2 years. Except as provided in section 2a of this chapter
5 and section 36 of chapter VIII, if the defendant is convicted of a
6 felony, the probation period ~~shall~~**must** not exceed ~~5~~**3** years.
7 **However, the probation term for a felony under this subsection may**
8 **be extended a single time for an additional year if the court finds**
9 **that there is a specific rehabilitation goal that has not yet been**
10 **achieved, or a specific, articulable, and ongoing risk of harm to a**
11 **victim that can be mitigated only with continued probation**
12 **supervision.**

13 (2) Except as provided in ~~subsection (4), section 2a of this~~
14 ~~chapter, and~~ section 36 of chapter VIII, after the defendant has
15 completed 1/2 of the original felony **or misdemeanor** probation
16 period, ~~of his or her felony probation, the department or probation~~
17 ~~department may notify the sentencing court. If, after a hearing to~~
18 ~~review~~ **he or she may be eligible for early discharge as provided in**
19 **this section.**

20 (3) If a probationer has completed all required programming
21 and has had no probation violations in the immediately preceding 3
22 months, not less than 30 days before a probationer becomes eligible
23 for early discharge from probation under subsection (2) the
24 probationer's supervising agent must notify the sentencing court
25 and the prosecutor of the case.

26 (4) A probationer must not be considered ineligible for early
27 discharge because of an inability to pay for the conditions of his
28 or her probation, or for outstanding court-ordered financial
29 obligations, including fines, fees, costs, or restitution, so long

1 as the probationer has made good-faith efforts to make payments.
2 However, nothing in this subsection relieves a probationer from his
3 or her court-ordered financial obligations, including restitution,
4 after discharge from probation.

5 (5) The sentencing court may review the case and the
6 probationer's conduct while on probation to determine whether the
7 probationer's behavior warrants an early discharge. Except as
8 provided in subsections (6) and (8), the court is not required to
9 hold a hearing before making a determination regarding early
10 discharge.

11 (6) The sentencing court shall hold a hearing before granting
12 early discharge to a probationer serving a term of probation for a
13 felony offense involving a victim who has requested to receive
14 notice under section 18b, 19, 19a, 20, or 20a of the William Van
15 Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.768b,
16 780.769, 780.769a, 780.770, and 780.770a, or for a misdemeanor
17 violation of section 81, 81a, 136b, 411h, or 520e of the Michigan
18 penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.136b, 750.411h,
19 and 750.520e.

20 (7) If a hearing is to be held under subsection (6), the
21 victim must be notified of the date and time of the hearing and be
22 given an opportunity to be heard.

23 (8) If, after reviewing the case, and ~~the defendant's~~
24 ~~probationer's conduct while on probation, including conducting a~~
25 **hearing if one is required**, the court determines that the
26 ~~defendant's~~ **probationer's** behavior warrants a reduction in the
27 probationary term, the court may ~~reduce that term by 100% or less.~~
28 ~~The victim must be notified of the date and time of the hearing and~~
29 ~~be given an opportunity to be heard.~~ **grant an early discharge from**

1 **probation, beginning as soon as the probationer is eligible.** The
 2 ~~court shall consider the impact on the victim and repayment of~~
 3 ~~outstanding restitution caused by reducing the defendant's~~
 4 ~~probationary term. Not less than 28 days before reducing or~~
 5 ~~terminating a period of probation or conducting a review under this~~
 6 ~~section, the court shall notify the prosecuting attorney, the~~
 7 ~~defendant or, if the defendant has an attorney, the defendant's~~
 8 ~~attorney. However, this subsection does not apply to a defendant~~
 9 ~~who is subject to a mandatory probation term.~~ **may only determine**
 10 **that the probationer's behavior does not warrant a reduction in his**
 11 **or her probationary term if the court does all of the following in**
 12 **reaching that determination:**

13 (a) **Conducts a hearing to allow the probationer to present his**
 14 **or her case for an early discharge.**

15 (b) **Finds and states on the record a specific rehabilitation**
 16 **goal that has not yet been achieved or a specific, articulable, and**
 17 **ongoing risk of harm to a victim that can only be mitigated with**
 18 **continued probation supervision.**

19 (9) ~~(3)~~ ~~The department of corrections shall report, no later~~
 20 ~~than December 31 of each year, after the effective date of the~~
 21 ~~amendatory act that added this subsection, to the committees of the~~
 22 ~~senate and house of representatives concerning the judiciary or~~
 23 ~~criminal justice the number of defendants referred to the court for~~
 24 ~~a hearing under subsection (2). The state court administrative~~
 25 ~~office shall report, no later than December 31 of each year after~~
 26 ~~the effective date of the amendatory act that added this~~
 27 ~~subsection, to the committees of the senate and house of~~
 28 ~~representatives concerning the judiciary the number of probationers~~
 29 ~~who were released early from probation under subsection~~

1 ~~(2)~~-probationers on felony probation evaluated by the sentencing
 2 court for early discharge, including the number of felony
 3 probationers for which a hearing was held under subsection (6) or
 4 (8), and the number of felony probationers who were discharged
 5 early from probation.

6 (10) ~~(4)~~-A defendant who was convicted of 1 or more of the
 7 following crimes is not eligible for reduced probation under
 8 subsection ~~(2)~~:**this section**:

9 (a) A violation of section 81(5) of the Michigan penal code,
 10 1931 PA 328, MCL 750.81.

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

13 (c) A violation of section 520c of the Michigan penal code,
 14 1931 PA 328, MCL 750.520c.

15 (d) A violation of section 520e of the Michigan penal code,
 16 1931 PA 328, MCL 750.520e.

17 (11) ~~(5)~~-The court shall, by order to be entered in the case
 18 as the court directs by general rule or in each case, fix and
 19 determine the period, ~~and conditions,~~ **and rehabilitation goals** of
 20 probation. The order is part of the record in the case. The court
 21 may amend the order in form or substance at any time. If the court
 22 reduces a defendant's probationary term under ~~subsection (2),~~ **this**
 23 **section**, the period by which that term was reduced must be reported
 24 to the department of corrections.

25 (12) ~~(6)~~-A defendant who was placed on probation under section
 26 1(4) of this chapter as it existed before March 1, 2003 for an
 27 offense committed before March 1, 2003 is subject to the conditions
 28 of probation specified in section 3 of this chapter, including
 29 payment of a probation supervision fee as prescribed in section 3c

1 of this chapter, and to revocation for violation of these
2 conditions, but the probation period must not be reduced other than
3 by a revocation that results in imprisonment or as otherwise
4 provided by law.

5 (13) ~~(7)~~—If an individual is placed on probation for a listed
6 offense as that term is defined in section 2 of the sex offenders
7 registration act, 1994 PA 295, MCL 28.722, the individual's
8 probation officer shall register the individual or accept the
9 individual's registration as provided in that act.

10 (14) ~~(8)~~—Subsection (1) does not apply to a juvenile placed on
11 probation and committed under section 1(3) or (4) of chapter IX to
12 an institution or agency described in the youth rehabilitation
13 services act, 1974 PA 150, MCL 803.301 to 803.309.

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

22 ~~(2) The court may place an individual convicted of violating~~
23 ~~section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i,~~
24 ~~on probation for any term of years, but not less than 5 years. The~~
25 ~~sentence is subject to the conditions of probation set forth in~~
26 ~~section 411i(4) of the Michigan penal code, 1931 PA 328, MCL~~
27 ~~750.411i, and section 3 of this chapter. The probation is subject~~
28 ~~to revocation for any violation of a condition of that probation.~~

29 (2) ~~(3)~~—The court may place an individual convicted of a

1 violation of section 136b of the Michigan penal code, 1931 PA 328,
 2 MCL 750.136b, that is designated as a misdemeanor on probation for
 3 not more than ~~5~~3 years, **subject to the extension in section 2(1)**
 4 **of this chapter.**

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

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

15 (5) ~~(6)~~—Except as otherwise provided by law, the court may
 16 place an individual convicted of a listed offense **that is a felony**
 17 on probation subject to the requirements of this subsection and
 18 subsections ~~(7)~~ **(6)** through ~~(12)~~ **(11)** for any term of years but not
 19 less ~~more~~ than 5 years.

20 (6) ~~(7)~~—Except as otherwise provided in subsections ~~(8)~~ **(7)** to
 21 ~~(12)~~ **(11)**, if an individual is placed on probation under
 22 subsection ~~(6)~~ **(5)**, the court shall order the individual not to do
 23 any of the following:

- 24 (a) Reside within a student safety zone.
- 25 (b) Work within a student safety zone.
- 26 (c) Loiter within a student safety zone.

27 (7) ~~(8)~~—The court shall not impose a condition of probation
 28 described in subsection ~~(7)(a)~~ **(6) (a)** if any of the following
 29 apply:

1 (a) The individual is not more than 19 years of age and
2 attends secondary school or postsecondary school, and resides with
3 his or her parent or guardian. However, an individual described in
4 this subdivision ~~shall~~**must** be ordered not to initiate or maintain
5 contact with a minor within that student safety zone. The
6 individual ~~shall~~**must** be permitted to initiate or maintain contact
7 with a minor with whom he or she attends secondary school or
8 postsecondary school in conjunction with that school attendance.

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

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

28 (8) ~~(9)~~ An order issued under subsection ~~(7)(a)~~ shall **(6)(a)**
29 **must** not prohibit an individual from being a patient in a hospital

1 or hospice that is located within a student safety zone. However,
2 this exception does not apply to an individual who initiates or
3 maintains contact with a minor within that student safety zone.

4 **(9)** ~~(10)~~—The court shall not impose a condition of probation
5 described in subsection ~~(7)(b)~~ **(6)(b)** if the individual was working
6 within the student safety zone ~~at the time the amendatory act that~~
7 ~~added this subsection was enacted into law.~~ **on January 1, 2006.**
8 However, if the individual was working within the student safety
9 zone ~~at the time the amendatory act that added this subsection was~~
10 ~~enacted into law,~~ **on January 1, 2006,** the court shall order the
11 individual not to initiate or maintain contact with any minors in
12 the course of his or her employment within that student safety
13 zone. This subsection does not prohibit the court from allowing
14 contact with any minors named in the probation order for good cause
15 shown and as specified in the probation order.

16 **(10)** ~~(11)~~—The court shall not impose a condition of probation
17 described in subsection ~~(7)(b)~~ **(6)(b)** if the individual only
18 intermittently or sporadically enters a student safety zone for
19 purposes of work. If the individual intermittently or sporadically
20 works within a student safety zone, the court shall order the
21 individual not to initiate or maintain contact with any minors in
22 the course of his or her employment within that safety zone. This
23 subsection does not prohibit the court from allowing contact with
24 any minors named in the probation order for good cause shown and as
25 specified in the probation order.

26 **(11)** ~~(12)~~—The court may exempt an individual from probation
27 under subsection ~~(6)~~ **(5)** if any of the following apply:

28 (a) The individual has successfully completed his or her
29 probationary period under sections 11 to 15 of chapter II for

1 committing a listed offense and has been discharged from youthful
2 trainee status.

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

8 (12) ~~(13)~~—As used in this section:

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

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

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

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

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

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

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

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

29 Sec. 3. (1) The sentence of probation ~~shall~~**must** include all

1 of the following conditions:

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

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

9 (c) The probationer shall report to the probation officer,
10 either in person or in writing, monthly or as often as the
11 probation officer requires. This subdivision does not apply to a
12 juvenile placed on probation and committed under section 1(3) or
13 (4) of chapter IX to an institution or agency described in the
14 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
15 803.309.

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

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

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

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

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

1 the probationer shall comply with that act.

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

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

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

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

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

24 (e) Engage in community service.

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

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

1 236, MCL 600.1060 to 600.1084.

2 (h) Participate in mental health treatment.

3 (i) Participate in mental health or substance abuse
4 counseling.

5 (j) Participate in a community corrections program.

6 (k) Be under house arrest.

7 (l) Be subject to electronic monitoring.

8 (m) Participate in a residential probation program.

9 (n) Satisfactorily complete a program of incarceration in a
10 special alternative incarceration unit as provided in section 3b of
11 this chapter.

12 (o) Be subject to conditions reasonably necessary for the
13 protection of 1 or more named persons.

14 (p) Reimburse the county for expenses incurred by the county
15 in connection with the conviction for which probation was ordered
16 as provided in the prisoner reimbursement to the county act, 1984
17 PA 118, MCL 801.81 to 801.93.

18 (q) Complete his or her high school education or obtain the
19 equivalency of a high school education in the form of a general
20 education development (GED) certificate.

21 (3) ~~The~~ **Subject to subsection (11), the** court may impose other
22 lawful conditions of probation as the circumstances of the case
23 require or warrant or as in its judgment are proper.

24 (4) If an order or amended order of probation contains a
25 condition for the protection of 1 or more named persons as provided
26 in subsection (2)(o), the court or a law enforcement agency within
27 the court's jurisdiction shall enter the order or amended order
28 into the law enforcement information network. If the court rescinds
29 the order or amended order or the condition, the court shall remove

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

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

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

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

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

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

1 immediately or the court may provide for payment to be made within
2 a specified period of time or in specified installments.

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

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**

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

2 (11) The conditions of probation imposed by the court under
3 subsections (2) and (3) must be individually tailored to the
4 probationer, must be the least restrictive conditions necessary to
5 address the assessed risks and needs of the probationer, must be
6 designed to reduce recidivism, and must be adjusted if the court
7 determines adjustments are appropriate.

8 Sec. 4. It is the intent of the legislature that ~~the granting~~
9 ~~of probation is a matter of grace conferring no vested right to its~~
10 ~~continuance. If during the probation period the sentencing court~~
11 ~~determines that the probationer is likely again to engage in an~~
12 ~~offensive or criminal course of conduct or that the public good~~
13 ~~requires revocation of probation, the court may revoke probation.~~
14 **revocation of probation, and subsequent incarceration, should be**
15 **imposed only for serious and repeated technical violations, or for**
16 **new criminal behavior.** All probation orders are revocable ~~in any~~
17 ~~manner the court that imposed probation considers applicable either~~
18 ~~for a violation or attempted violation of a probation condition or~~
19 ~~for any other type of antisocial conduct or action on the~~
20 ~~probationer's part for which the court determines that revocation~~
21 ~~is proper in the public interest.~~ **subject to the requirements of**
22 **section 4b of this chapter.** Hearings on the revocation ~~shall~~ **must**
23 be summary and informal and not subject to the rules of evidence or
24 of pleadings applicable in criminal trials. In its probation order
25 or by general rule, the court may provide for the apprehension,
26 detention, and confinement of a probationer accused of violating a
27 probation condition. ~~or conduct inconsistent with the public good.~~
28 The method of hearing and presentation of charges are within the
29 court's discretion, except that the probationer is entitled to a

1 written copy of the charges constituting the claim that he or she
2 violated probation and to a probation revocation hearing. ~~The~~
3 **Subject to the requirements of section 4b of this chapter, the**
4 court may investigate and enter a disposition of the probationer as
5 the court determines best serves the public interest. If a
6 probation order is revoked, the court may sentence the probationer
7 in the same manner and to the same penalty as the court might have
8 done if the probation order had never been made. This section does
9 not apply to a juvenile placed on probation and committed under
10 section 1(3) or (4) of chapter IX to an institution or agency
11 described in the youth rehabilitation services act, 1974 PA 150,
12 MCL 803.301 to 803.309.

13 Sec. 4b. (1) Except as otherwise provided in this section,
14 ~~beginning on January 1, 2018,~~ a probationer who commits a technical
15 probation violation and is sentenced to temporary incarceration in
16 a state or local correctional or detention facility may be
17 incarcerated for a maximum of 30 days for each technical violation.
18 ~~A probationer must not be given credit for any time served on a~~
19 ~~previous technical violation. After a probationer serves the period~~
20 ~~of temporary incarceration under this section, he or she may be~~
21 ~~returned to probation under the terms of his or her original~~
22 ~~probation order or under a new probation order at the discretion of~~
23 ~~the court.~~

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

28 ~~(3) The court may extend the period of temporary incarceration~~
29 ~~under subsection (1) to not more than 90 days if a probationer has~~

1 ~~been ordered to attend a treatment program as part of his or her~~
2 ~~probation but for which a treatment bed is not currently available;~~
3 ~~however, the period of temporary incarceration imposed under~~
4 ~~subsection (1) must not extend beyond 90 days.~~

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

10 **(a) For a technical violation committed by an individual who**
11 **is on probation because he or she was convicted of or pleaded**
12 **guilty to a misdemeanor:**

13 **(i) For a first sanction, jail incarceration for not more than**
14 **5 days.**

15 **(ii) For a second sanction, jail incarceration for not more**
16 **than 10 days.**

17 **(iii) For a third sanction, jail incarceration for not more than**
18 **15 days.**

19 **(iv) For a fourth or subsequent sanction, jail incarceration**
20 **for any number of days, but not exceeding the total of the**
21 **remaining eligible jail sentence.**

22 **(b) For a technical violation committed by an individual who**
23 **is on probation because he or she was convicted of or pleaded**
24 **guilty to a felony:**

25 **(i) For a first sanction, jail incarceration for not more than**
26 **15 days.**

27 **(ii) For a second sanction, jail incarceration for not more**
28 **than 30 days.**

29 **(iii) For a third sanction, jail incarceration for not more than**

1 45 days.

2 (iv) For a fourth or subsequent sanction, jail or prison
3 incarceration for any number of days, but not exceeding the total
4 of the remaining eligible jail or prison sentence.

5 (2) A jail sanction under subsection (1) (a) or (b) may be
6 extended to not more than 45 days if the probationer is awaiting
7 placement in a treatment facility and does not have a safe
8 alternative location to await treatment.

9 (3) Subject to the prohibition in subsection (6), the court
10 shall not revoke probation on the basis of a technical probation
11 violation unless a probationer has already been sanctioned for 3 or
12 more technical probation violations and commits a new technical
13 probation violation.

14 (4) ~~(5)~~—If more than 1 technical probation violation arises
15 out of the same transaction, the court shall treat the technical
16 probation violations as a single technical probation violation for
17 purposes of this section.

18 (5) ~~(6)~~—Subsection (1) does not apply to a probationer who is
19 on probation for a domestic violence violation of section 81 or
20 81a, or a violation of section 411h or 411i of the Michigan penal
21 code, 1931 PA 328, MCL 750.81, 750.81a, 750.411h, and 750.411i.

22 (6) The court shall not impose a jail sanction or revoke
23 probation for any of the following technical probation violations:

24 (a) Failure to seek or maintain employment.

25 (b) Failure to pay court-ordered fines, fees, or the costs of
26 court-ordered treatment or programming.

27 (c) Failure to report a change in residence.

28 (7) Except as otherwise provided in this subsection, there is
29 a rebuttable presumption that the court shall not issue a warrant

1 for arrest for a technical probation violation and shall issue a
 2 summons or order to show cause to the probationer instead. The
 3 court may overcome the presumption and issue a warrant if it states
 4 on the record a specific reason to suspect that 1 or more of the
 5 following apply:

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

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

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

13 (8) A probationer who is arrested and detained for a technical
 14 probation violation must be brought to a hearing on the technical
 15 probation violation as soon as is possible. If the hearing is not
 16 held within the applicable and permissible jail sanction, as
 17 determined under subsection (1) (a) or (b), the probationer must be
 18 returned to community supervision.

19 (9) ~~(7)~~As used in this section: ~~,"technical~~

20 (a) "Absconding" means the intentional failure of a
 21 probationer to report to his or her supervising agent or to advise
 22 his or her supervising agent of his or her whereabouts for a
 23 continuous period of not less than 60 days.

24 (b) "Technical probation violation" means a violation of the
 25 terms of a probationer's probation other than 1 of the following:

26 (i) A violation of ~~the terms of a probationer's probation an~~
 27 ~~order that is not a violation of an order~~ of the court requiring
 28 that the probationer have no contact with a named individual. ~~or~~
 29 ~~that is not a~~

1 **(ii) A** violation of a law of this state, a political
2 subdivision of this state, another state, or the United States or
3 of tribal law, **whether or not a new criminal offense is charged.** ~~7~~
4 ~~and does not include the consumption of alcohol by a probationer~~
5 ~~who is on probation for a felony violation of section 625 of the~~
6 ~~Michigan vehicle code, 1949 PA 300, MCL 257.625.~~**However, a**
7 **violation involving the use of a controlled substance, the evidence**
8 **of which is obtained because of a required drug test, is a**
9 **technical violation under this section.**

10 **(iii) Absconding.**