

SENATE BILL No. 1110

March 2, 2006, Introduced by Senators GARCIA, TOY, HAMMERSTROM, GOSCHKA, HARDIMAN, BARCIA, CASSIS, CROPSEY and BIRKHOLZ and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 2a of chapter XI (MCL 771.2a), as amended by
2005 PA 126.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XI

1
2 Sec. 2a. (1) The court may place an individual convicted of
3 violating section 411h of the Michigan penal code, 1931 PA 328, MCL
4 750.411h, on probation for not more than 5 years. The sentence is
5 subject to the conditions of probation set forth in section 411h(3)
6 of the Michigan penal code, 1931 PA 328, MCL 750.400h, and section
7 3 of this chapter. The probation is subject to revocation for any
8 violation of a condition of that probation.

1 (2) THE COURT MAY PLACE AN INDIVIDUAL CONVICTED OF A VIOLATION
2 OF SECTION 136B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL
3 750.136B, THAT IS DESIGNATED AS A MISDEMEANOR ON PROBATION FOR NOT
4 MORE THAN 5 YEARS.

5 (3) ~~—(2)—~~ The court may place an individual convicted of
6 violating section 411i of the Michigan penal code, 1931 PA 328, MCL
7 750.411i, on probation for any term of years, but not less than 5
8 years. The sentence is subject to the conditions of probation set
9 forth in section 411i(4) of the Michigan penal code, 1931 PA 328,
10 MCL 750.411i, and section 3 of this chapter. The probation is
11 subject to revocation for any violation of a condition of that
12 probation.

13 (4) ~~—(3)—~~ The court shall by order, to be filed or entered in
14 the cause as the court directs by general rule or in each case, fix
15 and determine the period and conditions of probation. The order is
16 part of the record in the cause. The court may amend the order in
17 form or substance at any time.

18 (5) ~~—(4)—~~ Subsections (1), (2), ~~and~~ (3), **AND (4)** do not
19 apply to a juvenile placed on probation and committed under section
20 1(3) or (4) of chapter IX to an institution or agency described in
21 the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
22 803.309.

23 (6) ~~—(5)—~~ Except as otherwise provided by law, the court may
24 place an individual convicted of a listed offense on probation
25 subject to the requirements of this subsection and subsections ~~—(6)—~~
26 (7) through ~~—(11)—~~ (12) for any term of years but not less than 5
27 years.

1 (7) ~~—(6)—~~ Except as otherwise provided in subsections ~~—(7)—~~
2 (8) to ~~—(11)—~~ (12), if an individual is placed on probation under
3 subsection ~~—(5)—~~ (6), the court shall order the individual not to
4 do any of the following:

5 (a) Reside within a student safety zone.

6 (b) Work within a student safety zone.

7 (c) Loiter within a student safety zone.

8 (8) ~~—(7)—~~ The court shall not impose a condition of probation
9 described in subsection ~~—(6)(a)—~~ (7) (A) if any of the following
10 apply:

11 (a) The individual is not more than 19 years of age and
12 attends secondary school or postsecondary school, and resides with
13 his or her parent or guardian. However, an individual described in
14 this subdivision shall be ordered not to initiate or maintain
15 contact with a minor within that student safety zone. The
16 individual shall be permitted to initiate or maintain contact with
17 a minor with whom he or she attends secondary school or
18 postsecondary school in conjunction with that school attendance.

19 (b) The individual is not more than 26 years of age, attends a
20 special education program, and resides with his or her parent or
21 guardian or in a group home or assisted living facility. However,
22 an individual described in this subdivision shall be ordered not to
23 initiate or maintain contact with a minor within that student
24 safety zone. The individual shall be permitted to initiate or
25 maintain contact with a minor with whom he or she attends a special
26 education program in conjunction with that attendance.

27 (c) The individual was residing within that student safety

1 zone at the time the amendatory act that added this subdivision was
2 enacted into law. However, if the individual was residing within
3 the student safety zone at the time the amendatory act that added
4 this subdivision was enacted into law, the court shall order the
5 individual not to initiate or maintain contact with any minors
6 within that student safety zone. This subdivision does not prohibit
7 the court from allowing contact with any minors named in the
8 probation order for good cause shown and as specified in the
9 probation order.

10 (9) ~~—(8)—~~ An order issued under subsection ~~—(6)(a)—~~ (7) (A)
11 shall not prohibit an individual from being a patient in a hospital
12 or hospice that is located within a student safety zone. However,
13 this exception does not apply to an individual who initiates or
14 maintains contact with a minor within that student safety zone.

15 (10) ~~—(9)—~~ The court shall not impose a condition of probation
16 described in subsection ~~—(6)(b)—~~ (7) (B) if the individual was
17 working within the student safety zone at the time the amendatory
18 act that added this subsection was enacted into law. However, if
19 the individual was working within the student safety zone at the
20 time the amendatory act that added this subsection was enacted into
21 law, the court shall order the individual not to initiate or
22 maintain contact with any minors in the course of his or her
23 employment within that student safety zone. This subsection does
24 not prohibit the court from allowing contact with any minors named
25 in the probation order for good cause shown and as specified in the
26 probation order.

27 (11) ~~—(10)—~~ The court shall not impose a condition of

1 probation described in subsection ~~—(6)(b)—~~ **(7)(B)** if the individual
2 only intermittently or sporadically enters a student safety zone
3 for purposes of work. If the individual intermittently or
4 sporadically works within a student safety zone, the court shall
5 order the individual not to initiate or maintain contact with any
6 minors in the course of his or her employment within that safety
7 zone. This subsection does not prohibit the court from allowing
8 contact with any minors named in the probation order for good cause
9 shown and as specified in the probation order.

10 **(12)** ~~—(11)—~~ The court may exempt an individual from probation
11 under subsection ~~—(5)—~~ **(6)** if any of the following apply:

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

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

21 **(13)** ~~—(12)—~~ As used in this section:

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

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

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

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

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

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

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

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