

**SUBSTITUTE FOR
HOUSE BILL NO. 5928**

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 1a, 1l, 11, 12, 13, and 34 of chapter IX and
section 21 of chapter XVII (MCL 769.1a, 769.1l, 769.11, 769.12,
769.13, 769.34, and 777.21), section 1a of chapter IX as amended by
2009 PA 27, section 1l of chapter IX as added by 2005 PA 325,
sections 11 and 13 of chapter IX and section 21 of chapter XVII as
amended by 2006 PA 655, section 12 of chapter IX as amended by 2012
PA 319, and section 34 of chapter IX as amended by 2002 PA 666, and
by adding sections 32a and 33a to chapter IX; and to repeal acts
and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER IX

2

Sec. 1a. (1) As used in this section:

1 (a) "Crime victim services commission" means that term as
2 described in section 2 of 1976 PA 223, MCL 18.352.

3 (b) "Victim" means an individual who suffers direct or
4 threatened physical, financial, or emotional harm as a result of
5 the commission of a felony, misdemeanor, or ordinance violation.
6 For purposes of subsections (2), (3), (6), (8), (9), and (13),
7 victim includes a sole proprietorship, partnership, corporation,
8 association, governmental entity, or any other legal entity that
9 suffers direct physical or financial harm as a result of a felony,
10 misdemeanor, or ordinance violation.

11 (2) Except as provided in subsection (8), when sentencing a
12 defendant convicted of a felony, misdemeanor, or ordinance
13 violation, the court shall order, in addition to or in lieu of any
14 other penalty authorized by law or in addition to any other penalty
15 required by law, that the defendant make full restitution to any
16 victim of the defendant's course of conduct that gives rise to the
17 conviction or to the victim's estate.

18 (3) If a felony, misdemeanor, or ordinance violation results
19 in damage to or loss or destruction of property of a victim of the
20 felony, misdemeanor, or ordinance violation or results in the
21 seizure or impoundment of property of a victim of the felony,
22 misdemeanor, or ordinance violation, the order of restitution may
23 require that the defendant do 1 or more of the following, as
24 applicable:

25 (a) Return the property to the owner of the property or to a
26 person designated by the owner.

27 (b) If return of the property under subdivision (a) is

1 impossible, impractical, or inadequate, pay an amount equal to the
2 greater of subparagraph (i) or (ii), less the value, determined as of
3 the date the property is returned, of that property or any part of
4 the property that is returned:

5 (i) The fair market value of the property on the date of the
6 damage, loss, or destruction. However, if the fair market value of
7 the property cannot be determined or is impractical to ascertain,
8 then the replacement value of the property shall be utilized in
9 lieu of the fair market value.

10 (ii) The fair market value of the property on the date of
11 sentencing. However, if the fair market value of the property
12 cannot be determined or is impractical to ascertain, then the
13 replacement value of the property shall be utilized in lieu of the
14 fair market value.

15 (c) Pay the cost of the seizure or impoundment, or both.

16 (4) If a felony, misdemeanor, or ordinance violation results
17 in physical or psychological injury to a victim, the order of
18 restitution may require that the defendant do 1 or more of the
19 following, as applicable:

20 (a) Pay an amount equal to the cost of actual medical and
21 related professional services and devices relating to physical and
22 psychological care.

23 (b) Pay an amount equal to the cost of actual physical and
24 occupational therapy and rehabilitation.

25 (c) Reimburse the victim or the victim's estate for after-tax
26 income loss suffered by the victim as a result of the felony,
27 misdemeanor, or ordinance violation.

1 (d) Pay an amount equal to the cost of psychological and
2 medical treatment for members of the victim's family that has been
3 incurred as a result of the felony, misdemeanor, or ordinance
4 violation.

5 (e) Pay an amount equal to the cost of actual homemaking and
6 child care expenses incurred as a result of the felony,
7 misdemeanor, or ordinance violation.

8 (5) If a felony, misdemeanor, or ordinance violation resulting
9 in bodily injury also results in the death of a victim, the order
10 of restitution may require that the defendant pay an amount equal
11 to the cost of actual funeral and related services.

12 (6) If the victim or the victim's estate consents, the order
13 of restitution may require that the defendant make restitution in
14 services in lieu of money.

15 (7) If the victim is deceased, the court shall order that the
16 restitution be made to the victim's estate.

17 (8) The court shall order restitution to the crime victim
18 services commission or to any individuals, partnerships,
19 corporations, associations, governmental entities, or other legal
20 entities that have compensated the victim or the victim's estate
21 for a loss incurred by the victim to the extent of the compensation
22 paid for that loss. The court shall also order restitution for the
23 costs of services provided to persons or entities that have
24 provided services to the victim as a result of the felony,
25 misdemeanor, or ordinance violation. Services that are subject to
26 restitution under this subsection include, but are not limited to,
27 shelter, food, clothing, and transportation. However, an order of

1 restitution shall require that all restitution to a victim or a
2 victim's estate under the order be made before any restitution to
3 any other person or entity under that order is made. The court
4 shall not order restitution to be paid to a victim or victim's
5 estate if the victim or victim's estate has received or is to
6 receive compensation for that loss, and the court shall state on
7 the record with specificity the reasons for its action. If an
8 entity entitled to restitution under this subsection for
9 compensating the victim or the victim's estate cannot or refuses to
10 be reimbursed for that compensation, the restitution paid for that
11 entity shall be deposited by the state treasurer in the crime
12 victim's rights fund created under section 4 of 1989 PA 196, MCL
13 780.904, or its successor fund.

14 (9) Any amount paid to a victim or a victim's estate under an
15 order of restitution shall be set off against any amount later
16 recovered as compensatory damages by the victim or the victim's
17 estate in any federal or state civil proceeding and shall reduce
18 the amount payable to a victim or a victim's estate by an award
19 from the crime victim services commission made after an order of
20 restitution under this section.

21 (10) If not otherwise provided by the court under this
22 subsection, restitution shall be made immediately. However, the
23 court may require that the defendant make restitution under this
24 section within a specified period or in specified installments.

25 (11) If the defendant is placed on probation or paroled or the
26 court imposes a conditional sentence under section 3 of this
27 chapter, any restitution ordered under this section shall be a

1 condition of that probation, parole, or sentence. The court may
2 revoke probation or impose imprisonment under the conditional
3 sentence and the parole board may revoke parole if the defendant
4 fails to comply with the order and if the defendant has not made a
5 good-faith effort to comply with the order. In determining whether
6 to revoke probation or parole or impose imprisonment, the court or
7 parole board shall consider the defendant's employment status,
8 earning ability, and financial resources, the willfulness of the
9 defendant's failure to pay, and any other special circumstances
10 that may have a bearing on the defendant's ability to pay.

11 (12) A defendant who is required to pay restitution and who is
12 not in willful default of the payment of the restitution may at any
13 time petition the sentencing judge or his or her successor to
14 modify the method of payment. If the court determines that payment
15 under the order will impose a manifest hardship on the defendant or
16 his or her immediate family, the court may modify the method of
17 payment.

18 (13) An order of restitution entered under this section
19 remains effective until it is satisfied in full. An order of
20 restitution is a judgment and lien against all property of the
21 defendant for the amount specified in the order of restitution. The
22 lien may be recorded as provided by law. An order of restitution
23 may be enforced by the prosecuting attorney, a victim, a victim's
24 estate, or any other person or entity named in the order to receive
25 the restitution in the same manner as a judgment in a civil action
26 or a lien.

27 (14) Notwithstanding any other provision of this section, a

1 defendant shall not be imprisoned, jailed, or incarcerated for a
2 violation of probation or parole or otherwise for failure to pay
3 restitution as ordered under this section unless the court or
4 parole board determines that the defendant has the resources to pay
5 the ordered restitution and has not made a good-faith effort to do
6 so.

7 (15) In each case in which payment of restitution is ordered
8 as a condition of probation, the probation officer assigned to the
9 case shall review the case not less than twice yearly to ensure
10 that restitution is being paid as ordered. The final review shall
11 be conducted not less than 60 days before the probationary period
12 expires. If the probation officer determines that restitution is
13 not being paid as ordered, the probation officer shall file a
14 written report of the violation with the court on a form prescribed
15 by the state court administrative office. The report shall include
16 a statement of the amount of the arrearage and any reasons for the
17 arrearage known by the probation officer. The probation officer
18 shall immediately provide a copy of the report to the prosecuting
19 attorney. If a motion is filed or other proceedings are initiated
20 to enforce payment of restitution and the court determines that
21 restitution is not being paid or has not been paid as ordered by
22 the court, the court shall promptly take action necessary to compel
23 compliance.

24 (16) If a defendant who is ordered to pay restitution under
25 this section is remanded to the jurisdiction of the department of
26 corrections, the court shall provide a copy of the order of
27 restitution to the department of corrections when the defendant is

1 ordered remanded to the department's jurisdiction.

2 (17) IT IS THE INTENT OF THE LEGISLATURE THAT THE MICHIGAN
3 SUPREME COURT IMPLEMENT MEASUREMENT OF RESTITUTION ASSESSMENT AND
4 COLLECTION AS A COURT PERFORMANCE MEASURE FOR CIRCUIT COURTS AND
5 DISTRICT COURTS.

6 Sec. 1l. If a prisoner under the jurisdiction of the department
7 of corrections has been ordered to pay any sum of money as
8 described in section 1k and the department of corrections receives
9 an order from the court on a form prescribed by the state court
10 administrative office, the department of corrections shall deduct
11 50% of the funds received by the prisoner in a month over \$50.00
12 and promptly forward a payment to the court as provided in the
13 order when the amount exceeds \$100.00, or the entire amount if the
14 prisoner is paroled, is transferred to community programs, or is
15 discharged on the maximum sentence. The department of corrections
16 shall give an order of restitution under section 20h of the
17 corrections code of 1953, 1953 PA 232, MCL 791.220h, or the **WILLIAM**
18 **VAN REGENMORTER** crime victim's rights act, 1985 PA 87, MCL 780.751
19 to 780.834, priority over an order received under this section. **THE**
20 **DEPARTMENT OF CORRECTIONS SHALL TRACK AND REPORT PRISONER**
21 **RESTITUTION COLLECTION AS A PERFORMANCE MEASURE.**

22 Sec. 11. (1) If a person has been convicted of any combination
23 of 2 or more felonies or attempts to commit felonies, whether the
24 convictions occurred in this state or would have been for felonies
25 or attempts to commit felonies in this state if obtained in this
26 state, and that person commits a subsequent felony within this
27 state, the person shall be punished upon conviction of the

1 subsequent felony and sentencing under section 13 of this chapter
2 as follows:

3 (a) If the subsequent felony is punishable upon a first
4 conviction by imprisonment for a term less than life, the court,
5 except as otherwise provided in this section or section 1 of
6 chapter XI, may sentence the person to imprisonment for a maximum
7 term that is not more than ~~twice~~ **1-1/2 TIMES** the longest term
8 prescribed by law for a first conviction of that offense or for a
9 lesser term.

10 (b) If the subsequent felony is punishable upon a first
11 conviction by imprisonment for life, the court, except as otherwise
12 provided in this section or section 1 of chapter XI, may sentence
13 the person to imprisonment for life or for a lesser term.

14 (c) If the subsequent felony is a major controlled substance
15 offense, the person shall be punished as provided by part 74 of the
16 public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

17 **(D) NOT MORE THAN 1 CONVICTION ARISING OUT OF THE SAME**
18 **TRANSACTION SHALL BE CONSIDERED A PRIOR FELONY CONVICTION UNDER**
19 **THIS SECTION.**

20 (2) If the court ~~pursuant to this section~~ imposes a sentence
21 of imprisonment for any term of years **UNDER THIS SECTION**, the court
22 shall fix the length of both the minimum and maximum sentence
23 within any specified limits in terms of years or a fraction of a
24 year, and the sentence so imposed shall be considered an
25 indeterminate sentence. The court shall not fix a maximum sentence
26 that is less than the maximum term for a first conviction.

27 (3) A conviction shall not be used to enhance a sentence under

1 this section if that conviction is used to enhance a sentence under
2 a statute that prohibits use of the conviction for further
3 enhancement under this section.

4 Sec. 12. (1) If a person has been convicted of any combination
5 of 3 or more felonies or attempts to commit felonies, whether the
6 convictions occurred in this state or would have been for felonies
7 or attempts to commit felonies in this state if obtained in this
8 state, and that person commits a subsequent felony within this
9 state, the person shall be punished upon conviction of the
10 subsequent felony and sentencing under section 13 of this chapter
11 as follows:

12 (a) If the subsequent felony is a serious crime or a
13 conspiracy to commit a serious crime, and 1 or more of the prior
14 felony convictions are listed prior felonies, the court shall
15 sentence the person to imprisonment for not less than 25 years. ~~Not~~
16 ~~more than 1 conviction arising out of the same transaction shall be~~
17 ~~considered a prior felony conviction for the purposes of this~~
18 ~~subsection only.~~

19 (b) If the subsequent felony is punishable upon a first
20 conviction by imprisonment for ~~a maximum term of 5 years or more or~~
21 ~~for life,~~ **LESS THAN LIFE**, the court, except as otherwise provided
22 in this section or section 1 of chapter XI, may sentence the person
23 to imprisonment for ~~life~~ **A MAXIMUM TERM THAT IS NOT MORE THAN TWICE**
24 **THE LONGEST TERM PRESCRIBED BY LAW FOR A FIRST CONVICTION OF THAT**
25 **OFFENSE** or for a lesser term.

26 (c) If the subsequent felony is punishable upon a first
27 conviction by imprisonment for ~~a maximum term that is less than 5~~

1 ~~years, LIFE~~, the court, except as otherwise provided in this
2 section or section 1 of chapter XI, may sentence the person to
3 imprisonment for a ~~maximum term of not more than 15 years.~~ **LIFE OR A**
4 **LESSER TERM.**

5 (d) If the subsequent felony is a major controlled substance
6 offense, the person shall be punished as provided by part 74 of the
7 public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

8 **(E) NOT MORE THAN 1 CONVICTION ARISING OUT OF THE SAME**
9 **TRANSACTION SHALL BE CONSIDERED A PRIOR FELONY CONVICTION UNDER**
10 **THIS SECTION.**

11 (2) If the court imposes a sentence of imprisonment for any
12 term of years under this section, the court shall fix the length of
13 both the minimum and maximum sentence within any specified limits
14 in terms of years or a fraction of a year, and the sentence so
15 imposed shall be considered an indeterminate sentence. The court
16 shall not fix a maximum sentence that is less than the maximum term
17 for a first conviction.

18 (3) A conviction shall not be used to enhance a sentence under
19 this section if that conviction is used to enhance a sentence under
20 a statute that prohibits use of the conviction for further
21 enhancement under this section.

22 (4) An offender sentenced under this section or section ~~10 or~~
23 11 of this chapter for an offense other than a major controlled
24 substance offense is not eligible for parole until expiration of
25 the following:

26 (a) For a prisoner other than a prisoner subject to
27 disciplinary time, the minimum term fixed by the sentencing judge

1 at the time of sentence unless the sentencing judge or a successor
2 gives written approval for parole at an earlier date authorized by
3 law.

4 (b) For a prisoner subject to disciplinary time, the minimum
5 term fixed by the sentencing judge.

6 (5) This section and ~~sections 10 and~~ **SECTION** 11 of this
7 chapter are not in derogation of other provisions of law that
8 permit or direct the imposition of a consecutive sentence for a
9 subsequent felony.

10 (6) As used in this section:

11 (a) "Listed prior felony" means a violation or attempted
12 violation of any of the following:

13 (i) Section 602a(4) or (5) or 625(4) of the Michigan vehicle
14 code, 1949 PA 300, MCL 257.602a and 257.625.

15 (ii) Article 7 of the public health code, 1978 PA 368, MCL
16 333.7101 to 333.7545, that is punishable by imprisonment for more
17 than 4 years.

18 (iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or
19 (3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a,
20 234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i,
21 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the
22 Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83,
23 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a,
24 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a,
25 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a,
26 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c,
27 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

1 (iv) A second or subsequent violation or attempted violation of
2 section 227b of the Michigan penal code, 1931 PA 328, MCL 750.227b.

3 (v) Section 2a of 1968 PA 302, MCL 752.542a.

4 (b) "Prisoner subject to disciplinary time" means that term as
5 defined in section 34 of 1893 PA 118, MCL 800.34.

6 (c) "Serious crime" means an offense against a person in
7 violation of section 83, 84, 86, 88, 89, 317, 321, 349, 349a, 350,
8 397, 520b, 520c, 520d, 520g(1), 529, or 529a of the Michigan penal
9 code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89,
10 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
11 750.520c, 750.520d, 750.520g, 750.529, and 750.529a.

12 Sec. 13. (1) In a criminal action, the prosecuting attorney
13 may seek to enhance the sentence of the defendant as provided under
14 section ~~10, 11~~ ~~7~~ or 12 of this chapter, by filing a written notice
15 of his or her intent to do so within ~~21~~ ~~35~~ days after the
16 defendant's arraignment on the information charging the underlying
17 offense or, if arraignment is waived, within ~~21~~ ~~35~~ days after the
18 filing of the information charging the underlying offense.

19 (2) A notice of intent to seek an enhanced sentence filed
20 under subsection (1) shall list the prior conviction or convictions
21 that will or may be relied upon for purposes of sentence
22 enhancement. The notice shall be filed with the court and served
23 upon the defendant or his or her attorney within the time provided
24 in subsection (1). The notice may be personally served upon the
25 defendant or his or her attorney at the arraignment on the
26 information charging the underlying offense, or may be served in
27 the manner provided by law or court rule for service of written

1 pleadings. The prosecuting attorney shall file a written proof of
2 service with the clerk of the court.

3 (3) The prosecuting attorney may file notice of intent to seek
4 an enhanced sentence after the defendant has been convicted of the
5 underlying offense or a lesser offense, upon his or her plea of
6 guilty or nolo contendere if the defendant pleads guilty or nolo
7 contendere at the arraignment on the information charging the
8 underlying offense, or within the time allowed for filing of the
9 notice under subsection (1).

10 (4) A defendant who has been given notice that the prosecuting
11 attorney will seek to enhance his or her sentence as provided under
12 section ~~10~~, ~~11~~, or 12 of this chapter, may challenge the accuracy
13 or constitutional validity of 1 or more of the prior convictions
14 listed in the notice by filing a written motion with the court and
15 by serving a copy of the motion upon the prosecuting attorney in
16 accordance with rules of the supreme court.

17 (5) The existence of the defendant's prior conviction or
18 convictions shall be determined by the court, without a jury, at
19 sentencing, or at a separate hearing scheduled for that purpose
20 before sentencing. The existence of a prior conviction may be
21 established by any evidence that is relevant for that purpose,
22 including, but not limited to, 1 or more of the following:

23 (a) A copy of a judgment of conviction.

24 (b) A transcript of a prior trial or a plea-taking or
25 sentencing proceeding.

26 (c) A copy of a court register of actions.

27 (d) Information contained in a presentence report.

1 (e) A statement of the defendant.

2 (6) The court shall resolve any challenges to the accuracy or
3 constitutional validity of a prior conviction or convictions that
4 have been raised in a motion filed under subsection (4) at
5 sentencing or at a separate hearing scheduled for that purpose
6 before sentencing. The defendant, or his or her attorney, shall be
7 given an opportunity to deny, explain, or refute any evidence or
8 information pertaining to the defendant's prior conviction or
9 convictions before sentence is imposed, and shall be permitted to
10 present relevant evidence for that purpose. The defendant shall
11 bear the burden of establishing a prima facie showing that an
12 alleged prior conviction is inaccurate or constitutionally invalid.
13 If the defendant establishes a prima facie showing that information
14 or evidence concerning an alleged prior conviction is inaccurate,
15 the prosecuting attorney shall bear the burden of proving, by a
16 preponderance of the evidence, that the information or evidence is
17 accurate. If the defendant establishes a prima facie showing that
18 an alleged prior conviction is constitutionally invalid, the
19 prosecuting attorney shall bear the burden of proving, by a
20 preponderance of the evidence, that the prior conviction is
21 constitutionally valid.

22 **SEC. 32A. (1) A CRIMINAL JUSTICE POLICY COMMISSION IS CREATED**
23 **IN THE LEGISLATIVE COUNCIL. BEFORE MARCH 1, 2015, THE GOVERNOR**
24 **SHALL APPOINT THE COMMISSION MEMBERS DESCRIBED IN SUBDIVISIONS (D)**
25 **TO (N). THE COMMISSION CONSISTS OF ALL OF THE FOLLOWING MEMBERS:**

26 **(A) TWO INDIVIDUALS WHO ARE MEMBERS OF THE SENATE SUBMITTED BY**
27 **THE SENATE MAJORITY LEADER, REPRESENTING EACH CAUCUS.**

1 (B) TWO INDIVIDUALS WHO ARE MEMBERS OF THE HOUSE OF
2 REPRESENTATIVES SUBMITTED BY THE SPEAKER OF THE HOUSE OF
3 REPRESENTATIVES, REPRESENTING EACH CAUCUS.

4 (C) THE ATTORNEY GENERAL, OR HIS OR HER DESIGNEE, REPRESENTING
5 CRIME VICTIMS.

6 (D) ONE INDIVIDUAL WHO IS A CIRCUIT COURT JUDGE, APPOINTED
7 FROM A LIST OF 3 NAMES SUBMITTED BY THE MICHIGAN JUDGES
8 ASSOCIATION.

9 (E) ONE INDIVIDUAL WHO IS A DISTRICT COURT JUDGE, APPOINTED
10 FROM A LIST OF 3 NAMES SUBMITTED BY THE MICHIGAN DISTRICT JUDGES
11 ASSOCIATION.

12 (F) ONE INDIVIDUAL WHO REPRESENTS THE PROSECUTING ATTORNEYS OF
13 THIS STATE, APPOINTED FROM A LIST OF 3 NAMES SUBMITTED BY THE
14 PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN.

15 (G) ONE INDIVIDUAL WHO REPRESENTS CRIMINAL DEFENSE ATTORNEYS,
16 APPOINTED FROM A LIST OF 3 NAMES SUBMITTED BY THE CRIMINAL DEFENSE
17 ATTORNEYS OF MICHIGAN.

18 (H) ONE INDIVIDUAL APPOINTED FROM A LIST OF 3 NAMES SUBMITTED
19 BY THE MICHIGAN SHERIFF'S ASSOCIATION.

20 (I) ONE INDIVIDUAL APPOINTED FROM A LIST OF 3 NAMES SUBMITTED
21 BY THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF CORRECTIONS.

22 (J) ONE INDIVIDUAL WHO REPRESENTS ADVOCATES OF ALTERNATIVES TO
23 INCARCERATION.

24 (K) ONE INDIVIDUAL WHO IS A MENTAL HEALTH EXPERT.

25 (L) ONE INDIVIDUAL APPOINTED FROM A LIST OF 3 NAMES SUBMITTED
26 BY THE MICHIGAN ASSOCIATION OF COUNTIES.

27 (M) ONE INDIVIDUAL WHO REPRESENTS COMMUNITY CORRECTIONS

1 AGENCIES.

2 (N) ONE INDIVIDUAL WHO REPRESENTS THE GENERAL PUBLIC.

3 (2) THE GOVERNOR SHALL DESIGNATE THE INDIVIDUAL REPRESENTING
4 THE GENERAL PUBLIC AS THE CHAIRPERSON OF THE JUSTICE POLICY
5 COMMISSION.

6 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
7 COMMISSION MEMBERS SHALL BE APPOINTED FOR TERMS OF 4 YEARS. OF THE
8 MEMBERS FIRST APPOINTED UNDER SUBSECTION (1) (D) TO (N), 4 MEMBERS
9 SHALL SERVE FOR 2 YEARS, 4 MEMBERS SHALL SERVE FOR 3 YEARS, AND 3
10 MEMBERS SHALL SERVE FOR 4 YEARS. THE MEMBERS OF THE COMMISSION
11 APPOINTED UNDER SUBSECTION (1) (A) AND (B) SHALL BE APPOINTED FOR
12 TERMS OF 2 YEARS.

13 (4) A VACANCY ON THE COMMISSION CAUSED BY THE EXPIRATION OF A
14 TERM OR A RESIGNATION OR DEATH SHALL BE FILLED IN THE SAME MANNER
15 AS THE ORIGINAL APPOINTMENT. A MEMBER APPOINTED TO FILL A VACANCY
16 CAUSED BY A RESIGNATION OR DEATH SHALL BE APPOINTED FOR THE BALANCE
17 OF THE UNEXPIRED TERM.

18 (5) A COMMISSION MEMBER SHALL NOT RECEIVE A SALARY FOR BEING A
19 COMMISSION MEMBER BUT SHALL BE REIMBURSED FOR HIS OR HER
20 REASONABLE, ACTUAL, AND NECESSARY EXPENSES INCURRED IN THE
21 PERFORMANCE OF HIS OR HER DUTIES AS A COMMISSION MEMBER.

22 (6) THE COMMISSION MAY ESTABLISH SUBCOMMITTEES THAT MAY
23 CONSIST OF INDIVIDUALS WHO ARE NOT MEMBERS OF THE COMMISSION,
24 INCLUDING, BUT NOT LIMITED TO, EXPERTS IN MATTERS OF INTEREST TO
25 THE COMMISSION.

26 (7) THE COMMISSION'S BUSINESS SHALL BE CONDUCTED AT PUBLIC
27 MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA

1 267, MCL 15.261 TO 15.275.

2 (8) A QUORUM CONSISTS OF A MAJORITY OF THE MEMBERS OF THE
3 SENTENCING COMMISSION. ALL COMMISSION BUSINESS SHALL BE CONDUCTED
4 BY NOT LESS THAN A QUORUM.

5 (9) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR
6 RETAINED BY THE COMMISSION IN THE PERFORMANCE OF AN OFFICIAL
7 FUNCTION SHALL BE MADE AVAILABLE TO THE PUBLIC IN COMPLIANCE WITH
8 THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

9 (10) THE LEGISLATIVE COUNCIL SHALL PROVIDE THE COMMISSION WITH
10 SUITABLE OFFICE SPACE, STAFF, AND NECESSARY EQUIPMENT.

11 SEC. 33A. (1) THE CRIMINAL JUSTICE POLICY COMMISSION SHALL DO
12 ALL OF THE FOLLOWING:

13 (A) COLLECT, PREPARE, ANALYZE, AND DISSEMINATE INFORMATION
14 REGARDING STATE AND LOCAL SENTENCING AND RELEASE POLICIES AND
15 PRACTICES FOR FELONIES AND THE USE OF PRISONS AND JAILS.

16 (B) COLLECT AND ANALYZE INFORMATION CONCERNING HOW MISDEMEANOR
17 SENTENCES AND THE DETENTION OF DEFENDANTS PENDING TRIAL AFFECT
18 LOCAL JAILS.

19 (C) CONDUCT ONGOING RESEARCH REGARDING THE EFFECTIVENESS OF
20 THE SENTENCING GUIDELINES IN ACHIEVING THE PURPOSES SET FORTH IN
21 SUBDIVISION (F).

22 (D) IN COOPERATION WITH THE DEPARTMENT OF CORRECTIONS,
23 COLLECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS REGARDING
24 THE POPULATIONS AND CAPACITIES OF STATE AND LOCAL CORRECTIONAL
25 FACILITIES, THE IMPACT OF THE SENTENCING GUIDELINES AND OTHER LAWS,
26 RULES, AND POLICIES ON THOSE POPULATIONS AND CAPACITIES, AND THE
27 EFFECTIVENESS OF EFFORTS TO REDUCE RECIDIVISM. MEASUREMENT OF

1 RECIDIVISM SHALL INCLUDE, AS APPLICABLE, ANALYSIS OF ALL OF THE
2 FOLLOWING:

3 (i) REOFFENSE RATES, REARREST RATES, RESENTENCE RATES, AND
4 RETURN TO PRISON RATES.

5 (ii) ONE-, 2-, AND 3-YEAR INTERVALS AFTER EXITING PRISON OR
6 JAIL AND AFTER ENTERING PROBATION.

7 (iii) THE STATEWIDE LEVEL, AND BY LOCALITY AND DISCRETE PROGRAM,
8 TO THE EXTENT PRACTICABLE.

9 (E) IN COOPERATION WITH THE STATE COURT ADMINISTRATOR,
10 COLLECT, ANALYZE, AND COMPILE DATA REGARDING THE EFFECT OF
11 SENTENCING GUIDELINES ON THE CASELOAD, DOCKET FLOW, AND CASE
12 BACKLOG OF THE TRIAL AND APPELLATE COURTS OF THIS STATE.

13 (F) DEVELOP MODIFICATIONS TO THE SENTENCING GUIDELINES. ANY
14 MODIFICATIONS TO THE SENTENCING GUIDELINES SHALL ACCOMPLISH ALL OF
15 THE FOLLOWING:

16 (i) PROVIDE FOR THE PROTECTION OF THE PUBLIC.

17 (ii) CONSIDER OFFENSES INVOLVING VIOLENCE AGAINST A PERSON OR
18 SERIOUS AND SUBSTANTIAL PECUNIARY LOSS AS MORE SEVERE THAN OTHER
19 OFFENSES.

20 (iii) BE PROPORTIONATE TO THE SERIOUSNESS OF THE OFFENSE AND THE
21 OFFENDER'S PRIOR CRIMINAL RECORD.

22 (iv) REDUCE SENTENCING DISPARITIES BASED ON FACTORS OTHER THAN
23 OFFENSE CHARACTERISTICS AND OFFENDER CHARACTERISTICS AND ENSURE
24 THAT OFFENDERS WITH SIMILAR OFFENSE AND OFFENDER CHARACTERISTICS
25 RECEIVE SUBSTANTIALLY SIMILAR SENTENCES.

26 (v) SPECIFY THE CIRCUMSTANCES UNDER WHICH A TERM OF
27 IMPRISONMENT IS PROPER AND THE CIRCUMSTANCES UNDER WHICH

1 INTERMEDIATE SANCTIONS ARE PROPER.

2 (vi) ESTABLISH SENTENCE RANGES FOR IMPRISONMENT THAT ARE WITHIN
3 THE MINIMUM AND MAXIMUM SENTENCES ALLOWED BY LAW FOR THE OFFENSES
4 TO WHICH THE RANGES APPLY.

5 (vii) MAINTAIN SEPARATE SENTENCE RANGES FOR CONVICTIONS UNDER
6 THE HABITUAL OFFENDER PROVISIONS IN SECTIONS 11 AND 12 OF THIS
7 CHAPTER, WHICH MAY INCLUDE AS AN AGGRAVATING FACTOR, AMONG OTHER
8 RELEVANT CONSIDERATIONS, THAT THE ACCUSED HAS ENGAGED IN A PATTERN
9 OF PROVEN OR ADMITTED CRIMINAL BEHAVIOR.

10 (viii) ESTABLISH SENTENCE RANGES THAT THE COMMISSION CONSIDERS
11 APPROPRIATE.

12 (ix) RECOGNIZE THE AVAILABILITY OF BEDS IN THE LOCAL
13 CORRECTIONS SYSTEM AND THAT THE LOCAL CORRECTIONS SYSTEM IS AN
14 EQUAL PARTNER IN CORRECTIONS POLICY, AND PRESERVE ITS FUNDING
15 MECHANISMS.

16 (G) CONSIDER THE SUITABILITY AND IMPACT OF OFFENSE VARIABLE
17 SCORING WITH REGARD TO PHYSICAL AND PSYCHOLOGICAL INJURY TO VICTIMS
18 AND VICTIMS' FAMILIES.

19 (2) IN DEVELOPING MODIFICATIONS TO THE SENTENCING GUIDELINES,
20 THE COMMISSION SHALL SUBMIT TO THE LEGISLATURE A PRISON AND JAIL
21 IMPACT REPORT RELATING TO ANY MODIFICATIONS TO THE SENTENCING
22 GUIDELINES. THE REPORT SHALL INCLUDE THE PROJECTED IMPACT ON TOTAL
23 CAPACITY OF STATE AND LOCAL CORRECTIONAL FACILITIES.

24 (3) MODIFICATIONS TO SENTENCING GUIDELINES SHALL INCLUDE
25 RECOMMENDED INTERMEDIATE SANCTIONS FOR EACH CASE IN WHICH THE UPPER
26 LIMIT OF THE RECOMMENDED MINIMUM SENTENCE RANGE IS 18 MONTHS OR
27 LESS.

1 (4) THE COMMISSION MAY RECOMMEND MODIFICATIONS TO ANY LAW,
2 ADMINISTRATIVE RULE, OR POLICY THAT AFFECTS SENTENCING OR THE USE
3 AND LENGTH OF INCARCERATION. THE RECOMMENDATIONS SHALL REFLECT ALL
4 OF THE FOLLOWING POLICIES:

5 (A) TO RENDER SENTENCES IN ALL CASES WITHIN A RANGE OF
6 SEVERITY PROPORTIONATE TO THE GRAVITY OF OFFENSES, THE HARMS DONE
7 TO CRIME VICTIMS, AND THE BLAMEWORTHINESS OF OFFENDERS.

8 (B) WHEN REASONABLY FEASIBLE, TO ACHIEVE OFFENDER
9 REHABILITATION, GENERAL DETERRENCE, INCAPACITATION OF DANGEROUS
10 OFFENDERS, RESTORATION OF CRIME VICTIMS AND COMMUNITIES, AND
11 REINTEGRATION OF OFFENDERS INTO THE LAW-ABIDING COMMUNITY.

12 (C) TO RENDER SENTENCES NO MORE SEVERE THAN NECESSARY TO
13 ACHIEVE THE APPLICABLE PURPOSES IN SUBDIVISIONS (A) AND (B).

14 (D) TO PRESERVE JUDICIAL DISCRETION TO INDIVIDUALIZE SENTENCES
15 WITHIN A FRAMEWORK OF LAW.

16 (E) TO PRODUCE SENTENCES THAT ARE UNIFORM IN THEIR REASONED
17 PURSUIT OF THE PURPOSES IN SUBSECTION (1).

18 (F) TO ELIMINATE INEQUITIES IN SENTENCING AND LENGTH OF
19 INCARCERATION ACROSS POPULATION GROUPS.

20 (G) TO ENCOURAGE THE USE OF INTERMEDIATE SANCTIONS.

21 (H) TO ENSURE THAT ADEQUATE RESOURCES ARE AVAILABLE FOR
22 CARRYING OUT SENTENCES IMPOSED AND THAT RATIONAL PRIORITIES ARE
23 ESTABLISHED FOR THE USE OF THOSE RESOURCES.

24 (I) TO PROMOTE RESEARCH ON SENTENCING POLICY AND PRACTICES,
25 INCLUDING ASSESSMENTS OF THE EFFECTIVENESS OF CRIMINAL SANCTIONS AS
26 MEASURED AGAINST THEIR PURPOSES.

27 (J) TO INCREASE THE TRANSPARENCY OF THE SENTENCING AND

1 CORRECTIONS SYSTEM, ITS ACCOUNTABILITY TO THE PUBLIC, AND THE
2 LEGITIMACY OF ITS OPERATIONS.

3 (5) THE COMMISSION SHALL SUBMIT ANY RECOMMENDED MODIFICATIONS
4 TO THE SENTENCING GUIDELINES OR TO OTHER LAWS, ADMINISTRATIVE
5 RULES, OR POLICIES TO THE SENATE MAJORITY LEADER, THE SPEAKER OF
6 THE HOUSE OF REPRESENTATIVES, AND THE GOVERNOR.

7 Sec. 34. (1) The sentencing guidelines promulgated by order of
8 the Michigan supreme court do not apply to felonies enumerated in
9 part 2 of chapter XVII committed on or after January 1, 1999.

10 (2) Except as otherwise provided in this subsection or for a
11 departure from the appropriate minimum sentence range provided for
12 under subsection (3), the minimum sentence imposed by a court of
13 this state for a felony enumerated in part 2 of chapter XVII
14 committed on or after January 1, 1999 shall be within the
15 appropriate sentence range under the version of those sentencing
16 guidelines in effect on the date the crime was committed. Both of
17 the following apply to minimum sentences under this subsection:

18 (a) If a statute mandates a minimum sentence for an individual
19 sentenced to the jurisdiction of the department of corrections, the
20 court shall impose sentence in accordance with that statute.
21 Imposing a mandatory minimum sentence is not a departure under this
22 section. If a statute mandates a minimum sentence for an individual
23 sentenced to the jurisdiction of the department of corrections and
24 the statute authorizes the sentencing judge to depart from that
25 minimum sentence, imposing a sentence that exceeds the recommended
26 sentence range but is less than the mandatory minimum sentence is
27 not a departure under this section. If the Michigan vehicle code,

1 1949 PA 300, MCL 257.1 to 257.923, mandates a minimum sentence for
2 an individual sentenced to the jurisdiction of the department of
3 corrections and the Michigan vehicle code, 1949 PA 300, MCL 257.1
4 to 257.923, authorizes the sentencing judge to impose a sentence
5 that is less than that minimum sentence, imposing a sentence that
6 exceeds the recommended sentence range but is less than the
7 mandatory minimum sentence is not a departure under this section.

8 (b) The court shall not impose a minimum sentence, including a
9 departure, that exceeds 2/3 of the statutory maximum sentence.

10 (3) A court may depart from the appropriate sentence range
11 established under the sentencing guidelines set forth in chapter
12 XVII if the court has a substantial and compelling reason for that
13 departure and states on the record the reasons for departure. All
14 of the following apply to a departure:

15 (a) The court shall not use an individual's gender, race,
16 ethnicity, alienage, national origin, legal occupation, lack of
17 employment, representation by appointed legal counsel,
18 representation by retained legal counsel, appearance in propria
19 persona, or religion to depart from the appropriate sentence range.

20 (b) The court shall not base a departure on an offense
21 characteristic or offender characteristic already taken into
22 account in determining the appropriate sentence range unless the
23 court finds from the facts contained in the court record, including
24 the presentence investigation report, that the characteristic has
25 been given inadequate or disproportionate weight.

26 (4) Intermediate sanctions shall be imposed under this chapter
27 as follows:

1 (a) If the upper limit of the recommended minimum sentence
2 range for a defendant determined under the sentencing guidelines
3 set forth in chapter XVII is 18 months or less, the court shall
4 impose an intermediate sanction unless the court states on the
5 record a substantial and compelling reason to sentence the
6 individual to the jurisdiction of the department of corrections. An
7 intermediate sanction may include a jail term that does not exceed
8 the upper limit of the recommended minimum sentence range or 12
9 months, whichever is less.

10 (b) If an attempt to commit a felony designated in offense
11 class H in part 2 of chapter XVII is punishable by imprisonment for
12 more than 1 year, the court shall impose an intermediate sanction
13 upon conviction of that offense absent a departure.

14 (c) If the upper limit of the recommended minimum sentence
15 exceeds 18 months and the lower limit of the recommended minimum
16 sentence is 12 months or less, the court shall sentence the
17 offender as follows absent a departure:

18 (i) To imprisonment with a minimum term within that range.

19 (ii) To an intermediate sanction that may include a term of
20 imprisonment of not more than 12 months.

21 (5) If a crime has a mandatory determinant penalty or a
22 mandatory penalty of life imprisonment, the court shall impose that
23 penalty. This section does not apply to sentencing for that crime.

24 (6) As part of the sentence, the court may also order the
25 defendant to pay any combination of a fine, **ALLOWABLE** costs, or
26 applicable assessments. The court shall order payment of
27 restitution as provided by law.

1 (7) If the trial court imposes on a defendant a minimum
2 sentence that is longer or more severe than the appropriate
3 sentence range, as part of the court's advice of the defendant's
4 rights concerning appeal, the court shall advise the defendant
5 orally and in writing that he or she may appeal the sentence as
6 provided by law on grounds that it is longer or more severe than
7 the appropriate sentence range.

8 (8) All of the following shall be part of the record filed for
9 an appeal of a sentence under this section:

10 (a) An entire record of the sentencing proceedings.

11 (b) The presentence investigation report. Any portion of the
12 presentence investigation report exempt from disclosure by law
13 shall not be a public record.

14 (c) Any other reports or documents the sentencing court used
15 in imposing sentence.

16 (9) An appeal of a sentence under this section does not stay
17 execution of the sentence.

18 (10) If a minimum sentence is within the appropriate
19 guidelines sentence range, the court of appeals shall affirm that
20 sentence and shall not remand for resentencing absent an error in
21 scoring the sentencing guidelines or inaccurate information relied
22 upon in determining the defendant's sentence. A party shall not
23 raise on appeal an issue challenging the scoring of the sentencing
24 guidelines or challenging the accuracy of information relied upon
25 in determining a sentence that is within the appropriate guidelines
26 sentence range unless the party has raised the issue at sentencing,
27 in a proper motion for resentencing, or in a proper motion to

1 remand filed in the court of appeals.

2 (11) If, upon a review of the record, the court of appeals
3 finds the trial court did not have a substantial and compelling
4 reason for departing from the appropriate sentence range, the court
5 shall remand the matter to the sentencing judge or another trial
6 court judge for resentencing under this chapter.

7 (12) Time served on the sentence appealed under this section
8 is considered time served on any sentence imposed after remand.

9 CHAPTER XVII

10 Sec. 21. (1) Except as otherwise provided in this section, for
11 an offense enumerated in part 2 of this chapter, determine the
12 recommended minimum sentence range as follows:

13 (a) Find the offense category for the offense from part 2 of
14 this chapter. From section 22 of this chapter, determine the
15 offense variables to be scored for that offense category and score
16 only those offense variables for the offender as provided in part 4
17 of this chapter. Total those points to determine the offender's
18 offense variable level.

19 (b) Score all prior record variables for the offender as
20 provided in part 5 of this chapter. Total those points to determine
21 the offender's prior record variable level.

22 (c) Find the offense class for the offense from part 2 of this
23 chapter. Using the sentencing grid for that offense class in part 6
24 of this chapter, determine the recommended minimum sentence range
25 from the intersection of the offender's offense variable level and
26 prior record variable level. The recommended minimum sentence
27 within a sentencing grid is shown as a range of months or life.

1 (2) If the defendant was convicted of multiple offenses,
2 subject to section 14 of chapter XI, score each offense as provided
3 in this part.

4 (3) If the offender is being sentenced under section ~~10, 11~~ ⁷
5 or 12 of chapter IX, determine the offense category, offense class,
6 offense variable level, and prior record variable level based on
7 the underlying offense. To determine the recommended minimum
8 sentence range, increase the upper limit of the recommended minimum
9 sentence range determined under part 6 for the underlying offense
10 as follows:

11 ~~—— (a) If the offender is being sentenced for a second felony,~~
12 ~~25%.~~

13 **(A)** ~~(b)~~—If the offender is being sentenced for a third felony,
14 50%.

15 **(B)** ~~(c)~~—If the offender is being sentenced for a fourth or
16 subsequent felony, 100%.

17 (4) If the offender is being sentenced for a violation
18 described in section 18 of this chapter, both of the following
19 apply:

20 (a) Determine the offense variable level by scoring the
21 offense variables for the underlying offense and any additional
22 offense variables for the offense category indicated in section 18
23 of this chapter.

24 (b) Determine the offense class based on the underlying
25 offense. If there are multiple underlying felony offenses, the
26 offense class is the same as that of the underlying felony offense
27 with the highest crime class. If there are multiple underlying

1 offenses but only 1 is a felony, the offense class is the same as
2 that of the underlying felony offense. If no underlying offense is
3 a felony, the offense class is G.

4 (5) If the offender is being sentenced for an attempted felony
5 described in section 19 of this chapter, determine the offense
6 variable level and prior record variable level based on the
7 underlying attempted offense.

8 Enacting section 1. Section 10 of chapter IX of the code of
9 criminal procedure, 1927 PA 175, MCL 769.10, is repealed.

10 Enacting section 2. This amendatory act does not take effect
11 unless House Bill No. 5930 of the 97th Legislature is enacted into
12 law.