

SUBSTITUTE FOR
HOUSE BILL NO. 5930

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 2 of chapter XI and the chapter heading and
sections 3, 4, 5, and 6 of chapter XIA (MCL 771.2, 771A.3, 771A.4,
771A.5, and 771A.6), section 2 of chapter XI as amended by 2010 PA
351 and sections 3, 4, 5, and 6 of chapter XIA as added by 2012 PA
616.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER XI

2

Sec. 2. (1) Except as provided in section 2a of this chapter,

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if the defendant is convicted for an offense that is not a felony,

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the probation period shall not exceed 2 years. Except as provided

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in section 2a of this chapter, if the defendant is convicted of a

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felony, the probation period shall not exceed 5 years. **AT ANY TIME**

1 AFTER THE DEFENDANT HAS SATISFACTORILY COMPLETED 1/3 OF THE
2 ORIGINAL FELONY PROBATION PERIOD OR 2 YEARS OF HIS OR HER FELONY
3 PROBATION, WHICHEVER IS LESS, THE PERIOD OF PROBATION MAY BE
4 REDUCED OR TERMINATED BY THE JUDGE. THE JUDGE SHALL REVIEW THE
5 DEFENDANT'S RECORD AND CONSIDER WHETHER TO REDUCE OR TERMINATE THE
6 PERIOD OF PROBATION, UNLESS THE DEFENDANT IS DELINQUENT IN PAYING
7 REQUIRED RESTITUTION, FINES, COSTS, OR FEES THAT THE DEFENDANT HAS
8 THE ABILITY TO PAY OR THE DEFENDANT HAS NOT COMPLETED COURT-ORDERED
9 COUNSELING OR TREATMENT. BEFORE REDUCING OR TERMINATING A PERIOD OF
10 PROBATION OR CONDUCTING A REVIEW UNDER THIS SECTION, THE JUDGE
11 SHALL NOTIFY THE PROSECUTING ATTORNEY AND THE DEFENDANT OR, IF THE
12 DEFENDANT HAS AN ATTORNEY, THE DEFENDANT'S ATTORNEY.

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

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

27 (4) If an individual is placed on probation for a listed

1 offense ~~enumerated~~ **AS THAT TERM IS DEFINED** in section 2 of the sex
 2 offenders registration act, 1994 PA 295, MCL 28.722, the
 3 individual's probation officer shall register the individual or
 4 accept the individual's registration as provided in that act.

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

9 CHAPTER XIA

10 **PROBATION SWIFT AND SURE SANCTIONS ACT**

11 Sec. 3. It is the intent of the legislature ~~to create a~~
 12 ~~voluntary state program to~~ fund swift and sure probation
 13 supervision ~~at the local level based upon~~ **ON** the immediate
 14 detection of probation violations and **THE** prompt ~~the~~ imposition of
 15 sanctions and remedies to address those violations. In furtherance
 16 of this intent, the state swift and sure sanctions program ~~is~~
 17 ~~created with the following objectives.~~ **SHALL BE IMPLEMENTED AND**
 18 **MAINTAINED AS PROVIDED IN THIS CHAPTER AS FOLLOWS:**

19 (a) Probationers are to be sentenced with prescribed terms of
 20 probation meeting the objectives of this chapter. Probationers are
 21 to be aware of their probation terms as well as the consequences
 22 for violating the terms of their probation.

23 (b) Probationers are to be closely monitored and every
 24 detected violation is to be promptly addressed by the court.

25 (c) Probationers are to be arrested as soon as a violation has
 26 been detected and are to be promptly taken before a judge for a
 27 hearing on the violation **UNLESS THE VIOLATION IS A NONCOMPLIANCE**

1 VIOLATION AND THE PROBATIONER WAIVES A HEARING AFTER BEING
2 PRESENTED WITH A VIOLATION REPORT.

3 (d) Continued violations are to be addressed by increasing
4 sanctions and remedies as necessary to achieve results.

5 (e) To the extent possible and considering local resources,
6 probationers subject to swift and sure probation under this chapter
7 shall ~~MUST~~ be treated uniformly throughout ~~the~~ THIS state.

8 Sec. 4. (1) ~~Beginning January 1, 2013, the~~ **THE SWIFT AND SURE**
9 **PROBATION SUPERVISION FUND IS CREATED WITHIN THE STATE TREASURY.**
10 **THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM ANY**
11 **SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER SHALL DIRECT**
12 **THE INVESTMENT OF THE FUND. THE STATE TREASURER SHALL CREDIT TO THE**
13 **FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS. MONEY IN THE FUND**
14 **AT THE CLOSE OF THE FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL**
15 **NOT LAPSE TO THE GENERAL FUND.**

16 (2) **THE STATE TREASURER SHALL ALLOCATE SUFFICIENT FUNDS TO**
17 **ALLOW THE** state court administrative office ~~shall,~~ **TO**, under the
18 supervision of the supreme court, **EXPEND FUNDS FROM THE SWIFT AND**
19 **SURE PROBATION SUPERVISION FUND TO ADMINISTER THIS CHAPTER AND TO**
20 provide grants under this chapter to fund programs of swift and
21 sure probation supervision in the circuit court that meet the
22 objectives set forth in section 3 **OF THIS CHAPTER** and the
23 requirements of section 5 **OF THIS CHAPTER.**

24 (3) ~~(2)~~—A court may apply for a grant to fund a program of
25 swift and sure probation supervision under this chapter by filing a
26 written application with the state court administrative office in
27 the manner required by that office. The funding of all grants under

1 this chapter is subject to appropriation.

2 (4) A COURT THAT HAS RECEIVED A GRANT UNDER THIS CHAPTER TO
3 FUND PROGRAMS OF SWIFT AND SURE PROBATION SUPERVISION MAY ACCEPT
4 PARTICIPANTS FROM ANY OTHER JURISDICTION IN THIS STATE BASED UPON
5 EITHER THE RESIDENCE OF THE PARTICIPANT IN THE RECEIVING
6 JURISDICTION OR THE UNAVAILABILITY OF A SWIFT AND SURE PROBATION
7 SUPERVISION PROGRAM IN THE JURISDICTION WHERE THE PARTICIPANT IS
8 CHARGED. THE TRANSFER CAN OCCUR AT ANY TIME DURING THE PROCEEDINGS,
9 INCLUDING, BUT NOT LIMITED TO, PRIOR TO ADJUDICATION. THE RECEIVING
10 COURT SHALL HAVE JURISDICTION TO IMPOSE SENTENCE, INCLUDING, BUT
11 NOT LIMITED TO, SANCTIONS, INCENTIVES, INCARCERATION, AND PHASE
12 CHANGES. A TRANSFER UNDER THIS SUBSECTION IS NOT VALID UNLESS IT IS
13 AGREED TO BY ALL OF THE FOLLOWING:

14 (A) THE DEFENDANT OR RESPONDENT.

15 (B) THE ATTORNEY REPRESENTING THE DEFENDANT OR RESPONDENT.

16 (C) THE JUDGE OF THE TRANSFERRING COURT AND THE PROSECUTOR OF
17 THE CASE.

18 (D) THE JUDGE OF THE RECEIVING COURT AND THE PROSECUTOR OF THE
19 RECEIVING COURT FUNDING UNIT.

20 Sec. 5. (1) A ~~program of swift and sure probation supervision~~
21 ~~funded under section 4~~ **JUDGE** shall do all of the following **IF SWIFT**
22 **AND SURE PROBATION APPLIES TO A PROBATIONER:**

23 (a) ~~Require the court to inform~~ **INFORM** the probationer in
24 person of the requirements of his or her probation and the
25 sanctions and remedies that may apply to probation violations.

26 (b) Require the probationer to initially meet in person with a
27 probation agent or probation officer and as otherwise required by

1 the court.

2 (c) Provide for an appearance before the judge **OR ANOTHER**
 3 **JUDGE** for any probation violation as soon as possible but within 72
 4 hours after the violation is reported to the court unless **THE**
 5 **PROBATIONER WAIVES A HEARING OR** a departure from the 72-hour
 6 requirement is authorized for good cause as determined by criteria
 7 established by the state court administrative office.

8 (d) Provide for the immediate imposition of sanctions and
 9 remedies ~~approved by the state court administrative office to~~
 10 ~~effectively address probation violations. The sanctions and~~
 11 ~~remedies approved under this subdivision may include, but need not~~
 12 ~~be limited to, 1 or more of the following:~~ **AS PROVIDED IN SECTION**
 13 **4(1) OF CHAPTER XI.**

14 ~~—— (i) Temporary incarceration in a jail or other facility~~
 15 ~~authorized by law to hold probation violators.~~

16 ~~—— (ii) Extension of the period of supervision within the period~~
 17 ~~provided by law.~~

18 ~~—— (iii) Additional reporting and compliance requirements.~~

19 ~~—— (iv) Testing for the use of drugs and alcohol.~~

20 ~~—— (v) Counseling and treatment for emotional or other mental~~
 21 ~~health problems, including for substance abuse.~~

22 ~~—— (vi) Probation revocation.~~

23 (2) The state court administrative office may, under the
 24 supervision of the supreme court, do any of the following regarding
 25 programs funded under this chapter:

26 (a) Establish general eligibility requirements for offender
 27 participation.

1 (b) Require courts and offenders to enter into written
2 participation agreements.

3 (c) Create recommended and mandatory sanctions and remedies
4 for use by participating courts.

5 (d) Establish criteria for deviating from recommended and
6 mandatory sanctions and remedies ~~when-IF~~ necessary to address
7 special circumstances.

8 (e) Establish a system for determining sanctions and remedies
9 that should or may be imposed under subdivision (c) and for
10 alternative sanctions and remedies under subdivision (d).

11 Sec. 6. (1) The state court administrative office may, under
12 the supervision of the supreme court, consult with the department
13 of corrections when establishing ~~initial-programming and~~
14 ~~eligibility~~ requirements under this chapter.

15 (2) AN INDIVIDUAL IS ELIGIBLE FOR THE SWIFT AND SURE PROBATION
16 SUPERVISION PROGRAM IF HE OR SHE RECEIVES A SCORE OF HIGH ON A
17 VALIDATED RISK ASSESSMENT. IF THE SENTENCING JUDGE, PROSECUTOR, AND
18 DEFENDANT AGREE TO PLACEMENT IN THE SWIFT AND SURE PROBATION
19 SUPERVISION PROGRAM, AN INDIVIDUAL MAY BE ELIGIBLE FOR THE PROGRAM
20 IF HE OR SHE IS A VIOLENT OFFENDER OR IF HE OR SHE RECEIVES A SCORE
21 OTHER THAN HIGH OR LOW ON A VALIDATED RISK ASSESSMENT.