

"SWIFT & SURE SANCTIONS" PROBATION PROGRAM: ADD FUND & SPECIALITY COURT

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Senate Bill 23 (reported from House committee as H-1)
Senate Bill 24 reported without amendment
Sponsor: Sen. John Proos
House Committee: Michigan Competitiveness
Senate Committee: Michigan Competitiveness
Complete to 3-7-17

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Acts 17 and 18 of 2017)

BRIEF SUMMARY: The bills would do the following:

Senate Bill 23:

- Creates the Swift and Sure Probation Supervision Fund;
- Allows Swift and Sure Sanctions Probation Programs (SSSPP) to accept participants from any jurisdiction under certain circumstances;
- Establishes eligibility criteria for participants;
- Prohibits judges from departing from the list of sanctions and remedies imposed on probationers; and,
- Shifts responsibility to adhere to program requirements from a program funded under the Swift and Sure Sanctions Act to a judge overseeing a probationer participating in a SSSPP.

Senate Bill 24 reclassifies a Swift and Sure Court as a specialty court, allows any circuit court to adopt or institute a Swift and Sure Sanctions Court, and allows the problem-solving court to accept participants from any jurisdiction under certain conditions.

The bills would take effect 90 days after enactment.

FISCAL IMPACT: The bills would have fiscal implications for state and local government. See *Fiscal Information* below for a more detailed discussion.

THE APPARENT PROBLEM:

For several years, a probation program for felony probationers known as the Swift and Sure Sanctions Probation Program (SSSPP) has been operating in a limited number of courts around the state. Modeled after a program first put into practice in Hawaii, a Swift and Sure Sanctions court provides more intensive supervision over a probationer and so is particularly useful and effective in supervising probationers at higher risk for violating the terms of their probation. Early data show the program to be very effective at reducing serious probation violations. Successful completion of such intensive supervision is a good step forward in reducing the likelihood of the probationer reoffending once released from supervision.

As stakeholders continue to look for ways to reduce costs incurred by the criminal justice system, while successfully reintegrating offenders into the community as productive members, many feel that expanding the use of swift and sure sanctions for medium and higher risk individuals makes sense. Legislation has been offered to encourage the expansion of swift and sure sanction courts.

THE CONTENT OF THE BILLS:

Senate Bill 23 amends Chapter XIA (Probation Swift and Sure Sanctions Act) of the Code of Criminal Procedure (MCL 771A.3 et al.). The bill makes the following changes:

- ❖ Specifies that the program "must be implemented and maintained as provided in [Chapter XIA]." This language updates the original provision when the programs was first enacted, which said the swift and sure sanctions program was being created with several listed objectives; however, the listed objectives are not being amended and remain unchanged. (This appears to be a technical amendment.)
- ❖ Restricts eligibility for the SSSPP to an individual receiving a risk score of other than *low* on a validated risk assessment.
- ❖ Specifically excludes from eligibility a defendant charged with a crime under one or more of the following:
 - First or second degree murder, first- or third-degree criminal sexual conduct, use or possession of a dangerous weapon in the commission of a crime, or treason.
 - A major controlled substance offense as the term is defined in Section 2 of Chapter I (refers to Schedule 1 or 2 narcotics or cocaine). A person charged with possessing an amount of a Schedule 1 narcotic or cocaine less than 25 grams would not be excluded from eligibility.
- ❖ Creates the Swift and Sure Probation Supervision Fund within the state treasury, allows money or other assets from any source to be deposited into the Fund, requires the treasurer to direct the investment of the Fund and credit interest and earnings from Fund investments to the Fund, and requires money at the close of a fiscal year to remain in the Fund (not lapse to the state General Fund). The treasurer must allocate sufficient funds to allow the State Court Administrative Office (SCAO) to expend funds to administer Chapter XIA. As currently provided in the act, SCAO will continue to provide grants to fund eligible SSSPPs.
- ❖ Allows a court receiving a grant for an SSSPP to accept participants from any other jurisdiction in the state based upon either the residence of the participant in the receiving jurisdiction or the unavailability of an SSSPP in the jurisdiction where the participant is charged. The transfer may occur at any time during the proceeding, including prior to adjudication. The receiving court has jurisdiction to impose sentences, including sanctions, incentives, incarceration, and phase

changes. To be valid, a transfer must be agreed upon by the defendant or respondent in writing, the attorney representing the defendant or respondent, the judge of the transferring court and the prosecutor of the case, and the judge of the receiving court and the prosecutor of the receiving court funding unit.

- ❖ Shifts the responsibility to meet certain listed requirements of an SSSPP from the program to the judge and specifies the requirements that must be met if swift and sure probation applies to a probationer. In addition to currently listed requirements, the judge will be required to adhere to and not depart from the prescribed list of sanctions and remedies imposed on the probationer. Further, approved sanctions may also include any other sanction approved by the State Court Administrative Office.

Senate Bill 24 adds a new section to the Revised Judicature Act (600.1086). The bill allows a circuit court in any judicial circuit to adopt or institute a swift and sure sanctions court, by statute or court rule. This new type of problem-solving court must carry out the purposes of the Swift and Sure Sanctions Act, Chapter XIA of the Code of the Criminal Procedure.

Similarly to amendments proposed by Senate Bill 23 to the Swift and Sure Sanctions Act, a court that has adopted a swift and sure sanctions court may accept participants from any other jurisdiction in the state based upon either the residence of the participant in the receiving jurisdiction or the unavailability of a swift and sure sanctions court in the jurisdiction where the participant is charged. To be valid, the transfer must be agreed upon by the defendant or respondent, the attorney representing the defendant or respondent, the judge of the transferring court and the prosecutor of the case, and the judge of the receiving court and the prosecutor of a court funding unit of the swift and sure sanctions court.

HOUSE COMMITTEE ACTION:

Changes to Senate Bill 23 include allowing offenders charged with possession of small amounts of a Schedule 1 narcotic or cocaine to be eligible to participate in a Swift and Sure Sanctions Probation Program; eliminating the provision allowing a probationer to refuse participation in a SSSPP; allowing participation by probationers with a risk score in the medium range on a validated risk assessment without needing approval by the judge, prosecutor, and the probationer; and allowing utilization of any sanctions approved by SCAO.

BACKGROUND INFORMATION:

The bills are part of a larger package addressing various components of the criminal justice system. The other bills include Senate Bills 5-22 and 50.

Under Michigan law, probation may be imposed for either misdemeanor or felony offenses, with some exceptions such as murder, armed robbery, criminal sexual conduct in the first- or third-degree, certain controlled substance offenses, and use of a firearm in the

commission of a felony. In general, the sentencing court imposes the conditions of probation. Participation in a Swift and Sure Sanctions Probation Program, by comparison, only applies to probationers convicted of a felony.

According to information provided on the Michigan Courts website,

[t]he swift and sure sanctions probation program (SSSPP) is an intensive probation supervision program that targets high-risk felony offenders with a history of probation violations or failures." Participants are closely monitored and probation violations are quickly addressed with the imposition of graduated sanctions. Judges in SSSPP courts report a reduction in positive drug tests and failures to appear at scheduled meetings with probation officers by participants in the SSSPP.

(See: <http://courts.mi.gov/administration/admin/op/problem-solving-courts/pages/swift-and-sure-sanctions-probation-program.aspx>)

Enabling legislation for implementation of the Swift and Sure Sanctions Probation Program was created by Public Act 616 of 2012. According to an online newsletter published by the State Court Administrative Office, probationers participating in SSSPPs are "36 percent less likely to reoffend, compared to a comparison group of probationers on regular probation." Reportedly, the intensive supervision, coupled with immediate sanctions for probation violations that increase in severity with repeat violations, is providing the support structure necessary for some probationers to turn their lives around. Even repeat offenders with long criminal records are breaking the cycle and successfully reintegrating into the community. [Myers, Thomas, The Swift and Sure Sanctions Probation Program: Success Stories, Connections (April 14, 2016). At: <http://info.courts.mi.gov/connectionsnewsletter/the-swift-and-sure-sanctions-probation-program-success-stories>

FISCAL INFORMATION:

The bills would have an indeterminate fiscal impact on the state and on local units of government. In the FY 2016 Judiciary appropriations act, there was \$4.3 million appropriated for distribution to courts that operated a Swift and Sure Sanctions Probation Program. Twenty-three circuit courts received the grant funding, spending \$3.6 million of the \$4.3 million appropriation. There is \$4.0 million appropriated in the FY 2017 Judiciary appropriations act for the same purpose.

If the bills result in an increase in the number of Swift and Sure Sanctions Probation Programs implemented and operated by courts, and, subsequently, an increase in the number of swift and sure sanctions issued, there would be increased costs to local courts, if the state does not continue to provide the grant funding to cover the costs. Or, there would be increased costs to the state if the state does continue to cover the costs. Costs would depend on the number of people supervised under the program. The program costs roughly \$2,800 per person per year, in addition to annual administrative costs.

Also, increased program utilization would be expected to result in increased use of jail bed space. In turn, the demand for state prison beds could be expected to decrease due to more sanctions to jail rather than to prison. This would mean a savings for the state. The average cost of prison incarceration in a state facility is roughly \$36,000 per prisoner per year, a figure that includes various fixed administrative and operational costs.

ARGUMENTS:

For:

A Swift and Sure Sanctions Probation Program is a type of specialty court designed specifically to help those felony offenders with a medium to high risk of violating probation to instead successfully comply with their terms of probation. Like other specialty courts such as mental health treatment courts, sobriety courts, and veteran's courts, a SSSPP court provides very intensive supervision, often with weekly meetings between a participant and the judge. Violations are dealt with immediately with specified sanctions and remedies. The results have been overwhelmingly positive. Though more work for judges and more restrictive for participants, many praise the SSSPP for enabling participants to turn their lives around.

Together, the bills shift the SSSPP concept from a program to a specialty court that courts around the state could put into practice. Judges would have to adhere to specific sanctions and remedies known to be effective. A fund would be created that could receive money from sources other than the state's General Fund, such as from federal or foundation grants that could then be used to distribute grants to courts wishing to implement a swift and sure court in their jurisdictions. Senate Bill 23 also opens up eligibility to low level drug offenders convicted of possessing a small amount of cocaine or other illegal narcotic such as heroin.

Advocates say expansion of the swift and sure sanctions probation program concepts to specialty courts that could be implemented in every county is a positive step forward in helping felony probationers find the support and accountability needed to move forward.

POSITIONS:

The Michigan Sheriff's Association indicated support for SB 24. (3-1-17)

The Michigan Catholic Conference indicated support for the bills. (2-8-17)

Goodwill Industries of Greater Detroit indicated support for the bills. (2-8-17)

Grand Rapids Area Chamber of Commerce indicated support for the bills. (3-1-17)

The Attorney General indicated support for the bills. (3-1-17)

Citizens Alliance on Prisons and Public Spending (CAPPS) indicated a neutral position on the bills. (3-1-17)

The Department of Corrections has not yet taken a formal position on the bills as reported.
(3-5-17)

The Michigan Association of Counties has not taken a formal position on the bills as supported. (3-6-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.