

# SENATE BILL NO. 423

May 06, 2021, Introduced by Senators SANTANA, WOJNO, BULLOCK, CHANG, BAYER, GEISS and VANDERWALL and referred to the Committee on Health Policy and Human Services.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 2 of chapter XI (MCL 771.2), as amended by 2020 PA 397.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1** CHAPTER XI  
**2** Sec. 2. (1) Except as provided in section 2a of this chapter  
**3** and section 36 of chapter VIII, if the defendant is convicted of an  
**4** offense that is not a felony, the probation period must not exceed

1 2 years. Except as provided in section 2a of this chapter and  
 2 section 36 of chapter VIII, if the defendant is convicted of a  
 3 felony, the probation period must not exceed 3 years. However, the  
 4 probation term for a felony under this subsection may be extended  
 5 not more than 2 times for not more than 1 additional year for each  
 6 extension if the court finds that there is a specific  
 7 rehabilitation goal that has not yet been achieved, or a specific,  
 8 articulable, and ongoing risk of harm to a victim that can be  
 9 mitigated only with continued probation supervision.

10 (2) Except as provided in subsection ~~(10)~~, **(12)**, section 2a of  
 11 this chapter, and section 36 of chapter VIII, after the defendant  
 12 has completed 1/2 of the original felony or misdemeanor probation  
 13 period, he or she may be eligible for early discharge as provided  
 14 in this section. The defendant must be notified at sentencing of  
 15 his or her eligibility and the requirements for early discharge  
 16 from probation, and the procedure provided under subsection ~~(3)~~ **(5)**  
 17 to notify the court of his or her eligibility.

18 **(3) Except as provided in subsection (12), section 2a of this**  
 19 **chapter, and section 36 of chapter VIII, and subject to subsection**  
 20 **(4), the court may reduce a sentence of probation by 90 days for**  
 21 **every 6 months that a qualified probationer complies with the**  
 22 **requirements of the medication-assisted program for the treatment**  
 23 **of an alcohol use disorder or opioid use disorder approved by the**  
 24 **department of corrections. However, this subsection does not apply**  
 25 **to a qualified probationer who is subject to a mandatory probation**  
 26 **term.**

27 (4) The court shall not grant the reduction in the term of  
 28 probation allowed under subsection (3) to a qualified probationer  
 29 if he or she commits either of the following during his or her term

1 of probation regardless of his or her compliance with a medication-  
2 assisted program for the treatment of an alcohol use disorder or  
3 opioid use disorder:

4 (a) An act that directly threatens, endangers, or injures  
5 another person.

6 (b) A violation of a law of this state, a political  
7 subdivision of this state, another state, or the United States or  
8 of tribal law, that is not a law related to the use or possession  
9 of a controlled substance, unless the court determines the primary  
10 cause of the violation was the probationer's identified substance  
11 use disorder and another person was not threatened, endangered, or  
12 injured by the conduct giving rise to the violation.

13 (5) ~~(3)~~—If a probationer has completed all required  
14 programming, the probation department may notify the sentencing  
15 court that the probationer may be eligible for early discharge from  
16 probation. If the probation department does not notify the  
17 sentencing court as required under this subsection and the  
18 probationer has not violated probation in the immediately preceding  
19 3 months, the probationer may notify the court that he or she may  
20 be eligible for early discharge from probation on a form provided  
21 by the state court administrative office. This subsection does not  
22 prohibit the court from considering a probationer for early  
23 discharge from probation at the court's discretion.

24 (6) ~~(4)~~—A probationer must not be considered ineligible for  
25 early discharge because of an inability to pay for the conditions  
26 of his or her probation, or for outstanding court-ordered fines,  
27 fees, or costs, so long as the probationer has made good-faith  
28 efforts to make payments. However, nothing in this subsection  
29 relieves a probationer from his or her court-ordered financial

1 obligations after discharge from probation.

2       (7) ~~(5)~~—Upon notification as provided under subsection ~~(3)~~,  
3 (5), the sentencing court may review the case and the probationer's  
4 conduct while on probation to determine whether the probationer's  
5 behavior warrants an early discharge. Except as provided in  
6 subsection ~~(7)~~, (9), if the court determines that the probationer's  
7 behavior warrants a reduction in the probationary term, the court  
8 may grant an early discharge from probation without holding a  
9 hearing. Before granting early discharge to a probationer who owes  
10 outstanding restitution, the court must consider the impact of  
11 early discharge on the victim and the payment of outstanding  
12 restitution. If a probationer has made a good-faith effort to pay  
13 restitution and is otherwise eligible for early discharge, the  
14 court may grant early discharge or retain the probationer on  
15 probation up to the maximum allowable probation term for the  
16 offense, with the sole condition of continuing restitution  
17 payments.

18       (8) ~~(6)~~—If after reviewing the case under subsection ~~(5)~~, (7),  
19 the court determines that the probationer's behavior does not  
20 warrant an early discharge, the court must conduct a hearing to  
21 allow the probationer to present his or her case for an early  
22 discharge and find on the record any specific rehabilitation goal  
23 that has not yet been achieved or a specific, articulable, and  
24 ongoing risk of harm to a victim that can only be mitigated with  
25 continued probation supervision.

26       (9) ~~(7)~~—The sentencing court shall hold a hearing before  
27 granting early discharge to a probationer serving a term of  
28 probation for a felony offense eligible for early discharge that  
29 involves a victim who has requested to receive notice under section

1 18b, 19, 19a, 20, or 20a of the William Van Regenmorter crime  
 2 victim's rights act, 1985 PA 87, MCL 780.768b, 780.769, 780.769a,  
 3 780.770, and 780.770a, or for a misdemeanor violation of section  
 4 81, 81a, or 136b of the Michigan penal code, 1931 PA 328, MCL  
 5 750.81, 750.81a, and 750.136b, that is eligible for early  
 6 discharge. If a probationer owes outstanding restitution, the court  
 7 must consider the impact of early discharge on the payment of  
 8 outstanding restitution and may grant early discharge or retain the  
 9 probationer on probation up to the maximum allowable probation term  
 10 for the offense, with the sole condition of continuing restitution  
 11 payments.

12       **(10)** ~~(8)~~—If a hearing is to be held under subsection ~~(7)~~, **(9)**,  
 13 the prosecutor shall notify the victim of the date and time of the  
 14 hearing and the victim must be given an opportunity to be heard.

15       **(11)** ~~(9)~~—The department of corrections shall report, no later  
 16 than December 31 of each year, to the committees of the senate and  
 17 house of representatives concerning the judiciary or criminal  
 18 justice the number of felony probationers who were released early  
 19 from probation under this section and any available recidivism  
 20 data.

21       **(12)** ~~(10)~~—A defendant who was convicted of 1 or more of the  
 22 following crimes is not eligible for reduced probation under this  
 23 section:

24       (a) A domestic violence related violation of section 81 or 81a  
 25 of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or  
 26 an offense involving domestic violence as that term is defined in  
 27 section 1 of 1978 PA 389, MCL 400.1501.

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

1 (c) A violation of section 411h of the Michigan penal code,  
2 1931 PA 328, MCL 750.411h.

3 (d) A violation of section 411i of the Michigan penal code,  
4 1931 PA 328, MCL 750.411i.

5 (e) A violation of section 520c of the Michigan penal code,  
6 1931 PA 328, MCL 750.520c.

7 (f) A violation of section 520e of the Michigan penal code,  
8 1931 PA 328, MCL 750.520e.

9 (g) A listed offense.

10 (h) An offense for which a defense was asserted under section  
11 36 of chapter VIII.

12 (i) A violation of chapter LXVIIA of the Michigan penal code,  
13 1931 PA 328, MCL 750.462a to 750.462h, or former section 462i or  
14 462j of that act.

15 **(13)** ~~(11)~~—The court shall, by order to be entered in the case  
16 as the court directs by general rule or in each case, fix and  
17 determine the period, conditions, and rehabilitation goals of  
18 probation. **The order shall include a designation that the**  
19 **probationer is a qualified probationer, if applicable.** The order is  
20 part of the record in the case. The court may amend the order in  
21 form or substance at any time. If the court reduces a defendant's  
22 probationary term under this section, the period by which that term  
23 was reduced must be reported to the department of corrections.

24 **(14)** ~~(12)~~—A defendant who was placed on probation under  
25 section 1(4) of this chapter as it existed before March 1, 2003 for  
26 an offense committed before March 1, 2003 is subject to the  
27 conditions of probation specified in section 3 of this chapter,  
28 including payment of a probation supervision fee as prescribed in  
29 section 3c of this chapter, and to revocation for violation of

1 these conditions, but the probation period must not be reduced  
2 other than by a revocation that results in imprisonment or as  
3 otherwise provided by law.

4 (15) ~~(13)~~—If an individual is placed on probation for a listed  
5 offense as that term is defined in section 2 of the sex offenders  
6 registration act, 1994 PA 295, MCL 28.722, the individual's  
7 probation officer shall register the individual or accept the  
8 individual's registration as provided in that act.

9 (16) ~~(14)~~—Subsection (1) does not apply to a juvenile placed  
10 on probation and committed under section 1(3) or (4) of chapter IX  
11 to an institution or agency described in the youth rehabilitation  
12 services act, 1974 PA 150, MCL 803.301 to 803.309.

13 (17) ~~(15)~~—As used in this section:  $\tau$

14 (a) ~~"listed"~~ **Listed** offense" means that term as defined in  
15 section 2 of the sex offenders registration act, 1994 PA 295, MCL  
16 28.722.

17 (b) **"Nonviolent offense"** means a crime that does not involve  
18 the use of any force against or injury to another person.

19 (c) **"Qualified probationer"** means an individual serving 1 or  
20 more probation terms for a controlled substance violation or  
21 another nonviolent offense that the court record indicates was  
22 primarily the result of controlled substance or alcohol use.