

HOUSE BILL NO. 4556

May 16, 2023, Introduced by Reps. Hope, Wilson, McKinney, Neeley, Aiyash, O'Neal, Wegela, Brixie, Rheingans, Price, McFall, Dievendorf, Martus, MacDonell, Arbit, Hoskins, Brenda Carter, Young, Grant and Whitsett and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 12 and 25 of chapter IX (MCL 769.12 and 769.25), section 12 as amended by 2012 PA 319 and section 25 as added by 2014 PA 22, and by adding sections 27a, 27b, 27c, 27d, 27e, 27f, 27g, and 27h to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX
2 Sec. 12. (1) ~~If~~ **Subject to subsection (6), if** a person has
3 been convicted of any combination of 3 or more felonies or attempts

1 to commit felonies, whether the convictions occurred in this state
2 or would have been for felonies or attempts to commit felonies in
3 this state if obtained in this state, and that person commits a
4 subsequent felony within this state, the person shall be punished
5 upon conviction of the subsequent felony and ~~sentencing~~**sentenced**
6 under section 13 of this chapter as follows:

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

14 (b) If the subsequent felony is punishable upon a first
15 conviction by imprisonment for a maximum term of 5 years or more or
16 for life, the court, except as otherwise provided in this section
17 or section 1 of chapter XI, may sentence the person to imprisonment
18 for life or for a lesser term.

19 (c) If the subsequent felony is punishable upon a first
20 conviction by imprisonment for a maximum term that is less than 5
21 years, the court, except as otherwise provided in this section or
22 section 1 of chapter XI, may sentence the person to imprisonment
23 for a maximum term of not more than 15 years.

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

27 (2) If the court imposes a sentence of imprisonment for any
28 term of years under this section, the court shall fix the length of
29 both the minimum and maximum sentence within any specified limits

1 in terms of years or a fraction of a year, and the sentence so
2 imposed ~~shall~~**must** be considered an indeterminate sentence. The
3 court shall not fix a maximum sentence that is less than the
4 maximum term for a first conviction.

5 (3) A conviction ~~shall~~**must** not be used to enhance a sentence
6 under this section if that conviction is used to enhance a sentence
7 under a statute that prohibits use of the conviction for further
8 enhancement under this section.

9 (4) ~~An~~**Subject to subsection (6), an** offender sentenced under
10 this section or section 10 or 11 of this chapter for an offense
11 other than a major controlled substance offense is not eligible for
12 parole until expiration of the following:

13 (a) For a prisoner other than a prisoner subject to
14 disciplinary time, the minimum term fixed by the sentencing judge
15 at the time of sentence unless the sentencing judge or a successor
16 gives written approval for parole at an earlier date authorized by
17 law.

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

20 (5) This section and sections 10 and 11 of this chapter are
21 not in derogation of other provisions of law that permit or direct
22 the imposition of a consecutive sentence for a subsequent felony.

23 **(6) This section does not apply to the resentencing of an**
24 **individual under sections 27a to 27h of this chapter.**

25 (7) ~~(6)~~As used in this section:

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

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

1 (ii) Article 7 of the public health code, 1978 PA 368, MCL
2 333.7101 to 333.7545, that is punishable by imprisonment for more
3 than 4 years.

4 (iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or
5 (3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a,
6 234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i,
7 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the
8 Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83,
9 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a,
10 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a,
11 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a,
12 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c,
13 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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

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

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

19 (c) "Serious crime" means an offense against a person in
20 violation of section 83, 84, 86, 88, 89, 317, 321, 349, 349a, 350,
21 397, 520b, 520c, 520d, 520g(1), 529, or 529a of the Michigan penal
22 code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89,
23 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
24 750.520c, 750.520d, 750.520g, 750.529, and 750.529a.

25 Sec. 25. (1) ~~This~~ **Subject to subsection (11), this** section
26 applies to a criminal defendant who was less than 18 years of age
27 at the time he or she committed an offense described in subsection
28 (2) if either of the following circumstances exists:

29 (a) The defendant is convicted of the offense on or after ~~the~~

1 ~~effective date of the amendatory act that added this section.~~**March**
 2 **14, 2014.**

3 (b) The defendant was convicted of the offense before ~~the~~
 4 ~~effective date of the amendatory act that added this section~~**March**
 5 **14, 2014** and either of the following applies:

6 (i) The case is still pending in the trial court or the
 7 applicable time periods for direct appellate review by state or
 8 federal courts have not expired.

9 (ii) On June 25, 2012 the case was pending in the trial court
 10 or the applicable time periods for direct appellate review by state
 11 or federal courts had not expired.

12 (2) The prosecuting attorney may file a motion under this
 13 section to sentence a defendant described in subsection (1) to
 14 imprisonment for life without the possibility of parole if the
 15 individual is or was convicted of any of the following violations:

16 (a) A violation of section 17764(7) of the public health code,
 17 1978 PA 368, MCL 333.17764.

18 (b) A violation of section 16(5), 18(7), 316, 436(2)(e), or
 19 543f of the Michigan penal code, 1931 PA 328, MCL 750.16, 750.18,
 20 750.316, 750.436, and 750.543f.

21 (c) A violation of chapter XXXIII of the Michigan penal code,
 22 1931 PA 328, MCL 750.200 to 750.212a.

23 (d) Any violation of law involving the death of another person
 24 for which parole eligibility is expressly denied under state law.

25 (3) If the prosecuting attorney intends to seek a sentence of
 26 imprisonment for life without the possibility of parole for a case
 27 described in subsection (1)(a), the prosecuting attorney shall file
 28 the motion within 21 days after the defendant is convicted of that
 29 violation. If the prosecuting attorney intends to seek a sentence

1 of imprisonment for life without the possibility of parole for a
 2 case described under subsection (1)(b), the prosecuting attorney
 3 shall file the motion within 90 days after ~~the effective date of~~
 4 ~~the amendatory act that added this section.~~ **March 14, 2014.** The
 5 motion ~~shall~~**must** specify the grounds on which the prosecuting
 6 attorney is requesting the court to impose a sentence of
 7 imprisonment for life without the possibility of parole.

8 (4) If the prosecuting attorney does not file a motion under
 9 subsection (3) within the time periods provided for in that
 10 subsection, the court shall sentence the defendant to a term of
 11 years as provided in subsection (9).

12 (5) If the prosecuting attorney files a motion under
 13 subsection (2) requesting that the individual be sentenced to
 14 imprisonment for life without parole eligibility, the individual
 15 shall file a response to the prosecution's motion within 14 days
 16 after receiving notice of the motion.

17 (6) If the prosecuting attorney files a motion under
 18 subsection (2), the court shall conduct a hearing on the motion as
 19 part of the sentencing process. At the hearing, the trial court
 20 shall consider the factors listed in ~~Miller v Alabama, 576 US _____;~~
 21 **Miller v Alabama, 576 US 460**; 183 L Ed 2d 407; 132 S Ct 2455
 22 (2012), and may consider any other criteria relevant to its
 23 decision, including the individual's record while incarcerated.

24 (7) At the hearing under subsection (6), the court shall
 25 specify on the record the aggravating and mitigating circumstances
 26 considered by the court and the court's reasons supporting the
 27 sentence imposed. The court may consider evidence presented at
 28 trial together with any evidence presented at the sentencing
 29 hearing.

1 (8) Each victim ~~shall~~**must** be afforded the right under section
2 15 of the William Van Regenmorter crime victim's rights act, 1985
3 PA 87, MCL 780.765, to appear before the court and make an oral
4 impact statement at any sentencing or resentencing of the defendant
5 under this section.

6 (9) If the court decides not to sentence the individual to
7 imprisonment for life without parole eligibility, the court shall
8 sentence the individual to a term of imprisonment for which the
9 maximum term shall be not less than 60 years and the minimum term
10 shall be not less than 25 years or more than 40 years.

11 (10) A defendant who is sentenced under this section ~~shall~~
12 **must** be given credit for time already served but ~~shall~~**must** not
13 receive any good time credits, special good time credits,
14 disciplinary credits, or any other credits that reduce the
15 defendant's minimum or maximum sentence.

16 (11) **This section does not apply to the resentencing of an**
17 **individual under sections 27a to 27h of this chapter.**

18 **Sec. 27a. (1) Notwithstanding any other provision of law, an**
19 **incarcerated individual who has served not less than 10 years of**
20 **the incarcerated individual's sentence or sentences for any**
21 **conviction or for a combination of convictions may petition the**
22 **sentencing court for a reduction of any or all of the incarcerated**
23 **individual's sentences as provided under this section.**

24 (2) A petition for a sentence reduction under this section may
25 be filed after the date on which the tenth year of imprisonment
26 begins for an incarcerated individual sentenced to more than 10
27 years of imprisonment.

28 (3) **Except as otherwise provided in this subsection, if a**
29 **petition for a reduction in sentence under this section has been**

1 denied, the incarcerated individual shall not file a successive
2 petition until not less than 2 years have elapsed after the date
3 the petition was denied. The court may require a waiting period
4 longer than 2 years, but in no case may require a waiting period
5 longer than 5 years after the date the most recent petition was
6 denied.

7 (4) If a petition for a reduction in sentence under this
8 section has been granted and the total sentence to be served was
9 reduced by not less than 25%, the incarcerated individual shall not
10 file a petition for a second sentencing reduction until not less
11 than 5 years have elapsed after the date the petition was granted.

12 (5) Notwithstanding any other provision of law to the
13 contrary, an incarcerated individual who has not yet served 10
14 years of imprisonment is eligible to petition for a reduction in
15 sentence if the prosecuting attorney in the applicable jurisdiction
16 consents to filing of the petition.

17 (6) Except as otherwise provided in this subsection, no
18 offense disqualifies an incarcerated individual from relief under
19 this chapter. An incarcerated individual who was convicted of a
20 mass shooting offense is not entitled to relief under this chapter.
21 For a petition under this section, an offense is considered a mass
22 shooting offense if the sentencing judge or the judge's successor
23 determines, by clear and convincing evidence, that the murders
24 resulted in physical, emotional, or psychological injury to a large
25 number of people who were present at the time of the offense, the
26 murders significantly increased the burden of victim assistance and
27 compensation for the applicable jurisdiction, and the murders arose
28 out of an incident in which the incarcerated individual brought a
29 firearm and ammunition to a location with the intent to commit

1 murder. As used in this subsection, "mass shooting offense" means
2 an offense that resulted in convictions for 3 or more counts of
3 first degree premeditated murder arising out of a single incident.

4 (7) A sentencing court that receives a petition for
5 resentencing under this chapter may reduce a sentence or deny the
6 petition. Notwithstanding any other law or provision, the court
7 shall not increase a sentence as a result of a petition under this
8 section. The court may reduce a mandatory sentence or a sentence
9 imposed as the result of a binding plea or sentencing agreement.

10 Sec. 27b. (1) After an individual has served 9 years of
11 imprisonment, the department of corrections shall, within 30 days
12 of the date beginning the incarcerated individual's ninth year of
13 incarceration, give written notice of the individual's eligibility
14 to file a petition for a reduction of sentence under section 27a of
15 this chapter to all of the following:

16 (a) The incarcerated individual.

17 (b) The sentencing court.

18 (c) The applicable prosecuting attorney.

19 (d) Any public defense authority in the judicial circuit in
20 which the sentence was imposed.

21 (2) The petition must be filed by the incarcerated individual,
22 counsel for the incarcerated individual, the prosecuting attorney,
23 or the next friend of the incarcerated individual, if the
24 incarcerated individual cannot bring the petition and the next
25 friend is acting in the best interests of the incarcerated
26 individual. As used in this subsection, "next friend" includes, but
27 is not limited to, the incarcerated individual's next of kin or a
28 qualified medical professional.

29 (3) The petition must be filed in writing in the judicial

1 circuit in which the sentence was imposed and may include
2 affidavits, declarations, letters, prison records, or other written
3 and electronic material.

4 (4) The petition must include, at a minimum, all of the
5 following:

6 (a) The name of the petitioner.

7 (b) The name of the incarcerated individual.

8 (c) The applicable case number or case numbers.

9 (d) The offense or offenses of conviction.

10 (e) The current sentence or sentences being served for each
11 case number.

12 (f) The date of the offense and sentence.

13 (g) The name of the trial and sentencing judge.

14 (h) The specific offenses for which the petitioner is
15 requesting resentencing.

16 (i) A factual statement explaining how the incarcerated
17 individual meets the eligibility requirements described in section
18 27a of this chapter.

19 (j) If the petition is filed by the next friend of the
20 incarcerated individual, a factual statement explaining the
21 petitioner's relationship to the incarcerated individual, why the
22 incarcerated individual cannot bring the petition on the
23 incarcerated individual's own behalf, and how the next friend is
24 acting in the best interests of the incarcerated individual.

25 (5) Within 30 days of receipt of a petition, the court shall
26 provide the applicable prosecuting attorney and the incarcerated
27 individual with a copy of the petition, including any attached
28 written or electronic material.

29 (6) A petition must be assigned to the judge who imposed the

1 original sentence on the incarcerated individual for a
2 determination. If, at the time of the petition, the original
3 sentencing judge is no longer available, the petition must be
4 assigned to that judge's successor.

5 (7) After the filing of a petition for a sentencing reduction,
6 the court may direct the parties to expand the record by submitting
7 additional materials relating to the petition. A petition may be
8 freely amended at any time before a hearing.

9 (8) The court shall not honor or permit a waiver of the right
10 to petition for a resentencing under section 27a of this chapter.

11 Sec. 27c. (1) On receiving a petition made under section 27a
12 of this chapter, the sentencing court shall determine whether the
13 incarcerated individual qualifies for a sentence reduction by
14 confirming all of the following:

15 (a) The incarcerated individual has served not less than 10
16 years in prison.

17 (b) The incarcerated individual is not time-barred by a prior
18 petition for a sentence reduction.

19 (c) The incarcerated individual is not excluded from
20 petitioning for a sentence reduction under 27a(6) of this chapter.

21 (2) Subject to subsection (3), if the court determines that
22 the incarcerated individual qualifies for a sentence reduction,
23 that court shall set a date for a resentencing hearing.

24 (3) If the incarcerated individual otherwise qualifies for a
25 sentence reduction under the requirements under subsection (1) and
26 is seeking a reduced sentence in connection with a conviction for
27 any of the following offenses, the court may or may not grant a
28 sentence reduction hearing at the court's discretion:

29 (a) A violation of section 520b or 520c of the Michigan penal

1 code, 1931 PA 328, MCL 750.520b and 750.520c, committed against a
2 victim less than 13 years of age.

3 (b) A violation section 81(4) or (5) of the Michigan penal
4 code, 1931 PA 328, MCL 750.81.

5 (c) A violation of section 81a(3) of the Michigan penal code,
6 1931 PA 328, MCL 750.81a.

7 (d) A violation of section 145c(2)(b) of the Michigan penal
8 code, 1931 Pa 328, MCL 750.145c.

9 (e) A violation of section 462c, 462d, or 462e of the Michigan
10 penal code, 1931 PA 328, MCL 750.462c, 750.462d, and 750.462e.

11 (4) If the court determines that the incarcerated individual
12 does not qualify for a sentence reduction under the requirements of
13 subsection (1), the court shall enter an order denying the petition
14 and cause a copy of the order to be provided to the petitioner and,
15 if the incarcerated individual is not the petitioner, the
16 incarcerated individual.

17 (5) Unless the court finds good cause to hold the hearing at a
18 later date or the petitioner requests a delay of the hearing, if
19 the court determines that the facts stated in the petition meet the
20 requirements under subsection (1), the court shall set a
21 resentencing hearing not more than 45 days after the date the
22 petition is filed with the court if 1 or more of the following
23 circumstances apply to the petition:

24 (a) The incarcerated individual has 1 or more medical
25 conditions leading to major limitations in activities of daily
26 living, including, but not limited to, a serious mental illness or
27 an intellectual or developmental disability.

28 (b) The incarcerated individual has 1 or more medical
29 conditions that make the incarcerated individual more likely to

1 contract an illness or disease while incarcerated that could lead
2 to death or cause the incarcerated individual to develop a medical
3 condition that prevents the performance of 1 or more activities of
4 daily living without assistance. Such conditions include, but are
5 not limited to, any condition related to a weakened immune system,
6 including human immunodeficiency virus or acquired immune
7 deficiency syndrome; debilitating health conditions that occur as a
8 result of dementia, Alzheimer's disease, or similar degenerative
9 brain disorders; cardiovascular disease; chronic lung disease or
10 asthma; diabetes; hepatitis C; seizure disorders; the need for
11 life-sustaining care such as feeding tubes or colostomy bags;
12 disabling neurological disorders such as multiple sclerosis or
13 amyotrophic lateral sclerosis; or any condition that requires or is
14 expected to require specialty care or recurrent hospitalizations.

15 (c) The petition is filed by the prosecuting attorney.

16 (6) Unless the court finds good cause to hold the hearing at a
17 later date or the petitioner requests a delay of the hearing, if
18 the court determines that the facts stated in the petition meet the
19 requirements under subsection (1), and if subsection (5) does not
20 apply to a petition but 1 or more of the following circumstances do
21 apply to the petition, the court shall set a resentencing hearing
22 not more than 90 days after the date the petition is filed with the
23 court:

24 (a) The incarcerated individual has served over 20 years of
25 the incarcerated individual's sentence.

26 (b) The incarcerated individual is over 55 years of age.

27 (7) Unless the court finds good cause to hold the hearing at a
28 later date or the petitioner requests a delay of the hearing, if
29 the court determines that the facts stated in the petition meet the

1 requirements under subsection (1) and neither subsection (5) nor
2 (6) apply to a petition, the court shall set a resentencing hearing
3 not more than 180 days after the date the petition is filed with
4 the court.

5 (8) If the court determines that the facts stated in the
6 petition meet the requirements under subsection (1) and the matter
7 is subsequently reassigned to a successor judge, the court shall
8 not reconsider the sufficiency of the petition or decline to set a
9 hearing.

10 (9) When the court sets a resentencing hearing under this
11 section, the court shall provide notice of the hearing to the
12 incarcerated individual, counsel for the incarcerated individual,
13 the department of corrections, the prosecuting attorney, and the
14 next friend of the incarcerated individual, if applicable.

15 (10) In a hearing under this section, the court may allow
16 parties to present any evidence that the court deems relevant to
17 the issue of the propriety of a reduction in sentence. The evidence
18 may include documents, live testimony, tangible objects, or any
19 other class of evidence or information pertinent to sentencing. The
20 court has exclusive discretion to determine the relevance of any
21 proposed evidence. The incarcerated individual must be permitted to
22 testify or to remain silent at the hearing.

23 (11) Unless the incarcerated individual waives the right to be
24 present, the incarcerated individual must be present during a
25 hearing under this section. The requirement under this subsection
26 may be satisfied by the incarcerated individual appearing by video
27 teleconference if the incarcerated individual consents to video
28 appearance.

29 (12) A hearing under this section must be conducted on the

1 record.

2 Sec. 27d. (1) In a hearing conducted under section 27c of this
3 chapter, the sentencing court shall consider all relevant evidence,
4 which includes, but is not limited to, all of the following:

5 (a) The age of the incarcerated individual at the time of the
6 offense and relevant research regarding child, adolescent, and
7 young adult brain development.

8 (b) The age of the incarcerated individual at the time of the
9 sentence modification petition and relevant research regarding the
10 decline in criminal behavior as individuals age.

11 (c) The nature of the offense, including changing societal
12 attitudes regarding the propriety of criminalizing the offense and
13 the appropriate sentence for the offense.

14 (d) The history and characteristics of the incarcerated
15 individual at the time of the petition for a reduction in sentence,
16 including rehabilitation demonstrated by the incarcerated
17 individual, the incarcerated individual's disciplinary record while
18 incarcerated, and the incarcerated individual's efforts to
19 participate in educational, therapeutic, and vocational
20 opportunities while incarcerated.

21 (e) Any oral or written statements provided by the victim's
22 representative.

23 (f) The circumstances of the offense, including the
24 incarcerated individual's role in its commission, whether the
25 incarcerated individual was under the influence of another, and the
26 proportionality of the incarcerated individual's sentence compared
27 to that received by other parties to the offense.

28 (g) The circumstances of the incarcerated individual's
29 incarceration, including the incarcerated individual's conditions

1 of confinement, the impact of the incarcerated individual's
2 incarceration on the community, and any evidence that the
3 incarcerated individual has been subjected to physical, sexual, or
4 psychological abuse while incarcerated.

5 (h) Any evidence concerning the incarcerated individual's
6 current physical or mental health and the incarcerated individual's
7 health at the time of the offense.

8 (i) Any evidence concerning plea offers by the prosecuting
9 attorney.

10 (j) Any evidence that the incarcerated individual was denied
11 effective assistance of counsel at any stage in the case resulting
12 in the original sentence, including ineffective assistance of
13 counsel during plea bargaining.

14 (k) Any evidence that the incarcerated individual was
15 wrongfully convicted.

16 (l) Any evidence that the incarcerated individual was subjected
17 to human trafficking and that the victimization was a contributing
18 factor to the incarcerated individual's criminal behavior.

19 (m) Any evidence that the incarcerated individual was
20 subjected to physical, sexual, or psychological abuse by an
21 intimate partner or a family or household member and that the
22 victimization was a contributing factor to the incarcerated
23 individual's criminal behavior.

24 (n) The incarcerated individual's parole guidelines score.

25 (o) The incarcerated individual's family and home environment
26 at the time of the offense, including any evidence of childhood
27 abuse or neglect, lack of adequate parenting or education, prior
28 exposure to violence, and susceptibility to psychological damage or
29 emotional disturbance.

1 (p) Any evidence about whether the individual might have been
2 charged and convicted of a lesser offense if not for an
3 incompetency associated with youth, intellectual disability, or
4 mental illness. This includes any evidence of the incarcerated
5 individual's inability to engage with police officers or
6 prosecutors or incapacity to assist defense counsel.

7 (q) Any other information the court determines relevant to the
8 decision of the court.

9 (2) At the conclusion of the hearing, if the sentencing court
10 finds that the petitioner has shown by a preponderance of the
11 evidence that it is in the interest of justice to reduce the
12 incarcerated individual's sentence, the court shall resentence the
13 incarcerated individual to an appropriate reduced sentence.

14 (3) The court shall set forth, either on the record or in
15 writing within 30 days of the hearing, the reasons for granting or
16 denying a petition for resentencing.

17 Sec. 27e. (1) In imposing the new term to be served by the
18 incarcerated individual, the court shall credit the incarcerated
19 individual for any jail time credited toward the subject conviction
20 and for any period of incarceration served under the sentence
21 originally imposed.

22 (2) If section 27c(5) of this chapter applies to the petition,
23 there is a rebuttable presumption that the incarcerated
24 individual's sentence must be reduced to time served.

25 (3) If the court finds that the incarcerated individual no
26 longer poses a meaningful risk to the community, there is a
27 rebuttable presumption that the incarcerated individual's sentence
28 must be reduced by not less than 20% or to no longer than 5 years
29 of incarceration from the date of the filing of the petition,

1 whichever results in a shorter period of incarceration.

2 (4) If the prosecuting attorney is the petitioner, the new
3 term of incarceration to be served by the incarcerated individual
4 must not exceed the recommendation of the petitioner. The court may
5 impose a shorter term of incarceration than the term recommended by
6 the petitioner, including by ordering immediate release.

7 (5) In imposing the new term to be served by the incarcerated
8 individual, the court shall impose a sentence of time served,
9 immediate parole, or a term of years. The court shall not impose
10 life with parole.

11 Sec. 27f. (1) Once a hearing date has been set for
12 resentencing under this chapter, the prosecuting attorney shall
13 promptly notify the victim of the offense for which the application
14 was filed and the hearing date. The notice must be by first-class
15 mail to the victim's last known address. The victim or the victim's
16 designee has the right to appear and the right, as otherwise
17 provided by law, to make a statement at the resentencing hearing of
18 the incarcerated individual regarding the impact of the offense
19 conduct on the victim. The prosecuting attorney shall promptly
20 notify the victim of any new sentence imposed under this chapter.

21 (2) If the incarcerated individual's underlying conviction is
22 homicide, the prosecuting attorney shall consult with the victim's
23 family before making any filing in relation to a petition for
24 resentencing.

25 (3) If the incarcerated individual would be otherwise
26 ineligible for relief but for the prosecuting attorney's consent
27 under section 27a(5) of this chapter, the prosecuting attorney
28 shall make reasonable efforts to consult with the victim before
29 consenting to the petition.

1 (4) Resentencing under section 27e of this chapter does not
2 disturb any restitution awarded at the original sentencing.

3 (5) As used in this section, "victim" means that term as
4 defined in sections 2 and 61 of the William Van Regenmorter crime
5 victim's rights act, 1985 PA 87, MCL 780.752 and 780.811.

6 Sec. 27g. (1) An appeal from a resentencing under section 27e
7 of this chapter may be taken by the incarcerated individual,
8 petitioner, or prosecuting authority. An appeal from resentencing
9 under this chapter is in the same manner, either by right or by
10 leave, as a first appeal from an initial sentence at the time of
11 conviction.

12 (2) An appeal from a denial of resentencing under this chapter
13 may be taken by the incarcerated individual or petitioner, if the
14 petitioner is not the incarcerated individual. An appeal from a
15 denial of resentencing under this chapter is in the same manner,
16 either by right or by leave, as a first appeal from an initial
17 sentence at the time of conviction.

18 Sec. 27h. (1) Resentencing under section 27e of this chapter
19 does not abridge or modify any existing remedy an incarcerated
20 individual may have for habeas corpus or other postconviction
21 relief as provided by court rule or law, or any other legal
22 framework.

23 (2) A petition filed under section 27a of this chapter does
24 not impact and is not impacted by any pending petitions for habeas
25 corpus or other postconviction proceedings provided for by court
26 rule or law, nor shall the denial of a petition under section 27a
27 of this chapter preclude such remedies from being granted.