

**Michigan Justice Reinvestment Recommendations
Second Draft**

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CODE OF CRIMINAL PROCEDURE CHAPTERS IX & XVII

1
2 769.35 Jail reimbursement program; operation; criteria.
3 Sec. 35. (1) The department of corrections shall operate a jail reimbursement program
4 that provides funding to counties for housing **FELONY** offenders in county jails who
5 otherwise would have been sentenced to prison, **AND UNDER THE FOLLOWING**
6 **SUPERVISION SANCTION STATUTES:**
7 **(A) SECTION 4 OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175,**
8 **MCL 771.4;**
9 **(B) SUBSECTION (1) OF SECTION 39A AND SUBSECTION (10) OF SECTION**
10 **40A OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.240A.**
11 **(2) The criteria for reimbursement, including but not limited to criteria for determining**
12 **those offenders who otherwise would have been sentenced to prison, and the rate of**
13 **reimbursement shall be established in the annual appropriations acts for the department of**
14 **corrections. THE DEPARTMENT OF CORRECTIONS SHALL SUBMIT TO THE**
15 **LEGISLATURE A PROJECTED BUDGET FOR THE FOLLOWING FISCAL**
16 **YEAR, IN ORDER TO MINIMIZE THE RISK OF UNREIMBURSED COUNTY**
17 **EXPENSES FOR HOUSING FELONY OFFENDERS IN COUNTY JAILS. THE**
18 **PROJECTED BUDGET SHALL ACCOUNT FOR ANTICIPATED SENTENCING**
19 **TO EACH COUNTY JAIL AND ALLOW FOR YEAR-END ADJUSTMENTS**
20 **BASED ON USE OF JAIL FOR SUPERVISION SANCTIONS.**
21
22 769.1a Order of restitution.
23 Sec. 1a.
24 (1) As used in this section:
25 (a) "Crime victim services commission" means that term as described in section 2 of
26 1976 PA 223, MCL 18.352.
27 (b) "Victim" means an individual who suffers direct or threatened physical, financial, or
28 emotional harm as a result of the commission of a felony, misdemeanor, or ordinance
29 violation. For purposes of subsections (2), (3), (6), (8), (9), and (13), victim includes a
30 sole proprietorship, partnership, corporation, association, governmental entity, or any

1 other legal entity that suffers direct physical or financial harm as a result of a felony,
2 misdemeanor, or ordinance violation.

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

8 (3) If a felony, misdemeanor, or ordinance violation results in damage to or loss or
9 destruction of property of a victim of the felony, misdemeanor, or ordinance violation or
10 results in the seizure or impoundment of property of a victim of the felony, misdemeanor,
11 or ordinance violation, the order of restitution may require that the defendant do 1 or
12 more of the following, as applicable:

13 (a) Return the property to the owner of the property or to a person designated by the
14 owner.

15 (b) If return of the property under subdivision (a) is impossible, impractical, or
16 inadequate, pay an amount equal to the greater of subparagraph (i) or (ii), less the value,
17 determined as of the date the property is returned, of that property or any part of the
18 property that is returned:

19 (i) The fair market value of the property on the date of the damage, loss, or destruction.
20 However, if the fair market value of the property cannot be determined or is impractical
21 to ascertain, then the replacement value of the property shall be utilized in lieu of the fair
22 market value.

23 (ii) The fair market value of the property on the date of sentencing. However, if the fair
24 market value of the property cannot be determined or is impractical to ascertain, then the
25 replacement value of the property shall be utilized in lieu of the fair market value.

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

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

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

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

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

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

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

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

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

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

3 (8) The court shall order restitution to the crime victim services commission or to any
4 individuals, partnerships, corporations, associations, governmental entities, or other legal
5 entities that have compensated the victim or the victim's estate for a loss incurred by the
6 victim to the extent of the compensation paid for that loss. The court shall also order
7 restitution for the costs of services provided to persons or entities that have provided
8 services to the victim as a result of the felony, misdemeanor, or ordinance violation.

9 Services that are subject to restitution under this subsection include, but are not limited
10 to, shelter, food, clothing, and transportation. However, an order of restitution shall
11 require that all restitution to a victim or a victim's estate under the order be made before
12 any restitution to any other person or entity under that order is made. The court shall not
13 order restitution to be paid to a victim or victim's estate if the victim or victim's estate has
14 received or is to receive compensation for that loss, and the court shall state on the record
15 with specificity the reasons for its action. If an entity entitled to restitution under this
16 subsection for compensating the victim or the victim's estate cannot or refuses to be
17 reimbursed for that compensation, the restitution paid for that entity shall be deposited by
18 the state treasurer in the crime victim's rights fund created under section 4 of 1989 PA
19 196, MCL 780.904, or its successor fund.

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

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

28 (11) If the defendant is placed on probation or paroled or the court imposes a conditional
29 sentence under section 3 of this chapter, any restitution ordered under this section shall be
30 a condition of that probation, parole, or sentence. The court may revoke probation or
31 impose imprisonment under the conditional sentence and the parole board may revoke
32 parole if the defendant fails to comply with the order and if the defendant has not made a
33 good faith effort to comply with the order. In determining whether to revoke probation or
34 parole or impose imprisonment, the court or parole board shall consider the defendant's
35 employment status, earning ability, and financial resources, the willfulness of the
36 defendant's failure to pay, and any other special circumstances that may have a bearing
37 on the defendant's ability to pay.

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

43 (13) An order of restitution entered under this section remains effective until it is satisfied
44 in full. An order of restitution is a judgment and lien against all property of the defendant
45 for the amount specified in the order of restitution. The lien may be recorded as provided
46 by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a

1 victim's estate, or any other person or entity named in the order to receive the restitution
2 in the same manner as a judgment in a civil action or a lien.

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

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

20 (16) If a defendant who is ordered to pay restitution under this section is remanded to the
21 jurisdiction of the department of corrections, the court shall provide a copy of the order of
22 restitution to the department of corrections when the defendant is ordered remanded to
23 the department's jurisdiction.

24 **(17) THE SUPREME COURT IS REQUESTED TO IMPLEMENT**
25 **MEASUREMENT OF RESTITUTION ASSESSMENT AND COLLECTION AS A**
26 **COURT PERFORMANCE MEASURE FOR DISTRICT AND CIRCUIT**
27 **COURTS, AND TO PERIODICALLY REPORT THE RESULTS TO THE**
28 **GOVERNOR, THE ATTORNEY GENERAL, THE SUPREME COURT, AND**
29 **THE LEGISLATURE.**

30
31 769.11 Order of restitution; deduction; payment to court; priority.

32 Sec. 11.

33 If a prisoner under the jurisdiction of the department of corrections has been ordered to
34 pay any sum of money as described in section 1k and the department of corrections
35 receives an order from the court on a form prescribed by the state court administrative
36 office, the department of corrections shall deduct 50% of the funds received by the
37 prisoner in a month over \$50.00 and promptly forward a payment to the court as provided
38 in the order when the amount exceeds \$100.00, or the entire amount if the prisoner is
39 paroled, is transferred to community programs, or is discharged on the maximum
40 sentence. The department of corrections shall give an order of restitution under section
41 20h of the corrections code of 1953, 1953 PA 232, MCL 791.220h, or the crime victim's
42 rights act, 1985 PA 87, MCL 780.751 to 780.834, priority over an order received under
43 this section. **THE DEPARTMENT SHALL TRACK AND REPORT PRISONER**
44 **AND PAROLE RESTITUTION COLLECTION AS A PERFORMANCE**
45 **MEASURE AND PERIODICALLY REPORT THE RESULTS TO THE**

1 **GOVERNOR, THE ATTORNEY GENERAL, THE SUPREME COURT, AND**
2 **THE LEGISLATURE.**

3
4 769.10 Punishment for subsequent felony; sentence imposed for term of years considered
5 indeterminate sentence; use of conviction to enhance sentence prohibited.

6 Sec. 10. (1) If a person has **A PRIOR CONVICTION** ~~been convicted of a felony or an~~
7 ~~attempt to commit a felony~~, whether the **PRIOR** conviction occurred in this state or
8 would have been for a felony or attempt to commit a felony in this state if obtained in this
9 state, and that person commits a subsequent felony within this state, the person shall be
10 punished upon conviction of the subsequent felony and sentencing under section 13 of
11 this chapter as follows:

12 (a) If the subsequent felony is punishable upon a first conviction by imprisonment
13 for a term less than life, the court, except as otherwise provided in this section or section
14 1 of chapter XI, may place the person on probation or sentence the person to
15 imprisonment for a maximum term that is not more than 1-1/2 times the longest term
16 prescribed for a first conviction of that offense or for a lesser term.

17 (b) If the subsequent felony is punishable upon a first conviction by imprisonment
18 for life, the court, except as otherwise provided in this section or section 1 of chapter XI,
19 may place the person on probation or sentence the person to imprisonment for life or for a
20 lesser term.

21 (c) If the subsequent felony is a major controlled substance offense, the person
22 shall be punished as provided by part 74 of the public health code, 1978 PA 368, MCL
23 333.7401 to 333.7461.

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

29 (3) A **PRIOR** conviction shall not be used to enhance a sentence under this section if that
30 **PRIOR** conviction is used **TO SCORE PRIOR RECORD VARIABLES UNDER**
31 **PART V OF CHAPTER XVII OR** to enhance a sentence under a statute that prohibits
32 use of the **PRIOR** conviction for further enhancement under this section.

33 (4) **AS USED IN THIS SECTION, "PRIOR CONVICTION" MEANS A**
34 **CONVICTION FOR A FELONY OR AN ATTEMPTED FELONY THAT**
35 **OCCURRED BEFORE THE COMMISSION OF THE SUBSEQUENT FELONY.**
36 **ANY FELONY OR ATTEMPTED FELONY ARISING FROM THE SAME**
37 **CRIMINAL INCIDENT OR TRANSACTION, ~~OR JOINED WITH ANOTHER~~**
38 **~~FELONY FOR PROSECUTION UNDER MCR 6.120(A) OR (B), SHALL BE~~**
39 **CONSIDERED A SINGLE FELONY OR ATTEMPTED FELONY FOR**
40 **PURPOSES OF ESTABLISHING THE NUMBER OF PRIOR CONVICTIONS**
41 **UNDER THIS SECTION.**

42
43 769.11 Punishment for subsequent felony following conviction of 2 or more felonies;
44 sentence for term of years considered indeterminate sentence; use of conviction to
45 enhance sentence prohibited.

1 Sec. 11. (1) If a person has ~~been convicted of~~ any combination of 2 or more **PRIOR**
2 **CONVICTIONS felonies or attempts to commit felonies**, whether the **PRIOR**
3 convictions occurred in this state or would have been for felonies or attempts to commit
4 felonies in this state if obtained in this state and that person commits a subsequent felony
5 within this state, the person shall be punished upon conviction of the subsequent felony
6 and sentencing under section 13 of this chapter as follows:

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

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

15 (c) If the subsequent felony is a major controlled substance offense, the person
16 shall be punished as provided by part 74 of the public health code, 1978 PA 368, MCL
17 333.7401 to 333.7461.

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

23 (3) A **PRIOR** conviction shall not be used to enhance a sentence under this section if that
24 **PRIOR** conviction is used **TO SCORE PRIOR RECORD VARIABLES UNDER**
25 **PART V OF CHAPTER XVII OR** to enhance a sentence under a statute that prohibits
26 use of the conviction for further enhancement under this section.

27 **(4) AS USED IN THIS SECTION, "PRIOR CONVICTION" MEANS A**
28 **CONVICTION FOR A FELONY OR AN ATTEMPTED FELONY THAT**
29 **OCCURRED BEFORE THE COMMISSION OF THE SUBSEQUENT FELONY.**
30 **ANY FELONY OR ATTEMPTED FELONY ARISING FROM THE SAME**
31 **CRIMINAL INCIDENT OR TRANSACTION, ~~OR JOINED WITH ANOTHER~~**
32 **~~FELONY FOR PROSECUTION UNDER MCR 6.120(A) OR (B), SHALL BE~~**
33 **CONSIDERED A SINGLE FELONY OR ATTEMPTED FELONY FOR**
34 **PURPOSES OF ESTABLISHING THE NUMBER OF PRIOR CONVICTIONS**
35 **UNDER THIS SECTION.**

36
37 769.12 Punishment for subsequent felony following conviction of 3 or more felonies;
38 sentence for term of years considered indeterminate sentence; use of conviction to
39 enhance sentence prohibited; eligibility for parole; provisions not in derogation of
40 consecutive sentence; definitions.

41 Sec. 12. (1) If a person has been convicted of any combination of 3 or more felonies or
42 attempts to commit felonies, whether the convictions occurred in this state or would have
43 been for felonies or attempts to commit felonies in this state if obtained in this state,
44 **AND EACH FELONY CONVICTION IS FOR AN OFFENSE THAT OCCURRED**
45 **SUBSEQUENT TO THE PREVIOUS CONVICTION HAVING BECOME FINAL,**
46 and that person commits a subsequent felony within this state, the person shall be

1 punished upon conviction of the subsequent felony and sentencing under section 13 of
2 this chapter as follows:

3 (a) If the subsequent felony is a serious crime or a conspiracy to commit a serious
4 crime, and 1 or more of the prior felony convictions are listed prior felonies, the court
5 shall sentence the person to imprisonment for not less than 25 years. Not more than 1
6 conviction arising out of the same transaction shall be considered a prior felony
7 conviction for the purposes of this subsection only.

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

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

16 (d) If the subsequent felony is a major controlled substance offense, the person
17 shall be punished as provided by part 74 of the public health code, 1978 PA 368, MCL
18 333.7401 to 333.7461.

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

24 (3) A conviction shall not be used to enhance a sentence under this section if that
25 conviction is used **TO SCORE PRIOR RECORD VARIABLES UNDER PART V**
26 **OF CHAPTER XVII OR** to enhance a sentence under a statute that prohibits use of the
27 conviction for further enhancement under this section.

28 (4) **AS USED IN THIS SECTION, "PRIOR CONVICTION" MEANS A**
29 **CONVICTION FOR A FELONY OR AN ATTEMPTED FELONY THAT**
30 **OCCURRED BEFORE THE COMMISSION OF THE SUBSEQUENT FELONY.**
31 **ANY FELONY OR ATTEMPTED FELONY ARISING FROM THE SAME**
32 **CRIMINAL INCIDENT OR TRANSACTION, ~~OR JOINED WITH ANOTHER~~**
33 **FELONY FOR PROSECUTION UNDER MCR 6.120(A) OR (B), SHALL BE**
34 **CONSIDERED A SINGLE FELONY OR ATTEMPTED FELONY FOR**
35 **PURPOSES OF ESTABLISHING THE NUMBER OF PRIOR CONVICTIONS**
36 **UNDER THIS SECTION.**

37 (5) An offender sentenced under this section or section 10 or 11 of this chapter for an
38 offense other than a major controlled substance offense is not eligible for parole until
39 expiration of the following:

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

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

1 ~~(6)(5)~~ This section and sections 10 and 11 of this chapter are not in derogation of other
2 provisions of law that permit or direct the imposition of a consecutive sentence for a
3 subsequent felony.

4 ~~(7)(6)~~ As used in this section:

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

6 (i) Section 602a(4) or (5) or 625(4) of the Michigan vehicle code, 1949 PA 300, MCL
7 257.602a and 257.625.

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

10 (iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or (3), 136b(2) or (3), 145n(1)
11 or (2), 157b, 197c, 226, 227, 234a, 234b, 234c, 317, 321, 329, 349, 349a, 350, 397,
12 411h(2)(b), 411i, 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the
13 Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83, 750.84, 750.85,
14 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a, 750.136b, 750.145n, 750.157b,
15 750.197c, 750.226, 750.227, 750.234a, 750.234b, 750.234c, 750.317, 750.321, 750.329,
16 750.349, 750.349a, 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b,
17 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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

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

21 (b) "Prisoner subject to disciplinary time" means that term as defined in section 34 of
22 1893 PA 118, MCL 800.34.

23 (c) "Serious crime" means an offense against a person in violation of section 83, 84, 86,
24 88, 89, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520g(1), 529, or 529a of the
25 Michigan penal code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89,
26 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b, 750.520c, 750.520d,
27 750.520g, 750.529, and 750.529a.

28 29 **769.32 CRIMINAL JUSTICE POLICY COMMISSION**

30 **(1) A CRIMINAL JUSTICE POLICY COMMISSION IS CREATED IN THE**
31 **LEGISLATIVE COUNCIL. THE LEGISLATIVE COUNCIL SHALL PROVIDE**
32 **THE COMMISSION WITH SUITABLE OFFICE SPACE, STAFF, AND**
33 **NECESSARY EQUIPMENT. THE COMMISSION SHALL CONSIST OF THE**
34 **FOLLOWING MEMBERS:**

35 **(A) TWO INDIVIDUALS WHO ARE MEMBERS OF THE SENATE,**
36 **CONSISTING OF THE CHAIRPERSON AND THE MINORITY VICE**
37 **CHAIRPERSON OF THE SENATE STANDING COMMITTEE ON THE**
38 **JUDICIARY OR THE CHAIRPERSON'S OR MINORITY VICE**
39 **CHAIRPERSON'S DESIGNEE, WHO MUST BE MEMBERS OF THAT**
40 **COMMITTEE.**

41 **(B) TWO INDIVIDUALS WHO ARE MEMBERS OF THE HOUSE OF**
42 **REPRESENTATIVES, CONSISTING OF THE CHAIRPERSON AND THE**
43 **MINORITY VICE CHAIRPERSON OF THE COMMITTEE OF THE HOUSE OF**
44 **REPRESENTATIVES CONCERNED WITH SENTENCING OR THAT**
45 **CHAIRPERSON'S OR MINORITY VICE CHAIRPERSON'S DESIGNEE, WHO**
46 **MUST BE MEMBERS OF THAT COMMITTEE.**

1 (C) ONE INDIVIDUAL WHO IS A CIRCUIT JUDGE, APPOINTED BY THE
2 MICHIGAN DISTRICT JUDGES ASSOCIATION.
3 (D) ONE INDIVIDUAL WHO IS A DISTRICT COURT JUDGE, APPOINTED BY
4 THE MICHIGAN DISTRICT JUDGES ASSOCIATION.
5 (E) ONE INDIVIDUAL WHO REPRESENTS THE PROSECUTING
6 ATTORNEYS OF THIS STATE.
7 (F) ONE INDIVIDUAL WHO REPRESENTS CRIMINAL DEFENSE
8 ATTORNEYS.
9 (G) ONE INDIVIDUAL WHO REPRESENTS THE MICHIGAN SHERIFF'S
10 ASSOCIATION.
11 (H) ONE INDIVIDUAL WHO REPRESENTS THE DEPARTMENT OF
12 CORRECTIONS.
13 (I) ONE INDIVIDUAL WHO REPRESENTS ADVOCATES OF ALTERNATIVES
14 TO INCARCERATION.
15 (J) ONE INDIVIDUAL WHO REPRESENTS CRIME VICTIMS.
16 (K) ONE INDIVIDUAL WHO IS A MENTAL HEALTH EXPERT.
17 (L) ONE INDIVIDUAL WHO REPRESENTS THE MICHIGAN ASSOCIATION
18 OF COUNTIES.
19 (M) ONE INDIVIDUAL WHO REPRESENTS COMMUNITY CORRECTIONS
20 AGENCIES.
21 (2) THE GOVERNOR SHALL APPOINT THE COMMISSION MEMBERS
22 DESCRIBED IN SUBSECTION (1) (E) TO (1) (M) WITH THE CONCURRENCE
23 OF THE SENATE. THE GOVERNOR SHALL DESIGNATE 1 MEMBER OF
24 THE COMMISSION AS COMMISSION CHAIRPERSON.
25 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
26 COMMISSION MEMBERS SHALL BE APPOINTED FOR TERMS OF 4
27 YEARS. OF THE MEMBERS FIRST APPOINTED UNDER SUBSECTION (1)(C)
28 TO (M), 4 MEMBERS SHALL SERVE FOR 2 YEARS, 4 MEMBERS SHALL
29 SERVE FOR 3 YEARS, AND 3 MEMBERS SHALL SERVE FOR 4 YEARS. THE
30 MEMBERS OF THE COMMISSION APPOINTED UNDER SUBSECTIONS
31 (1)(A) AND (B) SHALL BE APPOINTED FOR TERMS OF 2 YEARS.
32 (4) A VACANCY ON THE COMMISSION CAUSED BY THE EXPIRATION OF
33 A TERM OR A RESIGNATION OR DEATH SHALL BE FILLED IN THE SAME
34 MANNER AS THE ORIGINAL APPOINTMENT. A MEMBER APPOINTED TO
35 FILL A VACANCY CAUSED BY A RESIGNATION OR DEATH SHALL BE
36 APPOINTED FOR THE BALANCE OF THE UNEXPIRED TERM.
37 (5) A COMMISSION MEMBER SHALL NOT RECEIVE A SALARY FOR
38 BEING A COMMISSION MEMBER, BUT SHALL BE REIMBURSED FOR HIS
39 OR HER REASONABLE, ACTUAL, AND NECESSARY EXPENSES INCURRED
40 IN THE PERFORMANCE OF HIS OR HER DUTIES AS A COMMISSION
41 MEMBER.
42 (6) THE COMMISSION MAY ESTABLISH SUBCOMMITTEES THAT MAY
43 CONSIST OF INDIVIDUALS WHO ARE NOT MEMBERS OF THE
44 COMMISSION, INCLUDING, BUT NOT LIMITED TO, EXPERTS IN
45 MATTERS OF INTEREST TO THE COMMISSION.
46 (7) THE COMMISSION'S BUSINESS SHALL BE CONDUCTED AT PUBLIC

1 MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT,
2 1976 PA 267, MCL 15.261 TO 15.275.

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

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

11 (10) THIS SECTION TAKES IMMEDIATE EFFECT. THE COMMISSION
12 SHALL BE APPOINTED AND HOLD AN INITIAL MEETING BY JUNE 30,
13 2015.

14
15 **769.33 DUTIES OF THE COMMISSION AND OTHER AGENCIES; PURPOSES**
16 **OF SENTENCING**

17 **SEC. 33. (1) THE COMMISSION SHALL DO ALL OF THE FOLLOWING:**

18 (a) COLLECT, PREPARE, ANALYZE, AND DISSEMINATE INFORMATION
19 REGARDING STATE AND LOCAL SENTENCING AND RELEASE POLICIES
20 AND PRACTICES FOR FELONIES AND THE USE OF PRISONS AND JAILS.

21 (b) COLLECT AND ANALYZE INFORMATION CONCERNING HOW
22 MISDEMEANOR SENTENCES AND THE DETENTION OF DEFENDANTS
23 PENDING TRIAL AFFECT LOCAL JAILS.

24 (c) CONDUCT ONGOING RESEARCH REGARDING THE EFFECTIVENESS
25 OF THE SENTENCING GUIDELINES IN ACHIEVING THE PURPOSES SET
26 FORTH IN SECTION (F).

27 (d) IN COOPERATION WITH THE DEPARTMENT OF CORRECTIONS,
28 COLLECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS
29 REGARDING THE POPULATIONS AND CAPACITIES OF STATE AND
30 LOCAL CORRECTIONAL FACILITIES, THE IMPACT OF THE SENTENCING
31 GUIDELINES AND OTHER LAWS, RULES AND POLICIES ON THOSE
32 POPULATIONS AND CAPACITIES, AND THE EFFECTIVENESS OF
33 EFFORTS TO REDUCE RECIDIVISM. MEASUREMENT OF RECIDIVISM
34 SHALL INCLUDE, AS APPLICABLE, ANALYSIS:

35 (i) OF REARREST RATES, RE-SENTENCE RATES, AND RETURN TO
36 PRISON RATES;

37 (ii) AT ONE, TWO AND THREE YEAR INTERVALS AFTER EXITING
38 PRISON OR JAIL AND AFTER ENTERING PROBATION;

39 (iii) AT THE STATEWIDE LEVEL, AND BY LOCALITY AND
40 DISCRETE PROGRAM, TO THE EXTENT PRACTICABLE.

41 (e) IN COOPERATION WITH THE STATE COURT ADMINISTRATOR,
42 COLLECT, ANALYZE, AND COMPILE DATA REGARDING THE EFFECT OF
43 SENTENCING GUIDELINES ON THE CASELOAD, DOCKET FLOW, AND
44 CASE BACKLOG OF THE TRIAL AND APPELLATE COURTS OF THIS
45 STATE.

46 (f) DEVELOP MODIFICATIONS TO THE SENTENCING GUIDELINES OR

1 ANY LAW, RULE, OR POLICY THAT AFFECTS SENTENCING OR THE USE
2 AND LENGTH OF INCARCERATION OR SUPERVISION.

3 (2) IN DEVELOPING MODIFICATIONS TO THE SENTENCING GUIDELINES
4 OR OTHER LAW, RULE OR POLICY, THE COMMISSION SHALL SUBMIT
5 TO THE LEGISLATURE A PRISON, SUPERVISION AND JAIL IMPACT
6 REPORT. THE REPORT SHALL INCLUDE THE PROJECTED IMPACT ON
7 SUPERVISION POPULATIONS AND TOTAL CAPACITY OF STATE AND
8 LOCAL CORRECTIONAL FACILITIES.

9 (3) RECOMMENDED MODIFICATIONS TO THE SENTENCING GUIDELINES
10 OR ANY LAW, RULE, OR POLICY THAT AFFECTS SENTENCING OR THE
11 USE AND LENGTH OF INCARCERATION OR SUPERVISION SHALL
12 REFLECT THE FOLLOWING POLICIES:

13 (a) TO RENDER SENTENCES IN ALL CASES WITHIN A RANGE OF
14 SEVERITY PROPORTIONATE TO THE GRAVITY OF OFFENSES, THE
15 HARMS DONE TO CRIME VICTIMS, AND THE BLAMEWORTHINESS OF
16 OFFENDERS;

17 (b) WHEN REASONABLY FEASIBLE, TO ACHIEVE OFFENDER
18 REHABILITATION, GENERAL DETERRENCE, INCAPACITATION OF
19 DANGEROUS OFFENDERS, RESTORATION OF CRIME VICTIMS AND
20 COMMUNITIES, AND REINTEGRATION OF OFFENDERS INTO THE LAW-
21 ABIDING COMMUNITY AND

22 (c) TO RENDER SENTENCES NO MORE SEVERE THAN NECESSARY TO
23 ACHIEVE THE APPLICABLE PURPOSES IN SUBSECTION (1)(F);

24 (d) TO PRESERVE JUDICIAL DISCRETION TO INDIVIDUALIZE
25 SENTENCES WITHIN A FRAMEWORK OF LAW;

26 (e) TO PRODUCE SENTENCES THAT ARE UNIFORM IN THEIR REASONED
27 PURSUIT OF THE PURPOSES IN SUBSECTION (1);

28 (f) TO ELIMINATE INEQUITIES IN SENTENCING AND LENGTH OF
29 INCARCERATION ACROSS POPULATION GROUPS;

30 (g) TO ENCOURAGE THE USE OF INTERMEDIATE SANCTIONS;

31 (h) TO ENSURE THAT ADEQUATE RESOURCES ARE AVAILABLE FOR
32 CARRYING OUT SENTENCES IMPOSED AND THAT RATIONAL

33 PRIORITIES ARE ESTABLISHED FOR THE USE OF THOSE RESOURCES;

34 (i) TO ENSURE THAT ALL CRIMINAL SANCTIONS ARE ADMINISTERED IN
35 A HUMANE FASHION AND THAT INCARCERATED OFFENDERS ARE
36 PROVIDED REASONABLE BENEFITS OF SUBSISTENCE, PERSONAL
37 SAFETY, MEDICAL AND MENTAL HEALTH CARE, AND OPPORTUNITIES
38 TO REHABILITATE THEMSELVES;

39 (j) TO PROMOTE RESEARCH ON SENTENCING POLICY AND PRACTICES,
40 INCLUDING ASSESSMENTS OF THE EFFECTIVENESS OF CRIMINAL
41 SANCTIONS AS MEASURED AGAINST THEIR PURPOSES; AND

42 (k) TO INCREASE THE TRANSPARENCY OF THE SENTENCING AND
43 CORRECTIONS SYSTEM, ITS ACCOUNTABILITY TO THE PUBLIC, AND
44 THE LEGITIMACY OF ITS OPERATIONS.

45 (4) THE COMMISSION SHALL SUBMIT ANY RECOMMENDED
46 MODIFICATIONS TO THE SENTENCING GUIDELINES OR TO OTHER

1 **LAWS, RULES OR POLICIES TO THE SENATE MAJORITY LEADER, THE**
2 **SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND THE GOVERNOR.**
3 **(5) BY DECEMBER 1 OF 2015, THE COMMISSION SHALL REPORT ON THE**
4 **IMPLEMENTATION OF POLICIES ADOPTED IN 2014. THE REPORT SHALL**
5 **INCLUDE THE FOLLOWING TOPICS:**

6 **(a) EDUCATION OF PRACTITIONERS ON CHANGES IN POLICY.**

7 **(b) LENGTH OF PROBATION SUPERVISION TERMS IMPOSED.**

8 **(c) PROPORTION OF PROBATIONERS SUBJECT TO SWIFT AND SURE**
9 **SANCTIONS PROBATION, AND NUMBER OF NONCOMPLIANCE**

10 **SANCTIONS AND RISK SANCTIONS IMPOSED ON THAT POPULATION.**

11 **(d) NONCOMPLIANCE AND RISK SANCTIONS IMPOSED ON THE PAROLE**
12 **SUPERVISION POPULATION.**

13 **(e) PAROLE GUIDELINE DECISIONS.**

14 **(6) THIS SECTION TAKES IMMEDIATE EFFECT.**

15
16
17 769.34 Sentencing guidelines; duties of court.

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

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

27 (a) If a statute mandates a minimum sentence for an individual sentenced to the
28 jurisdiction of the department of corrections, the court shall impose sentence in
29 accordance with that statute. Imposing a mandatory minimum sentence is not a departure
30 under this section. If a statute mandates a minimum sentence for an individual sentenced
31 to the jurisdiction of the department of corrections and the statute authorizes the
32 sentencing judge to depart from that minimum sentence, imposing a sentence that
33 exceeds the recommended sentence range but is less than the mandatory minimum
34 sentence is not a departure under this section. If the Michigan vehicle code, 1949 PA 300,
35 MCL 257.1 to 257.923, mandates a minimum sentence for an individual sentenced to the
36 jurisdiction of the department of corrections and the Michigan vehicle code, 1949 PA
37 300, MCL 257.1 to 257.923, authorizes the sentencing judge to impose a sentence that is
38 less than that minimum sentence, imposing a sentence that exceeds the recommended
39 sentence range but is less than the mandatory minimum sentence is not a departure under
40 this section.

41 (b) The court shall not impose a minimum sentence, including a departure, that exceeds
42 2/3 of the statutory maximum sentence.

43 (3) A court may depart from the appropriate sentence range established under the
44 sentencing guidelines set forth in chapter XVII if the court has a substantial and
45 compelling reason for that departure and states on the record the reasons for departure.

46 All of the following apply to a departure:

- 1 (a) The court shall not use an individual's gender, race, ethnicity, alienage, national
2 origin, legal occupation, lack of employment, representation by appointed legal counsel,
3 representation by retained legal counsel, appearance in propria persona, or religion to
4 depart from the appropriate sentence range.
- 5 (b) The court shall not base a departure on an offense characteristic or offender
6 characteristic already taken into account in determining the appropriate sentence range
7 unless the court finds from the facts contained in the court record, including the
8 presentence investigation report, that the characteristic has been given inadequate or
9 disproportionate weight.
- 10 (4) Intermediate sanctions shall be imposed under this chapter as follows:
- 11 (a) If the upper limit of the recommended minimum sentence range for a defendant
12 determined under the sentencing guidelines set forth in chapter XVII is 18 months or less,
13 the court shall impose an intermediate sanction unless the court states on the record a
14 substantial and compelling reason to sentence the individual to the jurisdiction of the
15 department of corrections. An intermediate sanction may include a jail term that does not
16 exceed the upper limit of the recommended minimum sentence range or 12 months,
17 whichever is less, **AND A SUBSEQUENT TERM OF PROBATION SUPERVISION**
18 **EQUAL TO THE JAIL TERM.**
- 19 (b) If an attempt to commit a felony designated in offense class H in part 2 of chapter
20 XVII is punishable by imprisonment for more than 1 year, the court shall impose an
21 intermediate sanction upon conviction of that offense absent a departure.
- 22 (c) If the upper limit of the recommended minimum sentence exceeds 18 months and the
23 lower limit of the recommended minimum sentence is 12 months or less, the court shall
24 sentence the offender as follows absent a departure:
- 25 (i) To imprisonment with a minimum term within that range.
- 26 (ii) To an intermediate sanction that may include a term of imprisonment of not more
27 than 12 months **AND A SUBSEQUENT TERM OF PROBATION SUPERVISION**
28 **EQUAL TO THE TERM OF IMPRISONMENT.**
- 29 (5) If a crime has a mandatory determinative penalty or a mandatory penalty of life
30 imprisonment, the court shall impose that penalty. This section does not apply to
31 sentencing for that crime.
- 32 (6) As part of the sentence, the court may also order the defendant to pay any
33 combination of a fine, **ALLOWABLE** costs, or applicable assessments. The court shall
34 order payment of restitution as provided by law.
- 35 (7) If the trial court imposes on a defendant a minimum sentence that is longer or more
36 severe than the appropriate sentence range, as part of the court's advice of the defendant's
37 rights concerning appeal, the court shall advise the defendant orally and in writing that he
38 or she may appeal the sentence as provided by law on grounds that it is longer or more
39 severe than the appropriate sentence range.
- 40 (8) All of the following shall be part of the record filed for an appeal of a sentence under
41 this section:
- 42 (a) An entire record of the sentencing proceedings.
- 43 (b) The presentence investigation report. Any portion of the presentence investigation
44 report exempt from disclosure by law shall not be a public record.
- 45 (c) Any other reports or documents the sentencing court used in imposing sentence.
- 46 (9) An appeal of a sentence under this section does not stay execution of the sentence.

1 (10) If a minimum sentence is within the appropriate guidelines sentence range, the court
2 of appeals shall affirm that sentence and shall not remand for resentencing absent an error
3 in scoring the sentencing guidelines or inaccurate information relied upon in determining
4 the defendant's sentence. A party shall not raise on appeal an issue challenging the
5 scoring of the sentencing guidelines or challenging the accuracy of information relied
6 upon in determining a sentence that is within the appropriate guidelines sentence range
7 unless the party has raised the issue at sentencing, in a proper motion for resentencing, or
8 in a proper motion to remand filed in the court of appeals.

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

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

15
16 777.21 Minimum sentence range; determination.

17 Sec. 21.

18 (1) Except as otherwise provided in this section, for an offense enumerated in part 2 of
19 this chapter, determine the recommended minimum sentence range as follows:

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

24 (b) Score all prior record variables for the offender as provided in part 5 of this chapter,
25 **EXCLUDING OFFENSES THAT WILL BE USED AS PRIOR CONVICTIONS**
26 **UNDER SECTION 769.10, 760.11, OR 769.12, CODE OF CRIMINAL**
27 **PROCEDURE, OR SECTION 333.7413, CONTROLLED SUBSTANCES ACT.**

28 Total those points to determine the offender's prior record variable level.

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

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

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

41 (a) If the offender is being sentenced for a second felony, 25%.

42 (b) If the offender is being sentenced for a third felony, 50%.

43 (c) If the offender is being sentenced for a fourth or subsequent felony, 100%.

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

1 (a) Determine the offense variable level by scoring the offense variables for the
2 underlying offense and any additional offense variables for the offense category indicated
3 in section 18 of this chapter.

4 (b) Determine the offense class based on the underlying offense. If there are multiple
5 underlying felony offenses, the offense class is the same as that of the underlying felony
6 offense with the highest crime class. If there are multiple underlying offenses but only 1
7 is a felony, the offense class is the same as that of the underlying felony offense. If no
8 underlying offense is a felony, the offense class is G.

9 (5) If the offender is being sentenced for an attempted felony described in section 19 of
10 this chapter, determine the offense variable level and prior record variable level based on
11 the underlying attempted offense.
12

13 CODE OF CRIMINAL PROCEDURE CHAPTERS XI AND XIA

14
15 771.2 Probation period; order fixing period and conditions of probation; registration
16 pursuant to sex offenders registration act; reduction in probation period; subsection (1)
17 inapplicable to certain juveniles.

18 Sec. 2.

19 (1) Except as provided in section 2a of this chapter, if the defendant is convicted for an
20 offense that is not a felony, the probation period shall not exceed 2 years. Except as
21 provided in section 2a of this chapter, if the defendant is convicted of a felony, the
22 probation period shall not exceed 5 years **WITH A PRIOR RECORD VARIABLE**
23 **SCORE OF 25 OR MORE, OR 2 YEARS WITH A PRIOR RECORD VARIABLE**
24 **SCORE OF LESS THAN 25, UNLESS, IN LIGHT OF THE VICTIM**
25 **RESTITUTION ORDERED, THE COURT DETERMINES THAT A PERIOD UP**
26 **TO 5 YEARS IS NECESSARY. IF THE DEFENDANT IS CONVICTED FOR AN**
27 **OFFENSE THAT IS A FELONY, AND THE PROSECUTING ATTORNEY DOES**
28 **NOT OBJECT, THE COURT MAY ALSO PLACE THE DEFENDANT ON**
29 **SWIFT AND SURE PROBATION SUPERVISION UNDER CHAPTER XIA IF**
30 **ONE OR MORE OF THE FOLLOWING CONDITIONS IS MET:**

31 (A) UPON RECOMMENDATION BY THE PROBATION OFFICER;

32 (B) THE DEFENDANT HAS A PRIOR RECORD VARIABLE SCORE OF
33 25 OR HIGHER; OR

34 (C) IN RESPONSE TO A PREVIOUS VIOLATION OF SUPERVISION.

35 (2) The court shall by order, to be filed or entered in the cause as the court may direct by
36 general rule or in each case, fix and determine the period and conditions of probation.
37 The order is part of the record in the cause. The court may amend the order in form or
38 substance at any time. **PROBATIONERS SHALL BE REPRESENTED BY**
39 **COUNSEL WHILE THEY ARE ADVISED OF THE CONSEQUENCES FOR**
40 **VIOLATIONS OF SUPERVISION AND ADVISED THAT THEY WILL BE**
41 **ASKED TO WAIVE THEIR RIGHT TO A HEARING IF A VIOLATION IS**
42 **ALLEGED.**

43 (3) A defendant who was placed on probation under section 1(4) of this chapter as it
44 existed before March 1, 2003 for an offense committed before March 1, 2003 is subject
45 to the conditions of probation specified in section 3 of this chapter, including payment of

1 a probation supervision fee as prescribed in section 3c of this chapter, and to revocation
2 for violation of these conditions, but the probation period shall not be reduced other than
3 by a revocation that results in imprisonment or as otherwise provided by law.

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

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

11
12
13 771.4 Legislative intent; **VIOLATION SANCTIONS AND** revocation of probation;
14 procedure; sentence; section inapplicable to certain juveniles.

15 Sec. 4. (1) It is the intent of the legislature that **THE PURPOSES OF PROBATION**
16 **ARE TO HOLD OFFENDERS ACCOUNTABLE FOR MAKING RESTITUTION, TO**
17 **ENSURE COMPLIANCE WITH THE COURT'S JUDGMENT, TO**
18 **EFFECTIVELY REHABILITATE OFFENDERS BY DIRECTING THEM TO**

19 **SPECIALIZED TREATMENT OR EDUCATION PROGRAMS, AND TO**
20 **PROTECT THE PUBLIC SAFETY** ~~granting of probation is a matter of grace~~
21 ~~conferring no vested right to its continuance.~~ If during the probation period the
22 sentencing court **IS NOTIFIED** ~~determines~~ that the probationer **HAS COMMITTED** ~~is~~
23 ~~likely again to engage in an offensive or criminal course of conduct or that the public~~
24 ~~good requires revocation of probation, the court may revoke probation. All probation~~
25 ~~orders are revocable in any manner the court that imposed probation considers applicable~~

26 ~~either for a violation or attempted violation of a probation condition, THE COURT~~
27 **MAY HOLD A HEARING ON SANCTION OR REVOCATION** ~~or for any other~~
28 ~~type of antisocial conduct or action on the probationer's part for which the court~~
29 ~~determines that revocation is proper in the public interest.~~ Hearings on the **SANCTION**
30 **OR** revocation shall be summary and informal and not subject to the rules of evidence or
31 of pleadings applicable in criminal trials. In its probation order or by general rule, the
32 court may provide for the apprehension, detention, and confinement of a probationer
33 accused of violating a probation condition or conduct inconsistent with the public good.

34 The method of hearing and presentation of charges are within the court's discretion,
35 except that the probationer is entitled to a written copy of the charges constituting the
36 claim that he or she violated probation and to a probation **SANCTION OR** revocation
37 hearing. The court may investigate and enter a disposition of the probationer as the court
38 determines best serves the public interest, **PROVIDED THAT:**

39 **(A) IF THE COURT DETERMINES THAT THE PROBATIONER HAS**
40 **COMMITTED OR ATTEMPTED A NONCOMPLIANCE VIOLATION, THE**
41 **COURT MAY SANCTION THE PROBATIONER WITH ONE OR MORE**
42 **NONCONFINEMENT RESPONSES.**

43 **(B) IF THE COURT DETERMINES THAT THE PROBATIONER HAS**
44 **COMMITTED OR ATTEMPTED A SECOND THROUGH FIFTH**
45 **NONCOMPLIANCE VIOLATION, THE COURT MAY SANCTION THE**

1 **PROBATIONER BY A PERIOD OF UP TO THREE DAYS CONFINEMENT IN**
2 **THE COUNTY JAIL.**

3 **(C) IF THE COURT DETERMINES THAT THE PROBATIONER HAS**
4 **COMMITTED OR ATTEMPTED A RISK VIOLATION THE COURT MAY**
5 **ORDER THE PROBATIONER TO SERVE UP TO 30 DAYS IN THE COUNTY**
6 **JAIL.**

7 **(D) IF THE COURT DETERMINES THAT THE PROBATIONER HAS**
8 **COMMITTED A THIRD RISK VIOLATION THE COURT MAY REVOKE THE**
9 **PROBATIONER AND** ~~If the probation order is revoked the court may sentence the~~
10 ~~probationer in the same manner and to the same penalty as the court might have done if~~
11 ~~the probation order had never been made.~~ **TIME SPENT IN CONFINEMENT UNDER**
12 **THIS SECTION SHALL BE CREDITED TOWARD THE SENTENCE IMPOSED**
13 **AND IF THE PROBATIONER IS ON PROBATION FOR MULTIPLE**
14 **JUDGMENTS THE CREDIT SHALL APPLY TO EACH SENTENCE.**

15 **(2) FOR PURPOSES OF THIS SECTION:**

16 **(A) "RISK VIOLATION" MEANS:**

- 17 **(i) CONTACT WITH A SPECIFICALLY PROHIBITED PERSON, OR**
18 **PROXIMITY TO A SPECIFICALLY PROHIBITED BUSINESS OR**
19 **LOCATION;**
- 20 **(ii) ARREST FOR DOMESTIC VIOLENCE OR OTHER THREATENING,**
21 **STALKING OR ASSAULTIVE BEHAVIOR;**
- 22 **(iii) ARREST FOR AN UNAJUDICATED NEW FELONY;**
- 23 **(iv) ABSCONDING SUPERVISION; OR**
- 24 **(v) THE PROBATIONER'S 6TH OR SUBSEQUENT NONCOMPLIANCE**
25 **VIOLATION.**

26 **(B) "NONCOMPLIANCE VIOLATION" MEANS FAILURE TO REPORT OR**
27 **ANY OTHER VIOLATION OF A CONDITION OF SUPERVISION THAT IS**
28 **NOT A RISK VIOLATION.**

29 **(C) "NONCONFINEMENT RESPONSE" MEANS ANY VIOLATION RESPONSE**
30 **THAT DOES NOT RESULT IN IMPRISONMENT IN THE CUSTODY OF THE**
31 **DEPARTMENT OR THE COUNTY JAIL, INCLUDING:**

- 32 **(i) EXTENSION OF THE PERIOD OF SUPERVISION WITHIN THE**
33 **PERIOD PROVIDED BY LAW;**
- 34 **(ii) ADDITIONAL REPORTING AND COMPLIANCE REQUIREMENTS;**
- 35 **(iii) TESTING FOR THE USE OF DRUGS AND ALCOHOL;**
- 36 **(iv) COUNSELING OR TREATMENT FOR BEHAVIORAL HEALTH**
37 **PROBLEMS, INCLUDING FOR SUBSTANCE ABUSE; OR**
- 38 **(v) REFERRAL TO SWIFT AND SURE SANCTIONS PROBATION.**

39 **(D) A "FAILURE TO REPORT" VIOLATION MEANS THE PROBATIONER**
40 **HAS TURNED HIM OR HERSELF IN WITHIN 7 DAYS AFTER A WARRANT**
41 **HAS BEEN ISSUED.**

42 **(E) AN "ABSCONDING SUPERVISION" VIOLATION MEANS THE**
43 **PROBATIONER IS APPREHENDED BY LAW ENFORCEMENT OR**
44 **PROBATION OR IS ARRESTED FOR A NEW CRIME OUTSIDE OF**
45 **MICHIGAN.**

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

4
5 771.14 Presentence investigation report; contents; information related to victim
6 prohibited from inclusion; information exempted from disclosure; amendment or
7 alteration; review of report; challenge; findings; copies.

8 Sec. 14. (1) Before the court sentences a person charged with a felony or a person who is
9 a licensee or registrant under article 15 of the public health code, 1978 PA 368, MCL
10 333.16101 to 333.18838, as described in section 1(14) of chapter IX, and, if directed by
11 the court, in any other case in which a person is charged with a misdemeanor within the
12 jurisdiction of the court, the probation officer shall inquire into the antecedents, character,
13 and circumstances of the person, and shall report in writing to the court.

14 (2) A presentence investigation report prepared under subsection (1) shall not include any
15 address or telephone number for the home, workplace, school, or place of worship of any
16 victim or witness, or a family member of any victim or witness, unless an address is used
17 to identify the place of the crime or to impose conditions of release from custody that are
18 necessary for the protection of a named individual. Upon request, any other address or
19 telephone number that would reveal the location of a victim or witness or a family
20 member of a victim or witness shall be exempted from disclosure unless an address is
21 used to identify the place of the crime or to impose conditions of release from custody
22 that are necessary for the protection of a named individual. A presentence investigation
23 report prepared under subsection (1) shall include all of the following:

24 (a) An evaluation of and a prognosis for the person's adjustment in the community based
25 on factual information contained in the report.

26 (b) If requested by a victim, any written impact statement submitted by the victim under
27 the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to
28 780.834.

29 (c) A specific written recommendation **FOR A TERM AND APPROPRIATE**
30 **CONDITIONS OF SUPERVISION FOLLOWING JAIL CONFINEMENT, IF**
31 **APPLICABLE, AND THE APPROPRIATE CONDITIONS OF PROBATION**
32 **SUPERVISION, SHOULD PROBATION BE GRANTED** ~~for disposition based on~~
33 ~~the evaluation and other information as prescribed by the assistant director of the~~
34 ~~department of corrections in charge of probation.~~

35 (d) A statement prepared by the prosecuting attorney as to whether consecutive
36 sentencing is required or authorized by law.

37 (e) For a person to be sentenced under the sentencing guidelines set forth in chapter
38 XVII, all of the following:

39 (i) For each conviction for which a consecutive sentence is authorized or required, the
40 sentence grid in part 6 of chapter XVII that contains the recommended minimum
41 sentence range.

42 (ii) Unless otherwise provided in subparagraph (i), for each crime having the highest
43 crime class, the sentence grid in part 6 of chapter XVII that contains the recommended
44 minimum sentence range.

45 (iii) Unless otherwise provided in subparagraph (i), the computation that determines the
46 recommended minimum sentence range for the crime having the highest crime class.

1 (iv) A specific statement as to the applicability of intermediate sanctions, as defined in
2 section 31 of chapter IX.

3 ~~(v) The recommended sentence.~~

4 (f) If a person is to be sentenced for a felony or for a misdemeanor involving the illegal
5 delivery, possession, or use of alcohol or a controlled substance, a statement that the
6 person is licensed or registered under article 15 of the public health code, 1978 PA 368,
7 MCL 333.16101 to 333.18838, if applicable.

8 (g) Diagnostic opinions that are available and not exempted from disclosure under
9 subsection (3).

10 (h) A statement as to whether the person has provided the identification documents
11 referenced in subsection (9)(b).

12 (3) The court may exempt from disclosure in the presentence investigation report
13 information or a diagnostic opinion that might seriously disrupt a program of
14 rehabilitation or sources of information obtained on a promise of confidentiality. If a part
15 of the presentence investigation report is not disclosed, the court shall state on the record
16 the reasons for its action and inform the defendant and his or her attorney that
17 information has not been disclosed. The action of the court in exempting information
18 from disclosure is subject to appellate review. Information or a diagnostic opinion
19 exempted from disclosure under this subsection shall be specifically noted in the
20 presentence investigation report.

21 (4) If a prepared presentence investigation report is amended or altered before sentencing
22 by the supervisor of the probation officer who prepared the report or by any other person
23 who has the authority to amend or alter a presentence investigation report, the probation
24 officer may request that the court strike his or her name from the report and the court
25 shall comply with that request.

26 (5) The court shall permit the prosecutor, the defendant's attorney, and the defendant to
27 review the presentence investigation report before sentencing.

28 (6) At the time of sentencing, either party may challenge, on the record, the accuracy or
29 relevancy of any information contained in the presentence investigation report. The court
30 may order an adjournment to permit the parties to prepare a challenge or a response to a
31 challenge. If the court finds on the record that the challenged information is inaccurate or
32 irrelevant, that finding shall be made a part of the record, the presentence investigation
33 report shall be amended, and the inaccurate or irrelevant information shall be stricken
34 accordingly before the report is transmitted to the department of corrections.

35 (7) A copy of the report described under subsection (5) and the amended report described
36 under subsection (6) shall be provided to the prosecutor and the defendant's attorney or
37 the defendant if he or she is not represented by an attorney. The copy of the report
38 described under subsection (5) shall be provided not less than 2 business days before
39 sentencing unless that period is waived by the defendant. The prosecutor and the
40 defendant's attorney or the defendant if he or she is not represented by an attorney have
41 the right to retain a copy of the report and the amended report provided under this
42 subsection.

43 (8) On appeal, the defendant's attorney, or the defendant if proceeding pro se, shall be
44 provided with a copy of the presentence investigation report and any attachments to the
45 report with the exception of any information exempted from disclosure by the court under
46 subsection (3).

1 (9) If the person is committed to a state correctional facility, both of the following apply:
2 (a) A copy or amended copy of the presentence investigation report and, if a psychiatric
3 examination of the person has been made for the court, a copy of the psychiatric report
4 shall accompany the commitment papers. If the person is sentenced by fine or
5 imprisonment or placed on probation or other disposition of his or her case is made by the
6 court, a copy or amended copy of the presentence investigation report, including a
7 psychiatric examination report made in the case, shall be filed with the department of
8 corrections.

9 (b) The person shall be provided notification that provides an explanation of the
10 importance of obtaining an operator's license or state personal identification card upon
11 release from incarceration and lists the personal identification documents described in
12 section 34c of the corrections code of 1953, 1953 PA 232, MCL 791.234c, necessary for
13 obtaining an operator's license or state personal identification card. The notification also
14 shall contain a request that the person obtain and provide those documents to the
15 department of corrections. The notification also shall state that the department of
16 corrections will retain in the file maintained for the person any identification documents
17 provided by the person until he or she is released from secure confinement. Any
18 identification documents previously provided by the person shall accompany the
19 commitment papers.

20 (10) A prisoner under the jurisdiction of the department of corrections shall be provided
21 with a copy of any presentence investigation report in the department's possession about
22 that prisoner, except for information exempted from disclosure under subsection (3), not
23 less than 30 days before a parole interview is conducted under section 35 of the
24 corrections code of 1953, 1953 PA 232, MCL 791.235.

25 26 CHAPTER XIA SWIFT AND SURE SANCTIONS PROGRAM

27
28 771A.3 State swift and sure sanctions program; ~~intent to create~~; objectives

29 **Sec. 3.** It is the intent of the legislature ~~to create a voluntary state program~~ to fund swift
30 and sure probation supervision ~~at the local level~~ based upon the immediate detection of
31 probation violations and ~~prompt~~ the **PROMPT** imposition of sanctions and remedies to
32 address those violations. In furtherance of this intent, the state swift and sure sanctions
33 program **SHALL BE IMPLEMENTED AS FOLLOWS** ~~is created with the following~~
34 ~~objectives:~~

35 (a) Probationers are to be sentenced with prescribed terms of probation meeting the
36 objectives of this chapter. Probationers are to be aware of their probation terms as well as
37 the consequences for violating the terms of their probation. **PROBATIONERS SHALL**
38 **BE REPRESENTED BY COUNSEL WHILE THEY ARE ADVISED OF THE**
39 **CONSEQUENCES FOR VIOLATIONS OF SUPERVISION AND ADVISED**
40 **THAT THEY WILL BE ASKED TO WAIVE THEIR RIGHT TO A HEARING IF**
41 **A VIOLATION IS ALLEGED.**

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

44 (c) Probationers are to be arrested as soon as a violation has been detected and are to be
45 promptly taken before a judge for a hearing on the violation **UNLESS A HEARING IS**

1 **WAIVED AFTER THE PROBATIONER IS PRESENTED WITH A VIOLATION**
2 **REPORT.**

3 (d) **THE PROBATIONER MAY BE CONFINED FOR THE PERIOD**
4 **DESIGNATED ON THE VIOLATION REPORT, UP TO THREE DAYS, UPON**
5 **THE EXECUTION OF A WAIVER OF RIGHTS SIGNED BY THE**
6 **PROBATIONER AND BY TWO OFFICERS ACTING AS WITNESSES.** ~~Continued~~
7 ~~violations are to be addressed by increasing sanctions and remedies as necessary to~~
8 ~~achieve results.~~

9 ~~To the extent possible and considering local resources, probationers~~
10 **PROBATIONERS** subject to swift and sure probation under this chapter shall be treated
11 uniformly throughout the state.

12
13 Sec. 5.

14 (1) A ~~JUDGE~~ program of swift and sure probation supervision funded under section 4
15 shall do all of the following **WHEN SWIFT AND SURE PROBATION APPLIES TO**
16 **A PROBATIONER:**

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

20 (b) Require the probationer to initially meet in person with a probation agent or probation
21 officer and as otherwise required by the court.

22 (c) Provide for an appearance before the judge **OR ANOTHER JUDGE** for any
23 probation violation as soon as possible but within 72 hours after the violation is reported
24 to the court unless **A HEARING IS WAIVED BY THE PROBATIONER OR** a
25 departure from the 72-hour requirement is authorized for good cause as determined by
26 criteria established by the state court administrative office.

27 (d) Provide for the immediate imposition of sanctions ~~and remedies~~ **AS PROVIDED BY**
28 **SUBSECTION (1) OF MCL 771.4.** ~~approved by the state court administrative office to~~
29 ~~effectively address probation violations. The sanctions and remedies approved under this~~
30 ~~subdivision may include, but need not be limited to, 1 or more of the following:~~

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

33 (ii) ~~Extension of the period of supervision within the period provided by law.~~

34 (iii) ~~Additional reporting and compliance requirements.~~

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

36 (v) ~~Counseling and treatment for emotional or other mental health problems, including~~
37 ~~for substance abuse.~~

38 (vi) ~~Probation revocation.~~

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

41 (a) ~~Establish general eligibility requirements for offender participation.~~

42 (b) ~~Require courts and offenders to enter into written participation agreements.~~

43 (c) ~~Create recommended and mandatory sanctions and remedies for use by participating~~
44 ~~courts.~~

45 (d) ~~Establish criteria for deviating from recommended and mandatory sanctions and~~
46 ~~remedies when necessary to address special circumstances.~~

- 1 ~~(e) Establish a system for determining sanctions and remedies that should or may be~~
- 2 ~~imposed under subdivision (e) and for alternative sanctions and remedies under~~
- 3 ~~subdivision (d).~~
- 4

DRAFT

CORRECTIONS CODE

Sec. 33e.

(1) The department shall develop parole guidelines that are consistent with section 33(1)(a) and that shall govern the exercise of the parole board's discretion pursuant to sections 34 and 35 as to the release of prisoners on parole under this act. The purpose of the parole guidelines shall be to assist the parole board in making release decisions that enhance the public safety.

(2) In developing the parole guidelines, the department shall consider factors including, but not limited to, the following:

(a) The offense for which the prisoner is incarcerated at the time of parole consideration.

(b) The prisoner's institutional program performance.

(c) The prisoner's institutional conduct.

(d) The prisoner's prior criminal record. As used in this subdivision, "prior criminal record" means the recorded criminal history of a prisoner, including all misdemeanor and felony convictions, probation violations, juvenile adjudications for acts that would have been crimes if committed by an adult, parole failures, and delayed sentences.

(e) Other relevant factors as determined by the department, if not otherwise prohibited by law.

(3) In developing the parole guidelines, the department may consider both of the following-factors:

(a) The prisoner's statistical risk screening.

(b) The prisoner's age.

(4) The department shall ensure that the parole guidelines do not create disparities in release decisions based on race, color, national origin, gender, religion, or disability.

(5) The department shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws 1969 PA 306, MCL 24.201 TO 24.328, which shall prescribe the parole guidelines. The department shall submit the proposed rules to the joint committee on administrative rules not later than April 1, 1994. Until the rules take effect, the director shall require that the parole guidelines be considered by the parole board in making release decisions. After the rules take effect, the director shall require that the parole board follow the parole guidelines.

~~(6) The parole board may depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole as determined under the parole guidelines or by granting parole to a prisoner who has a low probability of parole as determined under the parole guidelines. A departure under this subsection shall be for substantial and compelling reasons stated in writing. The parole board shall not use a prisoner's gender, race, ethnicity, alienage, national origin, or religion to depart from the recommended parole guidelines.~~

THE PAROLE BOARD SHALL RELEASE A PRISONER WHO SCORES HIGH OR AVERAGE PROBABILITY OF RELEASE, UPON SERVICE OF THE PRISONER'S MINIMUM SENTENCE, UNLESS:

(A) THE PRISONER HAS AN INSTITUTIONAL MISCONDUCT SCORE LOWER THAN -1.

1 **(B) THERE IS OBJECTIVE AND VERIFIABLE EVIDENCE OF POST-**
2 **SENTENCING CONDUCT NOT ALREADY SCORED IN THE PAROLE**
3 **GUIDELINES THAT DEMONSTRATES THAT THE PRISONER WOULD**
4 **PRESENT A HIGH CURRENT RISK TO PUBLIC SAFETY IF RELEASED.**
5 **(C) THE PRISONER HAS A PENDING FELONY CHARGE OR DETAINER, OR**
6 **(D) RELEASE WOULD OTHERWISE BE BARRED BY LAW.**
7 **(7) A PRISONER WHO HAS BEEN DENIED RELEASE UPON SERVICE OF**
8 **THE MINIMUM SENTENCE SHALL BE REVIEWED THEREAFTER AS**
9 **FOLLOWS:**

10 **(A) IF THE PRISONER SCORED HIGH OR AVERAGE PROBABILITY OF**
11 **RELEASE, SUBSEQUENT REVIEWS SHALL BE ANNUAL.**

12 **(B) IF THE PRISONER SCORED LOW PROBABILITY OF RELEASE,**
13 **SUBSEQUENT REVIEWS SHALL BE EVERY TWO YEARS UNTIL A SCORE**
14 **OF AVERAGE PROBABILITY IS ATTAINED.**

15 **(8) RELEASE UPON FIRST ELIGIBILITY MAY BE DEFERRED FOR UP TO**
16 **FOUR MONTHS TO ALLOW THE PRISONER TO COMPLETE A**
17 **TREATMENT PROGRAM THAT IS REASONABLY NECESSARY TO REDUCE**
18 **THE RISK TO PUBLIC SAFETY FROM THE PRISONER'S RELEASE.**

19 **(9)(7)-**Not less than once every 2 years, the department shall review the correlation
20 between the implementation of the parole guidelines and the recidivism rate of paroled
21 prisoners, and shall submit to the joint committee on administrative rules any proposed
22 revisions to the administrative rules that the department considers appropriate after
23 conducting the review. **THE DEPARTMENT SHALL SUBMIT ANY PROPOSED**
24 **REVISIONS TO THE GUIDELINES TO THE CRIMINAL JUSTICE POLICY**
25 **COMMISSION AND THE JOINT COMMITTEE ON ADMINISTRATIVE**
26 **RULES.**

27
28 Sec. 34

29 (1) Except as provided in section 34a, a prisoner sentenced to an indeterminate sentence
30 and confined in a state correctional facility with a minimum in terms of years other than a
31 prisoner subject to disciplinary time is subject to the jurisdiction of the parole board when
32 the prisoner has served a period of time equal to the minimum sentence imposed by the
33 court for the crime of which he or she was convicted, less good time and disciplinary
34 credits, if applicable.

35 (2) Except as provided in section 34a, a prisoner subject to disciplinary time sentenced to
36 an indeterminate sentence and confined in a state correctional facility with a minimum in
37 terms of years is subject to the jurisdiction of the parole board when the prisoner has
38 served a period of time equal to the minimum sentence imposed by the court for the
39 crime of which he or she was convicted.

40 (3) If a prisoner other than a prisoner subject to disciplinary time is sentenced for
41 consecutive terms, whether received at the same time or at any time during the life of the
42 original sentence, the parole board has jurisdiction over the prisoner for purposes of
43 parole when the prisoner has served the total time of the added minimum terms, less the
44 good time and disciplinary credits allowed by statute. The maximum terms of the
45 sentences shall be added to compute the new maximum term under this subsection, and
46 discharge shall be issued only after the total of the maximum sentences has been served

1 less good time and disciplinary credits, unless the prisoner is paroled and discharged
2 upon satisfactory completion of the parole.

3 (4) If a prisoner subject to disciplinary time is sentenced for consecutive terms, whether
4 received at the same time or at any time during the life of the original sentence, the parole
5 board has jurisdiction over the prisoner for purposes of parole when the prisoner has
6 served the total time of the added minimum terms. The maximum terms of the sentences
7 shall be added to compute the new maximum term under this subsection, and discharge
8 shall be issued only after the total of the maximum sentences has been served, unless the
9 prisoner is paroled and discharged upon satisfactory completion of the parole.

10 (5) If a prisoner other than a prisoner subject to disciplinary time has 1 or more
11 consecutive terms remaining to serve in addition to the term he or she is serving, the
12 parole board may terminate the sentence the prisoner is presently serving at any time after
13 the minimum term of the sentence has been served.

14 (6) A prisoner sentenced to imprisonment for life for any of the following is not eligible
15 for parole and is instead subject to the provisions of section 44:

16 (a) First degree murder in violation of section 316 of the Michigan penal code, 1931 PA
17 328, MCL 750.316.

18 (b) A violation of section 16(5) or 18(7) of the Michigan penal code, 1931 PA 328, MCL
19 750.16 and 750.18.

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

22 (d) A violation of section 17764(7) of the public health code, 1978 PA 368, MCL
23 333.17764.

24 (e) First degree criminal sexual conduct in violation of section 520b(2)(c) of the
25 Michigan penal code, 1931 PA 328, MCL 750.520b.

26 (f) Any other violation for which parole eligibility is expressly denied under state law.

27 (7) A prisoner sentenced to imprisonment for life, other than a prisoner described in
28 subsection (6), is subject to the jurisdiction of the parole board and may be placed on
29 parole according to the conditions prescribed in subsection (8) if he or she meets any of
30 the following criteria:

31 (a) Except as provided in subdivision (b) or (c), the prisoner has served 10 calendar years
32 of the sentence for a crime committed before October 1, 1992 or 15 calendar years of the
33 sentence for a crime committed on or after October 1, 1992.

34 (b) Except as provided in subsection (12), the prisoner has served 20 calendar years of a
35 sentence for violating, or attempting or conspiring to violate, section 7401(2)(a)(i) of the
36 public health code, 1978 PA 368, MCL 333.7401, and has another conviction for a
37 serious crime.

38 (c) Except as provided in subsection (12), the prisoner has served 17-1/2 calendar years
39 of the sentence for violating, or attempting or conspiring to violate, section 7401(2)(a)(i)
40 of the public health code, 1978 PA 368, MCL 333.7401, and does not have another
41 conviction for a serious crime.

42 (8) A parole granted to a prisoner under subsection (7) is subject to the following
43 conditions:

44 (a) At the conclusion of 10 calendar years of the prisoner's sentence and thereafter as
45 determined by the parole board until the prisoner is paroled, discharged, or deceased, and
46 in accordance with the procedures described in subsection (9), 1 member of the parole

1 board shall interview the prisoner. The interview schedule prescribed in this subdivision
2 applies to all prisoners to whom subsection (7) applies, regardless of the date on which
3 they were sentenced.

4 (b) In addition to the interview schedule prescribed in subdivision (a), the parole board
5 shall review the prisoner's file at the conclusion of 15 calendar years of the prisoner's
6 sentence and every 5 years thereafter until the prisoner is paroled, discharged, or
7 deceased. A prisoner whose file is to be reviewed under this subdivision shall be notified
8 of the upcoming file review at least 30 days before the file review takes place and shall
9 be allowed to submit written statements or documentary evidence for the parole board's
10 consideration in conducting the file review.

11 (c) A decision to grant or deny parole to the prisoner shall not be made until after a public
12 hearing held in the manner prescribed for pardons and commutations in sections 44 and
13 45. Notice of the public hearing shall be given to the sentencing judge, or the judge's
14 successor in office, and parole shall not be granted if the sentencing judge, or the judge's
15 successor in office, files written objections to the granting of the parole within 30 days of
16 receipt of the notice of hearing. The written objections shall be made part of the
17 prisoner's file.

18 (d) A parole granted under subsection (7) shall be for a period of not less than 4 years and
19 subject to the usual rules pertaining to paroles granted by the parole board. A parole
20 granted under subsection (7) is not valid until the transcript of the record is filed with the
21 attorney general whose certification of receipt of the transcript shall be returnable to the
22 office of the parole board within 5 days. Except for medical records protected under
23 section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157, the file
24 of a prisoner granted a parole under subsection (7) is a public record.

25 (9) An interview conducted under subsection (8)(a) is subject to both of the following
26 requirements:

27 (a) The prisoner shall be given written notice, not less than 30 days before the interview
28 date, stating that the interview will be conducted.

29 (b) The prisoner may be represented at the interview by an individual of his or her choice.
30 The representative shall not be another prisoner. A prisoner is not entitled to appointed
31 counsel at public expense. The prisoner or representative may present relevant evidence
32 in favor of holding a public hearing as allowed in subsection (8)(b).

33 (10) In determining whether a prisoner convicted of violating, or attempting or conspiring
34 to violate, section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401,
35 and sentenced to imprisonment for life before October 1, 1998 is to be released on parole,
36 the parole board shall consider all of the following:

37 (a) Whether the violation was part of a continuing series of violations of section 7401 or
38 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, by that
39 individual.

40 (b) Whether the violation was committed by the individual in concert with 5 or more
41 other individuals.

42 (c) Any of the following:

43 (i) Whether the individual was a principal administrator, organizer, or leader of an entity
44 that the individual knew or had reason to know was organized, in whole or in part, to
45 commit violations of section 7401 or 7403 of the public health code, 1978 PA 368, MCL

1 333.7401 and 333.7403, and whether the violation for which the individual was convicted
2 was committed to further the interests of that entity.

3 (ii) Whether the individual was a principal administrator, organizer, or leader of an entity
4 that the individual knew or had reason to know committed violations of section 7401 or
5 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and whether
6 the violation for which the individual was convicted was committed to further the
7 interests of that entity.

8 (iii) Whether the violation was committed in a drug-free school zone.

9 (iv) Whether the violation involved the delivery of a controlled substance to an individual
10 less than 17 years of age or possession with intent to deliver a controlled substance to an
11 individual less than 17 years of age.

12 ~~(11) Except as provided in section 34a, a prisoner's release on parole is discretionary with~~
13 ~~the parole board.~~ The action of the parole board in granting a parole is appealable by the
14 prosecutor of the county from which the prisoner was committed or the victim of the
15 crime for which the prisoner was convicted. The appeal shall be to the circuit court in the
16 county from which the prisoner was committed, by leave of the court.

17 (12) If the sentencing judge, or his or her successor in office, determines on the record
18 that a prisoner described in subsection (7)(b) or (c) sentenced to imprisonment for life for
19 violating, or attempting or conspiring to violate, section 7401(2)(a)(i) of the public health
20 code, 1978 PA 368, MCL 333.7401, has cooperated with law enforcement, the prisoner is
21 subject to the jurisdiction of the parole board and may be released on parole as provided
22 in subsection (7)(b) or (c) 2-1/2 years earlier than the time otherwise indicated in
23 subsection (7)(b) or (c). The prisoner is considered to have cooperated with law
24 enforcement if the court determines on the record that the prisoner had no relevant or
25 useful information to provide. The court shall not make a determination that the prisoner
26 failed or refused to cooperate with law enforcement on grounds that the defendant
27 exercised his or her constitutional right to trial by jury. If the court determines at
28 sentencing that the defendant cooperated with law enforcement, the court shall include its
29 determination in the judgment of sentence.

30 (13) Notwithstanding subsections (1) and (2), an individual convicted of violating, or
31 attempting or conspiring to violate, section 7401(2)(a)(i) or 7403(2)(a)(i) of the public
32 health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense occurred before
33 March 1, 2003, and who was sentenced to a term of years, is eligible for parole after
34 serving 20 years of the sentence imposed for the violation if the individual has another
35 serious crime or 17-1/2 years of the sentence if the individual does not have another
36 conviction for a serious crime, or after serving the minimum sentence imposed for that
37 violation, whichever is less.

38 (14) Notwithstanding subsections (1) and (2), an individual who was convicted of
39 violating, or attempting or conspiring to violate, section 7401(2)(a)(ii) or 7403(2)(a)(ii) of
40 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense
41 occurred before March 1, 2003, and who was sentenced according to those sections as
42 they existed before March 1, 2003, is eligible for parole after serving the minimum of
43 each sentence imposed for that violation or 10 years of each sentence imposed for that
44 violation, whichever is less.

45 (15) Notwithstanding subsections (1) and (2), an individual who was convicted of
46 violating, or attempting or conspiring to violate, section 7401(2)(a)(iii) or 7403(2)(a)(iii)

1 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense
2 occurred before March 1, 2003, and who was sentenced according to those sections as
3 they existed before March 1, 2003, is eligible for parole after serving the minimum of
4 each sentence imposed for that violation or 5 years of each sentence imposed for that
5 violation, whichever is less.

6 (16) Notwithstanding subsections (1) and (2), an individual who was convicted of
7 violating, or attempting or conspiring to violate, section 7401(2)(a)(iv) or 7403(2)(a)(iv)
8 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense
9 occurred before March 1, 2003, who was sentenced according to those sections of law as
10 they existed before March 1, 2003 to consecutive terms of imprisonment for 2 or more
11 violations of section 7401(2)(a) or 7403(2)(a), is eligible for parole after serving 1/2 of
12 the minimum sentence imposed for each violation of section 7401(2)(a)(iv) or
13 7403(2)(a)(iv). This subsection applies only to sentences imposed for violations of
14 section 7401(2)(a)(iv) or 7403(2)(a)(iv) and does not apply if the sentence was imposed
15 for a conviction for a new offense committed while the individual was on probation or
16 parole.

17 (17) The parole board shall provide notice to the prosecuting attorney of the county in
18 which the individual was convicted before granting parole to the individual under
19 subsection (13), (14), (15), or (16).

20 (18) As used in this section:

21 (a) "Serious crime" means violating or conspiring to violate article 7 of the public health
22 code, 1978 PA 368, MCL 333.7101 to 333.7545, that is punishable by imprisonment for
23 more than 4 years, or an offense against a person in violation of section 83, 84, 86, 87,
24 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520g, 529, 529a, or 530 of
25 the Michigan penal code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88,
26 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
27 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

28 (b) "State correctional facility" means a facility that houses prisoners committed to the
29 jurisdiction of the department.

30
31 Sec. 35.

32 (1) ~~The release of a prisoner on parole shall be granted solely upon the initiative of the~~
33 ~~parole board.~~ The parole board may grant a parole without interviewing the prisoner -
34 ~~However, beginning January 26, 1996, the parole board may grant a parole without~~
35 ~~interviewing the prisoner only if,~~ after evaluating the prisoner according to the parole
36 guidelines, the parole board determines that the prisoner has a high probability of being
37 paroled and the parole board therefore intends to parole the prisoner. Except as provided
38 in subsection (2), a prisoner shall not be denied parole without an interview before 1
39 member of the parole board. The interview shall be conducted at least 1 month before the
40 expiration of the prisoner's minimum sentence less applicable good time and disciplinary
41 credits for a prisoner eligible for good time and disciplinary credits, or at least 1 month
42 before the expiration of the prisoner's minimum sentence for a prisoner subject to
43 disciplinary time. The parole board shall consider any statement made to the parole board
44 by a crime victim under the William Van Regenmorter crime victim's rights act, 1985 PA
45 87, MCL 780.751 to 780.834, or under any other provision of law. The parole board shall
46 not consider any of the following factors in making a parole determination:

- 1 (a) A juvenile record that a court has ordered the department to expunge.
- 2 (b) Information that is determined by the parole board to be inaccurate or irrelevant after
3 a challenge and presentation of relevant evidence by a prisoner who has received a notice
4 of intent to conduct an interview as provided in subsection (4). ~~This subdivision applies
5 only to presentence investigation reports prepared before April 1, 1983.~~
- 6 (2) Beginning January 26, 1996, if, after evaluating a prisoner according to the parole
7 guidelines, the parole board determines that the prisoner has a low probability of being
8 paroled and the parole board therefore does not intend to parole the prisoner, the parole
9 board is not required to interview the prisoner before denying parole to the prisoner.
- 10 (3) The parole board may consider but shall not base a determination to deny parole
11 solely on either of the following:
- 12 (a) A prisoner's marital history.
- 13 (b) Prior arrests not resulting in conviction or adjudication of delinquency.
- 14 (4) If an interview is to be conducted, the prisoner shall be sent a notice of intent to
15 conduct an interview at least 1 month before the date of the interview. The notice shall
16 state the specific issues and concerns that shall be discussed at the interview and that may
17 be a basis for a denial of parole. A denial of parole shall not be based on reasons other
18 than those stated in the notice of intent to conduct an interview except for good cause
19 stated to the prisoner at or before the interview and in the written explanation required by
20 subsection (12). This subsection does not apply until April 1, 1983.
- 21 (5) Except for good cause, the parole board member conducting the interview shall not
22 have cast a vote for or against the prisoner's release before conducting the current
23 interview. Before the interview, the parole board member who is to conduct the interview
24 shall review pertinent information relative to the notice of intent to conduct an interview.
- 25 (6) A prisoner may waive the right to an interview by 1 member of the parole board. The
26 waiver of the right to be interviewed shall be given not more than 30 days after the notice
27 of intent to conduct an interview is issued and shall be made in writing. During the
28 interview held pursuant to a notice of intent to conduct an interview, the prisoner may be
29 represented by an individual of his or her choice. The representative shall not be another
30 prisoner or an attorney. A prisoner is not entitled to appointed counsel at public expense.
31 The prisoner or representative may present relevant evidence in support of release.
- 32 (7) At least 90 days before the expiration of the prisoner's minimum sentence less
33 applicable good time and disciplinary credits for a prisoner eligible for good time or
34 disciplinary credits, or at least 90 days before the expiration of the prisoner's minimum
35 sentence for a prisoner subject to disciplinary time, or the expiration of a 12-month
36 continuance for any prisoner, a parole eligibility report shall be prepared by appropriate
37 institutional staff. The parole eligibility report shall be considered pertinent information
38 for purposes of subsection (5). The report shall include all of the following:
- 39 (a) A statement of all major misconduct charges of which the prisoner was found guilty
40 and the punishment served for the misconduct.
- 41 (b) The prisoner's work and educational record while confined.
- 42 (c) The results of any physical, mental, or psychiatric examinations of the prisoner that
43 may have been performed.
- 44 **(D) THE RESULTS ON ANY VALIDATED RISK ASSESSMENT**
45 **INSTRUMENTS.**

1 (E) ~~(d)~~ Whether the prisoner fully cooperated with the state by providing complete
2 financial information as required under section 3a of the state correctional facility
3 reimbursement act, 1935 PA 253, MCL 800.403a.

4 (F) ~~(e)~~ Whether the prisoner refused to attempt to obtain identification documents under
5 section 34c, if applicable.

6 (f) For a prisoner subject to disciplinary time, a statement of all disciplinary time
7 submitted for the parole board's consideration under section 34 of 1893 PA 118, MCL
8 800.34.

9 (8) The preparer of the report shall not include a recommendation as to release on parole.

10 (9) Psychological evaluations performed at the request of the parole board to assist it in
11 reaching a decision on the release of a prisoner may be performed by the same person
12 who provided the prisoner with therapeutic treatment, unless a different person is
13 requested by the prisoner or parole board.

14 (10) The parole board may grant a medical parole for a prisoner determined to be
15 physically or mentally incapacitated. A decision to grant a medical parole shall be
16 initiated upon the recommendation of the bureau of health care services and shall be
17 reached only after a review of the medical, institutional, and criminal records of the
18 prisoner.

19 (11) The department shall submit a petition to the appropriate court under section 434 of
20 the mental health code, 1974 PA 258, MCL 330.1434, for any prisoner being paroled or
21 being released after serving his or her maximum sentence whom the department
22 considers to be a person requiring treatment. The parole board shall require mental health
23 treatment as a special condition of parole for any parolee whom the department has
24 determined to be a person requiring treatment whether or not the petition filed for that
25 prisoner is granted by the court. As used in this subsection, "person requiring treatment"
26 means that term as defined in section 401 of the mental health code, 1974 PA 258, MCL
27 330.1401.

28 (12) When the parole board makes a final determination not to release a prisoner, the
29 prisoner shall be provided with a written explanation of the reason for denial and, if
30 appropriate, specific recommendations for corrective action the prisoner may take to
31 facilitate release.

32 (13) This section does not apply to the placement on parole of a person in conjunction
33 with special alternative incarceration under section 34a(7).

34
35 Sec. 39a.

36 (1) **WITHIN 3 DAYS AFTER AN ARREST FOR AN ALLEGED VIOLATION OF**
37 **PAROLE, THE PAROLE OFFICER MAY WITHDRAW THE WARRANT AND**
38 **RELEASE THE PRISONER TO PAROLE SUPERVISION IF THE OFFICER**
39 **DETERMINES, AND A SUPERVISOR CONFIRMS, THAT THE PAROLED**
40 **PRISONER COMMITTED ONLY A NONCOMPLIANCE VIOLATION. TIME**
41 **SERVED UNDER THIS SUBSECTION SHALL NOT BE CREDITED UNLESS**
42 **CUMULATIVE CONFINEMENT UNDER THIS SUBSECTION EQUALS 30**
43 **DAYS, AT WHICH POINT THE 30 DAYS AND ANY FUTURE CONFINEMENT**
44 **UNDER THIS SUBSECTION SHALL BE CREDITED.**

45 (2) Within 10 days after an arrest for an alleged violation of parole, the parolee shall be
46 entitled to a preliminary hearing to determine whether there is probable cause to believe

1 that the conditions of parole have been violated or a fact-finding hearing held pursuant to
2 section 40a.

3 ~~(2)~~ Prior to the preliminary hearing, the accused parolee shall be given written notice of
4 the charges, time, place, and purpose of the preliminary hearing.

5 (3) At the preliminary hearing, the accused parolee is entitled to the following rights:

6 (a) Disclosure of the evidence against him or her.

7 (b) The right to testify and present relevant witnesses and documentary evidence.

8 (c) The right to confront and cross-examine adverse witnesses unless the person
9 conducting the preliminary hearing finds on the record that a witness may be subjected to
10 risk of harm if his or her identity is revealed.

11 (4) A preliminary hearing may be postponed beyond the 10-day time limit on the written
12 request of the parolee, but shall not be postponed by the department.

13 (5) If a preliminary hearing is not held pursuant to subsection (1), an accused parolee
14 shall be given written notice of the charges against him or her, the time, place and
15 purpose of the fact-finding hearing and a written summary of the evidence to be
16 presented against him or her.

17 (6) If a preliminary hearing is not held pursuant to subsection (1), an accused parolee may
18 not be found guilty of a violation based on evidence that was not summarized in the
19 notice provided pursuant to subsection (5) except for good cause stated on the record and
20 included in the written findings of fact provided to the parolee.

21 **(7) IN THIS SECTION AND SECTION 40A, "NONCOMPLIANCE VIOLATION"**
22 **MEANS FAILURE TO REPORT OR ANY OTHER VIOLATION OF A**
23 **CONDITION OF SUPERVISION THAT IS NOT A RISK VIOLATION AS**
24 **DEFINED IN SECTION 40A.**

25
26 Sec. 40a.

27 (1) After a prisoner is released on parole, the prisoner's parole order is subject to
28 **SANCTIONS AND** revocation at the discretion of the **DEPARTMENT AND THE**
29 parole board for cause as provided in this section **AND SECTION 39a**.

30 (2) If a paroled prisoner who is required to register pursuant to the sex offenders
31 registration act, 1994 PA 295, MCL 28.721 to 28.736, willfully violates that act, the
32 parole board shall revoke the parole. If a prisoner convicted of violating or conspiring to
33 violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii) of the public health code, 1978
34 PA 368, MCL 333.7401 and 333.7403, is released on parole and violates or conspires to
35 violate article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, and
36 that violation or conspiracy to violate is punishable by imprisonment for 4 or more years,
37 or commits a violent felony during his or her release on parole, parole shall be revoked.

38 (3) Within 45 days after a paroled prisoner has been returned or is available for return to
39 a state correctional facility under accusation of a parole violation other than conviction
40 for a felony or misdemeanor punishable by imprisonment under the laws of this state, the
41 United States, or any other state or territory of the United States, the prisoner is entitled to
42 a fact-finding hearing on the charges before 1 member of the parole board or an attorney
43 hearings officer designated by the chairperson of the parole board. The fact-finding
44 hearing shall be conducted only after the accused parolee has had a reasonable amount of
45 time to prepare a defense. The fact-finding hearing may be held at a state correctional
46 facility or at or near the location of the alleged violation.

1 (4) If, before a fact-finding hearing begins, the accused parolee alleges that he or she is
2 indigent and requests that an attorney be appointed to represent him or her, the parole
3 board member or attorney hearings officer who will conduct the hearing shall determine
4 whether the accused parolee is indigent. If the accused parolee is determined to be
5 indigent, the parole board member or hearings officer shall cause the appointment of an
6 attorney to represent the accused parolee at the fact-finding hearing. The cost of the
7 appointed attorney shall be paid from the department's general operating budget.

8 (5) An accused parolee shall be given written notice of the charges against him or her and
9 the time, place, and purpose of the fact-finding hearing. At the fact-finding hearing, the
10 accused parolee may be represented by a retained attorney or an attorney appointed under
11 subsection (4) and is entitled to the following rights:

12 (a) Full disclosure of the evidence against him or her.
13 (b) To testify and present relevant witnesses and documentary evidence.
14 (c) To confront and cross-examine adverse witnesses unless the person conducting the
15 fact-finding hearing finds on the record that a witness is subject to risk of harm if his or
16 her identity is revealed.
17 (d) To present other relevant evidence in mitigation of the charges.

18 (6) A fact-finding hearing may be postponed for cause beyond the 45-day time limit on
19 the written request of the parolee, the parolee's attorney, or, if a postponement of the
20 preliminary parole violation hearing required under section 39a has been granted beyond
21 the 10-day time limit, by the parole board.

22 (7) The director or a deputy director designated by the director shall be notified in writing
23 if the preliminary parole violation hearing is not conducted within the 10-day time limit,
24 and the hearing shall be conducted as soon as possible. The director or a deputy director
25 designated by the director shall be notified in writing if the fact-finding hearing is not
26 conducted within the 45-day time limit, and the hearing shall be conducted as soon as
27 possible. A parolee held in custody shall not be released pending disposition of either
28 hearing.

29 (8) If the evidence presented is insufficient to support the allegation that a parole
30 violation occurred, the parolee shall be reinstated to parole status.

31 (9) If the parole board member or hearings officer conducting the fact-finding hearing
32 determines from a preponderance of the evidence that a parole violation has occurred, the
33 parole board member or hearings officer shall present the relevant facts to the parole
34 board and make a recommendation as to the disposition of the charges.

35 (10) If a preponderance of the evidence supports the allegation that a parole violation
36 occurred, the parole board may **IMPOSE A SANCTION OR** revoke parole, and the
37 parolee shall be provided with a written statement of the findings of fact and the reasons
38 for the determination within **THE SANCTION PERIOD OR, IF APPLICABLE, 60**
39 **days** after the paroled prisoner has been returned or is available for return to a state
40 correctional facility. **THE PRISONER SHALL BE SANCTIONED WITH**
41 **CONFINEMENT IN THE COUNTY JAIL, THEN PLACED ON PAROLE AGAIN**
42 **NOT MORE THAN 30 DAYS FOLLOWING THE DATE ON WHICH THE**
43 **DETERMINATION OF A FIRST OR SECOND RISK VIOLATION OCCURS.**
44 **THE PAROLE BOARD MAY REVOKE PAROLE TO THE CUSTODY OF THE**
45 **DEPARTMENT FOR THE THIRD DETERMINATION OF A RISK**

1 **VIOLATION, AND PLACE THE PRISONER ON PAROLE AGAIN AT ITS**
2 **DISCRETION.**

3 (11) A parolee who is ordered to make restitution under the William Van Regenmorter
4 crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or the code of criminal
5 procedure, 1927 PA 175, MCL 760.1 to 777.69, or to pay an assessment ordered under
6 section 5 of 1989 PA 196, MCL 780.905, as a condition of parole may have his or her
7 parole revoked by the parole board if the parolee fails to comply with the order and if the
8 parolee has not made a good faith effort to comply with the order. In determining whether
9 to revoke parole, the parole board shall consider the parolee's employment status, earning
10 ability, and financial resources, the willfulness of the parolee's failure to comply with the
11 order, and any other special circumstances that may have a bearing on the parolee's
12 ability to comply with the order.

13 (12) As used in this section:-

14 **(A) AN "ABSCONDING SUPERVISION" VIOLATION MEANS THE PRISONER**
15 **IS APPREHENDED BY LAW ENFORCEMENT OR PAROLE OR IS**
16 **ARRESTED FOR A NEW CRIME OUTSIDE OF MICHIGAN. IF THE**
17 **PRISONER HAS TURNED HIM OR HERSELF IN WITHIN 7 DAYS AFTER A**
18 **WARRANT HAS BEEN ISSUED HE OR SHE SHALL NOT BE SANCTIONED**
19 **OR REVOKED FOR ABSCONDING SUPERVISION.**

20 **(B) "RISK VIOLATION" MEANS:**

- 21 **(i) CONTACT WITH A SPECIFICALLY PROHIBITED PERSON, OR**
22 **PROXIMITY TO A SPECIFICALLY PROHIBITED BUSINESS OR LOCATION;**
23 **(ii) ARREST FOR DOMESTIC VIOLENCE OR OTHER THREATENING OR**
24 **ASSAULTIVE BEHAVIOR;**
25 **(iii) ARREST FOR A NEW FELONY;**
26 **(iv) ABSCONDING SUPERVISION; OR**
27 **(v) THE PRISONER'S 6TH OR SUBSEQUENT NONCOMPLIANCE VIOLATION**
28 **AS DEFINED IN SECTION 39A.**

29 (c) "violent felony" means that term as defined in section 36.

30 PUBLIC HEALTH CODE

31
32 333.7413 Conviction of second or subsequent violation; penalty.
33 Sec. 7413.

34 (1) An individual who was convicted previously for a violation of any of the following
35 offenses and is thereafter convicted of a second or subsequent violation of any of the
36 following offenses shall be imprisoned for life and shall not be eligible for probation,
37 suspension of sentence, or parole during that mandatory term:

38 (a) A violation of section 7401(2)(a)(ii) or (iii).

39 (b) A violation of section 7403(2)(a)(ii) or (iii).

40 (c) Conspiracy to commit an offense proscribed by section 7401(2)(a)(ii) or (iii) or
41 section 7403(2)(a)(ii) or (iii).

42 (2) Except as otherwise provided in subsections (1) and (3), an individual convicted of a
43 second ~~or subsequent~~ offense under this article may be imprisoned **FOR A MAXIMUM**
44 **TERM THAT IS NOT MORE THAN 1-1/2 TIMES THE LONGEST TERM**
45 **PRESCRIBED FOR A FIRST CONVICTION OF THAT OFFENSE OR FOR A**

1 **LESSER TERM. AN INDIVIDUAL CONVICTED OF A THIRD OR**
2 **SUBSEQUENT OFFENSE UNDER THIS ARTICLE MAY BE IMPRISONED**
3 **FOR A MAXIMUM TERM THAT IS NOT MORE THAN TWICE THE**
4 **LONGEST TERM PRESCRIBED FOR A FIRST CONVICTION OF THAT**
5 **OFFENSE OR FOR A LESSER TERM.** ~~for a term not more than twice the term~~
6 ~~otherwise authorized or fined an amount not more than twice that otherwise authorized,~~
7 ~~or both.~~

8 (3) An individual convicted of a second or subsequent offense under section 7410(2) or
9 (3) shall be punished, subject to subsection (4), by a term of imprisonment of not less
10 than 5 years nor more than twice that authorized under section 7410(2) or (3) and, in
11 addition, may be punished by a fine of not more than 3 times that authorized by section
12 7410(2) or (3); and shall not be eligible for probation or suspension of sentence during
13 the term of imprisonment.

14 (4) The court may depart from the minimum term of imprisonment authorized under
15 subsection (3) if the court finds on the record that there are substantial and compelling
16 reasons to do so.

17 (5) For purposes of subsection (2), an offense is considered a second or subsequent
18 offense, if, before conviction of the offense, the offender has at any time been convicted
19 under this article or under any statute of the United States or of any state relating to a
20 narcotic drug, marihuana, depressant, stimulant, or hallucinogenic drug. **A**
21 **CONVICTION SHALL NOT BE USED TO ENHANCE A SENTENCE UNDER**
22 **THIS SECTION IF THAT CONVICTION IS USED TO SCORE PRIOR RECORD**
23 **VARIABLES UNDER PART V OF CHAPTER XVII.**

24 **COMMUNITY CORRECTIONS ACT**

25
26 791.404 Duties of state board.

27 Sec. 4.

28 **(1)** The state board shall do all of the following:

29 (a) Develop and establish goals, offender eligibility criteria, and program guidelines for
30 community corrections programs.

31 (b) Adopt minimum program standards, policies, and rules for community corrections
32 programs.

33 (c) Adopt an application process and procedures for funding community corrections
34 programs, including the format for comprehensive corrections plans.

35 (d) Adopt criteria for community corrections program evaluations.

36 (e) Hire an executive director, who shall serve at the pleasure of the board.

37 **(f) DEVELOP PROCEDURES FOR THE TRANSITION TO UNIFIED**
38 **COMMUNITY CORRECTIONS AND REENTRY PLANNING AND FUNDING**
39 **UNDER SECTION 8.**

40 **(2) BEGINNING ON JUNE 1, 2015, AND EVERY BIENNIUM THEREAFTER,**
41 **THE STATE BOARD SHALL DIRECT THE OFFICE TO DO THE**
42 **FOLLOWING:**

43 **(a) CONDUCT A COUNTY-BY-COUNTY ANALYSIS OF THE PROBATIONER**
44 **AND PAROLEE POPULATIONS, INCLUDING A CENSUS OF THE HIGH-RISK**
45 **SUBPOPULATIONS, AND THE CRIMINOGENIC NEEDS FOR SERVICES**

1 **THAT ARE PRESENT IN THOSE SUBPOPULATIONS.**

2 **(b) PREPARE INSTRUCTIONS FOR ADVISORY BOARDS TO:**

3 **(i) CONDUCT A GAP ANALYSIS, COMPARING THE RESULTS OF THE**
4 **OFFICE'S NEEDS ANALYSIS WITH THE EXISTING RESOURCES,**
5 **PROGRAMS AND SERVICES IN THE LOCALITY;**

6 **(ii) DESCRIBE THE NEEDS THAT ARE CURRENTLY WITHIN THEIR**
7 **ABILITY TO MEET; AND**

8 **(iii) DESCRIBE THOSE NEEDS THAT REQUIRE FURTHER**
9 **RESOURCES TO MEET.**

10 **(c) EVALUATE THE OFFICE'S CURRENTLY FUNDED PROGRAMS AS**
11 **WELL AS THE DEPARTMENT'S COMMUNITY REENTRY PROGRAMS FOR**
12 **FIDELITY TO EVIDENCE BASED PRACTICES AND TO IDENTIFY**
13 **RESOURCES THAT CAN BE REDIRECTED TO PROGRAMS ADDRESSING**
14 **CRIMINOGENIC NEEDS.**

15 **(d) PRIOR TO JANUARY 1, 2016, CONDUCT AT LEAST THREE PUBLIC**
16 **HEARINGS IN LOCATIONS OTHER THAN THE CAPITAL TO PRESENT THE**
17 **RESULTS OF THE EFFORTS DESCRIBED IN SUBSECTIONS (a) THROUGH**
18 **(c) AND RECEIVE PUBLIC COMMENT.**

19 **(d) CONDUCT SERVICE PROCUREMENT UNDER SECTION 11.**

20 **(e) EVALUATE THE DELIVERY OF SERVICES ACCORDING TO**
21 **CONTRACTUAL EXPECTATIONS FOR PROVIDERS, INCLUDING**
22 **MEASUREMENT OF RECIDIVISM. RECIDIVISM MEASUREMENT BY THE**
23 **DEPARTMENT SHALL INCLUDE, AS APPLICABLE, ANALYSIS:**

24 **(i) OF REARREST RATES, RE-SENTENCE RATES, AND RETURN TO**
25 **PRISON RATES;**

26 **(ii) AT ONE, TWO AND THREE YEAR INTERVALS AFTER EXITING**
27 **PRISON OR JAIL AND AFTER ENTERING PROBATION;**

28 **(iii) AT THE STATEWIDE LEVEL, AND BY LOCALITY AND**
29 **DISCRETE PROGRAM, TO THE EXTENT PRACTICABLE.**

30
31 791.407 Membership of boards.

32 Sec. 7.

33 (1) A county advisory board, regional advisory board, city-county advisory board, or city
34 advisory board shall consist of the following:

35 (a) One member shall be a county sheriff, or his or her designee.

36 (b) One member shall be a chief of a city police department, or his or her designee.

37 (c) One member shall be a judge of the circuit court or his or her designee.

38 (d) One member shall be a judge of the district court or his or her designee.

39 (e) One member shall be a judge of the probate court or his or her designee.

40 (f) One member shall be a county commissioner or city councilperson. In the case of a
41 regional advisory board or a city-county advisory board, 1 county commissioner or
42 councilperson from each participating city and county shall serve as a member.

43 (g) One member **EACH** shall be selected from **AT LEAST THREE** + of the following
44 service areas: mental health, public health, substance abuse, employment and training, or
45 community alternative programs.

46 (h) One member shall be a county prosecuting attorney or his or her designee.

- 1 (i) One member shall be a criminal defense attorney.
- 2 (j) One member shall be from the business community.
- 3 (k) One member shall be from the communications media.
- 4 (l) One member shall be either a circuit court probation agent or a district court probation
- 5 officer.
- 6 (m) One member shall be a representative of the general public.

7 **(n) ONE MEMBER SHALL BE AFFILIATED WITH THE APPLICABLE**
8 **WORKFORCE INVESTMENT BOARD.**

9 (2) In the case of a county or regional advisory board, the members shall be appointed by
10 the county board or boards of commissioners. In the case of a city advisory board, the
11 members shall be appointed by the city council. In the case of the city-county advisory
12 board, the members shall be appointed by the county board of commissioners and the city
13 council. In appointing the members of an advisory board, the county and city shall ensure
14 that minority persons and women are fairly represented.

15 (3) Before an appointment is made under this section, the appointing authority shall
16 publish advance notice of the appointments and shall request that the names of persons
17 interested in being considered for appointment be submitted to the appointing authority.
18 791.408 Comprehensive corrections **AND REENTRY** plan.

19 Sec. 8.

20 (1) A county, city, city-county, or regional advisory board, on behalf of the city, county,
21 or counties it represents, may apply for funding and other assistance under this act by
22 submitting to the office a comprehensive corrections **AND REENTRY** plan that meets
23 the requirements of this section, and the criteria, standards, rules, and policies developed
24 by the state board pursuant to section 4.

25 (2) The plan shall be developed by the county, city, city-county, or regional advisory
26 board **SHALL REFLECT THE RESULTS OF THE PROCESS DESCRIBED IN**
27 **SUBSECTION 2 OF SECTION 4**, and shall include all of the following for the county,
28 city, or counties represented by the advisory board:

29 (a) A system for the development, implementation, and operation of community
30 corrections programs **OR SERVICES TO ENHANCE PUBLIC SAFETY BY**
31 **REDUCING RECIDIVISM, HOLDING OFFENDERS ACCOUNTABLE, AND**
32 **SUPPORTING OFFENDERS REENTERING FROM JAIL OR PRISON** and an
33 explanation of how the state prison commitment rate for the city, county, or counties will
34 be reduced, and how the public safety will be maintained, as a result of implementation
35 of the comprehensive corrections plan. The plan shall include, where appropriate,
36 provisions that detail how the city, county, or counties plan to substantially reduce, within
37 1 year, the use of prison sentences for felons for which the state felony sentencing
38 guidelines upper limit for the recommended minimum sentence is 12 months or less as
39 validated by the department of corrections. Continued funding in the second and
40 subsequent years shall be contingent upon substantial compliance with this subdivision.

41 (b) A data analysis of the local criminal justice system including a basic description of
42 jail utilization detailing such areas as sentenced versus unsentenced inmates, sentenced
43 felons versus sentenced misdemeanants, **AND USE OF PRETRIAL ASSESSMENT**
44 **AND DIVERSION.** any use of a jail classification system. The analysis also shall
45 include a basic description of offenders sentenced to probation and to prison and a review
46 of the rate of commitment to the state corrections systems from the city, county, or

1 ~~counties for the preceding 3 years. The analysis also shall compare actual sentences with~~
2 ~~the sentences recommended by the state felony sentencing guidelines.~~

3 (c) An analysis of the local community corrections **AND REENTRY** programs used at
4 the time the plan is submitted and during the preceding 3 years, including types of
5 offenders served, **EVALUATION RESULTS**, and funding levels.

6 (d) A system for evaluating the effectiveness of the community corrections **AND**
7 **REENTRY** programs, which shall utilize the criteria developed pursuant to section 4(d)
8 **AND INCLUDE EITHER A DESCRIPTION OF THE LOCAL EVALUATION**
9 **DESIGN OR A REQUEST FOR A STATE EVALUATION DESIGN.**

10 (e) The identity of any designated subgrant recipient.

11 (f) In the case of a regional or city-county plan, provisions for the appointment of 1 fiscal
12 agent to coordinate the financial activities pertaining to the grant award.

13 **(g) A STATEMENT WHETHER THE ADVISORY BOARD AGREES TO**
14 **EXPAND THE MISSION OF THE BOARD TO ENCOMPASS REENTRY**
15 **SERVICES AND ACCEPT FUNDING FOR REENTRY SERVICES, OR**
16 **REQUESTS THE CREATION OF A SEPARATE ADVISORY BOARD AND**
17 **FUNDING FOR THAT PURPOSE. REQUESTS TO EXPAND THE MISSION OF**
18 **THE ADVISORY BOARD MAY BE ACCOMPANIED BY PROPOSED NEW**
19 **MEMBER POSITIONS ON THE BOARD.**

20 (3) The county board or boards of commissioners of the county or counties represented
21 by a county, city-county, or regional advisory board, or the city council of the city
22 represented by a city or city-county advisory board, shall approve the proposed
23 comprehensive corrections **AND REENTRY** plan prepared by their advisory board
24 before the plan is submitted to the office pursuant to subsection (1).

25 ~~(4) This section is intended to encourage the participation in community corrections~~
26 ~~programs of offenders who would likely be sentenced to imprisonment in a state~~
27 ~~correctional facility or jail, would not increase the risk to public safety, have not~~
28 ~~demonstrated a pattern of violent behavior, and do not have a criminal record that~~
29 ~~indicates a pattern of violent offenses.~~

30
31 791.411 Authorized payments for community corrections programs; funding for
32 administration; current spending not to be supplanted.

33 Sec. 11.

34 **(1) THE FUNDS APPROPRIATED TO THE OFFICE SHALL BE ALLOCATED**
35 **TO THE MAXIMUM EXTENT POSSIBLE TO PERFORMANCE BASED**
36 **CONTRACTUAL AGREEMENTS WITH PROGRAMS AND SERVICE**
37 **PROVIDERS FOR THE OPERATION OF COMMUNITY-BASED**
38 **CORRECTIONS AND REENTRY PROGRAMS THAT FULFILL NEEDS**
39 **IDENTIFIED IN THE PLAN SUBMITTED PURSUANT TO SECTION 8 OR THE**
40 **PROPOSAL SUBMITTED PURSUANT TO SECTION 10 IF THE PLAN IS**
41 **APPROVED BY THE OFFICE.** The office **MAY ALSO** ~~shall~~ authorize payments
42 from funds appropriated to the office for community corrections **AND REENTRY**
43 programs to cities, counties, **OR** regions, ~~or agencies~~ for the community corrections
44 **AND REENTRY** programs described in the plan submitted pursuant to section 8 or the
45 proposal submitted pursuant to section 10 if the plan or proposal is approved by the
46 office.

1 (2) Of the total funding recommended for the implementation of the comprehensive
2 corrections plan **AND PAID TO CITIES OR COUNTIES**, not more than 30% may be
3 used by the city, county, or counties for administration.

4 (3) The funds provided to a city, county, or counties under this section shall not supplant
5 current spending by the city, county, or counties for community corrections **AND**
6 **REENTRY** programs.

7 **(4) CONTRACTS FOR SERVICE PROCUREMENT SHALL BE**
8 **COMPETITIVELY BID AND PERFORMANCE BASED. TO BE ELIGIBLE FOR**
9 **FUNDING, PROGRAMS AND SERVICE PROVIDERS MUST DEMONSTRATE**
10 **THAT THEY WILL PROVIDE INTERVENTIONS WITH FIDELITY TO**
11 **MODELS THAT ARE KNOWN TO REDUCE RECIDIVISM.**

12 **(5) THE OFFICE SHALL DEVELOP MINIMUM PROGRAM STANDARDS,**
13 **POLICIES, AND RULES FOR COMMUNITY CORRECTIONS AND REENTRY**
14 **PROGRAMS. COMMUNITY CORRECTIONS OR REENTRY TREATMENT**
15 **PROGRAMS SHALL BE CERTIFIED BY THE DIRECTOR OF THE**
16 **DEPARTMENT. THE DIRECTOR MAY ESTABLISH QUALIFICATIONS FOR**
17 **THE CERTIFICATION OF PROGRAMS, WHICH MAY INCLUDE**
18 **REQUIREMENTS FOR SUPERVISION AND MONITORING OF CLIENTS, FEE**
19 **REIMBURSEMENT PROCEDURES, HANDLING OF CONFLICTS OF**
20 **INTEREST, DELIVERY OF SERVICES TO CLIENTS UNABLE TO PAY, AND**
21 **OTHER MATTERS RELATING TO QUALITY AND DELIVERY OF SERVICES**
22 **BY THE PROGRAM. THE CERTIFICATION SHALL BE FOR A FOUR-YEAR**
23 **PERIOD. THE DIRECTOR SHALL CONSULT WITH THE DEPARTMENT OF**
24 **HUMAN SERVICES ON THOSE STANDARDS, POLICIES, AND RULES THAT**
25 **ARE APPLICABLE TO LICENSED AND CREDENTIALLED SUBSTANCE**
26 **ABUSE OR MENTAL HEALTH SERVICES.**

27
28 **CRIME VICTIMS COMPENSATION BOARD**
29

30 18.353 Crime victims services commission; powers and duties generally.

31 Sec. 3.

32 (1) The commission shall do all of the following:

33 (a) Promulgate rules under the administrative procedures act of 1969, Act No. 306 of the
34 Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws,
35 including rules for the approval of attorneys' fees for representation before the
36 commission or before the court of appeals upon judicial review as provided for in section
37 8.

38 (b) Obtain from a state or local governmental unit assistance and data to enable the
39 commission to carry out its functions and duties.

40 (c) Investigate and determine claims for awards and reinvestigate or reopen cases as the
41 commission considers necessary.

42 (d) Direct medical examination of victims.

43 (e) Review all appeals, hold hearings, administer oaths or affirmations, examine any
44 person under oath or affirmation, issue subpoenas requiring the attendance and giving of
45 testimony of witnesses and the production of books, papers, documentary or other
46 evidence. For the purposes of this section, a certified copy of an investigative report

- 1 relating to the hearing meets the requirements of this section.
2 (f) Take or cause to be taken affidavits or depositions within or without the state.
3 (g) Give an annual written report of its activities to the governor and the legislature.
4 (h) Conduct a program to insure continued public awareness of the provisions of this act
5 in cooperation with state and local agencies.
6 (i) Monitor, evaluate, and coordinate state and local victim assistance programs.
7 (j) Administer and provide advice for the disbursement of federal funds available from
8 the victims of crime act of 1984, chapter XIV of the comprehensive crime control act of
9 1984, title II of Public Law 98-473, 98 Stat. 2170, for the purposes of compensating and
10 assisting crime victims.
11 (k) Perform the duties required under Act No. 196 of the Public Acts of 1989, being
12 sections 780.901 to 780.911 of the Michigan Compiled Laws.
13 **(l) PERFORM OR CONTRACT FOR THE PERFORMANCE OF A PERIODIC**
14 **VICTIMIZATION SURVEY BY LOCALITY, AND REPORT THE RESULTS TO**
15 **THE GOVERNOR, THE ATTORNEY GENERAL, THE SUPREME COURT,**
16 **AND THE LEGISLATURE. THE PURPOSE OF THE SURVEY IS TO**
17 **SUPPLEMENT INFORMATION CONTAINED IN UNIFORM CRIME**
18 **REPORTING SO THAT THE AMOUNT AND NATURE OF CRIMINAL**
19 **VICTIMIZATION IS MORE ACCURATELY CAPTURED FOR PURPOSES OF**
20 **PUBLIC POLICY. IN THIS SECTION, "VICTIMIZATION SURVEY" MEANS**
21 **SURVEY RESEARCH OF REPRESENTATIVE SAMPLES OF THE STATE'S**
22 **POPULATION, AND DOES NOT MEAN SPECIFICALLY RECONTACTING**
23 **KNOWN VICTIMS OF CRIME.**
24 (2) With the exception of subsection (1)(e), the powers provided in subsection (1) may be
25 delegated by the commission to a member of the commission or its staff.