

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5135

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 37a of chapter VII, sections 12, 13, and 20a of chapter VIII, sections 1k, 10, 11, 12, and 13 of chapter IX, section 3 of chapter XI, and sections 13j, 16y, 16z, 21, 51, 52, 53, and 54 of chapter XVII (MCL 767.37a, 768.12, 768.13, 768.20a, 769.1k, 769.10, 769.11, 769.12, 769.13, 771.3, 777.13j, 777.16y, 777.16z, 777.21, 777.51, 777.52, 777.53, and 777.54), section 37a of chapter VII as added by 1994 PA 229, section 20a of chapter VIII as amended by 1983 PA 42, section 1k of chapter IX as added by 2005 PA 316, sections 10, 11, and 12 of chapter IX as amended and sections 51, 52, and 53 of chapter XVII as added by 1998 PA 317, section 13 of chapter IX as amended by 1994 PA 110, section

3 of chapter XI as amended by 2004 PA 330, section 13j of chapter XVII as added by 2002 PA 30, section 16y of chapter XVII as amended by 2006 PA 166, section 16z of chapter XVII as amended by 2006 PA 62, and sections 21 and 54 of chapter XVII as amended by 2000 PA 279; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VII

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Sec. 37a. (1) ~~Unless the defendant requests physical presence before the court, a~~ A judge or district court magistrate may conduct initial criminal arraignments and ~~the setting of~~ **SET** bail by 2-way ~~closed circuit television~~ **INTERACTIVE VIDEO TECHNOLOGY** communication between a court facility and a prison, jail, or other place where a person is imprisoned or detained. A judge or district court magistrate may conduct initial criminal arraignments and ~~the setting of~~ **SET** bail on weekends, holidays, or at any time as determined by the court.

(2) A 2-way ~~closed circuit television~~ **INTERACTIVE VIDEO TECHNOLOGY** system used ~~pursuant to~~ **UNDER** this section shall enable the accused and the judge or district court magistrate to see, hear, and communicate with each other simultaneously, and shall enable defense counsel and the prosecuting attorney, if present, to be heard by and to communicate simultaneously with the accused, the judge or district court magistrate, and opposing counsel.

(3) Except as otherwise provided by law, the public shall have access to the courtroom **OR OTHER LOCATION**, ~~with the ability~~

1 **THAT ALLOWS THEM** to view and hear the proceedings.

2 (4) If proceedings conducted ~~pursuant to~~ **UNDER** this
3 section are not recorded by an individual certified by the state
4 court administrative office, the court shall record and maintain
5 an original audiovisual recording of the entire proceedings. A
6 recording made ~~pursuant to~~ **UNDER** this subsection shall become
7 part of the court record.

8 (5) This act does not prohibit the use of 2-way ~~closed~~
9 ~~circuit television~~ **INTERACTIVE VIDEO TECHNOLOGY** for arraignments
10 on the information, criminal pretrial hearings, criminal pleas,
11 sentencing hearings for misdemeanor violations cognizable in the
12 district court, show cause hearings, or other criminal
13 proceedings, to the extent the Michigan supreme court has
14 authorized that use.

15 CHAPTER VIII

16 Sec. 12. (1) ~~Any~~ **A** person who is put on trial for an
17 offense ~~which~~ **THAT** is not punishable by death or life
18 imprisonment shall be allowed to challenge peremptorily 5 of the
19 persons drawn to serve as jurors. ~~and no more; and the~~
20 ~~prosecuting officers on behalf of the people shall be allowed to~~
21 ~~challenge peremptorily in such cases 5 of such jurors and no~~
22 ~~more.~~ In ~~cases~~ **A CASE** involving 2 or more defendants who are
23 being jointly tried for ~~such~~ an offense **THAT IS NOT PUNISHABLE**
24 **BY DEATH OR LIFE IMPRISONMENT**, each of ~~said~~ **THE** defendants
25 shall be allowed to challenge peremptorily 5 persons returned as
26 jurors. ~~and no more; and the~~ **THE** prosecuting officers on behalf
27 of the people shall be allowed to challenge 5 **JURORS** peremptorily

1 ~~as many times 5 of the persons returned as jurors as there may be~~
2 ~~defendants being so jointly tried.~~ IF A DEFENDANT IS BEING TRIED
3 ALONE OR, IF DEFENDANTS ARE TRIED JOINTLY, SHALL BE ALLOWED THE
4 TOTAL NUMBER OF PEREMPTORY CHALLENGES TO WHICH ALL THE DEFENDANTS
5 ARE ENTITLED.

6 (2) ON MOTION AND A SHOWING OF GOOD CAUSE, THE COURT MAY
7 GRANT 1 OR MORE OF THE PARTIES AN INCREASED NUMBER OF PEREMPTORY
8 CHALLENGES. THE NUMBER OF ADDITIONAL PEREMPTORY CHALLENGES THE
9 COURT GRANTS MAY CAUSE THE VARIOUS PARTIES TO HAVE UNEQUAL
10 NUMBERS OF PEREMPTORY CHALLENGES.

11 Sec. 13. (1) ~~Any~~ A person who is ~~put on trial~~ BEING
12 TRIED ALONE for an offense punishable by death or imprisonment
13 for life, shall be allowed to challenge peremptorily ~~20~~ 12 of
14 the persons drawn to serve as jurors. ~~—, and no more; and the~~
15 ~~prosecuting officers on behalf of the people shall be allowed to~~
16 ~~challenge peremptorily 15 of such persons, and no more. In cases~~
17 ~~involving 2 or more defendants, who are being jointly tried for~~
18 ~~such an offense, each of said defendants shall be allowed to~~
19 ~~challenge peremptorily 20 persons returned as jurors, and no~~
20 ~~more; and the prosecuting officers on behalf of the people shall~~
21 ~~be allowed to challenge peremptorily as many times 15 of the~~
22 ~~persons returned as jurors as there may be defendants being so~~
23 ~~jointly tried.~~ IN A CASE PUNISHABLE BY DEATH OR IMPRISONMENT FOR
24 LIFE THAT INVOLVES 2 OR MORE DEFENDANTS, A DEFENDANT SHALL BE
25 ALLOWED THE FOLLOWING NUMBER OF PEREMPTORY CHALLENGES:

26 (A) TWO DEFENDANTS - 10 EACH.

27 (B) THREE DEFENDANTS - 9 EACH.

1 (C) FOUR DEFENDANTS - 8 EACH.

2 (D) FIVE OR MORE DEFENDANTS - 7 EACH.

3 (2) IN A CASE PUNISHABLE BY DEATH OR IMPRISONMENT FOR LIFE,
4 THE PROSECUTING OFFICERS ON BEHALF OF THE PEOPLE SHALL BE ALLOWED
5 TO CHALLENGE PEREMPTORILY 12 JURORS IF A DEFENDANT IS BEING TRIED
6 ALONE OR, IF DEFENDANTS ARE TRIED JOINTLY, SHALL BE ALLOWED THE
7 TOTAL NUMBER OF PEREMPTORY CHALLENGES TO WHICH ALL THE DEFENDANTS
8 ARE ENTITLED.

9 (3) ON MOTION AND A SHOWING OF GOOD CAUSE, THE COURT MAY
10 GRANT 1 OR MORE OF THE PARTIES AN INCREASED NUMBER OF PEREMPTORY
11 CHALLENGES. THE NUMBER OF ADDITIONAL PEREMPTORY CHALLENGES THE
12 COURT GRANTS MAY CAUSE THE VARIOUS PARTIES TO HAVE UNEQUAL
13 NUMBERS OF PEREMPTORY CHALLENGES.

14 Sec. 20a. (1) If a defendant in a felony case proposes to
15 offer in his or her defense testimony to establish his or her
16 insanity at the time of an alleged offense, the defendant shall
17 file and serve upon the court and the prosecuting attorney a
18 notice in writing of his or her intention to assert the defense
19 of insanity not less than 30 days before the date set for the
20 trial of the case, or at such other time as the court directs.

21 (2) Upon receipt of a notice of an intention to assert the
22 defense of insanity, a court shall order the defendant to undergo
23 an examination relating to his or her claim of insanity by
24 personnel of the center for forensic psychiatry or by other
25 qualified personnel, as applicable, for a period not to exceed 60
26 days from the date of the order. When the defendant is to be held
27 in jail pending trial, the center or the other qualified

1 personnel may perform the examination in the jail, or may notify
2 the sheriff to transport the defendant to the center or facility
3 used by the qualified personnel for the examination, and the
4 sheriff shall return the defendant to the jail upon completion of
5 the examination. When the defendant is at liberty pending trial,
6 on bail or otherwise, the defendant shall make himself or herself
7 available for the examination at the place and time established
8 by the center or the other qualified personnel. If the defendant,
9 after being notified of the place and time of the examination,
10 fails to make himself or herself available for the examination,
11 the court may, without a hearing, order his or her commitment to
12 the center.

13 (3) The defendant may, at his or her own expense, ~~or if~~
14 ~~indigent, at the expense of the county,~~ secure an independent
15 psychiatric evaluation by a clinician of his or her choice on the
16 issue of his or her insanity at the time the alleged offense was
17 committed. **IF THE DEFENDANT IS INDIGENT, THE COURT MAY, UPON**
18 **SHOWING OF GOOD CAUSE, ORDER THAT THE COUNTY PAY FOR AN**
19 **INDEPENDENT PSYCHIATRIC EVALUATION.** The defendant shall notify
20 the prosecuting attorney at least 5 days before the day scheduled
21 for the independent evaluation that he or she intends to secure
22 such an evaluation. The prosecuting attorney may similarly obtain
23 independent psychiatric evaluation. A clinician secured by an
24 indigent defendant ~~shall be~~ **IS** entitled to receive a reasonable
25 fee as approved by the court.

26 (4) The defendant shall fully cooperate in his or her
27 examination by personnel of the center for forensic psychiatry or

1 by other qualified personnel, and by any other independent
2 examiners for the defense and prosecution. If he or she fails to
3 cooperate, and that failure is established to the satisfaction of
4 the court at a hearing prior to trial, the defendant shall be
5 barred from presenting testimony relating to his or her insanity
6 at the trial of the case.

7 (5) Statements made by the defendant to personnel of the
8 center for forensic psychiatry, to other qualified personnel, or
9 to any independent examiner during an examination shall not be
10 admissible or have probative value in court at the trial of the
11 case on any issues other than his or her mental illness or
12 insanity at the time of the alleged offense.

13 (6) Upon conclusion of the examination, the center for
14 forensic psychiatry or the other qualified personnel, and any
15 independent examiner, shall prepare a written report and shall
16 submit the report to the prosecuting attorney and defense
17 counsel. The report shall contain:

18 (a) The clinical findings of the center, the qualified
19 personnel, or any independent examiner.

20 (b) The facts, in reasonable detail, upon which the findings
21 were based.

22 (c) The opinion of the center or qualified personnel, and
23 the independent examiner on the issue of the defendant's insanity
24 at the time the alleged offense was committed and whether the
25 defendant was mentally ill or mentally retarded at the time the
26 alleged offense was committed.

27 (7) Within 10 days after the receipt of the report from the

1 center for forensic psychiatry or from the qualified personnel,
2 or within 10 days after the receipt of the report of an
3 independent examiner secured by the prosecution, whichever occurs
4 later, but not later than 5 days before the trial of the case, or
5 at ~~such other~~ **ANOTHER** time ~~as~~ the court directs, the
6 prosecuting attorney shall file and serve upon the defendant a
7 notice of rebuttal of the defense of insanity which shall contain
8 the names of the witnesses whom the prosecuting attorney proposes
9 to call in rebuttal.

10 (8) The report of the center for forensic psychiatry, the
11 qualified personnel, or any independent examiner may be
12 admissible in evidence upon the stipulation of the prosecution
13 and defense.

14 (9) As used in this section, "qualified personnel" means
15 ~~either of the following:~~

16 ~~—— (a) Personnel~~ **PERSONNEL** meeting standards determined by the
17 department of ~~mental~~ **COMMUNITY** health under rules promulgated
18 pursuant to ~~Act No. 306 of the Public Acts of 1969, being~~
19 ~~sections 24.301 to 24.315 of the Michigan Compiled Laws.~~

20 ~~—— (b) Until the rules to which subdivision (a) refers,~~
21 ~~excluding emergency rules, are in effect, personnel of the~~
22 ~~psychiatric clinic of the recorder's court of the city of~~
23 ~~Detroit.~~ **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,**
24 **MCL 24.201 TO 24.328.**

25 CHAPTER IX

26 Sec. 1k. (1) If a defendant enters a plea of guilty or nolo
27 contendere or if the court determines after a hearing or trial

1 that the defendant is guilty, both of the following apply at the
2 time of the sentencing or at the time entry of judgment of guilt
3 is deferred pursuant to statute or sentencing is delayed pursuant
4 to statute:

5 (a) The court shall impose the minimum state costs as set
6 forth in section 1j of this chapter.

7 (b) The court may impose any or all of the following:

8 (i) Any fine.

9 (ii) Any cost in addition to the minimum state cost set forth
10 in subdivision (a).

11 (iii) The expenses of providing legal assistance to the
12 defendant.

13 (iv) Any assessment authorized by law.

14 (v) Reimbursement under section 1f of this chapter.

15 **(2) IN ADDITION TO ANY FINE, COST, OR ASSESSMENT IMPOSED**
16 **UNDER SUBSECTION (1), THE COURT MAY ORDER THE DEFENDANT TO PAY**
17 **ANY ADDITIONAL COSTS INCURRED IN COMPELLING THE DEFENDANT'S**
18 **APPEARANCE.**

19 **(3) —(2) Subsection (1) applies regardless of whether**
20 **SUBSECTIONS (1) AND (2) APPLY EVEN IF** the defendant is placed on
21 probation, probation is revoked, or the defendant is discharged
22 from probation.

23 **(4) —(3) —** The court may require the defendant to pay any
24 fine, cost, or assessment ordered to be paid under this section
25 by wage assignment.

26 **(5) —(4) —** The court may provide for the amounts imposed
27 under this section to be collected at any time.

1 (6) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE COURT MAY APPLY
2 PAYMENTS RECEIVED ON BEHALF OF A DEFENDANT THAT EXCEED THE TOTAL
3 OF ANY FINE, COST, FEE, OR OTHER ASSESSMENT IMPOSED IN THE CASE
4 TO ANY FINE, COST, FEE, OR ASSESSMENT THAT THE SAME DEFENDANT
5 OWES IN ANY OTHER CASE.

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

13 (a) If the subsequent felony is punishable upon a first
14 conviction by imprisonment for a term less than life, the court,
15 except as otherwise provided in this section or section 1 of
16 chapter XI, may place the person on probation or sentence the
17 person to imprisonment for a maximum term that is not more than
18 1-1/2 times the longest term prescribed for a first conviction of
19 that offense or for a lesser term.

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

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

1 (2) If the court pursuant to this section imposes a sentence
2 of imprisonment for any term of years, the court shall fix the
3 length of both the minimum and maximum sentence within any
4 specified limits in terms of years or a fraction of a year and
5 the sentence so imposed shall be considered an indeterminate
6 sentence. **THE COURT SHALL NOT FIX A MAXIMUM SENTENCE THAT IS LESS**
7 **THAN THE MAXIMUM TERM FOR A FIRST CONVICTION.**

8 (3) A conviction shall not be used to enhance a sentence
9 under this section if that conviction is used to enhance a
10 sentence under a statute that prohibits use of the conviction for
11 further enhancement under this section.

12 Sec. 11. (1) If a person has been convicted of any
13 combination of 2 or more felonies or attempts to commit felonies,
14 whether the convictions occurred in this state or would have been
15 for felonies or attempts to commit felonies in this state if
16 obtained in this state, and that person commits a subsequent
17 felony within this state, the person shall be punished upon
18 conviction of the subsequent felony and sentencing under section
19 13 of this chapter as follows:

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

26 (b) If the subsequent felony is punishable upon a first
27 conviction by imprisonment for life, the court, except as

1 otherwise provided in this section or section 1 of chapter XI,
2 may sentence the person to imprisonment for life or for a lesser
3 term.

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

7 (2) If the court pursuant to this section imposes a sentence
8 of imprisonment for any term of years, the court shall fix the
9 length of both the minimum and maximum sentence within any
10 specified limits in terms of years or a fraction of a year, and
11 the sentence so imposed shall be considered an indeterminate
12 sentence. **THE COURT SHALL NOT FIX A MAXIMUM SENTENCE THAT IS LESS**
13 **THAN THE MAXIMUM TERM FOR A FIRST CONVICTION.**

14 (3) A conviction shall not be used to enhance a sentence
15 under this section if that conviction is used to enhance a
16 sentence under a statute that prohibits use of the conviction for
17 further enhancement under this section.

18 Sec. 12. (1) If a person has been convicted of any
19 combination of 3 or more felonies or attempts to commit felonies,
20 whether the convictions occurred in this state or would have been
21 for felonies or attempts to commit felonies in this state if
22 obtained in this state, and that person commits a subsequent
23 felony within this state, the person shall be punished upon
24 conviction of the subsequent felony and sentencing under section
25 13 of this chapter as follows:

26 (a) If the subsequent felony is punishable upon a first
27 conviction by imprisonment for a maximum term of 5 years or more

1 or for life, the court, except as otherwise provided in this
2 section or section 1 of chapter XI, may sentence the person to
3 imprisonment for life or for a lesser term.

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

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

12 (2) If the court pursuant to this section imposes a sentence
13 of imprisonment for any term of years, the court shall fix the
14 length of both the minimum and maximum sentence within any
15 specified limits in terms of years or a fraction of a year, and
16 the sentence so imposed shall be considered an indeterminate
17 sentence. **THE COURT SHALL NOT FIX A MAXIMUM SENTENCE THAT IS LESS**
18 **THAN THE MAXIMUM TERM FOR A FIRST CONVICTION.**

19 (3) A conviction shall not be used to enhance a sentence
20 under this section if that conviction is used to enhance a
21 sentence under a statute that prohibits use of the conviction for
22 further enhancement under this section.

23 (4) An offender sentenced under this section or section 10
24 or 11 of this chapter for an offense other than a major
25 controlled substance offense is not eligible for parole until
26 expiration of the following:

27 (a) For a prisoner other than a prisoner subject to

1 disciplinary time, the minimum term fixed by the sentencing judge
2 at the time of sentence unless the sentencing judge or a
3 successor gives written approval for parole at an earlier date
4 authorized by law.

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

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

11 (6) As used in this section, "prisoner subject to
12 disciplinary time" means that term as defined in section 34 of
13 1893 PA 118, MCL 800.34.

14 Sec. 13. (1) In a criminal action, the prosecuting attorney
15 may seek to enhance the sentence of the defendant as provided
16 under section 10, 11, or 12 of this chapter, by filing a written
17 notice of his or her intent to do so within 21 days after the
18 defendant's arraignment on the information charging the
19 underlying offense or, if arraignment is waived, within 21 days
20 after the filing of the information charging the underlying
21 offense.

22 (2) A notice of intent to seek an enhanced sentence filed
23 under subsection (1) shall list the prior conviction or
24 convictions that will or may be relied upon for purposes of
25 sentence enhancement. The notice shall be filed with the court
26 and served upon the defendant or his or her attorney within the
27 time provided in subsection (1). The notice may be personally

1 served upon the defendant or his or her attorney at the
2 arraignment on the information charging the underlying offense,
3 or may be served in the manner provided by law or court rule for
4 service of written pleadings. The prosecuting attorney shall file
5 a written proof of service with the clerk of the court.

6 (3) The prosecuting attorney may file notice of intent to
7 seek an enhanced sentence after the defendant has been convicted
8 of the underlying offense or a lesser offense, upon his or her
9 plea of guilty or nolo contendere if the defendant pleads guilty
10 or nolo contendere at the arraignment on the information charging
11 the underlying offense, or within the time allowed for filing of
12 the notice under subsection (1).

13 (4) A defendant who has been given notice that the
14 prosecuting attorney will seek to enhance his or her sentence as
15 provided under section 10, 11, or 12 of this chapter, may
16 challenge the accuracy or constitutional validity of 1 or more of
17 the prior convictions listed in the notice by filing a written
18 motion with the court and by serving a copy of the motion upon
19 the prosecuting attorney in accordance with rules of the supreme
20 court.

21 (5) The existence of the defendant's prior conviction or
22 convictions shall be determined by the court, without a jury, at
23 sentencing, or at a separate hearing scheduled for that purpose
24 before sentencing. The existence of a prior conviction may be
25 established by any evidence that is relevant for that purpose,
26 including, but not limited to, 1 or more of the following:

27 (a) A copy of a judgment of conviction.

1 (b) A transcript of a prior trial or a plea-taking or
2 sentencing proceeding.

3 (C) A COPY OF A COURT REGISTER OF ACTIONS.

4 (D) ~~—(e)—~~ Information contained in a presentence report.

5 (E) ~~—(d)—~~ A statement of the defendant.

6 (6) The court shall resolve any challenges to the accuracy
7 or constitutional validity of a prior conviction or convictions
8 that have been raised in a motion filed under subsection (4) at
9 sentencing or at a separate hearing scheduled for that purpose
10 before sentencing. The defendant, or his or her attorney, shall
11 be given an opportunity to deny, explain, or refute any evidence
12 or information pertaining to the defendant's prior conviction or
13 convictions before sentence is imposed, and shall be permitted to
14 present relevant evidence for that purpose. The defendant shall
15 bear the burden of establishing a prima facie showing that an
16 alleged prior conviction is inaccurate or constitutionally
17 invalid. If the defendant establishes a prima facie showing that
18 information or evidence concerning an alleged prior conviction is
19 inaccurate, the prosecuting attorney shall bear the burden of
20 proving, by a preponderance of the evidence, that the information
21 or evidence is accurate. If the defendant establishes a prima
22 facie showing that an alleged prior conviction is
23 constitutionally invalid, the prosecuting attorney shall bear the
24 burden of proving, by a preponderance of the evidence, that the
25 prior conviction is constitutionally valid.

26 CHAPTER XI

27 Sec. 3. (1) The sentence of probation shall include all of

1 the following conditions:

2 (a) During the term of his or her probation, the probationer
3 shall not violate any criminal law of this state, the United
4 States, or another state or any ordinance of any municipality in
5 this state or another state.

6 (b) During the term of his or her probation, the probationer
7 shall not leave the state without the consent of the court
8 granting his or her application for probation.

9 (c) The probationer shall report to the probation officer,
10 either in person or in writing, monthly or as often as the
11 probation officer requires. This subdivision does not apply to a
12 juvenile placed on probation and committed under section 1(3) or
13 (4) of chapter IX to an institution or agency described in the
14 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
15 803.309.

16 (d) If sentenced in circuit court, the probationer shall pay
17 a probation supervision fee as prescribed in section 3c of this
18 chapter.

19 (e) The probationer shall pay restitution to the victim of
20 the defendant's course of conduct giving rise to the conviction
21 or to the victim's estate as provided in chapter IX. An order for
22 payment of restitution may be modified and shall be enforced as
23 provided in chapter IX.

24 (f) The probationer shall pay an assessment ordered under
25 section 5 of 1989 PA 196, MCL 780.905.

26 (g) The probationer shall pay the minimum state cost
27 prescribed by section 1j of chapter IX.

1 (h) If the probationer is required to be registered under
2 the sex offenders registration act, 1994 PA 295, MCL 28.721 to
3 ~~28.732~~ 28.736, the probationer shall comply with that act.

4 (2) As a condition of probation, the court may require the
5 probationer to do 1 or more of the following:

6 (a) Be imprisoned in the county jail for not more than 12
7 months, at the time or intervals, which may be consecutive or
8 nonconsecutive, within the probation as the court determines.
9 However, the period of confinement shall not exceed the maximum
10 period of imprisonment provided for the offense charged if the
11 maximum period is less than 12 months. The court may permit day
12 parole as authorized under 1962 PA 60, MCL 801.251 to 801.258.
13 The court may permit a work or school release from jail. This
14 subdivision does not apply to a juvenile placed on probation and
15 committed under section 1(3) or (4) of chapter IX to an
16 institution or agency described in the youth rehabilitation
17 services act, 1974 PA 150, MCL 803.301 to 803.309.

18 (b) Pay immediately or within the period of his or her
19 probation a fine imposed when placed on probation.

20 (c) Pay costs pursuant to subsection (5).

21 (d) Pay any assessment ordered by the court other than an
22 assessment described in subsection (1)(f).

23 (e) Engage in community service.

24 (f) Agree to pay by wage assignment any restitution,
25 assessment, fine, or cost imposed by the court.

26 (g) Participate in inpatient or outpatient drug treatment
27 or, beginning January 1, 2005, participate in a drug treatment

1 court under chapter 10A of the revised judicature act of 1961,
2 1961 PA 236, MCL 600.1060 to 600.1082.

3 (h) Participate in mental health treatment.

4 (i) Participate in mental health or substance abuse
5 counseling.

6 (j) Participate in a community corrections program.

7 (k) Be under house arrest.

8 (l) Be subject to electronic monitoring.

9 (m) Participate in a residential probation program.

10 (n) Satisfactorily complete a program of incarceration in a
11 special alternative incarceration unit as provided in section 3b
12 of this chapter.

13 (o) Be subject to conditions reasonably necessary for the
14 protection of 1 or more named persons.

15 (p) Reimburse the county for expenses incurred by the county
16 in connection with the conviction for which probation was ordered
17 as provided in the prisoner reimbursement to the county act, 1984
18 PA 118, MCL 801.81 to 801.93.

19 (q) Complete his or her high school education or obtain the
20 equivalency of a high school education in the form of a general
21 education development (GED) certificate.

22 (3) The court may impose other lawful conditions of
23 probation as the circumstances of the case require or warrant or
24 as in its judgment are proper.

25 (4) If an order or amended order of probation contains a
26 condition for the protection of 1 or more named persons as
27 provided in subsection (2)(o), the court or a law enforcement

1 agency within the court's jurisdiction shall enter the order or
2 amended order into the law enforcement information network. If
3 the court rescinds the order or amended order or the condition,
4 the court shall remove the order or amended order or the
5 condition from the law enforcement information network or notify
6 that law enforcement agency and the law enforcement agency shall
7 remove the order or amended order or the condition from the law
8 enforcement information network.

9 (5) If the court requires the probationer to pay costs under
10 subsection (2), the costs shall be limited to expenses
11 specifically incurred in prosecuting the defendant or providing
12 legal assistance to the defendant and supervision of the
13 probationer.

14 (6) If the court imposes costs under subsection (2) as part
15 of a sentence of probation, all of the following apply:

16 (a) The court shall not require a probationer to pay costs
17 under subsection (2) unless the probationer is or will be able to
18 pay them during the term of probation. In determining the amount
19 and method of payment of costs under subsection (2), the court
20 shall take into account the probationer's financial resources and
21 the nature of the burden that payment of costs will impose, with
22 due regard to his or her other obligations.

23 (b) A probationer who is required to pay costs under
24 subsection (1)(g) or (2)(c) and who is not in willful default of
25 the payment of the costs may petition the sentencing judge or his
26 or her successor at any time for a remission of the payment of
27 any unpaid portion of those costs. If the court determines that

1 payment of the amount due will impose a manifest hardship on the
2 probationer or his or her immediate family, the court may remit
3 all or part of the amount due in costs or modify the method of
4 payment.

5 (7) If a probationer is required to pay costs as part of a
6 sentence of probation, the court may require payment to be made
7 immediately or the court may provide for payment to be made
8 within a specified period of time or in specified installments.

9 (8) If a probationer is ordered to pay costs as part of a
10 sentence of probation, compliance with that order shall be a
11 condition of probation. The court may revoke probation if the
12 probationer fails to comply with the order and if the probationer
13 has not made a good faith effort to comply with the order. In
14 determining whether to revoke probation, the court shall consider
15 the probationer's employment status, earning ability, and
16 financial resources, the willfulness of the probationer's failure
17 to pay, and any other special circumstances that may have a
18 bearing on the probationer's ability to pay. The proceedings
19 provided for in this subsection are in addition to those provided
20 in section 4 of this chapter.

21 (9) If ~~sentencing~~ **ENTRY OF JUDGMENT** is deferred in the
22 circuit court, the court shall require the individual to pay a
23 supervision fee in the same manner as is prescribed for a delayed
24 sentence under section 1(3) of this chapter, shall require the
25 individual to pay the minimum state costs prescribed by section
26 1j of chapter IX, and may impose, as applicable, the conditions
27 of probation described in subsections (1), (2), and (3).

1 (10) If sentencing is delayed or **ENTRY OF JUDGMENT IS**
 2 deferred in the district court or in a municipal court, the court
 3 shall require the individual to pay the minimum state costs
 4 prescribed by section 1j of chapter IX and may impose, as
 5 applicable, the conditions of probation described in subsections
 6 (1), (2), and (3).

7 **CHAPTER XVII**

8 Sec. 13j. This chapter applies to the following felonies
 9 enumerated in chapters 325 to 332 of the Michigan Compiled Laws:

10 M.C.L.	Category	Class	Description	Stat Max
11 328.232	Property	E	Conversion of funeral contracts	5
12 330.1944	PUB SAF	F	CRIMINAL SEXUAL PSYCHOPATH LEAVING STATE WITHOUT PERMISSION	4

13 Sec. 16y. This chapter applies to the following felonies
 14 enumerated in chapter 750 of the Michigan Compiled Laws:

15 M.C.L.	Category	Class	Description	Stat Max
16 750.520b(2)(a) 750.520B(2)	Person	A	First degree criminal sexual conduct	Life
17 750.520c	Person	C	Second degree criminal sexual conduct	15
18 750.520d	Person	B	Third degree criminal sexual conduct	15

1	750.520e	Person	G	Fourth degree criminal sexual conduct	2
2	750.520g(1)	Person	D	Assault with intent to commit sexual penetration	10
3	750.520g(2)	Person	E	Assault with intent to commit sexual contact	5
4	750.520n	Pub saf	G	Electronic monitoring device violation	2
5	750.528	Pub saf	F	Destroying dwelling house or other property during riot or unlawful assembly	4
6	750.528a	Pub saf	F	Civil disorders – firearms/explosives	4
7	750.529	Person	A	Armed robbery	Life
8	750.529a	Person	A	Carjacking	Life
9	750.530	Person	C	Unarmed robbery	15
10	750.531	Person	C	Bank robbery/safebreaking	Life
11	750.532	Person	H	Seduction	5
12	750.552e	Pub saf	F	Trespass upon key facility	4

13 Sec. 16z. This chapter applies to the following felonies
14 enumerated in chapter 750 of the Michigan Compiled Laws:

1	M.C.L.	Category	Class	Description	Stat Max
2	750.520b(2)(a) 750.520B(2)	Property	D	Receiving or concealing stolen property having a value of \$20,000 or more or with prior convictions	10
3	750.535(3)	Property	E	Receiving or concealing stolen property having a value of \$1,000 to \$20,000 or with prior convictions	5
4	750.535(7)	Property	E	Receiving or concealing stolen motor vehicle	5
5	750.535a(2)	Pub ord	D	Operating a chop shop	10
6	750.535a(3)	Pub ord	D	Operating a chop shop, subsequent violation	10
7	750.535b	Pub saf	E	Stolen firearms or ammunition	10
8	750.539c	Pub ord	H	Eavesdropping	2
9	750.539d(3)(a)(i)	Pub ord	H	Installing, placing, or using eavesdropping device	2
10	750.539d(3)(a)(ii)	Pub ord	E	Installing, placing, or using eavesdropping device – subsequent offense	5
11	750.539d(3)(b)	Pub ord	E	Distributing, disseminating, or transmitting recording or image obtained by eavesdropping	5

1	750.539e	Pub ord	H	Divulging or using information obtained by eavesdropping	2
2	750.539f	Pub ord	H	Manufacture or possession of eavesdropping device	2
3	750.539j(2)(a)(i)	Pub ord	H	Lewd surveillance or capturing lewd image	2
4	750.539j(2)(a)(ii)	Pub ord	E	Lewd surveillance or capturing lewd image – subsequent offense	5
5	750.539j(2)(b)	Pub ord	E	Distributing, disseminating, or transmitting visual image obtained by surveillance	5
6	750.540(5)(a)	Pub ord	H	Damaging, destroying, using, or obstructing use of electronic medium of communication	2
7	750.540(5)(b)	Person	F	Damaging, destroying, using, or obstructing use of electronic medium of communication resulting in injury or death	4
8	750.540c(4)	Property	F	Telecommunication violation	4
9	750.540f(2)	Property	E	Knowingly publishing a communications access device with prior convictions	5
10	750.540g(1)(c)	Property	E	Diverting telecommunication services having a value of \$1,000 to \$20,000 or with prior convictions	5

1	750.540g(1) (d)	Property	D	Diverting telecommunications services having a value of \$20,000 or more or with prior convictions	10
2	750.543f	Person	A	Terrorism without causing death	Life
3	750.543h(3) (a)	Pub ord	B	Hindering prosecution of terrorism – certain terrorist acts	20
4	750.543h(3) (b)	Pub ord	A	Hindering prosecution of terrorism – act of terrorism	Life
5	750.543k	Pub saf	B	Soliciting or providing material support for terrorism or terrorist acts	20
6	750.543m	Pub ord	B	Threat or false report of terrorism	20
7	750.543p	Pub saf	B	Use of internet or telecommunications to commit certain terrorist acts	20
8	750.543r	Pub saf	B	Possession of vulnerable target information with intent to commit certain terrorist acts	20
9	750.545	Pub ord	E	Misprision of treason	5
10	750.552b	Property	F	Trespassing on correctional facility property	4

1 750.552C

PUB SAF

F

TRESPASS UPON KEY
FACILITY

4

2 Sec. 21. (1) ~~For~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**
3 **SECTION, FOR** an offense enumerated in part 2 of this chapter,
4 determine the recommended minimum sentence range as follows:

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

11 (b) Score all prior record variables for the offender as
12 provided in part 5 of this chapter. Total those points to
13 determine the offender's prior record variable level.

14 (c) Find the offense class for the offense from part 2 of
15 this chapter. Using the sentencing grid for that offense class in
16 part 6 of this chapter, determine the recommended minimum
17 sentence range from the intersection of the offender's offense
18 variable level and prior record variable level. The recommended
19 minimum sentence within a sentencing grid is shown as a range of
20 months or life.

21 (2) If the defendant was convicted of multiple offenses,
22 subject to section 14 of chapter ~~IX~~ **XI**, score each offense as
23 provided in this part.

24 (3) If the offender is being sentenced under section 10, 11,
25 or 12 of chapter IX, determine the offense category, offense

1 class, offense variable level, and prior record variable level
2 based on the underlying offense. To determine the recommended
3 minimum sentence range, increase the upper limit of the
4 recommended minimum sentence range determined under part 6 for
5 the underlying offense as follows:

6 (a) If the offender is being sentenced for a second felony,
7 25%.

8 (b) If the offender is being sentenced for a third felony,
9 50%.

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

12 (4) If the offender is being sentenced for a violation
13 described in section 18 of this chapter, ~~determine the offense~~
14 ~~class, offense variable level, and prior record variable level~~
15 ~~based on the underlying offense.~~ **BOTH OF THE FOLLOWING APPLY:**

16 **(A) DETERMINE THE OFFENSE VARIABLE LEVEL BY SCORING THE**
17 **OFFENSE VARIABLES FOR THE UNDERLYING OFFENSE AND ANY ADDITIONAL**
18 **OFFENSE VARIABLES FOR THE OFFENSE CATEGORY INDICATED IN SECTION**
19 **18 OF THIS CHAPTER.**

20 **(B) DETERMINE THE OFFENSE CLASS BASED ON THE UNDERLYING**
21 **OFFENSE. IF THERE ARE MULTIPLE UNDERLYING FELONY OFFENSES, THE**
22 **OFFENSE CLASS IS THE SAME AS THAT OF THE UNDERLYING FELONY**
23 **OFFENSE WITH THE HIGHEST CRIME CLASS. IF THERE ARE MULTIPLE**
24 **UNDERLYING OFFENSES BUT ONLY 1 IS A FELONY, THE OFFENSE CLASS IS**
25 **THE SAME AS THAT OF THE UNDERLYING FELONY OFFENSE. IF NO**
26 **UNDERLYING OFFENSE IS A FELONY, THE OFFENSE CLASS IS G.**

27 (5) If the offender is being sentenced for an attempted

1 felony described in section 19 of this chapter, determine the
2 offense variable level and prior record variable level based on
3 the underlying attempted offense.

4 Sec. 51. (1) Prior record variable 1 is prior high severity
5 felony convictions. Score prior record variable 1 by determining
6 which of the following apply and by assigning the number of
7 points attributable to the one that has the highest number of
8 points:

- 9 (a) The offender has 3 or more prior high
10 severity felony convictions..... 75 points
- 11 (b) The offender has 2 prior high severity
12 felony convictions..... 50 points
- 13 (c) The offender has 1 prior high severity
14 felony conviction..... 25 points
- 15 (d) The offender has no prior high severity
16 felony convictions..... 0 points

17 (2) As used in this section, "prior high severity felony
18 conviction" means a conviction for ~~a~~ **ANY OF THE FOLLOWING, IF**
19 **THE CONVICTION WAS ENTERED BEFORE THE SENTENCING OFFENSE WAS**
20 **COMMITTED:**

21 (A) A crime listed in offense class M2, A, B, C, or D. ~~or~~
22 ~~for a~~

23 (B) A felony under a law of the United States or another
24 state corresponding to a crime listed in offense class M2, A, B,
25 C, or D. ~~, if the conviction was entered before the sentencing~~
26 ~~offense was committed.~~

27 (C) A FELONY THAT IS NOT LISTED IN OFFENSE CLASS M2, A, B,

1 C, D, E, F, G, OR H AND THAT IS PUNISHABLE BY A MAXIMUM TERM OF
2 IMPRISONMENT OF 10 YEARS OR MORE.

3 (D) A FELONY UNDER A LAW OF THE UNITED STATES OR ANOTHER
4 STATE THAT DOES NOT CORRESPOND TO A CRIME LISTED IN OFFENSE CLASS
5 M2, A, B, C, D, E, F, G, OR H AND THAT IS PUNISHABLE BY A MAXIMUM
6 TERM OF IMPRISONMENT OF 10 YEARS OR MORE.

7 Sec. 52. (1) Prior record variable 2 is prior low severity
8 felony convictions. Score prior record variable 2 by determining
9 which of the following apply and by assigning the number of
10 points attributable to the one that has the highest number of
11 points:

- 12 (a) The offender has 4 or more prior low
13 severity felony convictions..... 30 points
- 14 (b) The offender has 3 prior low severity
15 felony convictions..... 20 points
- 16 (c) The offender has 2 prior low severity
17 felony convictions..... 10 points
- 18 (d) The offender has 1 prior low severity
19 felony conviction..... 5 points
- 20 (d) The offender has no prior low severity
21 felony convictions..... 0 points

22 (2) As used in this section, "prior low severity felony
23 conviction" means a conviction for ~~a~~ ANY OF THE FOLLOWING, IF
24 THE CONVICTION WAS ENTERED BEFORE THE SENTENCING OFFENSE WAS
25 COMMITTED:

- 26 (A) A crime listed in offense class E, F, G, or H. ~~or for a~~
- 27 (B) A felony under a law of the United States or another

1 state that corresponds to a crime listed in offense class E, F,
2 G, or H. ~~, if the conviction was entered before the sentencing~~
3 ~~offense was committed.~~

4 (C) A FELONY THAT IS NOT LISTED IN OFFENSE CLASS M2, A, B,
5 C, D, E, F, G, OR H AND THAT IS PUNISHABLE BY A MAXIMUM TERM OF
6 IMPRISONMENT OF LESS THAN 10 YEARS.

7 (D) A FELONY UNDER A LAW OF THE UNITED STATES OR ANOTHER
8 STATE THAT DOES NOT CORRESPOND TO A CRIME LISTED IN OFFENSE CLASS
9 M2, A, B, C, D, E, F, G, OR H AND THAT IS PUNISHABLE BY A MAXIMUM
10 TERM OF IMPRISONMENT OF LESS THAN 10 YEARS.

11 Sec. 53. (1) Prior record variable 3 is prior high severity
12 juvenile adjudications. Score prior record variable 3 by
13 determining which of the following apply and by assigning the
14 number of points attributable to the one that has the highest
15 number of points:

- 16 (a) The offender has 3 or more prior high
17 severity juvenile adjudications..... 50 points
- 18 (b) The offender has 2 prior high severity
19 juvenile adjudications..... 25 points
- 20 (c) The offender has 1 prior high severity
21 juvenile adjudication..... 10 points
- 22 (d) The offender has no prior high severity
23 juvenile adjudications..... 0 points

24 (2) As used in this section, "prior high severity juvenile
25 adjudication" means a juvenile adjudication for conduct that
26 would be ~~a~~ ANY OF THE FOLLOWING IF COMMITTED BY AN ADULT, IF

1 THE ORDER OF DISPOSITION WAS ENTERED BEFORE THE SENTENCING
2 OFFENSE WAS COMMITTED:

3 (A) A crime listed in offense class M2, A, B, C, or D. ~~if~~
4 ~~committed by an adult or for conduct that would be a~~

5 (B) A felony under a law of the United States or another
6 state corresponding to a crime listed in offense class M2, A, B,
7 C, or D. ~~if committed by an adult, if the order of disposition~~
8 ~~was entered before the sentencing offense was committed.~~

9 (C) A FELONY THAT IS NOT LISTED IN OFFENSE CLASS M2, A, B,
10 C, D, E, F, G, OR H AND THAT IS PUNISHABLE BY A MAXIMUM TERM OF
11 IMPRISONMENT OF 10 YEARS OR MORE.

12 (D) A FELONY UNDER A LAW OF THE UNITED STATES OR ANOTHER
13 STATE THAT DOES NOT CORRESPOND TO A CRIME LISTED IN OFFENSE CLASS
14 M2, A, B, C, D, E, F, G, OR H AND THAT IS PUNISHABLE BY A MAXIMUM
15 TERM OF IMPRISONMENT OF 10 YEARS OR MORE.

16 Sec. 54. (1) Prior record variable 4 is prior low severity
17 juvenile adjudications. Score prior record variable 4 by
18 determining which of the following apply and by assigning the
19 number of points attributable to the one that has the highest
20 number of points:

21 (a) The offender has 6 or more prior low
22 severity juvenile adjudications..... 20 points

23 (b) The offender has 5 prior low severity
24 juvenile adjudications..... 15 points

25 (c) The offender has 3 or 4 prior low
26 severity juvenile adjudications..... 10 points

27 (d) The offender has 2 prior low severity

- 1 juvenile adjudications..... 5 points
- 2 (e) The offender has 1 prior low severity
- 3 juvenile adjudication..... 2 points
- 4 (f) The offender has no prior low severity
- 5 juvenile adjudications..... 0 points

6 (2) As used in this section, "prior low severity juvenile
 7 adjudication" means a juvenile adjudication for conduct that
 8 would be ~~a~~ **ANY OF THE FOLLOWING IF COMMITTED BY AN ADULT, IF**
 9 **THE ORDER OF DISPOSITION WAS ENTERED BEFORE THE SENTENCING**
 10 **OFFENSE WAS COMMITTED:**

11 (A) A crime listed in offense class E, F, G, or H. ~~if~~
 12 ~~committed by an adult or for conduct that would be a~~

13 (B) A felony under a law of the United States or another
 14 state corresponding to a crime listed in offense class E, F, G,
 15 or H. ~~if committed by an adult, if the order of disposition was~~
 16 ~~entered before the sentencing offense was committed.~~

17 (C) A FELONY THAT IS NOT LISTED IN OFFENSE CLASS M2, A, B,
 18 C, D, E, F, G, OR H AND THAT IS PUNISHABLE BY A MAXIMUM TERM OF
 19 IMPRISONMENT OF LESS THAN 10 YEARS.

20 (D) A FELONY UNDER A LAW OF THE UNITED STATES OR ANOTHER
 21 STATE THAT DOES NOT CORRESPOND TO A CRIME LISTED IN OFFENSE CLASS
 22 M2, A, B, C, D, E, F, G, OR H AND THAT IS PUNISHABLE BY A MAXIMUM
 23 TERM OF IMPRISONMENT OF LESS THAN 10 YEARS.

24 Enacting section 1. Section 3a of chapter X of the code of
 25 criminal procedure, 1927 PA 175, MCL 770.3a, is repealed.