Legislative Analysis

MODIFY PROBATION POLICIES

House Bill 4137 as introduced
Sponsor: Rep. Martin Howrylak
Committee: Criminal Justice
Complete to 5-25-15

SUMMARY:

Briefly, House Bill 4137 would amend Chapters XI and XIA of the Code of Criminal Procedure to make changes to the sanctions imposed for a violation of <u>probation</u> conditions, to include the following:

- o Modify the legislative intent regarding the purposes of probation.
- o Expand the Swift and Sure Sanctions Probation Program statewide.
- o For a felony conviction, base the maximum term of probation on a probationer's applicable prior record variable score (taking certain circumstances into consideration).
- o Base sanctions for probation violations on the severity of the infraction and the number of times probation conditions had been violated. This would also apply to probation violations by participants in the Swift and Sure Sanctions Probation Program.
- o Count multiple probation violations as one violation when alleged at a single hearing on sanctions or revocation.
- o For probationers in the Swift and Sure Sanctions Probation Program, specify that a noncompliance violation would not subject the probationer to arrest and prompt appearance before a judge if the probationer waived a hearing. Continued violations could, at a minimum, subject a probationer to up to three days confinement.
- o Define terms, such as "noncompliance violation" and "major risk violation."

Probation is a term of supervision afforded a person who is convicted of a felony or a misdemeanor as an alternative to prison or jail, or may comprise a combination of jail and probation. A convicted felon serving a term of probation is supervised by the Department of Corrections under the jurisdiction of the sentencing court. A violation of an order or rule of probation may result in the addition of sanctions such as additional conditions of probation, the extension of the length of probation, or even revocation of the probation order. (In the case of revocation, a court could sentence the probationer in the same manner and to the same penalty as if probation had never been granted). A violation of probation occurs when the probationer commits a new crime or fails to keep one or more of the conditions or rules of the probation order (known as a "technical violation").

Specifically, House Bill 4137 would do the following:

** Revise <u>the maximum probation</u> period for a defendant convicted of a felony to either:

1) <u>Five years</u> if the applicable prior record variable (PRV) score calculated under the sentencing guidelines is 25 or greater <u>or</u> if the conditions under (2) below for a two-year maximum period do not apply.
2) <u>Two years</u> if the PRV score is less than 25 <u>and</u>:
   - The court does not determine that a period up to five years is necessary because of victim restitution ordered, <u>or</u>,
   - The conviction is <u>not</u> for a felony under Chapter LXXVI of the Michigan Penal Code (entitled "Rape"); a felony for stalking, aggravated stalking, or cyber stalking; or a felony involving domestic violence.

Currently, the maximum period of probation for any felony is five years.

** Revise the stated legislative intent to specify that the <u>purposes of probation</u> are to hold offenders accountable for making restitution to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety. Currently, the legislative intent says that the *granting of probation is a matter of grace conferring no vested right to its continuance*; that language would be deleted.

** Revise <u>protocols regarding probation violations</u>. Under the bill, a court may hold a hearing on sanction or revocation and could enter a disposition as determined to best serve the public interest if the probationer committed or attempted to commit a violation– subject to the following:

- A *first noncompliance violation* – require a court to sanction the probationer to one or more nonconfinement responses. A *second through a fifth noncompliance violation* – allow the court to sanction the probationer by confinement in the county jail for up to three days.
- A *risk violation* – allow the court to order confinement for up to 30 days.
- A *third risk violation or a major risk violation* – allow a court to revoke the probation order and sentence the probationer in the same manner and to the same penalty as if the probation order had never been made.

Time spent in confinement under these provisions must be credited toward the sentence imposed; if the probationer were on probation for multiple judgments, the credit must be applied to each sentence (this would apply to swift and sure probationers, as well).

** Specify that all violations alleged at a single hearing on sanction or revocation would constitute one violation for purposes of determining the sanction.

** Define terms:
- "*Noncompliance violation*" would mean a failure to report, or other violation of a condition of supervision that is not a risk violation or a major risk violation.

o "*Failure to report*" would mean failure to report to the probation officer when required and to turn oneself in within seven days after a warrant for apprehension has been issued.

o "*Nonconfinement response*" would mean a violation response that does not result in imprisonment in the custody of the Department of Corrections or the county jail, including extension of the period of supervision within the period provided by law; additional reporting and compliance requirements; testing for the use of drugs or alcohol; and/or counseling or treatment for behavioral health problems, including for substance use.

o "*Risk violation*" means a violation of a condition of supervision that is: contact with a specifically prohibited person or proximity to a specifically prohibited business or location; an arrest for domestic violence or other threatening, stalking, or assaultive behavior that is not a violation of a protective order; an arrest for an unadjudicated new felony that is not a major risk violation; absconding from supervision; and/or the probationer's sixth or subsequent noncompliance violation.

o "*Major risk violation*" means either the violation of a protective order or an offense against a person that constitutes:
   ▪ Assault with the intent to murder, do great bodily harm less than murder, maim, or rob and steal–armed or unarmed.
   ▪ Manslaughter or second-degree murder.
   ▪ Kidnapping, taking a hostage, or leading away/enticing a child under 14 years of age.
   ▪ Mayhem.
   ▪ Criminal sexual conduct in the 1st to 3rd degree and assault with intent to commit CSC involving penetration.
   ▪ Aggravated assault.
   ▪ Carjacking.

o "*Absconding from supervi*sion" would mean being apprehended by a law enforcement or probation officer, or being arrested for a new crime outside of Michigan.

** Require a presentence investigation report (PSI) to include a specific written recommendation for a term and the appropriate conditions of probation supervision following jail confinement, if applicable, or the appropriate conditions of probation supervision, if probation is granted. This provision replaces one requiring a written recommendation for disposition based on the evaluation and other information as prescribed by the assistant director of the DOC in charge of probation. Further, a PSI report would no longer be required to include a recommended sentence.

Swift and Sure Sanctions Probation Program (SSSPP)

The SSSPP is an intensive probation supervision program targeting high-risk felony offenders who have a history of probation violations or failures. The intent of the Legislature was ***to create a voluntary state program*** to fund swift and sure probation supervision ***at the local level***. The bill would delete the highlighted (bolded and italicized) language above, thus specifying that the Legislature's intent is to fund swift and sure probation supervision based on the immediate detection of probation violations and prompt imposition of sanctions and remedies to address those violations. In furtherance of this intent, the bill specifies that the state swift and sure sanctions program **shall be implemented and maintained as provided** in Chapter XIA.

Chapter XIA currently lists several objectives of the program. The bill would make several revisions to listed objectives. Currently, one objective requires probationers to be arrested as soon as a violation has been detected and taken promptly before a judge for a hearing on the violation. Under the bill, the arrest and appearance before a judge would apply unless the violation is a noncompliance violation and the probationer waives a hearing after being presented with a violation report.

In addition, continued violations are to be addressed by increasing sanctions and remedies as necessary to achieve results. The bill would add that, at a minimum, probationers may be confined for the period designated in the violation report, up to three days, on the execution by the probationer of a waiver of rights.

Further, the act requires a ***program of swift and sure probation supervision funded under Section 4*** to do certain things (e.g., inform the probationer of the probation requirements and sanctions or remedies for violations and require a probationer to appear before a judge within 72 hours of a violation). The bill would strike the highlighted (bolded and italicized) language and instead charge a judge with carrying out the requirements if swift and sure probation applies to a probationer.

The act currently lists sanctions and remedies for probation violations by swift and sure probationers approved by the State Court Administrative Office (SCAO) that may be immediately imposed. The bill would delete that list and instead provide for the immediate imposition of the new protocols regarding probation violations as provided in Section 4(1) of Chapter XI ("Probation") as detailed above for other probationers.

MCL 771.2 et al.

FISCAL IMPACT:

The intent of House Bill 4137 is to change the way sanctions are imposed for offenders who violate terms of probation, and to expand the state's Swift and Sure Sanctions Probation Program (SSSPP) statewide. It is anticipated the population of those on probation would be reduced over time by policies that encourage shorter terms for lower-

risk offenders. Also, it is expected the demand for jail space would decrease overall as a result of increased use of the state's SSSPP and due to shorter sanctions for violators.

Savings to county jails are expected to occur due to reduced lengths of stay for violations of probation. Implementation of jail sanctions for probation violators, implementing a cap on the number of days of jail sanctions, and mandatory use by the courts of the state's SSSPP are anticipated to result in a decrease in the number of bed days used in county jails. As with the costs of incarceration in county jails, the savings will vary by jurisdiction.

Though, in the long run, these policy changes are expected to result in savings, it can also be expected that upfront costs would occur. Mandatory, statewide use of the state's SSSPP would require additional funding. Costs would depend on the number of people supervised under the program. According to the State Court Administrative Office, the program costs roughly $2,750 per person per year, in addition to annual administrative costs. In addition, given that more offenders would be on probation, there would be a corresponding increase in the need for probation supervision services. State costs for probation supervision average about $3,760 per supervised offender per year.

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