

HOUSE BILL No. 4114

February 7, 1989, Introduced by Rep. Perry Bullard and referred to the Committee on Judiciary.

A bill to amend the title and section 24 of chapter IX and sections 3 and 12 of chapter X of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

section 3 of chapter X as amended by Act No. 205 of the Public Acts of 1981 and section 12 of chapter X as amended by Act No. 66 of the Public Acts of 1988, being sections 769.24, 770.3, and 770.12 of the Michigan Compiled Laws; and to add sections 31, 33, 35, and 37 to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and section 24 of chapter IX and sec-
2 tions 3 and 12 of chapter X of Act No. 175 of the Public Acts of
3 1927, section 3 of chapter X as amended by Act No. 205 of the
4 Public Acts of 1981 and section 12 of chapter X as amended by Act
5 No. 66 of the Public Acts of 1988, being sections 769.24, 770.3,

1 and 770.12 of the Michigan Compiled Laws, are amended and
2 sections 31, 33, 35, and 37 are added to chapter IX to read as
3 follows:

4 TITLE

5 An act to revise, consolidate, and codify the laws relating
6 to criminal procedure and to define the jurisdiction, powers, and
7 duties of courts, judges, and other officers of the court under
8 the provisions of this act; to provide laws relative to the
9 rights of persons accused of criminal offenses and ordinance vio-
10 lations; to provide for the arrest of persons charged with or
11 suspected of criminal offenses and ordinance violations; to pro-
12 vide for bail of persons arrested for or accused of criminal
13 offenses and ordinance violations; to provide for the examination
14 of persons accused of criminal offenses; to regulate the proce-
15 dure relative to grand juries, indictments, informations, and
16 proceedings before trial; to provide for trials of persons com-
17 plained of or indicted for criminal offenses and ordinance viola-
18 tions and to provide for the procedure in those trials; to pro-
19 vide for judgments and sentences of persons convicted of criminal
20 offenses and ordinance violations; TO PROVIDE FOR THE USE OF SEN-
21 TENCING GUIDELINES AND TO PRESCRIBE CERTAIN PROCEDURES WITH
22 REGARD TO THOSE SENTENCING GUIDELINES; TO ESTABLISH AN ADVISORY
23 COMMITTEE AND TO PRESCRIBE ITS POWERS AND DUTIES; to provide for
24 procedure relating to new trials and appeals in criminal and
25 ordinance violation cases; to provide a uniform system of proba-
26 tion throughout this state and the appointment of probation
27 officers; to prescribe the powers, duties, and compensation of

1 probation officers; to provide penalties for the violation of the
2 duties of probation officers; to provide for procedure governing
3 proceedings to prevent crime and proceedings for the discovery of
4 crime; to provide for fees of officers, witnesses, and others in
5 criminal and ordinance violation cases; to set forth miscella-
6 neous provisions as to criminal procedure in certain cases; to
7 provide penalties for the violation of certain provisions of this
8 act; and to repeal all acts and parts of acts inconsistent with
9 or contravening any of the provisions of this act.

10 CHAPTER IX

11 Sec. 24. (1) Whenever, in any criminal case, the defendant
12 shall be adjudged guilty and a punishment by fine or imprisonment
13 shall be imposed in excess of that allowed by law, the judgment
14 shall not for that reason alone be judged altogether void, nor be
15 wholly reversed and annulled by any court of review, but ~~the~~
16 ~~same~~ shall be valid and effectual to the extent of the lawful
17 penalty, and shall only be reversed or annulled on writ of error
18 or otherwise, in respect to the unlawful excess.

19 (2) THIS SECTION DOES NOT APPLY TO SENTENCES IMPOSED PURSU-
20 ANT TO SECTION 31 OR 35 OF THIS CHAPTER.

21 SEC. 31. (1) THE SENTENCING GUIDELINES PROMULGATED BY
22 MICHIGAN SUPREME COURT ADMINISTRATIVE ORDER 1988-4 ARE RATIFIED
23 AND APPROVED.

24 (2) THE SUPREME COURT IS GRANTED THE AUTHORITY TO AMEND THE
25 SENTENCING GUIDELINES PROMULGATED BY MICHIGAN SUPREME COURT
26 ADMINISTRATIVE ORDER 1988-4 AT ANY TIME, EITHER ON ITS OWN MOTION

1 OR ON THE RECOMMENDATIONS OF THE SENTENCING ADVISORY COMMITTEE.

2 ANY AMENDMENTS TO THE GUIDELINES SHALL DO ALL OF THE FOLLOWING:

3 (A) REDUCE SENTENCING VARIATIONS BASED ON FACTORS OTHER THAN
4 OFFENSE CHARACTERISTICS AND OFFENDER CHARACTERISTICS AND ASSURE
5 THAT OFFENDERS WITH SIMILAR OFFENSE AND OFFENDER CHARACTERISTICS
6 RECEIVE SUBSTANTIALLY SIMILAR SENTENCES.

7 (B) BE PROPORTIONATE TO THE SERIOUSNESS OF THE OFFENSE AND
8 THE OFFENDER'S PRIOR CRIMINAL RECORD. GENERALLY AN OFFENSE
9 INVOLVING VIOLENCE AGAINST A PERSON SHALL BE CONSIDERED AS MORE
10 SEVERE THAN OTHER OFFENSES.

11 (C) PROVIDE FOR PROTECTION OF THE PUBLIC.

12 (D) SPECIFY THE CIRCUMSTANCES UNDER WHICH A TERM OF IMPRIS-
13 ONMENT IS PROPER AND THE CIRCUMSTANCES UNDER WHICH NONINCARCERA-
14 TIVE SANCTIONS ARE PROPER.

15 (E) ESTABLISH SENTENCING GUIDELINES FOR IMPRISONMENT WHICH
16 SHALL BE WITHIN THE MINIMUM AND MAXIMUM ALLOWED BY LAW, AND WHICH
17 WILL NOT CAUSE THE RATED DESIGN CAPACITY OF STATE AND LOCAL COR-
18 RECTIONAL FACILITIES TO BE EXCEEDED.

19 (3) EXCEPT FOR DEPARTURES FROM THE APPROPRIATE GUIDELINE
20 SENTENCE PROVIDED FOR UNDER SECTION 35 OF THIS CHAPTER, ALL SEN-
21 TENCES IMPOSED BY THE COURTS OF THIS STATE FOR A FELONY COMMITTED
22 ON OR AFTER THE EFFECTIVE DATE OF THE SENTENCING GUIDELINES UNDER
23 SECTIONS 31 TO 35 OF THIS CHAPTER SHALL BE BASED UPON THE SEN-
24 TENCING GUIDELINES IN EFFECT ON THE DATE THE CRIME WAS
25 COMMITTED.

1 (4) WHENEVER A TERM OF INCARCERATION IS IMPOSED, THE COURT
2 MAY ALSO ORDER THAT A FINE, RESTITUTION, OR COSTS, OR ANY
3 COMBINATION THEREOF, BE PAID.

4 SEC. 33. (1) A SENTENCING ADVISORY COMMITTEE IS ESTABLISHED
5 IN THE OFFICE OF THE STATE COURT ADMINISTRATOR. THE COMMITTEE
6 SHALL CONSIST OF 10 MEMBERS APPOINTED BY THE GOVERNOR WHO ARE
7 REPRESENTATIVE OF THE GENERAL PUBLIC. THE COMMITTEE SHALL BE
8 PROVIDED WITH SUITABLE OFFICE SPACE, STAFF, AND NECESSARY EQUIP-
9 MENT BY THE OFFICE OF THE STATE COURT ADMINISTRATOR.

10 (2) BEFORE APPOINTING ANY MEMBERS OF THE COMMITTEE, THE GOV-
11 ERNOR SHALL SOLICIT AND ENCOURAGE RECOMMENDATIONS REGARDING POS-
12 SIBLE APPOINTEES FROM ORGANIZATIONS OR ENTITIES THE GOVERNOR CON-
13 SIDERS MAY BE AFFECTED BY OR HAVE AN INTEREST IN THE COMMITTEE.

14 (3) THE SENTENCING ADVISORY COMMITTEE SHALL CONSIST OF THE
15 FOLLOWING:

16 (A) THREE PERSONS APPOINTED BY THE GOVERNOR WHO ARE JUDGES,
17 1 OF WHOM SHALL BE A CIRCUIT COURT JUDGE AND 1 OF WHOM SHALL BE A
18 JUDGE OF THE RECORDER'S COURT OF THE CITY OF DETROIT.

19 (B) SEVEN PERSONS APPOINTED BY THE GOVERNOR AS FOLLOWS:

20 (i) ONE PERSON WHO IS REPRESENTATIVE OF THE PROSECUTING
21 ATTORNEYS OF THIS STATE.

22 (ii) ONE PERSON WHO IS REPRESENTATIVE OF CRIMINAL DEFENSE
23 ATTORNEYS.

24 (iii) ONE PERSON WHO IS REPRESENTATIVE OF THE DEPARTMENT OF
25 CORRECTIONS.

26 (iv) ONE PERSON WHO IS REPRESENTATIVE OF THE LAW ENFORCEMENT
27 COMMUNITY OF THIS STATE.

1 (v) ONE PERSON WHO IS REPRESENTATIVE OF PROGRAMS THAT
2 PROMOTE ALTERNATIVES TO INCARCERATION.

3 (vi) ONE PERSON WHO IS AN ADVOCATE OF THE INTEREST OF INCAR-
4 CERATED PERSONS.

5 (vii) ONE PERSON WHO IS REPRESENTATIVE OF THE GENERAL
6 PUBLIC, WHO SHALL BE CHAIRPERSON OF THE COMMITTEE.

7 (4) EACH MEMBER OF THE COMMITTEE SHALL BE APPOINTED FOR A
8 TERM OF 4 YEARS, EXCEPT THAT OF THE MEMBERS FIRST APPOINTED,
9 4 MEMBERS SHALL SERVE FOR 2 YEARS, 3 MEMBERS SHALL SERVE FOR
10 3 YEARS, AND 3 MEMBERS SHALL SERVE FOR 4 YEARS, AS DESIGNATED BY
11 THE GOVERNOR. A VACANCY CAUSED BY THE EXPIRATION OF A TERM SHALL
12 BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT. A
13 MEMBER APPOINTED TO FILL A VACANCY CREATED OTHER THAN BY EXPIRA-
14 TION OF A TERM SHALL BE APPOINTED FOR THE BALANCE OF THE UNEX-
15 PIRED TERM.

16 (5) THE COMMITTEE SHALL DESIGNATE A MEMBER AS THE
17 VICE-CHAIRPERSON. THE GOVERNOR MAY REMOVE A MEMBER OF THE COM-
18 MITTEE FOR CAUSE, WHICH SHALL BE EXPLAINED IN WRITING TO THE COM-
19 MITTEE AND TO THE MEMBER.

20 (6) A MEMBER OF THE COMMITTEE SHALL NOT RECEIVE A SALARY IN
21 THAT CAPACITY, BUT SHALL BE REIMBURSED FOR HIS OR HER REASONABLE
22 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF
23 DUTIES AS A MEMBER OF THE COMMITTEE.

24 (7) THE COMMITTEE SHALL DO ALL OF THE FOLLOWING:

25 (A) COLLECT, PREPARE, ANALYZE, AND DISSEMINATE INFORMATION
26 REGARDING STATE AND LOCAL SENTENCING PRACTICES FOR FELONIES AND
27 THE UTILIZATION OF PRISONS AND JAILS.

1 (B) CONDUCT ON-GOING RESEARCH REGARDING THE IMPACT OF THE
2 SENTENCING GUIDELINES DEVELOPED PURSUANT TO THIS SECTION.

3 (C) COLLECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS
4 REGARDING THE POPULATIONS AND CAPACITIES OF STATE AND LOCAL COR-
5 RECTIONAL FACILITIES.

6 (D) IN COOPERATION WITH THE STATE COURT ADMINISTRATOR, COL-
7 LECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS REGARDING
8 THE EFFECT OF SENTENCING GUIDELINES ON THE CASE LOAD, DOCKET
9 FLOW, AND CASE BACKLOG OF THE COURTS OF THIS STATE.

10 (8) THE COMMITTEE MAY FROM TIME TO TIME RECOMMEND SENTENCING
11 GUIDELINES AND MODIFICATIONS TO THE GUIDELINES TO THE SUPREME
12 COURT THAT THE COMMITTEE CONSIDERS NECESSARY OR ADVISABLE. IN
13 MAKING SUCH A RECOMMENDATION, THE COMMITTEE SHALL CONSIDER CUR-
14 RENT SENTENCING AND RELEASE PRACTICES, PRISON AND JAIL CAPACITY
15 AND POPULATION, COURT DOCKET MANAGEMENT, THE EXERCISE OF PROSECU-
16 TORIAL CHARGING DISCRETION, AND THE PROTECTION OF THE PUBLIC.

17 (9) THE BUSINESS OF THE COMMITTEE SHALL BE CONDUCTED AT
18 PUBLIC MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT,
19 ACT NO. 267 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 15.261 TO
20 15.275 OF THE MICHIGAN COMPILED LAWS. PUBLIC NOTICE OF THE TIME,
21 DATE, AND PLACE OF THE MEETING SHALL BE GIVEN IN THE MANNER
22 REQUIRED BY ACT NO. 267 OF THE PUBLIC ACTS OF 1976. A QUORUM
23 SHALL CONSIST OF 6 MEMBERS. ALL BUSINESS OF THE COMMITTEE SHALL
24 BE CONDUCTED BY NOT LESS THAN A QUORUM. A WRITING PREPARED,
25 OWNED, USED, IN THE POSSESSION OF, OR RETAINED BY THE COMMITTEE
26 IN THE PERFORMANCE OF AN OFFICIAL FUNCTION SHALL BE MADE
27 AVAILABLE TO THE PUBLIC IN COMPLIANCE WITH THE FREEDOM OF

1 INFORMATION ACT, ACT NO. 442 OF THE PUBLIC ACTS OF 1976, BEING
2 SECTIONS 15.231 TO 15.246 OF THE MICHIGAN COMPILED LAWS.

3 SEC. 35. (1) A COURT MAY DEPART FROM THE APPROPRIATE GUIDE-
4 LINE SENTENCE, BUT IF A COURT DEPARTS FROM THE APPROPRIATE GUIDE-
5 LINE SENTENCE, THE COURT SHALL HAVE A SUBSTANTIAL AND COMPELLING
6 REASON FOR THAT DEPARTURE. A PERSON'S GENDER, RACE, ETHNICITY,
7 ALIENAGE, NATIONAL ORIGIN, LEGAL OCCUPATION, LACK OF EMPLOYMENT,
8 REPRESENTATION BY APPOINTED LEGAL COUNSEL, OR RELIGION SHALL NOT
9 BE USED BY THE COURT FOR PURPOSES OF DEPARTING FROM THE APPROPRI-
10 ATE GUIDELINE SENTENCE. THE COURT SHALL STATE ON THE RECORD THE
11 REASON OR REASONS FOR THE DEPARTURE.

12 (2) IF THE DEFENDANT IS SENTENCED TO INCARCERATION, THE
13 COURT SHALL, AFTER IMPOSING SENTENCE, STATE ON THE RECORD THE
14 EARLIEST TIME THE DEFENDANT WILL BE ELIGIBLE FOR RELEASE FROM
15 INCARCERATION UNDER THE POLICIES OF THE DEPARTMENT OF
16 CORRECTIONS.

17 (3) IMMEDIATELY UPON SENTENCING, THE TRIAL COURT SHALL
18 ADVISE THE DEFENDANT, ORALLY AND IN WRITING, OF THE RIGHT TO AN
19 APPEAL OF THE SENTENCE PURSUANT TO THIS SECTION.

20 (4) ANY SENTENCE THAT IS THE APPROPRIATE GUIDELINE SENTENCE
21 OR IS LOWER OR LESS SEVERE THAN THE APPROPRIATE GUIDELINE SEN-
22 TENCE MAY BE APPEALED BY THE PEOPLE TO THE COURT OF APPEALS. A
23 SENTENCE APPEALED UNDER THIS SUBSECTION MAY EITHER BE AFFIRMED BY
24 THE COURT OR REMANDED PURSUANT TO SUBSECTION (7). UPON REMAND,
25 THE SENTENCE SHALL ONLY BE INCREASED IN LENGTH OR MADE MORE
26 SEVERE, OR BOTH.

1 (5) ANY SENTENCE THAT IS THE APPROPRIATE GUIDELINE SENTENCE
2 OR IS HIGHER OR MORE SEVERE THAN THE APPROPRIATE GUIDELINE
3 SENTENCE MAY BE APPEALED BY THE DEFENDANT TO THE COURT OF
4 APPEALS. A SENTENCE APPEALED UNDER THIS SUBSECTION MAY EITHER BE
5 AFFIRMED BY THE COURT OR REMANDED PURSUANT TO SUBSECTION (7).
6 UPON REMAND, THE SENTENCE SHALL ONLY BE DECREASED IN LENGTH OR
7 MADE LESS SEVERE, OR BOTH.

8 (6) ALL OF THE FOLLOWING SHALL BE PART OF THE RECORD FILED
9 FOR AN APPEAL OF THE SENTENCE UNDER THIS SECTION:

10 (A) AN ENTIRE STENOGRAPHIC RECORD OF THE PROCEEDINGS.

11 (B) THE PRESENTENCE INVESTIGATION REPORT.

12 (C) ANY OTHER REPORTS OR DOCUMENTS THE SENTENCING COURT USED
13 IN IMPOSING SENTENCE.

14 (7) UPON A REVIEW OF THE RECORD AND A FINDING THAT THE TRIAL
15 COURT DID NOT HAVE A SUBSTANTIAL AND COMPELLING REASON FOR
16 DEPARTING FROM THE APPROPRIATE GUIDELINE SENTENCE, THE COURT
17 SHALL REMAND THE MATTER TO THE SENTENCING JUDGE OR ANOTHER TRIAL
18 COURT JUDGE FOR RESENTENCING PURSUANT TO THIS SECTION.

19 (8) TIME SERVED ON THE SENTENCE APPEALED UNDER THIS SECTION
20 SHALL BE CONSIDERED TIME SERVED ON ANY SENTENCE IMPOSED AFTER
21 REMAND.

22 (9) AN APPEAL OF A SENTENCE UNDER THIS SECTION SHALL NOT ACT
23 AS A STAY ON THE EXECUTION OF THE SENTENCE.

24 SEC. 37. (1) IF THE RECOMMENDED MINIMUM SENTENCE FOR THE
25 DEFENDANT IS 12 MONTHS OR LESS UNDER THE SENTENCING GUIDELINES,
26 AND IF A SENTENCING COURT IS CONTEMPLATING SENTENCING A DEFENDANT
27 TO INCARCERATION IN A STATE CORRECTIONAL FACILITY OR JAIL, THEN

1 THE SENTENCING COURT SHALL PLACE THE DEFENDANT IN A COMMUNITY
2 CORRECTIONS PROGRAM ESTABLISHED PURSUANT TO THE COMMUNITY CORREC-
3 TIONS ACT, ACT NO. 511 OF THE PUBLIC ACTS OF 1988, BEING SECTIONS
4 791.401 TO 791.414 OF THE MICHIGAN COMPILED LAWS, UNLESS THE
5 COURT STATES ON THE RECORD A SUBSTANTIAL AND COMPELLING REASON
6 NOT TO PLACE THE DEFENDANT IN A COMMUNITY CORRECTIONS PROGRAM.

7 (2) THIS SECTION SHALL ONLY APPLY TO A SENTENCING COURT IF
8 PLACEMENT OF A DEFENDANT IS AVAILABLE IN A COMMUNITY CORRECTIONS
9 PROGRAM ESTABLISHED PURSUANT TO THE COMMUNITY CORRECTIONS ACT,
10 ACT NO. 511 OF THE PUBLIC ACTS OF 1988.

11 CHAPTER X

12 Sec. 3. (1) Subject to ~~the limitations imposed by~~ section
13 12 of this chapter AND SECTION 35 OF CHAPTER IX, an aggrieved
14 party shall have a right of appeal from a final judgment or trial
15 order as follows:

16 (a) In a felony or misdemeanor case tried in the circuit
17 court or recorder's court of the city of Detroit, there shall be
18 a right of appeal to the court of appeals, within 60 days after
19 the entry of judgment or after the entry of an order appointing
20 appellate counsel for an indigent defendant pursuant to supreme
21 court rule, or within 60 days after the entry of an order denying
22 a motion for new trial where the motion is timely filed as pre-
23 scribed in section 2(1) of this chapter.

24 (b) In a misdemeanor or ordinance violation case tried in
25 the district court in districts other than the thirty-sixth dis-
26 trict, there shall be a right of appeal to the circuit court in
27 the county in which the misdemeanor or ordinance violation was

1 committed, within 20 days after the entry of judgment, or within
2 20 days after entry of an order denying a motion for new trial
3 where the motion is timely filed as prescribed in section 2(2) of
4 this chapter.

5 (c) In a misdemeanor or ordinance violation case tried in
6 the district court in the thirty-sixth district, or in a felony
7 case over which the district court in the thirty-sixth district
8 has jurisdiction before trial, there shall be a right of appeal
9 to the recorder's court of the city of Detroit within 20 days
10 after the entry of judgment, or within 20 days after entry of an
11 order denying a motion for a new trial where the motion is timely
12 filed as prescribed in section 2(2) of this chapter.

13 (d) In a misdemeanor or ordinance violation case tried in a
14 municipal court, there shall be a right of appeal as provided in
15 chapter XIV.

16 (2) An appeal from an interlocutory judgment or order in a
17 felony, misdemeanor, or ordinance violation may be taken, in the
18 manner provided by supreme court rule, by application for leave
19 to appeal to the same court of which a final judgment in that
20 case would be appealable as a matter of right under subsection
21 (1).

22 (3) After expiration of the period prescribed in subsection
23 (1) for timely appeal, the appellate court may grant leave to
24 appeal from any order or judgment from which timely appeal would
25 have been available as of right, or by leave, upon conditions
26 prescribed by supreme court rule.

1 (4) Further appellate review of matters appealed to the
2 circuit court under subsection (1)(b), (1)(d), or (2) may be had
3 only upon application for leave to appeal granted by the court of
4 appeals.

5 (5) Further appellate review of matters appealed to the
6 recorder's court under subsection (1)(c) may be had only upon
7 application for leave to appeal granted by the court of appeals.

8 (6) Further review of any matter appealed to the court of
9 appeals under this section may be had only upon application for
10 leave to appeal granted by the supreme court.

11 (7) An appeal as of right and an appeal by application for
12 leave to appeal provided for in this section shall be taken pur-
13 suant to and within the time prescribed by supreme court rule.

14 Sec. 12. (1) The people of this state may take an appeal of
15 right in a criminal case, if the protection against double jeop-
16 ardy under section 15 of article I of the state constitution of
17 1963 and amendment V of the constitution of the United States
18 would not bar further proceedings against the defendant, from
19 ~~either~~ ANY of the following:

20 (a) A final judgment or final order of the circuit court or
21 recorder's court, except a judgment or order of the circuit court
22 or recorder's court on appeal from any other court.

23 (b) A final judgment or order of a court or tribunal from
24 which appeal of right has been established by law.

25 (C) A SENTENCE IMPOSED BY THE CIRCUIT COURT OR RECORDER'S
26 COURT AS PROVIDED FOR UNDER SECTION 35 OF CHAPTER IX.

1 (2) The people of this state may take an appeal by leave in
2 a criminal case, if the protection against double jeopardy under
3 section 15 of article I of the state constitution of 1963 and
4 amendment V of the constitution of the United States would not
5 bar further proceedings against the defendant, from any of the
6 following:

7 (a) A judgment or order of the circuit court or recorder's
8 court which is not a final judgment appealable of right.

9 (b) A final judgment entered by the circuit court or the
10 recorder's court on appeal from any other court.

11 (c) Any other judgment or order appealable by law or rule.

12 (d) A judgment or order when an appeal of right could have
13 been taken but was not timely filed.

14 (3) The right of the defendant to bail upon appeal under
15 this section shall be governed by section 9a of this chapter and
16 section 7 of chapter V.

17 Section 2. This amendatory act shall take effect April 1,
18 1990.