

HOUSE BILL No. 4191

February 15, 1989, Introduced by Reps. Ciaramitaro, Perry Bullard, Power, Kilpatrick, Murphy, Scott, DeMars, Jondahl, Clack, Nye, Van Regenmorter, Stabenow and Honigman and referred to the Committee on Judiciary.

A bill to amend the title and sections 8, 9, and 24 of chapter IX, section 3 of chapter X, and sections 3 and 14 of chapter XI 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, section 3 of chapter XI as amended by Act No. 78 of the Public Acts of 1988, and section 14 of chapter XI as amended by Act No. 88 of the Public Acts of 1985, being sections 769.8, 769.9, 769.24, 770.3, 771.3, and 771.14 of the Michigan Compiled Laws; to add sections 31, 32, 33, 34, 35, 36, 37, 38, and 39 to chapter IX; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 8, 9, and 24 of chapter
2 IX, section 3 of chapter X, and sections 3 and 14 of chapter XI
3 of Act No. 175 of the Public Acts of 1927, section 3 of chapter X

1 as amended by Act No. 205 of the Public Acts of 1981, section 3
2 of chapter XI as amended by Act No. 78 of the Public Acts of
3 1988, and section 14 of chapter XI as amended by Act No. 88 of
4 the Public Acts of 1985, being sections 769.8, 769.9, 769.24,
5 770.3, 771.3, and 771.14 of the Michigan Compiled Laws, are
6 amended and sections 31, 32, 33, 34, 35, 36, 37, 38, and 39 are
7 added to chapter IX to read as follows:

8 TITLE

9 An act to revise, consolidate, and codify the laws relating
10 to criminal procedure and to define the jurisdiction, powers, and
11 duties of courts, judges, and other officers of the court under
12 the provisions of this act; to provide laws relative to the
13 rights of persons accused of criminal offenses and ordinance vio-
14 lations; to provide for the arrest of persons charged with or
15 suspected of criminal offenses and ordinance violations; to pro-
16 vide for bail of persons arrested for or accused of criminal
17 offenses and ordinance violations; to provide for the examination
18 of persons accused of criminal offenses; to regulate the proce-
19 dure relative to grand juries, indictments, informations, and
20 proceedings before trial; to provide for trials of persons com-
21 plained of or indicted for criminal offenses and ordinance viola-
22 tions and to provide for the procedure in those trials; to pro-
23 vide for judgments and sentences of persons convicted of criminal
24 offenses and ordinance violations; TO ESTABLISH A SENTENCING
25 ADVISORY COMMITTEE AND TO PRESCRIBE ITS POWERS AND DUTIES; to
26 provide for procedure relating to new trials and appeals in
27 criminal and ordinance violation cases; to provide a uniform

1 system of probation throughout this state and the appointment of
2 probation officers; to prescribe the powers, duties, and compen-
3 sation of probation officers; to provide penalties for the viola-
4 tion of the duties of probation officers; to provide for proce-
5 dure governing proceedings to prevent crime and proceedings for
6 the discovery of crime; to provide for fees of officers, wit-
7 nesses, and others in criminal and ordinance violation cases; to
8 set forth miscellaneous provisions as to criminal procedure in
9 certain cases; to provide penalties for the violation of certain
10 provisions of this act; and to repeal all acts and parts of acts
11 inconsistent with or contravening any of the provisions of this
12 act.

13 CHAPTER IX

14 Sec. 8. (1) When a person is convicted for the first time
15 for the commission of a felony, and the punishment prescribed by
16 law for that offense may be imprisonment in a state prison, the
17 court imposing sentence shall not fix a definite term of impris-
18 onment, but shall fix a minimum term, except as otherwise pro-
19 vided in this chapter. The maximum penalty provided by law shall
20 be the maximum sentence in all cases, except as provided in this
21 chapter, and shall be stated by the judge in imposing the
22 sentence. Before or at the time of imposing the sentence the
23 judge shall ascertain by examination of the ~~convict~~ PERSON
24 CONVICTED on oath, or otherwise, and by other evidence as can be
25 obtained tending to indicate briefly the causes of the criminal
26 character or conduct of the ~~convict~~ PERSON CONVICTED, which
27 facts and other facts which appear to be pertinent in the case,

1 the judge shall cause to be entered upon the ~~minutes~~ RECORD of
2 the court.

3 (2) THIS SECTION DOES NOT APPLY TO A SENTENCE IMPOSED PURSU-
4 ANT TO SECTION 32, 33(1), OR 38 OF THIS CHAPTER.

5 Sec. 9. (1) The provisions of this chapter relative to
6 indeterminate sentences shall not apply to a person convicted for
7 the commission of an offense for which the only punishment pre-
8 scribed by law is imprisonment for life.

9 (2) In all cases where the maximum sentence in the discre-
10 tion of the court may be imprisonment for life or any number or
11 term of years, the court may impose a sentence for life or may
12 impose a sentence for any term of years. If the sentence imposed
13 by the court is for any term of years, the court shall fix both
14 the minimum and the maximum of that sentence in terms of years or
15 fraction thereof, and sentences so imposed shall be considered
16 indeterminate sentences. The court shall not impose a sentence
17 in which the maximum penalty is life imprisonment with a minimum
18 for a term of years included in the same sentence.

19 (3) In cases involving a major controlled substance offense
20 for which the court is directed by law to impose a sentence which
21 cannot be less than a specified term of years nor more than a
22 specified term of years, the court in imposing the sentence shall
23 fix the length of both the minimum and maximum sentence within
24 those specified limits, in terms of years or fraction thereof,
25 and the sentence so imposed shall be considered an indeterminate
26 sentence.

1 (4) THIS SECTION DOES NOT APPLY TO A SENTENCE IMPOSED
2 PURSUANT TO SECTION 32, 33(1), OR 38 OF THIS CHAPTER.

3 Sec. 24. (1) ~~Whenever~~ IF, in ~~any~~ A criminal case, the
4 defendant ~~shall be~~ IS adjudged guilty and a punishment by fine
5 or imprisonment ~~shall be~~ IS imposed in excess of that allowed
6 by law, the judgment shall not for that reason alone be judged
7 altogether void, ~~nor~~ OR be wholly reversed and annulled by any
8 court of review, but ~~the same~~ shall be valid and effectual to
9 the extent of the lawful penalty, and shall only be reversed or
10 annulled on writ of error or otherwise, in respect to the unlaw-
11 ful excess.

12 (2) THIS SECTION DOES NOT APPLY TO SENTENCES IMPOSED PURSU-
13 ANT TO SECTION 32, 33(1), OR 38 OF THIS CHAPTER.

14 SEC. 31. AS USED IN THIS SECTION AND SECTIONS 32 TO 39 OF
15 THIS CHAPTER:

16 (A) "COMMITTEE" MEANS THE SENTENCING ADVISORY COMMITTEE CRE-
17 ATED IN SECTION 34 OF THIS CHAPTER.

18 (B) "DEPARTURE" MEANS A SENTENCE THAT IS IMPOSED WHICH IS
19 NOT WITHIN THE APPROPRIATE SENTENCE RANGE.

20 (C) "FIXED SENTENCE" MEANS A FLAT OR DETERMINATE SENTENCE OF
21 IMPRISONMENT.

22 (D) "NONINCARCERATIVE SANCTION" MEANS PROBATION OR ANY SANC-
23 TION, OTHER THAN IMPRISONMENT, THAT MAY LAWFULLY BE IMPOSED.

24 (E) "OFFENDER CHARACTERISTICS" MEANS ONLY THE PRIOR CRIMINAL
25 RECORD OF AN OFFENDER.

1 (F) "OFFENSE CHARACTERISTICS" MEANS THE ELEMENTS OF THE
2 CRIME AND OTHER FACTORS CONSISTENT WITH THE PURPOSES OF SECTIONS
3 32 TO 38 OF THIS CHAPTER.

4 (G) "PRIOR CRIMINAL RECORD" MEANS THE RECORDED CRIMINAL HIS-
5 TORY OF AN OFFENDER. PRIOR CRIMINAL RECORD INCLUDES ALL MISDE-
6 MEANOR AND FELONY CONVICTIONS, PROBATION VIOLATIONS, AND JUVENILE
7 ADJUDICATIONS FOR ACTS THAT WOULD HAVE BEEN CRIMES IF COMMITTED
8 BY AN ADULT.

9 SEC. 32. (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 38 OF
10 THIS CHAPTER FOR DEPARTURES AND EXCEPT AS OTHERWISE PROVIDED IN
11 SECTION 33(4) OF THIS CHAPTER, A SENTENCE IMPOSED BY A COURT OF
12 THIS STATE FOR A FELONY COMMITTED ON OR AFTER THE EFFECTIVE DATE
13 OF THE SENTENCE RANGES ESTABLISHED UNDER SECTIONS 31 TO 38 OF
14 THIS CHAPTER SHALL BE WITHIN THE APPROPRIATE SENTENCE RANGE IN
15 EFFECT ON THE DATE THE CRIME WAS COMMITTED.

16 (2) WHENEVER A TERM OF IMPRISONMENT IS IMPOSED, THE COURT
17 MAY ALSO ORDER THAT A FINE, RESTITUTION, OR COSTS, OR ANY COMBI-
18 NATION THEREOF, BE PAID.

19 SEC. 33. (1) A FELONY SENTENCE OF IMPRISONMENT IMPOSED BY A
20 COURT OF THIS STATE FOR A CRIME COMMITTED 2 YEARS OR MORE AFTER
21 THE EFFECTIVE DATE OF THIS SECTION SHALL BE A FIXED SENTENCE. A
22 FIXED SENTENCE IMPOSED UNDER THIS SUBSECTION SHALL NOT EXCEED THE
23 MAXIMUM SENTENCE PRESCRIBED BY LAW.

24 (2) THE SENTENCE RANGES ESTABLISHED PURSUANT TO THIS CHAPTER
25 SHALL NOT PROVIDE FOR A SENTENCE THAT EXCEEDS THE MAXIMUM SEN-
26 TENCE PRESCRIBED BY LAW.

1 (3) MULTIPLE CONVICTIONS ARISING OUT OF A SINGLE TRANSACTION
2 SHALL BE CONSIDERED AS ONLY 1 CONVICTION FOR PURPOSES OF
3 DETERMINING THE OFFENDER CHARACTERISTICS OF THE DEFENDANT AND THE
4 APPROPRIATE SENTENCE RANGE FOR SENTENCING ON A CONVICTION ARISING
5 OUT OF THAT TRANSACTION.

6 (4) IF A CRIME HAS A MANDATORY PENALTY, THE COURT SHALL
7 IMPOSE THAT SENTENCE AND SECTIONS 32 AND 38 OF THIS CHAPTER SHALL
8 NOT APPLY TO SENTENCING FOR THAT CRIME.

9 SEC. 34. (1) A SENTENCING ADVISORY COMMITTEE IS ESTABLISHED
10 WITHIN THE LEGISLATIVE COUNCIL. THE COMMITTEE SHALL CONSIST OF
11 11 MEMBERS APPOINTED BY THE GOVERNOR WHO ARE REPRESENTATIVE OF
12 THE GENERAL PUBLIC. THE COMMITTEE SHALL BE PROVIDED WITH SUIT-
13 ABLE OFFICE SPACE, STAFF, AND NECESSARY EQUIPMENT BY THE LEGISLA-
14 TIVE COUNCIL.

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

19 (3) THE SENTENCING ADVISORY COMMITTEE SHALL CONSIST OF THE
20 FOLLOWING:

21 (A) THREE PERSONS APPOINTED BY THE GOVERNOR WHO ARE JUDGES,
22 1 OF WHOM SHALL BE A CIRCUIT COURT JUDGE AND 1 OF WHOM SHALL BE A
23 JUDGE OF THE RECORDER'S COURT OF THE CITY OF DETROIT.

24 (B) EIGHT PERSONS APPOINTED BY THE GOVERNOR AS FOLLOWS:

25 (i) ONE PERSON WHO IS REPRESENTATIVE OF THE PROSECUTING
26 ATTORNEYS OF THIS STATE.

1 (ii) ONE PERSON WHO IS REPRESENTATIVE OF CRIMINAL DEFENSE
2 ATTORNEYS.

3 (iii) ONE PERSON WHO IS REPRESENTATIVE OF THE DEPARTMENT OF
4 CORRECTIONS.

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

7 (v) ONE PERSON WHO IS REPRESENTATIVE OF PROGRAMS THAT PRO-
8 MOTE ALTERNATIVES TO INCARCERATION.

9 (vi) THREE PERSONS WHO ARE REPRESENTATIVE OF THE GENERAL
10 PUBLIC, 1 OF WHOM SHALL BE CHAIRPERSON OF THE COMMITTEE.

11 (4) THE MEMBERS OF THE COMMITTEE SHALL BE APPOINTED FOR
12 TERMS OF 4 YEARS, EXCEPT THAT OF THE MEMBERS FIRST APPOINTED,
13 4 MEMBERS SHALL SERVE FOR 2 YEARS, 4 MEMBERS SHALL SERVE FOR
14 3 YEARS, AND 3 MEMBERS SHALL SERVE FOR 4 YEARS, AS DESIGNATED BY
15 THE GOVERNOR. A VACANCY SHALL BE FILLED IN THE SAME MANNER AS
16 THE ORIGINAL APPOINTMENT FOR THE BALANCE OF THE UNEXPIRED TERM.
17 A MEMBER APPOINTED TO FILL A VACANCY CREATED OTHER THAN BY EXPI-
18 RATION OF A TERM SHALL BE APPOINTED FOR THE BALANCE OF THE UNEX-
19 PIRED TERM.

20 (5) THE COMMITTEE SHALL DESIGNATE A MEMBER AS THE
21 VICE-CHAIRPERSON. THE GOVERNOR MAY REMOVE A MEMBER OF THE COM-
22 MITTEE FOR CAUSE WHICH SHALL BE EXPLAINED IN WRITING TO THE COM-
23 MITTEE AND TO THE MEMBER.

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

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

2 (A) COLLECT, PREPARE, ANALYZE, AND DISSEMINATE INFORMATION
3 REGARDING STATE AND LOCAL SENTENCING PRACTICES FOR FELONIES AND
4 THE UTILIZATION OF PRISONS AND JAILS.

5 (B) CONDUCT ON-GOING RESEARCH REGARDING THE IMPACT OF THE
6 SENTENCE RANGES DEVELOPED PURSUANT TO THIS SECTION.

7 (C) COLLECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS
8 REGARDING THE POPULATIONS AND CAPACITIES OF STATE AND LOCAL COR-
9 RECTIONAL FACILITIES.

10 (D) IN COOPERATION WITH THE STATE COURT ADMINISTRATOR, COL-
11 LECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS REGARDING
12 THE EFFECT OF SENTENCE RANGES ON THE CASE LOAD, DOCKET FLOW, AND
13 CASE BACKLOG OF THE COURTS OF THIS STATE.

14 (8) THE ADVISORY COMMITTEE SHALL RECOMMEND TO THE LEGISLA-
15 TURE OF THIS STATE SENTENCE RANGES AND MODIFICATIONS TO THE
16 RANGES THAT THE COMMITTEE CONSIDERS NECESSARY OR ADVISABLE. IN
17 MAKING SUCH A RECOMMENDATION, THE COMMITTEE SHALL CONSIDER CUR-
18 RENT SENTENCING AND RELEASE PRACTICES, PRISON AND JAIL CAPACITY
19 AND POPULATION, COURT DOCKET MANAGEMENT, THE EXERCISE OF PROSECU-
20 TORIAL CHARGING DISCRETION, AND THE PROTECTION OF THE PUBLIC.

21 (9) THE SENTENCE RANGES AND ANY MODIFICATIONS TO THE RANGES
22 DEVELOPED BY THE COMMITTEE UNDER THIS SECTION SHALL ACCOMPLISH
23 ALL OF THE FOLLOWING:

24 (A) REDUCE SENTENCING DISPARITIES BASED ON FACTORS OTHER
25 THAN OFFENSE CHARACTERISTICS AND OFFENDER CHARACTERISTICS AND
26 ENSURE THAT OFFENDERS WITH SIMILAR OFFENSE AND OFFENDER
27 CHARACTERISTICS RECEIVE SUBSTANTIALLY SIMILAR SENTENCES.

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

5 (C) PROVIDE FOR PROTECTION OF THE PUBLIC.

6 (D) SPECIFY THE CIRCUMSTANCES UNDER WHICH A TERM OF IMPRIS-
7 ONMENT IS PROPER AND THE CIRCUMSTANCES UNDER WHICH NONINCARCERA-
8 TIVE SANCTIONS ARE PROPER.

9 (E) ESTABLISH SENTENCE RANGES FOR IMPRISONMENT THAT ARE
10 WITHIN THE MINIMUM AND MAXIMUM SENTENCES ALLOWED BY LAW FOR THE
11 OFFENSES TO WHICH THE RANGES APPLY.

12 (10) THE BUSINESS OF THE COMMITTEE SHALL BE CONDUCTED AT
13 PUBLIC MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT,
14 ACT NO. 267 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS 15.261 TO
15 15.275 OF THE MICHIGAN COMPILED LAWS. PUBLIC NOTICE OF THE TIME,
16 DATE, AND PLACE OF THE MEETING SHALL BE GIVEN IN THE MANNER
17 REQUIRED BY ACT NO. 267 OF THE PUBLIC ACTS OF 1976. A QUORUM
18 SHALL CONSIST OF 6 MEMBERS. ALL BUSINESS OF THE COMMITTEE SHALL
19 BE CONDUCTED BY NOT LESS THAN A QUORUM. A WRITING PREPARED,
20 OWNED, USED, IN THE POSSESSION OF, OR RETAINED BY THE COMMITTEE
21 IN THE PERFORMANCE OF AN OFFICIAL FUNCTION SHALL BE MADE AVAIL-
22 ABLE TO THE PUBLIC IN COMPLIANCE WITH THE FREEDOM OF INFORMATION
23 ACT, ACT NO. 442 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS
24 15.231 TO 15.246 OF THE MICHIGAN COMPILED LAWS.

25 SEC. 35. (1) IF, AFTER ANALYZING THE DATA, INFORMATION, AND
26 PROJECTIONS OBTAINED UNDER SECTION 34 OF THIS CHAPTER, AND BEFORE
27 THE PROPOSED SENTENCE RANGES ARE SUBMITTED TO THE LEGISLATURE,

1 THE COMMITTEE DETERMINES THAT THE PROPOSED SENTENCE RANGES
2 DEVELOPED UNDER SECTION 34 OF THIS CHAPTER WILL CAUSE THE CAPAC-
3 ITY OF STATE AND LOCAL CORRECTIONAL FACILITIES TO BE EXCEEDED,
4 THE COMMITTEE SHALL RECOMMEND TO THE GOVERNOR AND THE LEGISLATURE
5 THAT THE CAPACITY OF STATE AND LOCAL CORRECTIONAL FACILITIES BE
6 INCREASED.

7 (2) THE PROPOSED SENTENCE RANGES FOR IMPRISONMENT SHALL BE
8 BASED UPON THE SENTENCES PROVIDED FOR UNDER SECTION 33(1) OF THIS
9 CHAPTER.

10 (3) THE COMMITTEE MAY PROPOSE TO THE SUPREME COURT MODIFICA-
11 TIONS OF THE SENTENCE RANGES THAT HAVE BEEN ENACTED INTO LAW THAT
12 ARE CONSISTENT WITH SECTIONS 31 TO 38 OF THIS CHAPTER.

13 SEC. 36. (1) THE COMMITTEE SHALL SUBMIT THE PROPOSED SEN-
14 TENCE RANGES TO THE SECRETARY OF THE SENATE AND THE CLERK OF THE
15 HOUSE OF REPRESENTATIVES ON OR AFTER NOVEMBER 7, 1990.

16 (2) THE PROPOSED SENTENCE RANGES SUBMITTED PURSUANT TO SUB-
17 SECTION (1) SHALL NOT TAKE EFFECT UNLESS LEGISLATION IS ENACTED
18 INTO LAW TO IMPLEMENT THOSE RANGES.

19 SEC. 37. (1) BEFORE SENTENCING, THE PROSECUTOR, THE
20 DEFENDANT, AND THE DEFENDANT'S ATTORNEY SHALL BE PERMITTED TO
21 REVIEW THE PRESENTENCE INVESTIGATION REPORT AS PROVIDED IN SEC-
22 TION 14 OF CHAPTER XI.

23 (2) A COURT THAT IMPOSES A SENTENCE FOR A FELONY CONVICTION
24 SHALL CONSIDER BOTH OF THE FOLLOWING:

25 (A) THE PRESENTENCE INVESTIGATION REPORT.

26 (B) ANY OTHER FACTORS BROUGHT TO THE ATTENTION OF THE COURT
27 BY THE PROSECUTION, THE DEFENSE, OR THE VICTIM.

1 SEC. 38. (1) A COURT MAY DEPART FROM THE APPROPRIATE
2 SENTENCE RANGE BUT IF A COURT DEPARTS FROM THE APPROPRIATE SEN-
3 TENCE RANGE, THE COURT SHALL HAVE A SUBSTANTIAL AND COMPELLING
4 REASON FOR THAT DEPARTURE. A PERSON'S GENDER, RACE, ETHNICITY,
5 ALIENAGE, NATIONAL ORIGIN, LEGAL OCCUPATION, LACK OF EMPLOYMENT,
6 REPRESENTATION BY APPOINTED LEGAL COUNSEL, OR RELIGION SHALL NOT
7 BE USED BY THE COURT FOR PURPOSES OF DEPARTING FROM THE APPROPRI-
8 ATE SENTENCE RANGE. THE COURT SHALL STATE ON THE RECORD THE
9 REASON OR REASONS FOR THE DEPARTURE.

10 (2) IMMEDIATELY UPON SENTENCING, THE TRIAL COURT SHALL
11 ADVISE THE DEFENDANT, ORALLY AND IN WRITING, OF THE RIGHT TO AN
12 APPEAL OF THE SENTENCE PURSUANT TO THIS SECTION.

13 (3) ANY SENTENCE THAT IS LOWER OR LESS SEVERE THAN THE
14 APPROPRIATE SENTENCE RANGE MAY BE APPEALED BY THE PEOPLE TO THE
15 COURT OF APPEALS. A SENTENCE APPEALED UNDER THIS SUBSECTION MAY
16 EITHER BE AFFIRMED BY THE COURT OF APPEALS PURSUANT TO
17 SUBSECTION (7) OR REMANDED PURSUANT TO SUBSECTION (6). UPON
18 REMAND PURSUANT TO SUBSECTION (6), THE SENTENCE SHALL ONLY BE
19 INCREASED IN LENGTH OR MADE MORE SEVERE, OR BOTH.

20 (4) ANY SENTENCE THAT IS HIGHER OR MORE SEVERE THAN THE
21 APPROPRIATE SENTENCE RANGE MAY BE APPEALED BY THE DEFENDANT TO
22 THE COURT OF APPEALS. A SENTENCE APPEALED UNDER THIS SUBSECTION
23 MAY EITHER BE AFFIRMED BY THE COURT OF APPEALS PURSUANT TO
24 SUBSECTION (7) OR REMANDED PURSUANT TO SUBSECTION (6). UPON
25 REMAND PURSUANT TO SUBSECTION (6), THE SENTENCE SHALL ONLY BE
26 DECREASED IN LENGTH OR MADE LESS SEVERE, OR BOTH.

1 (5) ALL OF THE FOLLOWING SHALL BE PART OF THE RECORD FILED
2 IN THE COURT OF APPEALS ON AN APPEAL OF A SENTENCE UNDER THIS
3 SECTION:

4 (A) AN ENTIRE STENOGRAPHIC RECORD OF THE SENTENCING
5 PROCEEDINGS.

6 (B) THE PRESENTENCE INVESTIGATION REPORT.

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

9 (6) IF, UPON A REVIEW OF THE RECORD, THE COURT OF APPEALS
10 FINDS THAT THE TRIAL COURT DID NOT HAVE A SUBSTANTIAL AND COMPEL-
11 LING REASON FOR DEPARTING FROM THE APPROPRIATE SENTENCE RANGE,
12 THE COURT SHALL REMAND THE MATTER TO THE SENTENCING JUDGE OR
13 ANOTHER TRIAL COURT JUDGE FOR RESENTENCING.

14 (7) UPON A REVIEW OF THE RECORD AND ABSENT A FINDING THAT
15 THE TRIAL COURT DID NOT HAVE A SUBSTANTIAL AND COMPELLING REASON
16 FOR DEPARTING FROM THE APPROPRIATE SENTENCE RANGE, THE COURT OF
17 APPEALS SHALL AFFIRM THE SENTENCE.

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

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

23 SEC. 39. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER,
24 THE SENTENCE OF A PERSON SENTENCED TO IMPRISONMENT UNDER THE
25 JURISDICTION OF THE DEPARTMENT OF CORRECTIONS PURSUANT TO SECTION
26 33(1) OF THIS CHAPTER OR PURSUANT TO A SENTENCE RANGE ESTABLISHED
27 UNDER THIS CHAPTER SHALL BE COMPOSED OF BOTH OF THE FOLLOWING:

1 (A) THE PERIOD OF TIME THE PERSON IS TO BE IMPRISONED.

2 (B) THE PERIOD OF TIME THE PERSON IS TO BE ON COMMUNITY
3 REENTRY STATUS UNDER THE JURISDICTION OF THE DEPARTMENT OF COR-
4 RECTIONS AFTER HIS OR HER RELEASE FROM IMPRISONMENT AND BEFORE
5 HIS OR HER FINAL DISCHARGE ON THE SENTENCE.

6 (2) THE PERIOD OF TIME A PERSON IS TO BE ON COMMUNITY REEN-
7 TRY STATUS SHALL BE 2 YEARS OR THE PERIOD OF TIME REMAINING
8 BETWEEN THE END OF THE FIXED SENTENCE OF IMPRISONMENT AND THE
9 MAXIMUM TERM OF IMPRISONMENT PRESCRIBED BY LAW, WHICHEVER PERIOD
10 IS SHORTER. HOWEVER, THE PERSON MAY BE DISCHARGED BY THE DEPART-
11 MENT OF CORRECTIONS FROM THE SENTENCE AFTER HAVING SUCCESSFULLY
12 SERVED 1 YEAR ON COMMUNITY REENTRY STATUS. THE PERIOD OF TIME A
13 PERSON IS TO BE ON COMMUNITY REENTRY STATUS TOGETHER WITH THE
14 PERIOD OF TIME THE PERSON IS TO BE IMPRISONED SHALL NOT EXCEED
15 THE MAXIMUM TERM OF IMPRISONMENT ALLOWED BY LAW.

16 (3) A PERSON SHALL NOT BEGIN TO SERVE TIME ON COMMUNITY
17 REENTRY STATUS UNTIL THE PERSON HAS SERVED HIS OR HER TERM OF
18 IMPRISONMENT LESS ACCUMULATED DISCIPLINARY CREDITS.

19 (4) NOT LESS THAN 30 DAYS BEFORE A PERSON BEGINS TO SERVE
20 TIME ON COMMUNITY REENTRY STATUS, THE DEPARTMENT OF CORRECTIONS
21 SHALL GIVE NOTICE OF THE IMPENDING PLACEMENT OF THAT PERSON ON
22 COMMUNITY REENTRY STATUS TO A VICTIM WHO HAS REQUESTED SUCH A
23 NOTICE UNDER THE CRIME VICTIM'S RIGHTS ACT, ACT NO. 87 OF THE
24 PUBLIC ACTS OF 1985, BEING SECTIONS 780.751 TO 780.834 OF THE
25 MICHIGAN COMPILED LAWS.

26 (5) COMMUNITY REENTRY STATUS SHALL BE REVOCABLE PURSUANT TO
27 SECTION 40B OF ACT NO. 232 OF THE PUBLIC ACTS OF 1953, BEING

1 SECTION 791.240B OF THE MICHIGAN COMPILED LAWS, AND IF COMMUNITY
2 REENTRY STATUS IS REVOKED, THE PERSON SHALL BE RETURNED TO PRISON
3 FOR ALL OR ANY PART OF THE PERIOD OF TIME THE PERSON WAS TO BE ON
4 COMMUNITY REENTRY STATUS.

5 (6) A PERSON SENTENCED TO IMPRISONMENT UNDER THE JURISDIC-
6 TION OF THE DEPARTMENT OF CORRECTIONS PURSUANT TO SECTION 33(1)
7 OF THIS CHAPTER OR PURSUANT TO A SENTENCE RANGE ESTABLISHED UNDER
8 THIS CHAPTER SHALL NOT BE ELIGIBLE FOR ANY PLACEMENT IN THE COM-
9 MUNITY EXCEPT FOR COMMUNITY REENTRY STATUS AS PROVIDED IN THIS
10 SECTION OR COMMUNITY WORK RELEASE PLACEMENT DURING THE LAST 12
11 MONTHS OR 1/3 OF THE TERM OF IMPRISONMENT, WHICHEVER PERIOD IS
12 SHORTER.

13 (7) THIS SECTION DOES NOT ALLOW PLACEMENT IN THE COMMUNITY
14 OF ANY PRISONER WHO IS OTHERWISE PROHIBITED BY LAW OR RULES OF
15 THE DEPARTMENT OF CORRECTIONS FROM BEING PLACED IN THE COMMUNITY.

16 CHAPTER X

17 Sec. 3. (1) Subject to ~~the limitations imposed by~~ section
18 12 of this chapter AND SECTION 38 OF CHAPTER IX, an aggrieved
19 party shall have a right of appeal from a final judgment or trial
20 order as follows:

21 (a) In a felony or misdemeanor case tried in the circuit
22 court or recorder's court of the city of Detroit, there shall be
23 a right of appeal to the court of appeals, within 60 days after
24 the entry of judgment or after the entry of an order appointing
25 appellate counsel for an indigent defendant pursuant to supreme
26 court rule, or within 60 days after the entry of an order denying

1 a motion for new trial where the motion is timely filed as
2 prescribed in section 2(1) of this chapter.

3 (b) In a misdemeanor or ordinance violation case tried in
4 the district court in districts other than the thirty-sixth dis-
5 trict, there shall be a right of appeal to the circuit court in
6 the county in which the misdemeanor or ordinance violation was
7 committed, within 20 days after the entry of judgment, or within
8 20 days after entry of an order denying a motion for new trial
9 where the motion is timely filed as prescribed in section 2(2) of
10 this chapter.

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

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

22 (2) An appeal from an interlocutory judgment or order in a
23 felony, misdemeanor, or ordinance violation may be taken, in the
24 manner provided by supreme court rule, by application for leave
25 to appeal to the same court of which a final judgment in that
26 case would be appealable as a matter of right under subsection
27 (1).

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

6 (4) Further appellate review of matters appealed to the cir-
7 cuit court under subsection (1)(b), (1)(d), or (2) may be had
8 only upon application for leave to appeal granted by the court of
9 appeals.

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

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

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

19 CHAPTER XI

20 Sec. 3. (1) The conditions of probation shall include the
21 following:

22 (a) That the probationer shall not, during the term of his
23 or her probation, violate any criminal law of this state, or any
24 ordinance of any municipality in the state.

25 (b) That the probationer shall not, during the term of his
26 or her probation, leave the state without the consent of the
27 court granting his or her application for probation.

1 (c) That the probationer shall make a report to the
2 probation officer, either in person or in writing, monthly, or as
3 often as the probation officer may require. This subdivision
4 does not apply to a juvenile placed on probation and committed
5 under section 1(3) or (4) of chapter IX to a state institution or
6 agency described in the youth rehabilitation services act, Act
7 No. 150 of the Public Acts of 1974, being sections 803.301 to
8 803.309 of the Michigan Compiled Laws.

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

11 (a) Be imprisoned in the county jail for not more than 12
12 months, at the time or intervals, which may be consecutive or
13 nonconsecutive, within the TERM OF probation as the court may
14 determine. However, the period of confinement shall not exceed
15 the maximum period of imprisonment provided for the offense
16 charged if the maximum period is less than 12 months. This sub-
17 division does not apply to a juvenile placed on probation and
18 committed under section 1(3) or (4) of chapter IX to a state
19 institution or agency described in Act No. 150 of the Public Acts
20 of 1974, being sections 803.301 to 803.309 of the Michigan
21 Compiled Laws.

22 (b) Pay immediately or within the period of his or her pro-
23 bation, a fine imposed at the time of being placed on probation.

24 (c) Pay costs pursuant to subsection (4).

25 (d) Pay restitution to the victim or the victim's estate.

26 (e) Engage in community service.

1 (F) PARTICIPATE IN A WORK RELEASE, EDUCATION RELEASE, OR
2 WORK-SEEKING PROGRAM.

3 (G) PAY A DAY FINE WHICH SHALL NOT EXCEED THE PROBATIONER'S
4 DAILY GROSS EARNINGS FOR THE NUMBER OF DAYS THE DAY FINE IS
5 IMPOSED. THE CUMULATIVE AMOUNT OF THE DAY FINES SHALL NOT EXCEED
6 THE MAXIMUM FINE ALLOWED BY LAW FOR THE OFFENSE.

7 (3) Subsection (2) shall not apply to a person who is placed
8 on probation for life pursuant to sections 1(3) and 2(3) of this
9 chapter.

10 (4) The court may impose other lawful conditions of proba-
11 tion as the circumstances of the case may require or warrant, or
12 as in its judgment may be proper. If the court requires the pro-
13 bationer to pay costs, the costs shall be limited to expenses
14 specifically incurred in prosecuting the defendant or providing
15 legal assistance to the defendant and probationary oversight of
16 the probationer.

17 (5) If the court imposes restitution or costs as part of a
18 sentence of probation, the following shall apply:

19 (a) The court shall not require a probationer to pay resti-
20 tution or costs unless the probationer is or will be able to pay
21 them during the term of probation. In determining the amount and
22 method of payment of restitution and costs, the court shall take
23 into account the financial resources of the probationer and the
24 nature of the burden that payment of restitution or costs will
25 impose, with due regard to his or her other obligations.

26 (b) A probationer who is required to pay restitution or
27 costs and who is not in willful default of the payment of the

1 restitution or costs, at any time, may petition the sentencing
2 judge or his or her successor for a remission of the payment of
3 any unpaid portion of restitution, costs, or both. If it appears
4 to the satisfaction of the court that payment of the amount due
5 will impose a manifest hardship on the probationer or his or her
6 immediate family, the court may remit all or part of the amount
7 due in restitution or costs or modify the method of payment.

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

13 (7) If a probationer is ordered to pay restitution or costs
14 as part of a sentence of probation, compliance with that order
15 shall be a condition of probation. The court may revoke proba-
16 tion if the probationer fails to comply with the order and if the
17 probationer has not made a good faith effort to comply with the
18 order. In determining whether to revoke probation, the court
19 shall consider the probationer's employment status, earning abil-
20 ity, financial resources, and the willfulness of the
21 probationer's failure to pay, and any other special circumstances
22 that may have a bearing on the probationer's ability to pay. The
23 proceedings provided for in this subsection shall be in addition
24 to those provided in section 4 of this chapter. A juvenile
25 placed on probation and committed under section 1(3) or (4) of
26 chapter IX to a state institution or agency described in Act
27 No. 150 of the Public Acts of 1974, being sections 803.301 to

1 803.309 of the Michigan Compiled Laws, shall not be committed to
2 the department of corrections for failure to comply with a resti-
3 tution order.

4 Sec. 14. (1) Before sentencing ~~any~~ A person charged with
5 a felony, and, if directed by the court, in any other case in
6 which ~~any~~ A person is charged with a misdemeanor within the
7 jurisdiction of the court, the probation officer shall inquire
8 into the antecedents, character, and circumstances of the person,
9 and shall report in writing to the court.

10 (2) A presentence investigation report prepared pursuant to
11 subsection (1) shall include all of the following:

12 (a) An evaluation of and a prognosis for the person's
13 adjustment in the community based on factual information con-
14 tained in the report.

15 (b) A written statement, if provided by the victim, of any
16 physical or emotional injury or economic loss suffered by any
17 victim of the course of conduct giving rise to the conviction for
18 which the person is being sentenced.

19 (c) If requested by a victim, any written impact statement
20 submitted by the victim pursuant to the crime victim's rights
21 act.

22 (d) A specific written recommendation for disposition based
23 on the evaluation and other information as prescribed by the
24 assistant director of the department of corrections in charge of
25 probation.

26 (e) A statement prepared by the prosecuting attorney on the
27 applicability of any consecutive sentencing provision.

1 (F) IN ADDITION TO THE REQUIREMENTS OF SUBDIVISIONS (A) TO
2 (E), FOR A PERSON TO BE SENTENCED PURSUANT TO THE SENTENCE RANGES
3 ESTABLISHED UNDER CHAPTER IX, THE PRESENTENCE INVESTIGATION
4 REPORT SHALL INCLUDE ALL OF THE FOLLOWING:

5 (i) FOR EACH CONVICTION ENTERED, THE SENTENCE GRID THAT CON-
6 TAINS THE APPROPRIATE SENTENCE RANGE.

7 (ii) THE COMPUTATION THAT DETERMINES THE APPROPRIATE SEN-
8 TENCE RANGE FOR EACH CONVICTION ENTERED.

9 (iii) THE RECOMMENDED SENTENCE.

10 (iv) THE DEFENDANT'S PRIOR CRIMINAL RECORD, INCLUDING ANY
11 CONVICTIONS FOR MISDEMEANORS OR FELONIES THAT ARE ON THE
12 DEFENDANT'S DRIVER'S RECORD. AS USED IN THIS SUBPARAGRAPH,
13 "PRIOR CRIMINAL RECORD" MEANS THE RECORDED CRIMINAL HISTORY OF AN
14 OFFENDER, INCLUDING ALL MISDEMEANOR AND FELONY CONVICTIONS, PRO-
15 BATION VIOLATIONS, AND JUVENILE ADJUDICATIONS FOR ACTS THAT WOULD
16 HAVE BEEN CRIMES IF COMMITTED BY AN ADULT.

17 (v) DIAGNOSTIC OPINIONS THAT ARE AVAILABLE AND NOT EXEMPTED
18 FROM DISCLOSURE UNDER SUBSECTION (3).

19 (3) The court may exempt from disclosure in the presentence
20 investigation report information or a diagnostic opinion ~~which~~
21 THAT might seriously disrupt a program of rehabilitation or
22 sources of information obtained on a promise of confidentiality.
23 If a part of the presentence investigation report is not dis-
24 closed, the court shall state on the record the reasons for its
25 action and inform the defendant and his or her attorney that
26 information has not been disclosed. The action of the court in
27 exempting information from disclosure shall be subject to

1 appellate review. Information or a diagnostic opinion exempted
2 from disclosure pursuant to this subsection shall be specifically
3 noted in the presentence investigation report.

4 (4) The court shall permit the prosecutor, the defendant's
5 attorney, and the defendant to review the presentence investiga-
6 tion report prior to sentencing.

7 (5) At the time of sentencing, either party may challenge,
8 on the record, the accuracy or relevancy of any information con-
9 tained in the presentence investigation report. The court may
10 order an adjournment to permit the parties to prepare a challenge
11 or a response to a challenge. If the court finds ON THE RECORD
12 that the challenged information is inaccurate or irrelevant, that
13 finding shall be made a part of the record, ~~and~~ the presentence
14 investigation report shall be amended, and the inaccurate or
15 irrelevant information shall be stricken accordingly before the
16 report is transmitted to the department of corrections.

17 (6) On appeal, the defendant's attorney, or the defendant if
18 proceeding pro se, shall be provided with a copy of the presen-
19 tence investigation report and any attachments thereto with the
20 exception of any information exempted from disclosure, on the
21 record, by the court pursuant to subsection (3).

22 (7) If the person is committed to a state penal institution,
23 a copy or amended copy of the presentence investigation report
24 and, if a psychiatric examination of the person has been made for
25 the court, a copy of the psychiatric report shall accompany the
26 commitment papers. If the person is sentenced by fine or
27 imprisonment or placed on probation or other disposition of his

1 or her case is made by the court, a copy or amended copy of the
2 presentence investigation report, including a psychiatric exami-
3 nation report made in the case, shall be filed with the depart-
4 ment of corrections.

5 (8) A prisoner under the jurisdiction of the department of
6 corrections shall be provided with a copy of any presentence
7 investigation report in the department's possession about that
8 prisoner, except for information exempted from disclosure pursu-
9 ant to subsection (3). ~~IF~~ IF A PERSON UNDER THE JURISDICTION OF
10 THE DEPARTMENT OF CORRECTIONS FOR A CRIME COMMITTED LESS THAN 2
11 YEARS AFTER THE EFFECTIVE DATE OF SECTION 33 OF CHAPTER IX IS TO
12 HAVE A PAROLE HEARING, THE PERSON SHALL BE PROVIDED WITH A COPY
13 OF THE PRESENTENCE INVESTIGATION REPORT, EXCEPT FOR INFORMATION
14 EXEMPTED FROM DISCLOSURE PURSUANT TO SUBSECTION (3), not less
15 than 30 days before a parole hearing is held pursuant to section
16 35 of Act No. 232 of the Public Acts of 1953, being section
17 791.235 of the Michigan Compiled Laws.

18 Section 2. Section 14 of chapter IX of Act No. 175 of the
19 Public Acts of 1927, being section 769.14 of the Michigan
20 Compiled Laws, is repealed.

21 Section 3. This amendatory act shall not take effect unless
22 Senate Bill No. _____ or House Bill No. 4192 (request
23 no. 00665'89 a) of the 85th Legislature is enacted into law.