

- (A) A mutual fund account.
- (B) A securities brokerage account.
- (C) A money market account.
- (D) A retail investment account.

(vii) An entity regulated by the securities and exchange commission that collects funds from the public.

(viii) An entity that is a member of the national association of securities dealers and that collects funds from the public.

(ix) Another entity that collects funds from the public.

(l) “Friend of the court act” means the friend of the court act, 1982 PA 294, MCL 552.501 to 552.535.

(m) “Friend of the court case” means that term as defined in section 2 of the friend of the court act, MCL 552.502. The term “friend of the court case”, when used in a provision of this act, is not effective until on and after December 1, 2002.

(n) “Income” means any of the following:

(i) Commissions, earnings, salaries, wages, and other income due or to be due in the future to an individual from his or her employer and successor employers.

(ii) A payment due or to be due in the future to an individual from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental unemployment benefits, or worker’s compensation.

(iii) An amount of money that is due to an individual as a debt of another individual, partnership, association, or private or public corporation, the United States or a federal agency, this state or a political subdivision of this state, another state or a political subdivision of another state, or another legal entity that is indebted to the individual.

(o) “Insurer” means an insurer, health maintenance organization, health care corporation, or other group, plan, or entity that provides health care coverage in accordance with any of the following acts:

(i) Public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(ii) The insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(iii) The nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704.

(p) “Medical assistance” means medical assistance as established under title XIX of the social security act, chapter 531, 49 Stat. 620, 42 USC 1396 to 1396r-6 and 1396r-8 to 1396v.

(q) “Most recent semiannual obligation” means the total amount of current child support owed by a parent during the preceding January 1 to June 30 or July 1 to December 31.

(r) “Occupational license” means a certificate, registration, or license issued by a state department, bureau, or agency that has regulatory authority over an individual that allows an individual to legally engage in a regulated occupation or that allows the individual to use a specific title in the practice of an occupation, profession, or vocation.

(s) “Office of child support” means the office of child support established in section 2 of the office of child support act, 1971 PA 174, MCL 400.232.

(t) “Office of the friend of the court” means an agency created in section 3 of the friend of the court act, MCL 552.503.

(u) “Order of income withholding” means an order entered by the circuit court providing for the withholding of a payer’s income to enforce a support order under this act.

(v) “Payer” means an individual who is ordered by the circuit court to pay support.

(w) “Person” means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(x) “Plan administrator” means that term as used in relation to a group health plan under section 609 of title I of the employee retirement income security act of 1974, Public Law 93-406, 29 USC 1169, if the health care coverage plan of the individual who is responsible for providing a child with health care coverage is subject to that act.

(y) “Political subdivision” means a county, city, village, township, educational institution, school district, or special district or authority of this state or of a local unit of government.

(z) “Recipient of support” means the following:

(i) The spouse, if the support order orders spousal support.

(ii) The custodial parent or guardian, if the support order orders support for a minor child or a child who is 18 years of age or older.

(iii) The department, if support has been assigned to that department.

(aa) “Recreational or sporting license” means a hunting, fishing, or fur harvester’s license issued under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, but does not include a commercial fishing license or permit issued under part 473 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.47301 to 324.47362.

(bb) “Referee” means a person who is designated as a referee under the friend of the court act.

(cc) “Source of income” means an employer or successor employer or another individual or entity that owes or will owe income to the payer.

(dd) “State disbursement unit” or “SDU” means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

(ee) “State friend of the court bureau” means that bureau as created in the state court administrative office under section 19 of the friend of the court act, MCL 552.519.

(ff) “Support” means all of the following:

(i) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses.

(ii) The payment of money ordered by the circuit court under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, for the necessary expenses incurred by or for the mother in connection with her confinement, for other expenses in connection with the pregnancy of the mother, or for the repayment of genetic testing expenses.

(iii) A surcharge under section 3a.

(gg) “Support order” means an order entered by the circuit court for the payment of support, whether or not a sum certain.

(hh) “Title IV-D” means part D of title IV of the social security act, chapter 531, 49 Stat. 620, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b.

(ii) “Title IV-D agency” means the agency in this state performing the functions under title IV-D and includes a person performing those functions under contract including an office of the friend of the court or a prosecuting attorney.

(jj) “Work activity” means any of the following:

(i) Unsubsidized employment.

(ii) Subsidized private sector employment.

(iii) Subsidized public sector employment.

(iv) Work experience, including work associated with the refurbishing of publicly assisted housing, if sufficient private sector employment is not available.

(v) On-the-job training.

(vi) Referral to and participation in the work first program prescribed in the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, or other job search and job readiness assistance.

(vii) Community service programs.

(viii) Vocational educational training, not to exceed 12 months with respect to an individual.

(ix) Job skills training directly related to employment.

(x) Education directly related to employment, in the case of an individual who has not received a high school diploma or a certificate of high school equivalency.

(xi) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of an individual who has not completed secondary school or received such a certificate.

(xii) The provisions of child care services to an individual who is participating in a community service program.

### **552.603a Support payment; surcharge; computation; assessment; collection; enforcement.**

Sec. 3a. (1) For a friend of the court case, as of January 1 and July 1 of each year, a surcharge shall be added to support payments that are past due as of those dates. The surcharge shall be calculated at 6-month intervals at an annual rate of interest equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer. The amount of the surcharge shall not compound. The amount shown as due and owing on the records of the friend of the court as of January 1 and July 1 of each year shall be reduced by an amount equal to 1 month’s support for purposes of assessing the surcharge. A surcharge under this subsection shall not be added to support ordered under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, for the time period to the date of the support order.

(2) A surcharge as computed in subsection (1) shall be assessed on a semiannual cycle on January 1 and July 1 of each year except as otherwise provided under subsection (3).

(3) A surcharge shall not be assessed for the current semiannual cycle for any of the following:

(a) Beginning on July 1, 2005, in cases in which the friend of the court is collecting on a current child support obligation, the payer has paid 90% or more of the most recent semiannual obligation during the semiannual cycle.

(b) For a support order entered after the effective date of the amendatory act that added this subsection, for any period of time a support order did not exist when support is later ordered for that period.

(c) The surcharge is waived or abated under a court order under section 3d.

(4) The surcharge shall be collected and enforced by any means authorized under this act, the friend of the court act, or another appropriate federal or state law for the enforcement and collection of child support and paid through the state disbursement unit.

**552.603d Repayment plan.**

Sec. 3d. (1) A party or the friend of the court may file a motion with the court for a repayment plan order that provides, subject to federal law or regulation, for discharge of amounts assessed as surcharge and for the waiver of future surcharge. The court shall enter the repayment plan order after notice and a hearing if the court finds that all of the following are true:

(a) The arrearage did not arise from conduct by the payer engaged in exclusively for the purpose of avoiding a support obligation.

(b) The payer has no present ability, and will not have an ability in the foreseeable future, to pay the arrearage absent a repayment plan that waives or discharges amounts assessed as surcharge.

(c) The payer's plan is reasonable based on the payer's current ability to pay.

(d) The surcharge accrued or will accrue after the effective date of the amendatory act that added this section.

(2) Following entry of a repayment plan order under subsection (1), upon notice and hearing if the court finds that the payer has failed substantially to comply with the repayment plan, the court shall enter an order reinstating the surcharge and all or a portion of the surcharge that was discharged.

**Effective date of MCL 552.603a.**

Enacting section 1. Section 3a of the support and parenting time enforcement act, 1982 PA 295, MCL 552.603a, as amended by this amendatory act, takes effect June 30, 2004.

**Effective date of MCL 552.602.**

Enacting section 2. Section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602, as amended by this amendatory act, takes effect June 30, 2005.

**Effective date of MCL 552.603d.**

Enacting section 3. Section 3d of the support and parenting time enforcement act, 1982 PA 295, MCL 552.603d, as added by this amendatory act, takes effect June 30, 2005.

This act is ordered to take immediate effect.

Approved July 14, 2004.

Filed with Secretary of State July 14, 2004.

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**[No. 209]**

**(HB 4775)**

AN ACT to amend 1956 PA 205, entitled "An act to confer upon circuit courts jurisdiction over proceedings to compel and provide support of children born out of wedlock; to prescribe the procedure for determination of such liability; to authorize agreements providing for furnishing of such support and to provide for the enforcement thereof; and to prescribe penalties for the violation of certain provisions of this act," by amending section 7 (MCL 722.717), as amended by 2001 PA 109.

*The People of the State of Michigan enact:*

**722.717 Order of filiation; circumstances; contents; support order; retroactivity; enforcement of judgment or order; fee; reports to director of department of community health; service of copies to parties.**

Sec. 7. (1) The court shall enter an order of filiation declaring paternity and providing for the support of the child under 1 or more of the following circumstances:

(a) The finding of the court or the verdict determines that the man is the father.

(b) The defendant acknowledges paternity either orally to the court or by filing with the court a written acknowledgment of paternity.

(c) The defendant is served with summons and a default judgment is entered against him or her.

(2) An order of filiation entered under subsection (1) shall specify the sum to be paid weekly or otherwise, as prescribed in section 5 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605, until the child reaches the age of 18. Subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, the court may also order support for a child after he or she reaches 18 years of age. In addition to providing for the support of the child, the order shall also provide for the payment of the necessary expenses incurred by or for the mother in connection with her confinement and pregnancy and for the funeral expenses if the child has died, as determined by the court under section 2. A child support obligation is only retroactive to the date that the paternity complaint was filed unless any of the following circumstances exist:

(a) The defendant was avoiding service of process.

(b) The defendant threatened or coerced through domestic violence or other means the complainant not to file a proceeding under this act.

(c) The defendant otherwise delayed the imposition of a support obligation.

(3) A judgment or order entered under this act providing for the support of a child or payment of expenses in connection with the mother's confinement or pregnancy is enforceable as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650. If this act contains a specific provision regarding the contents or enforcement of a support order that conflicts with a provision in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act controls in regard to that provision.

(4) Upon entry of an order of filiation, the clerk of the court shall collect a fee of \$35.00 from the person against whom the order of filiation is entered. The clerk shall retain \$9.00 of the fee and remit the \$26.00 balance, along with a written report of the order of filiation, to the director of the department of community health. The report shall be on a form prescribed by or in a manner approved by the director of the department of community health. Regardless of whether the fee required by this section is collected, the clerk shall transmit and the department of community health shall receive the report of the order of filiation.

(5) If an order of filiation or acknowledgment of parentage is abrogated by a later judgment or order of a court, the clerk of the court that entered the order shall immediately communicate that fact to the director of the department of community health on a form prescribed by the director of the department of community health. An order of filiation supersedes an acknowledgment of parentage.

(6) Within the time prescribed by court rule, the party, attorney, or agency that secures the signing of an order of filiation shall serve a copy of the order on all parties to the action and file proof of service with the court clerk.

**Effective date.**

Enacting section 1. This amendatory act takes effect October 1, 2004.

This act is ordered to take immediate effect.

Approved July 14, 2004.

Filed with Secretary of State July 14, 2004.

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**[No. 210]**

**(HB 4776)**

AN ACT to amend 1982 PA 294, entitled “An act to revise and consolidate the laws relating to the friend of the court; to provide for the appointment or removal of the friend of the court; to create the office of the friend of the court; to establish the rights, powers, and duties of the friend of the court and the office of the friend of the court; to establish a state friend of the court bureau and to provide the powers and duties of the bureau; to prescribe powers and duties of the circuit court and of certain state and local agencies and officers; to establish friend of the court citizen advisory committees; to prescribe certain duties of certain employers and former employers; and to repeal acts and parts of acts,” by amending sections 2, 2a, 3, 4, 4a, 7, and 9 (MCL 552.502, 552.502a, 552.503, 552.504, 552.504a, 552.507, and 552.509), sections 2, 2a, and 9 as amended by 2002 PA 571, section 3 as amended by 1996 PA 365, sections 4 and 4a as added by 1996 PA 366, and section 7 as amended by 1996 PA 144, and by adding section 7a.

*The People of the State of Michigan enact:*

**552.502 Definitions; B to I.**

Sec. 2. As used in this act:

- (a) “Bureau” means the state friend of the court bureau created in section 19.
- (b) “Centralizing enforcement” means the process authorized under section 10 of the office of child support act, 1971 PA 174, MCL 400.240.
- (c) “Chief judge” means the following:
  - (i) The circuit judge in a judicial circuit having only 1 circuit judge.
  - (ii) Except in the county of Wayne, the chief judge of the circuit court in a judicial circuit having 2 or more circuit judges.
  - (iii) In the county of Wayne, the executive chief judge of the circuit court in the third judicial circuit.
- (d) “Citizen advisory committee” means a citizen friend of the court advisory committee established as provided in section 4.
- (e) “Consumer reporting agency” means a person that, for monetary fees or dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. As used in this subdivision, “consumer report” means that term as defined in section 603

of the fair credit reporting act, title VI of the consumer credit protection act, Public Law 90-321, 15 USC 1681a.

(f) “County board” means the county board of commissioners in the county served by the office. If a judicial circuit includes more than 1 county, action required to be taken by the county board means action by the county boards of commissioners for all counties composing that circuit.

(g) “Court” means the circuit court.

(h) “Current employment” means employment within 1 year before a friend of the court request for information.

(i) “Custody or parenting time order violation” means an individual’s act or failure to act that interferes with a parent’s right to interact with his or her child in the time, place, and manner established in the order that governs custody or parenting time between the parent and the child and to which the individual accused of interfering is subject.

(j) “De novo hearing” means a new judicial consideration of a matter previously heard by a referee.

(k) “Department” means the family independence agency.

(l) “Domestic relations matter” means a circuit court proceeding as to child custody or parenting time, or child or spousal support, that arises out of litigation under a statute of this state, including, but not limited to, the following:

(i) 1846 RS 84, MCL 552.1 to 552.45.

(ii) The family support act, 1966 PA 138, MCL 552.451 to 552.459.

(iii) Child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.31.

(iv) 1968 PA 293, MCL 722.1 to 722.6.

(v) The paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vi) Revised uniform reciprocal enforcement of support act, 1952 PA 8, MCL 780.151 to 780.183.

(vii) Uniform interstate family support act, 1996 PA 310, MCL 552.1101 to 552.1901.

(m) “Domestic relations mediation” means a process by which the parties are assisted by a domestic relations mediator in voluntarily formulating an agreement to resolve a dispute concerning child custody or parenting time that arises from a domestic relations matter.

(n) “Friend of the court” means the person serving under section 21(1) or appointed under section 23 as the head of the office of the friend of the court.

(o) “Friend of the court case” means a domestic relations matter that an office establishes as a friend of the court case as required under section 5a. The term “friend of the court case”, when used in a provision of this act, is not effective until on and after December 1, 2002.

(p) “Income” means that term as defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602.

### **552.502a Definitions; M to T.**

Sec. 2a. As used in this act:

(a) “Medical assistance” means medical assistance as established under title XIX of the social security act, 42 USC 1396 to 1396r-6 and 1396r-8 to 1396v.

(b) “Office” and “office of the friend of the court” mean an agency created in section 3.

(c) “Payer” means a person ordered by the circuit court to pay support.

(d) “Public assistance” means cash assistance provided under the social welfare act, 1939 PA 280, 400.1 to 400.119b.

(e) “Recipient of support” means the following:

(i) The spouse, if the support order orders spousal support.

(ii) The custodial parent or guardian, if the support order orders support for a minor child or a child who is 18 years of age or older.

(iii) The family independence agency, if support has been assigned to that department.

(f) “State advisory committee” means the committee established by the bureau under section 19.

(g) “State disbursement unit” or “SDU” means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

(h) “Support” means all of the following:

(i) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses.

(ii) The payment of money ordered by the circuit court under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, for the necessary expenses incurred by or for the mother in connection with her confinement, for other expenses in connection with the pregnancy of the mother, or for the repayment of genetic testing expenses.

(iii) A surcharge under section 3a of the support and parenting time enforcement act, MCL 552.603a.

(i) “Support and parenting time enforcement act” means 1982 PA 295, MCL 552.601 to 552.650.

(j) “Support order” means an order entered by the circuit court for the payment of support in a sum certain, whether in the form of a lump sum or a periodic payment.

(k) “Title IV-D” means part D of title IV of the social security act, 42 USC 651 to 655, 656 to 657, 658a to 660, and 663 to 669b.

(l) “Title IV-D agency” means that term as defined in section 2 of the support and parenting time enforcement act, MCL 552.602.

**552.503 Office of the friend of the court; creation in judicial circuit; exception; separate office in county; vacancy; merger; head of office as friend of the court; friend of the court as employee of circuit court; performance of duties; office procedures; availability of services to public.**

Sec. 3. (1) There is created in each judicial circuit of this state an office of the friend of the court, except as provided in subsection (2).

(2) If each county in a multicounty judicial circuit has a separate office of the friend of the court on the day before the effective date of this act, each county in that circuit shall have a separate office of the friend of the court on the effective date of this act. If a vacancy occurs in the position of the friend of the court in such a county, the chief judge may merge the office of the friend of the court in that county with the office of the friend of the court in another county of the judicial circuit.

(3) The head of each office is the friend of the court serving under section 21(1) or appointed according to section 23.

(4) The friend of the court is an employee of the circuit court in the judicial circuit served by the friend of the court.

(5) The duties of the office shall be performed under the direction and supervision of the chief judge.

(6) Except as otherwise required by federal law on cases that are eligible for funding under title IV-D, the friend of the court is only required to perform activities under this act or the support and parenting time enforcement act when a party in that case has requested title IV-D services.

(7) Each friend of the court shall take all necessary steps to adopt office procedures to implement this act, the Michigan court rules, and the recommendations of the bureau. Office of the friend of the court duties shall be performed in accordance with the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to 37.2804.

(8) An office of the friend of the court shall be open to the public making available all of the office's services not less than 20 hours each month during nontraditional office hours. This subsection does not require an office of the friend of the court to be open for a greater number of hours than it was required to be open before January 1, 1997.

**552.504 Citizen friend of the court advisory committee; establishment; composition; appointment; vacancy; terms; election of chairperson and vice-chairperson; court administrative office guidelines; term limitation.**

Sec. 4. (1) Each county may establish a citizen friend of the court advisory committee composed of the following members, each of whom is a resident of the county:

- (a) A noncustodial parent.
- (b) A custodial parent.
- (c) An attorney who engages primarily in family law practice.
- (d) The county sheriff or the sheriff's designee.
- (e) The prosecuting attorney or the prosecuting attorney's designee.
- (f) The director of the family independence agency or the director's designee.
- (g) A mental health professional who provides family counseling.

(h) Two members of the general public who are not serving on the committee in a category listed in subdivisions (a) to (g).

(2) Except for a member serving under subsection (1)(d), (e), or (f), and except as otherwise provided in this subsection, the county board shall appoint the citizen advisory committee members. In a county organized under 1966 PA 293, MCL 45.501 to 45.521, the county executive shall appoint the citizen advisory committee members with the advice and consent of the county board, and shall exercise the other powers and duties prescribed for the county board by this section in regard to the citizen advisory committee.

(3) A vacancy on the citizen advisory committee shall be filled for the remainder of the term in the same manner as the position was originally filled. The county board shall attempt to compose the citizen advisory committee so that its membership reflects the ethnic, racial, and gender distribution of the community that it serves.

(4) Committee members shall serve renewable terms of 3 years for each time appointed. Members appointed under subsection (1)(a), (b), (c), (g), and (h) shall serve initial terms of 3 years for 2 members, 2 years for 2 members, and 1 year for 2 members to allow 1/3 of those members to be appointed to the committee each year.

(5) A citizen advisory committee shall elect 1 of its members as chairperson and 1 as vice-chairperson.

(6) A citizen advisory committee shall honor any guidelines established by the state court administrative office for a friend of the court office pertaining to citizen advisory committees.

(7) Except for a member serving under subsection (1)(d), (e), or (f), a citizen advisory committee member shall not serve more than 2 consecutive terms. After completion of 2 consecutive terms, a former member shall not be reappointed to serve during the 2 years immediately following the end of his or her previous term.

**552.504a Citizen advisory committee; scope; duties; subcommittees; meetings open to the public; exception.**

Sec. 4a. (1) A citizen advisory committee is advisory only. Once established, the citizen advisory committee shall do all of the following:

(a) Meet not less than 6 times annually. The citizen advisory committee shall keep minutes of each meeting and submit a copy to the county board.

(b) Review and investigate grievances concerning the friend of the court as provided in section 26.

(c) Advise the court and the county board on the office of the friend of the court's and the friend of the court's duties and performance, and on the community's needs relating to the office's services.

(d) At the end of each calendar year, submit an annual report of its activities to the county board, court, state court administrative office, governor's office, and standing senate and house committees and appropriations subcommittees that are responsible for legislation concerning the judicial branch.

(2) A citizen advisory committee chairperson may appoint subcommittees comprised of 3 committee members to review, investigate, and hold hearings on grievances submitted to the citizen advisory committee as provided in section 26. The chairperson may serve on a grievance subcommittee and shall attempt to appoint members so that each member has an equal opportunity for subcommittee participation.

(3) Except as otherwise provided in this subsection, a citizen advisory committee meeting is open to the public. A member of the public attending a meeting shall be given a reasonable opportunity to address the committee on an issue under consideration by the committee. If a vote is to be taken by the citizen advisory committee, the opportunity to address the committee shall be given before the vote is taken. A citizen advisory committee meeting, including a meeting of a subcommittee appointed under subsection (2), is not open to the public while the committee or subcommittee is reviewing, investigating, or holding a hearing on a grievance as provided in section 26.

**552.507 Referee; designation by chief judge; powers; transcript of hearing; cost; de novo court hearing; request; interim order; review.**

Sec. 7. (1) The chief judge may designate a referee as provided by the Michigan court rules.

(2) A referee may do all of the following:

(a) Hear all motions in a domestic relations matter, except motions pertaining to an increase or decrease in spouse support, referred to the referee by the court.

(b) Administer oaths, compel the attendance of witnesses and the production of documents, and examine witnesses and parties.

(c) Make a written, signed report to the court containing a summary of testimony given, a statement of findings, and a recommended order; or make a statement of findings on the record and submit a recommended order.

(d) Hold hearings as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650. The referee shall make a record of each hearing held.

(e) Accept a voluntary acknowledgment of support liability, and review and make a recommendation to the court concerning a stipulated agreement to pay support.

(f) Recommend a default order establishing, modifying, or enforcing a support obligation in a domestic relations matter.

(3) If ordered by the court, or if stipulated by the parties, a referee shall make a transcript, verified by oath, of each hearing held. The cost of preparing a transcript shall be apportioned equally between the parties, unless otherwise ordered by the court.

(4) The court shall hold a de novo hearing on any matter that has been the subject of a referee hearing, upon the written request of either party or upon motion of the court. The request of a party shall be made within 21 days after the recommendation of the referee is made available to that party.

(5) A hearing is de novo despite the court's imposition of reasonable restrictions and conditions to conserve the resources of the parties and the court if the following conditions are met:

(a) The parties have been given a full opportunity to present and preserve important evidence at the referee hearing.

(b) For findings of fact to which the parties have objected, the parties are afforded a new opportunity to offer the same evidence to the court as was presented to the referee and to supplement that evidence with evidence that could not have been presented to the referee.

(6) Subject to subsection (5), de novo hearings include, but are not limited to, the following:

(a) A new decision based entirely on the record of a previous hearing, including any memoranda, recommendations, or proposed orders by the referee.

(b) A new decision based only on evidence presented at the time of the de novo hearing.

(c) A new decision based in part on the record of a referee hearing supplemented by evidence that was not introduced at a previous hearing.

(7) Pending a de novo hearing, the referee's recommended order may be presented to the court for entry as an interim order as provided by the Michigan court rules. The interim order shall be served on the parties within 3 days and shall be subject to review as provided under this subsection.

### **552.507a Making report, recommendation, and supporting documents available to attorneys and parties; informing parties in child custody dispute or guardian concerning preference expressed by child; availability of information.**

Sec. 7a. (1) A copy of each report, recommendation, and any supporting documents or a summary of supporting documents prepared or used by the friend of the court or an employee of the office shall be made available to the attorney for each party and to each of the parties before the court takes any action on a recommendation by the office.

(2) In a child custody dispute, the parties shall be informed of whether a custody preference expressed by the child was considered, evaluated, and determined by the judge, referee, or employee of the friend of the court. The parties shall not be informed of the preference expressed by the child under section 3 of the child custody act of 1970, 1970 PA 91, MCL 722.23.

(3) If a guardian is appointed for a child, the guardian shall be informed whether a custody preference expressed by the child was considered, evaluated, and determined by the judge, referee, or employee of the friend of the court, and, if so, the preference expressed.

(4) The manner and time within which the information required under this section is made available shall be determined by the Michigan court rules.

**552.509 Duties of office regarding support payments; transition to state disbursement unit; providing statement of account to parties; initiating and carrying out proceedings to enforce order entered in domestic relations matter; enforcement orders entered in other state.**

Sec. 9. (1) Except as otherwise provided in subsections (2) and (3), after a support order is entered in a friend of the court case, the office shall receive each payment and service fee under the support order; shall, not less than once each month, record each support payment due, paid, and past due; and shall disburse each support payment to the recipient of support within 14 days after the office receives each payment or within the federally mandated time frame, whichever is shorter.

(2) An office shall receive support order and service fee payments, and shall disburse support, as required by subsection (1) until the state disbursement unit implements support and fee receipt and disbursement for the cases administered by that office. At the family independence agency's direction and in cooperation with the SDU, an office shall continue support and fee receipt and support disbursement to facilitate the transition of that responsibility to the SDU as directed in, and in accordance with the transition schedule developed as required by, the office of child support act, 1971 PA 174, MCL 400.231 to 400.240.

(3) After SDU support and fee receipt and disbursement is implemented in a circuit court circuit, the office for that court may accept a support payment made in cash or by cashier's check or money order. If the office accepts such a payment, the office shall transmit the payment to the SDU and shall inform the payer of the SDU's location and the requirement to make payments through the SDU.

(4) Promptly after November 3, 1999, each office shall establish and maintain the support order and account records necessary to enforce support orders and necessary to record obligations, support and fee receipt and disbursement, and related payments. Each office shall provide the SDU with access to those records and shall assist the SDU to resolve support and fee receipt and disbursement problems related to inadequate identifying information.

(5) The office shall provide annually to each party, without charge, 1 statement of account upon request. Additional statements of account shall be provided at a reasonable fee sufficient to pay for the cost of reproduction. Statements provided under this subsection are in addition to statements provided for administrative and judicial hearings.

(6) The office shall initiate and carry out proceedings to enforce an order in a friend of the court case regarding custody, parenting time, health care coverage, or support in accordance with this act, the support and parenting time enforcement act, and supreme court rules.

(7) Upon request of a child support agency of another state, the office shall initiate and carry out certain proceedings to enforce support orders entered in the other state without the need to register the order as a friend of the court case in this state. The order shall be enforced using automated administrative enforcement actions authorized under the support and parenting time enforcement act.

**Effective date.**

Enacting section 1. This amendatory act takes effect October 1, 2004.

This act is ordered to take immediate effect.

Approved July 14, 2004.

Filed with Secretary of State July 14, 2004.

**[No. 211]****(HB 4792)**

AN ACT to amend 1982 PA 295, entitled “An act to provide for and to supplement statutes that provide for the provisions and enforcement of support, health care, and parenting time orders with respect to divorce, separate maintenance, paternity, child custody and support, and spousal support; to prescribe and authorize certain provisions of those orders; to prescribe the powers and duties of the circuit court and friend of the court; to prescribe certain duties of certain employers and other sources of income; to provide for penalties and remedies; and to repeal acts and parts of acts,” (MCL 552.601 to 552.650) by adding section 5e.

*The People of the State of Michigan enact:*

**552.605e Payment plan for arrearages.**

Sec. 5e. (1) A payer who has an arrearage under a support order may seek relief from the arrearage by complying with the amnesty under section 3b of the office of child support act, 1971 PA 174, MCL 400.233b, or by filing a motion with the circuit court for a payment plan to pay arrearages and to discharge or abate arrearages. Except as provided in subsection (7)(d), if the payer files a motion for a payment plan, the court shall approve the plan after notice and a hearing if it finds by a preponderance of the evidence that the plan is in the best interest of the parties and children and that either of the following applies:

(a) The arrearage is owed to an individual payee and both of the following:

(i) The payee has consented to entry of the order under circumstances that satisfy the court that the payee is not acting under fear, coercion, or duress.

(ii) The payer establishes that the arrearage did not arise from conduct by the payer engaged in exclusively for the purpose of avoiding a support obligation.

(b) The arrearage is owed to this state or a political subdivision of this state, and the payer establishes the following:

(i) The arrearage did not arise from conduct by the payer engaged in exclusively for the purpose of avoiding a support obligation.

(ii) The payer has no present ability, and will not have an ability in the foreseeable future, to pay the arrearage absent a payment plan.

(iii) The payment plan will pay a reasonable portion of the arrearage over a reasonable period of time in accordance with the payer’s current ability to pay. A payment plan that does not pay the entire arrearage shall:

(A) As to a payer who has an income at or below the poverty level, require payments for at least 24 months.

(B) As to a payer who has an income in excess of the poverty level, require payments for at least 24 months plus 1 additional month for each \$1,000.00 above the poverty level that the payer earns.

(iv) The office of child support or its designee has been served with a copy of the motion at least 56 days before the hearing.

(2) When the payer has completed the plan, the payer shall provide notice to interested parties and obtain a hearing before the court. If, after notice and hearing, the court finds that the payer has completed the payment plan, the court shall enter an order discharging the remaining arrearage, if any. If the court finds that the payer has substantially completed the payment plan, the court may enter an order granting relief appropriate to the circumstances of the case.

(3) A payment plan may provide for discharge of any portion of an arrearage that meets the requirements under subsection (2), even if other portions of the arrearage do not meet those requirements.

(4) A payment plan under subsection (1) shall provide that arrearages subject to the payment plan may be reinstated upon motion and hearing for good cause shown at any time during the pendency of the payment plan. Good cause includes, but is not limited to, the payee becoming a recipient of public assistance, or the payer receiving property sufficient to pay a substantial portion of the amount discharged, including, but not limited to, lottery proceeds, other winnings, a settlement under an insurance policy or a judgment in a civil action, or an inheritance.

(5) A court shall require conditions in the payment plan in addition to the payment of support that the court determines are in the best interests of a child, including, but not limited to, any of the following:

(a) A payer's participation in a parenting program.

(b) Drug and alcohol counseling.

(c) Anger management classes or participation in a batterer intervention program that meets the standards recommended by the governor's task force on batterer intervention standards.

(d) Participation in a work program.

(e) Counseling.

(f) Continuing compliance with a current support order.

(6) This section does not modify the right of a party to receive other child support credits to which the payer is entitled nor prevent the court from correcting a support order under other applicable law or court rule.

(7) In making its findings under subsection (1), the court shall consider any written comments submitted before the hearing by the office of child support or its designee. When written comments have not been submitted, the court may do any of the following:

(a) Adjourn the hearing to seek written comments before making its decision.

(b) Appoint an examiner who shall review the payer's assets and the plan and make a recommendation concerning the plan or propose an alternative plan to the court. The examiner shall be paid by the payer for services provided under terms and conditions the court establishes separate from any payments made through the friend of the court or state disbursement unit.

(c) Appoint a receiver who shall review the payer's assets and the plan and make a recommendation concerning the plan or propose an alternative plan to the court. The receiver shall have the powers of a receiver under all applicable laws and may, at the court's discretion, use the payer's assets to complete the plan or otherwise monitor the payer's progress in completing the plan. The receiver shall be paid by the payer for services provided under terms and conditions the court establishes separately from any payments made through the friend of the court or state disbursement unit.

(d) Approve the plan as presented, but only if the payer satisfies the requirements of subsection (1) by clear and convincing evidence.

(e) Deny the plan as presented if the court finds that the payer has not satisfied the requirements of subsection (1).

(8) If the court approves a plan under subsection (1)(b), that approval shall be considered the state's consent to a compromise of the arrearage.

(9) An arrearage subject to a plan under subsection (1) shall continue to be enforced under this act, the office of child support act, and the friend of the court act, when federal

or state law requires the enforcement action. When federal or state law does not require the enforcement action, an arrearage subject to a plan under subsection (1) may continue to be enforced as allowed under this act, the office of child support act, and the friend of the court act, except that when the payer is complying with the plan, a referee, judge, or person conducting an administrative review or hearing as allowed under the acts shall not allow enforcement to continue when the statute permits the exercise of discretion in using the enforcement and the payer is complying with the plan.

(10) A person who knowingly provides false information on a motion filed under subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not more than \$1,000.00, or both.

(11) A title IV-D agency shall comply with the amnesty program established under section 3b of the office of child support act, 1971 PA 174, MCL 400.233b. If prosecution has been initiated under section 161, 165, or 167 of the Michigan penal code, 1931 PA 328, MCL 750.161, 750.165, and 750.167, before the payer seeks participation in the child support amnesty program or a payment plan under this section, the individual is not eligible to participate in the child support amnesty program or a payment plan under this section.

### **Effective date.**

Enacting section 1. This amendatory act takes effect February 28, 2005.

This act is ordered to take immediate effect.

Approved July 14, 2004.

Filed with Secretary of State July 14, 2004.

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## **[No. 212]**

### **(HB 5148)**

AN ACT to amend 1962 PA 174, entitled “An act to enact the uniform commercial code, relating to certain commercial transactions in or regarding personal property and contracts and other documents concerning them, including sales, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, other documents of title, investment securities, leases, and secured transactions, including certain sales of accounts, chattel paper and contract rights; to provide for public notice to third parties in certain circumstances; to regulate procedure, evidence and damages in certain court actions involving such transactions, contracts or documents; to make uniform the law with respect thereto; to make an appropriation; to provide penalties; and to repeal certain acts and parts of acts,” by amending sections 9501 and 9525 (MCL 440.9501 and 440.9525), section 9501 as amended and section 9525 as added by 2000 PA 348.

*The People of the State of Michigan enact:*

### **440.9501 Filing office.**

Sec. 9501. (1) Except as otherwise provided in subsection (2), the office in which to file a financing statement to perfect the security interest or agricultural lien is 1 of the following:

(a) The office designated for the filing or recording of a record of a mortgage on the related real property, if the collateral is as-extracted collateral or timber to be cut, or the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures.

(b) The office of secretary of state in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

(3) Any financing statement filed under subsection (1)(a) with a register of deeds and any continuation statement, termination statement, amendment, or assignment relating to the financing statement and meeting the formal requisites of this part shall be recorded by the register of deeds, notwithstanding the provisions for witnessing and acknowledging instruments to be recorded in the real property records contained in section 47 of 1846 RS 65, MCL 565.47.

(4) If the office of secretary of state receives a financing statement under subsection (1)(b) or (2) for filing, and any debtor identified on the financing statement is an individual, the secretary of state shall provide written notice of the filing of the financing statement to that debtor. The secretary of state shall determine the form of the written notice and the written notice shall contain at least all of the following information:

(a) The debtor's name and address as shown on the financing statement.

(b) The secured party's name and address as shown on the financing statement.

(c) The remedies available to the debtor under this act if he or she believes that the financing statement is erroneously or fraudulently filed.

(5) In addition to the written notice described in subsection (4), the secretary of state shall provide at no charge to a debtor described in that subsection a copy or image of the filed financing statement and any attachments. If the debtor requests additional copies or searches, the fees provided in section 9525 apply to that request.

(6) A person shall not knowingly or intentionally file a false or fraudulent financing statement with the office of the secretary of state under subsection (1)(b) or (2). In addition to any other penalty provided by law, a violation of this subsection is a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500.00, or both. If the person is convicted of the violation, the court may find that the financing statement is ineffective and may order the office of the secretary of state to terminate the financing statement and may order restitution.

(7) If a person files a false or fraudulent financing statement with the office of the secretary of state under subsection (1)(b) or (2), a debtor named in that financing statement may file an action against the person that filed the financing statement seeking appropriate equitable relief or damages, including, but not limited to, an order declaring the financing statement ineffective and ordering the office of the secretary of state to terminate the financing statement, and reasonable attorney fees.

#### **440.9525 Fees.**

Sec. 9525. (1) Except as otherwise provided in subsection (3) or (4), the fee for filing and indexing a record under this part is \$15.00.

(2) A filing office shall charge a person a fee for responding to a request for a search of the records filed with a filing office concerning a debtor, including issuance of a certificate describing each presently effective record filed concerning the debtor if requested. The fee is \$6.00, plus 1 or more of the following, if applicable:

(a) If the person requests expediting of the regular search process, an additional fee of \$25.00.

(b) If the person requests copies of the presently effective records disclosed by the search, an additional fee of \$2.00 per page.

(c) If the filing office is the secretary of state and the person requests that the secretary of state include an impression of the official seal of the secretary of state on the certificate, an additional fee of \$6.00.

(3) This section does not require a fee with respect to a record of a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 9502(3). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(4) There is no fee for filing and indexing a correction statement filed with the office of the secretary of state under section 9518, filed by an individual named as a debtor on a record indexed by the secretary of state.

#### **Effective date.**

Enacting section 1. This amendatory act takes effect January 1, 2005.

#### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1260 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 14, 2004.

Filed with Secretary of State July 14, 2004.

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**Compiler's note:** Senate Bill No. 1260, referred to in enacting section 2, was filed with the Secretary of State August 11, 2004, and became P.A. 2004, No. 304, Imd. Eff. Jan. 1, 2005.

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### **[No. 213]**

#### **(HB 5174)**

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending sections 16 and 18 (MCL 750.16 and 750.18), section 16 as amended by 2002 PA 672.

*The People of the State of Michigan enact:*

#### **750.16 Adulteration; drugs or medicine injurious to health; violations; penalty; "serious impairment of a body function" defined; other violations committed.**

Sec. 16. (1) Except as otherwise provided in this section, a person who knowingly or recklessly commits any of the following actions is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$1,000.00, or both:

(a) Adulterates, misbrands, removes, or substitutes a drug or medicine so as to render that drug or medicine injurious to health.

(b) Sells, offers for sale, possesses for sale, causes to be sold, or manufactures for sale a drug or medicine that has been adulterated, misbranded, removed, or substituted so as to render it injurious to health.

(2) A person who violates subsection (1), which violation results in personal injury, is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$4,000.00, or both.

(3) A person who violates subsection (1), which violation results in serious impairment of a body function, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both.

(4) A person who violates subsection (1), which violation results in death, is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$20,000.00, or both.

(5) A person who violates subsection (1) with the intent to kill or to cause serious impairment of a body function of 2 or more individuals, which violation results in death, is guilty of a felony punishable by imprisonment for life without possibility of parole or life without possibility of parole and a fine of not more than \$40,000.00. It is not a defense to a charge under this subsection that the person did not intend to kill a specific individual or did not intend to cause serious impairment of a body function of 2 or more specific individuals.

(6) As used in this section, “serious impairment of a body function” means that phrase as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(7) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

### **750.18 Prohibiting mixing drugs or medicine; injuriously affecting quality; violations; penalties; “serious impairment of body function” defined; other violations committed.**

Sec. 18. (1) Except for the purpose of compounding in the necessary preparation of medicine, a person shall not knowingly or recklessly mix, color, stain, or powder, or order or permit another person to mix, color, stain, or powder, a drug or medicine with an ingredient or material so as to injuriously affect the quality or potency of the drug or medicine.

(2) A person shall not sell, offer for sale, possess for sale, cause to be sold, or manufacture for sale a drug or medicine mixed, colored, stained, or powdered in the manner proscribed in subsection (1).

(3) Except as otherwise provided in this section, a person who violates subsection (1) or (2) is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$1,000.00, or both.

(4) A person who violates subsection (1) or (2), which violation results in personal injury, is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$4,000.00, or both.

(5) A person who violates subsection (1) or (2), which violation results in serious impairment of a body function, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both.

(6) A person who violates subsection (1) or (2), which violation results in death, is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$20,000.00, or both.

(7) A person who violates subsection (1) or (2) with the intent to kill or to cause serious impairment of a body function of 2 or more individuals, which violation results in death, is guilty of a felony punishable by imprisonment for life without possibility of parole or life without possibility of parole and a fine of not more than \$40,000.00. It is not a defense to a charge under this subsection that the person did not intend to kill a specific individual or did not intend to cause serious impairment of a body function of 2 or more specific individuals.

(8) As used in this section, “serious impairment of a body function” means that phrase as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(9) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

**Effective date.**

Enacting section 1. This amendatory act takes effect 90 days after it is enacted.

This act is ordered to take immediate effect.

Approved July 14, 2004.

Filed with Secretary of State July 14, 2004.

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**[No. 214]**

**(HB 5175)**

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending sections 16221, 16226, 17763, and 17764 (MCL 333.16221, 333.16226, 333.17763, and 333.17764), sections 16221 and 16226 as amended by 2004 PA 48 and section 17763 as amended by 1997 PA 153.

*The People of the State of Michigan enact:*

**333.16221 Investigation of licensee, registrant, or applicant for licensure or registration; hearings, oaths, and testimony; report; grounds for proceeding under MCL 333.16226.**

Sec. 16221. The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the appropriate disciplinary subcommittee. The

disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

(a) A violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully practice the health profession.

(b) Personal disqualifications, consisting of 1 or more of the following:

(i) Incompetence.

(ii) Subject to sections 16165 to 16170a, substance abuse as defined in section 6107.

(iii) Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

(iv) Declaration of mental incompetence by a court of competent jurisdiction.

(v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or a felony. A certified copy of the court record is conclusive evidence of the conviction.

(vi) Lack of good moral character.

(vii) Conviction of a criminal offense under sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g. A certified copy of the court record is conclusive evidence of the conviction.

(viii) Conviction of a violation of section 492a of the Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of the court record is conclusive evidence of the conviction.

(ix) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.

(x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, by the United States military, by the federal government, or by another country. A certified copy of the record of the board is conclusive evidence of the final action.

(xi) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.

(xii) Conviction of a violation of section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy of the court record is conclusive evidence of the conviction.

(c) Prohibited acts, consisting of 1 or more of the following:

(i) Fraud or deceit in obtaining or renewing a license or registration.

(ii) Permitting the license or registration to be used by an unauthorized person.

(iii) Practice outside the scope of a license.

(iv) Obtaining, possessing, or attempting to obtain or possess a controlled substance as defined in section 7104 or a drug as defined in section 7105 without lawful authority; or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.

(d) Unethical business practices, consisting of 1 or more of the following:

(i) False or misleading advertising.

(ii) Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or in behalf of patients.

(iii) Fraud or deceit in obtaining or attempting to obtain third party reimbursement.

(e) Unprofessional conduct, consisting of 1 or more of the following:

(i) Misrepresentation to a consumer or patient or in obtaining or attempting to obtain third party reimbursement in the course of professional practice.

(ii) Betrayal of a professional confidence.

(iii) Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service.

(iv) Either of the following:

(A) A requirement by a licensee other than a physician that an individual purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.

(B) A referral by a physician for a designated health service that violates section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, or a regulation promulgated under that section. Section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, and the regulations promulgated under that section, as they exist on June 3, 2002, are incorporated by reference for purposes of this subparagraph. A disciplinary subcommittee shall apply section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, and the regulations promulgated under that section regardless of the source of payment for the designated health service referred and rendered. If section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, or a regulation promulgated under that section is revised after June 3, 2002, the department shall officially take notice of the revision. Within 30 days after taking notice of the revision, the department shall decide whether or not the revision pertains to referral by physicians for designated health services and continues to protect the public from inappropriate referrals by physicians. If the department decides that the revision does both of those things, the department may promulgate rules to incorporate the revision by reference. If the department does promulgate rules to incorporate the revision by reference, the department shall not make any changes to the revision. As used in this subparagraph, “designated health service” means that term as defined in section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, and the regulations promulgated under that section and “physician” means that term as defined in sections 17001 and 17501.

(v) For a physician who makes referrals pursuant to section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, or a regulation promulgated under that section, refusing to accept a reasonable proportion of patients eligible for medicaid and refusing to accept payment from medicaid or medicare as payment in full for a treatment, procedure, or service for which the physician refers the individual and in which the physician has a financial interest. A physician who owns all or part of a facility in which he or she provides surgical services is not subject to this subparagraph if a referred surgical procedure he or she performs in the facility is not reimbursed at a minimum of the appropriate medicaid or medicare outpatient fee schedule, including the combined technical and professional components.

(f) Beginning June 3, 2003, the department of consumer and industry services shall prepare the first of 3 annual reports on the effect of this amendatory act on access to care for the uninsured and medicaid patients. The department shall report on the number of referrals by licensees of uninsured and medicaid patients to purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.

(g) Failure to report a change of name or mailing address within 30 days after the change occurs.

(h) A violation, or aiding or abetting in a violation, of this article or of a rule promulgated under this article.

(i) Failure to comply with a subpoena issued pursuant to this part, failure to respond to a complaint issued under this article or article 7, failure to appear at a compliance conference or an administrative hearing, or failure to report under section 16222 or 16223.

(j) Failure to pay an installment of an assessment levied pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, within 60 days after notice by the appropriate board.

(k) A violation of section 17013 or 17513.

(l) Failure to meet 1 or more of the requirements for licensure or registration under section 16174.

(m) A violation of section 17015 or 17515.

(n) A violation of section 17016 or 17516.

(o) Failure to comply with section 9206(3).

(p) A violation of section 5654 or 5655.

(q) A violation of section 16274.

(r) A violation of section 17020 or 17520.

(s) A violation of the medical records access act.

(t) A violation of section 17764(2).

**333.16226 Sanctions; determination; judicial review; maximum fine for violation of MCL 333.16221(a) or (b); completion of program or examination.**

Sec. 16226. (1) After finding the existence of 1 or more of the grounds for disciplinary subcommittee action listed in section 16221, a disciplinary subcommittee shall impose 1 or more of the following sanctions for each violation:

Violations of Section 16221

Sanctions

Subdivision (a), (b)(ii), (b)(iv), (b)(vi), or (b)(vii)

Probation, limitation, denial, suspension, revocation, restitution, community service, or fine.

Subdivision (b)(viii)

Revocation or denial.

Subdivision (b)(i), (b)(iii), (b)(v), (b)(ix), (b)(x), (b)(xi), or (b)(xii)

Limitation, suspension, revocation, denial, probation, restitution, community service, or fine.

Subdivision (c)(i)

Denial, revocation, suspension, probation, limitation, community service, or fine.

Subdivision (c)(ii)

Denial, suspension, revocation, restitution, community service, or fine.

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Subdivision (c)(iii)	Probation, denial, suspension, revocation, restitution, community service, or fine.
Subdivision (c)(iv) or (d)(iii)	Fine, probation, denial, suspension, revocation, community service, or restitution.
Subdivision (d)(i) or (d)(ii)	Reprimand, fine, probation, community service, denial, or restitution.
Subdivision (e)(i)	Reprimand, fine, probation, limitation, suspension, community service, denial, or restitution.
Subdivision (e)(ii) or (i)	Reprimand, probation, suspension, restitution, community service, denial, or fine.
Subdivision (e)(iii), (e)(iv), or (e)(v)	Reprimand, fine, probation, suspension, revocation, limitation, community service, denial, or restitution.
Subdivision (g)	Reprimand or fine.
Subdivision (h) or (s)	Reprimand, probation, denial, suspension, revocation, limitation, restitution, community service, or fine.
Subdivision (j)	Suspension or fine.
Subdivision (k), (p), or (r)	Reprimand or fine.
Subdivision (l)	Reprimand, denial, or limitation.
Subdivision (m) or (o)	Denial, revocation, restitution, probation, suspension, limitation, reprimand, or fine.
Subdivision (n)	Revocation or denial.
Subdivision (q)	Revocation.
Subdivision (t)	Revocation, fine, and restitution.

(2) Determination of sanctions for violations under this section shall be made by a disciplinary subcommittee. If, during judicial review, the court of appeals determines that a final decision or order of a disciplinary subcommittee prejudices substantial rights of the petitioner for 1 or more of the grounds listed in section 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.306, and holds that the final decision or order is unlawful and is to be set aside, the court shall state on the record the reasons for the holding and may remand the case to the disciplinary subcommittee for further consideration.

(3) A disciplinary subcommittee may impose a fine of up to, but not exceeding, \$250,000.00 for a violation of section 16221(a) or (b).

(4) A disciplinary subcommittee may require a licensee or registrant or an applicant for licensure or registration who has violated this article or article 7 or a rule promulgated under this article or article 7 to satisfactorily complete an educational program, a training program, or a treatment program, a mental, physical, or professional competence examination, or a combination of those programs and examinations.

### **333.17763 Grounds for fine, reprimand, or probation; grounds for denying, limiting, suspending, or revoking license.**

Sec. 17763. In addition to the grounds set forth in part 161, the disciplinary subcommittee may fine, reprimand, or place a pharmacist licensee on probation, or deny, limit, suspend, or revoke the license of a pharmacist or order restitution or community service for a violation or abetting in a violation of this part or rules promulgated under this part, or for 1 or more of the following grounds:

(a) Employing the mail to sell, distribute, or deliver a drug that requires a prescription when the prescription for the drug is received by mail.

(b) Permitting the dispensing of prescriptions by an individual who is not a pharmacist, pharmacist intern, or dispensing prescriber.

(c) Permitting the dispensing of prescriptions by a pharmacist intern, except in the presence and under the personal charge of a pharmacist.

(d) Selling at auction drugs in bulk or in open packages unless the sale has been approved in accordance with rules of the board.

(e) Promoting a prescription drug to the public in any manner.

(f) In addition to the prohibition contained in section 7405(1)(e), dispensing a prescription for a controlled substance as defined in section 7104 that is written and signed or transmitted by a physician prescriber in a state other than Michigan, unless the prescription is issued by a physician prescriber residing adjacent to the land border between this state and an adjoining state who is authorized under the laws of that state to practice medicine or osteopathic medicine and surgery and to prescribe controlled substances and whose practice may extend into this state, but who does not maintain an office or designate a place to meet patients or receive calls in this state.

### **333.17764 Conduct constituting misdemeanor; violation; penalty; other violations.**

Sec. 17764. (1) A person shall not sell, offer for sale, possess for sale, or manufacture for sale a drug or device bearing or accompanied by a label that is misleading as to the contents, uses, or purposes of the drug or device. A person who violates this subsection is guilty of a misdemeanor. In determining whether a label is misleading, consideration shall be given to the representations made or suggested by the statement, word, design, device, sound, or any combination thereof, and the extent to which the label fails to reveal facts material in view of the representations made or material as to consequences that may result from use of the drug or device to which the label relates under conditions of use prescribed in the label or under customary or usual conditions of use.

(2) A person shall not knowingly or recklessly do either of the following:

(a) Adulterate, misbrand, remove, or substitute a drug or device knowing or intending that the drug or device shall be used.

(b) Sell, offer for sale, possess for sale, cause to be sold, or manufacture for sale an adulterated or misbranded drug.

(3) Except as otherwise provided in this section, a person who violates subsection (2) is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$1,000.00, or both.

(4) A person who violates subsection (2), which violation results in personal injury, is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$4,000.00, or both.

(5) A person who violates subsection (2), which violation results in serious impairment of a body function, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both. As used in this subsection, “serious impairment of a body function” means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(6) A person who violates subsection (2), which violation results in death, is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$20,000.00, or both.

(7) A person who violates subsection (2) with the intent to kill or to cause serious impairment of a body function of 2 or more individuals, which violation results in death, is guilty of a felony punishable by imprisonment for life without the possibility of parole or life without the possibility of parole and a fine of not more than \$40,000.00. It is not a defense to a charge under this subsection that the person did not intend to kill a specific individual, or did not intend to cause serious impairment of a body function of 2 or more specific individuals.

(8) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

### **Effective date.**

Enacting section 1. This amendatory act takes effect 90 days after it is enacted.

This act is ordered to take immediate effect.

Approved July 14, 2004.

Filed with Secretary of State July 14, 2004.

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**[No. 215]**

**(HB 5176)**

AN ACT to amend 1927 PA 175, entitled “An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of

criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 13n of chapter XVII (MCL 777.13n), as amended by 2003 PA 309.

*The People of the State of Michigan enact:*

CHAPTER XVII

**777.13n Applicability of chapter to certain felonies; MCL 333.10204(1) to 333.21792.**

Sec. 13n. This chapter applies to the following felonies enumerated in chapter 333 of the Michigan Compiled Laws:

<b>M.C.L.</b>	<b>Category</b>	<b>Class</b>	<b>Description</b>	<b>Stat Max</b>
333.10204(1)	Pub ord	F	Transferring a human organ for valuable consideration	4
333.10204(4)	Pub saf	F	Removal of a human organ by an unauthorized individual	4
333.10205	Pub saf	F	Removal of a human organ in an unapproved facility	4
333.13738(2)	Pub saf	F	Waste disposal violations — second offense	5
333.13738(3)	Pub saf	F	Disposing of waste — indifference to human life	2
	Pub saf	B	Disposing of waste — extreme indifference to human life	20
333.16170(3)	Pub trst	F	False representation — health professional recovery program	4
333.16294	Pub saf	F	Health profession — unauthorized practice	4
333.17764(3)	Pub saf	G	Adulterate, misbrand, remove, or substitute a drug or device	2
333.17764(4)	Pub saf	F	Adulterate, misbrand, remove, or substitute a drug or device causing personal injury	4

333.17764(5)	Pub saf	E	Adulterate, misbrand, remove, or substitute a drug or device causing serious impairment of a body function	5
333.17764(6)	Pub saf	C	Adulterate, misbrand, remove, or substitute a drug or device causing death	15
333.17766c(2)	CS	G	Possession of more than 12 grams ephedrine or pseudoephedrine	2
333.20142(5)	Pub trst	F	False statement — application licensure health facility	4
333.21792	Pub trst	G	Nursing homes — referral fees/ bribing officials/ accepting bribes	4

**Effective date.**

Enacting section 1. This amendatory act takes effect 90 days after it is enacted.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5175 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 14, 2004.

Filed with Secretary of State July 14, 2004.

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**Compiler's note:** House Bill No. 5175, referred to in enacting section 1, was filed with the Secretary of State July 14, 2004, and became P.A. 2004, No. 214, Eff. Oct. 12, 2004.

**[No. 216]****(HB 5177)**

AN ACT to amend 1927 PA 175, entitled “An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the

duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 16a of chapter XVII (MCL 777.16a), as amended by 2000 PA 279.

*The People of the State of Michigan enact:*

CHAPTER XVII

**777.16a MCL 750.11 to 750.32; felonies to which chapter applicable.**

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

<b>M.C.L.</b>	<b>Category</b>	<b>Class</b>	<b>Description</b>	<b>Stat Max</b>
750.11	Person	A	Taking a woman and compelling her to marry	Life
750.12	Person	H	Taking a woman with intent to compel her to marry	10
750.13	Person	D	Enticing female under 16 for immoral purposes	10
750.14	Person	C	Abortion resulting in death of female	15
	Person	G	Abortion	4
750.16(1)	Person	G	Adulterate, misbrand, remove, or substitute a drug or medicine	2
750.16(2)	Person	F	Adulterate, misbrand, remove, or substitute a drug or medicine causing personal injury	4
750.16(3)	Person	E	Adulterate, misbrand, remove, or substitute a drug or medicine resulting in serious impairment of body function	5
750.16(4)	Person	C	Adulterate, misbrand, remove, or substitute a drug or medicine resulting in death	15
750.18(3)	Person	G	Mix, color, stain, or powder a drug or medicine with an ingredient or material so as to injuriously affect its quality or potency	2
750.18(4)	Person	F	Mix, color, stain, or powder a drug or medicine with an ingredient or material so as to injuriously affect its quality or potency resulting in personal injury	4

750.18(5)	Person	E	Mix, color, stain, or powder a drug or medicine with an ingredient or material so as to injuriously affect its quality or potency resulting in serious impairment of body function	5
750.18(6)	Person	C	Mix, color, stain, or powder a drug or medicine with an ingredient or material so as to injuriously affect its quality or potency resulting in death	15
750.30	Pub ord	H	Adultery	4
750.32	Pub ord	H	Cohabitation of divorced parties	4

**Effective date.**

Enacting section 1. This amendatory act takes effect 90 days after it is enacted.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

- (a) House Bill No. 5174.
- (b) House Bill No. 5178.

This act is ordered to take immediate effect.

Approved July 14, 2004.

Filed with Secretary of July 14, 2004.

**Compiler's note:** House Bill No. 5174, referred to in enacting section 2, was filed with the Secretary of State July 14, 2004, and became P.A. 2004, No. 213, Eff. Oct. 12, 2004.

House Bill No. 5178, also referred to in enacting section 2, was filed with the Secretary of State July 14, 2004, and became P.A. 2004, No. 218, Eff. Oct. 12, 2004.

**[No. 217]****(HB 5930)**

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line

agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," (MCL 500.100 to 500.8302) by adding section 8115a.

*The People of the State of Michigan enact:*

**500.8115a Netting agreement or qualified financial contract; rights; transfer; duties of receiver; exception; rights of counterparties; definitions.**

Sec. 8115a. (1) Notwithstanding any other provision of this act, including any other provision of this act permitting the modification of contracts, or other law of the state, a person shall not be stayed or prohibited from exercising any of the following:

(a) A contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of the commencement of a formal delinquency proceeding under this chapter or the insolvency, financial condition, or default of the insurer at any time, provided that the right is enforceable under applicable law other than this act.

(b) Any right under a pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract.

(c) Subject to section 8130(2), any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract where the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the securities valuation office of the national association of insurance commissioners and approved by the commissioner as eligible for netting.

(2) Upon termination of a netting agreement, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under this chapter shall be transferred to or on the order of the receiver for the

insurer, even if the insurer is the defaulting party, notwithstanding any provision in the netting agreement that may provide that the nondefaulting party is not required to pay any net or settlement amount due to the defaulting party upon termination. Any limited 2-way payment provision in a netting agreement with an insurer that has defaulted shall be considered to be a full 2-way payment provision as against the defaulting insurer. Any such property or amount shall, except to the extent it is subject to 1 or more secondary liens or encumbrances, be a general asset of the insurer.

(3) In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter, the receiver shall do either of the following:

(a) Transfer to 1 party, other than an insurer subject to a proceeding under this chapter, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including all rights and obligations of each party under each such netting agreement and qualified financial contract and all property, including any guarantees or credit support documents, securing any claims of each party under each such netting agreement and qualified financial contract.

(b) Transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in subdivision (a) with respect to the counterparty and any affiliate of the counterparty.

(4) If a receiver for an insurer makes a transfer of 1 or more netting agreements or qualified financial contracts, then the receiver shall use its best efforts to notify any person who is party to the netting agreements or qualified financial contracts of the transfer by 12 noon of the receiver's local time on the business day following the transfer. For purposes of this subsection, "business day" means a day other than a Saturday, Sunday, or any day on which either the New York stock exchange or the federal reserve bank of New York is closed.

(5) Notwithstanding any other provision of this act, a receiver may not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract or any pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract that is made before the commencement of a formal delinquency proceeding under this chapter. However, a transfer may be avoided under section 8126 if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

(6) In exercising any of its powers under this chapter to disaffirm or repudiate a netting agreement or qualified financial contract, the receiver shall take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection with the netting agreement or qualified financial contract in its entirety. Notwithstanding any other provision of this chapter, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding rehabilitation case shall be determined and shall be allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation. The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract.

(7) This section does not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

(8) All rights of counterparties under this act apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

(9) As used in this section:

(a) “Actual direct compensatory damages” includes normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims, but does not include punitive and exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering.

(b) “Commodity contract” means any of the following:

(i) A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade designated as a contract market by the commodity futures trading commission under the commodity exchange act, 7 USC 1 to 27f, or board of trade outside the United States.

(ii) An agreement that is subject to regulation under section 23 of the commodity exchange act, 7 USC 23, and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract.

(iii) An agreement or transaction that is subject to regulation under section 6c of the commodity exchange act, 7 USC 6c, and that is commonly known to the commodities trade as a commodity option.

(c) “Contractual right” includes any right, whether or not evidenced in writing, arising under statutory or common law, a rule or bylaw of a national securities exchange, national securities clearing organization, or securities clearing agency, a rule or bylaw, or a resolution of the governing body, of a contract market or its clearing organization, or under law merchant.

(d) “Forward contract” means a contract for the purchase, sale, or transfer of a commodity, as defined in section 1a of the commodity exchange act, 7 USC 1a, or any similar good, article, service, right, or interest that is presently or in the future becomes the subject of dealing in the forward contract trade, or product or by-product thereof, with a maturity date more than 2 days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or a combination of these or option on any of them. Forward contract does not include a commodity contract.

(e) “Netting agreement” means a contract or agreement, including terms and conditions incorporated by reference in the contract or agreement, that documents 1 or more transactions between the parties to the agreement for or involving 1 or more qualified financial contracts and that provides for the netting or liquidation of qualified financial contracts or present or future payment obligations or payment entitlements thereunder, including liquidation or close-out values relating to those obligations or entitlements, among the parties to the netting agreement. Netting agreement includes a master agreement that otherwise meets this definition. A master agreement includes all schedules, confirmations, definitions, and addenda to it and transactions under it, which shall be treated as 1 netting agreement.

(f) “Qualified financial contract” means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the commissioner determines by regulation, resolution, or order to be a qualified financial contract for the purposes of this chapter.

(g) “Repurchase agreement”, including a reverse repurchase agreement, means an agreement, including related terms, that provides for the transfer of certificates of deposit,

eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or an agency of the United States against the transfer of funds by the transferee of the certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by the transferee to transfer to the transferor certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than 1 year after the transfers or on demand, against the transfer of funds. For the purposes of this definition, the items that may be subject to an agreement include mortgage-related securities, a mortgage loan, and an interest in a mortgage loan, and shall not include any participation in a commercial mortgage loan, unless the commissioner determines by regulation, resolution, or order to include the participation within the meaning of the term.

(h) "Securities contract" means a contract for the purchase, sale, or loan of a security, including an option for the repurchase or sale of a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof, or an option entered into on a national securities exchange relating to foreign currencies, or the guarantee of a settlement of cash or securities by or to a securities clearing agency. As used in this definition, "security" includes a mortgage loan, mortgage-related securities, and an interest in any mortgage loan or mortgage-related security.

(i) "Swap agreement" means an agreement, including the terms and conditions incorporated by reference in an agreement, that is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option or any other similar agreement, and includes any combination of agreements and an option to enter into an agreement.

This act is ordered to take immediate effect.

Approved July 14, 2004.

Filed with Secretary of State July 14, 2004.

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**[No. 218]**

**(HB 5178)**

AN ACT to amend 1953 PA 232, entitled "An act to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are transferred by this act; to allow for the operation of certain facilities by private entities; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to prescribe penalties for the violation of the provisions of this act; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act," by amending section 34 (MCL 791.234), as amended by 2002 PA 670.

*The People of the State of Michigan enact:*

**791.234 Prisoners subject to jurisdiction of parole board; indeterminate and other sentences; termination of sentence; interview; release on parole; discretion of parole board; appeal to circuit court; cooperation with law enforcement by prisoner violating MCL 333.7401; conviction before effective date of amendatory act; definitions.**

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

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

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

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

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

(6) A prisoner under sentence for life, other than a prisoner sentenced for life for murder in the first degree or sentenced for life for a violation of section 16(5) or 18(7) or chapter XXXIII of the Michigan penal code, 1931 PA 328, MCL 750.16, 750.18, and 750.200 to 750.212a, or section 17764(7) of the public health code, 1978 PA 368, MCL 333.17764, who has served 10 calendar years of the sentence in the case of a prisoner sentenced for a crime committed before October 1, 1992, or, except as provided in subsection (10), who has served 20 calendar years of the sentence in the case of a prisoner sentenced to imprisonment for life for violating or conspiring to violate section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, who has another conviction for a serious crime, or, except as provided in subsection (10), who has served 17-1/2 calendar years of the sentence in the case of a prisoner sentenced to imprisonment for life for violating or conspiring to violate

section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, who does not have another conviction for a serious crime, or who has served 15 calendar years of the sentence in the case of a prisoner sentenced for a crime committed on or after October 1, 1992, is subject to the jurisdiction of the parole board and may be released on parole by the parole board, subject to the following conditions:

(a) At the conclusion of 10 calendar years of the prisoner's sentence and thereafter as determined by the parole board until the prisoner is paroled, discharged, or deceased, and in accordance with the procedures described in subsection (7), 1 member of the parole board shall interview the prisoner. The interview schedule prescribed in this subdivision applies to all prisoners to whom this subsection is applicable, regardless of the date on which they were sentenced.

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

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

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

(e) A parole shall not be granted under this subsection in the case of a prisoner who is otherwise prohibited by law from parole consideration. In such cases the interview procedures in section 44 shall be followed.

(7) An interview conducted under subsection (6)(a) is subject to both of the following requirements:

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

(b) The prisoner may be represented at the interview by an individual of his or her choice. The representative shall not be another prisoner. A prisoner is not entitled to appointed counsel at public expense. The prisoner or representative may present relevant evidence in favor of holding a public hearing as described in subsection (6)(b).

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

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

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

(c) Any of the following:

(i) Whether the individual was a principal administrator, organizer, or leader of an entity that the individual knew or had reason to know was organized, in whole or in part, to commit violations of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and whether the violation for which the individual was convicted was committed to further the interests of that entity.

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

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

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

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

(10) If the sentencing judge, or his or her successor in office, determines on the record that a prisoner described in subsection (6) sentenced to imprisonment for life for violating or conspiring to violate section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, has cooperated with law enforcement, the prisoner is subject to the jurisdiction of the parole board and may be released on parole as provided in subsection (6), 2-1/2 years earlier than the time otherwise indicated in subsection (6). The prisoner is considered to have cooperated with law enforcement if the court determines on the record that the prisoner had no relevant or useful information to provide. The court shall not make a determination that the prisoner failed or refused to cooperate with law enforcement on grounds that the defendant exercised his or her constitutional right to trial by jury. If the court determines at sentencing that the defendant cooperated with law enforcement, the court shall include its determination in the judgment of sentence.

(11) An individual convicted of violating or conspiring to violate section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003 is eligible for parole after serving the minimum of each sentence imposed for that violation or 10 years of each sentence imposed for that violation, whichever is less.

(12) An individual convicted of violating or conspiring to violate section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003 is eligible for parole after serving the minimum of each sentence imposed for that violation or 5 years of each sentence imposed for that violation, whichever is less.

(13) An individual convicted of violating or conspiring to violate section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003 who is sentenced to a term of imprisonment that is consecutive to a term of imprisonment imposed for any other violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i) to (iv) is eligible for parole after serving 1/2 of the minimum sentence

imposed for each violation of section 7401(2)(a)(*iv*) or 7403(2)(a)(*iv*). This subsection does not apply if the sentence was imposed for a conviction for a new offense committed while the individual is on probation or parole.

(14) The parole board shall provide notice to the prosecuting attorney of the county in which the individual was convicted before granting parole to the individual under subsection (11), (12), or (13).

(15) As used in this section:

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

(b) “State correctional facility” means a facility that houses prisoners committed to the jurisdiction of the department, and includes a youth correctional facility operated under section 20g by the department or a private vendor.

### **Effective date.**

Enacting section 1. This amendatory act takes effect 90 days after it is enacted.

### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

- (a) House Bill No. 5174.
- (b) House Bill No. 5177.

This act is ordered to take immediate effect.

Approved July 14, 2004.

Filed with Secretary of State July 14, 2004.

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**Compiler's note:** House Bill No. 5174, referred to in enacting section 2, was filed with the Secretary of State July 14, 2004, and became P.A. 2004, No. 213, Eff. Oct. 12, 2004.

House Bill No. 5177, also referred to in enacting section 1, was filed with the Secretary of State July 14, 2004, and became P.A. 2004, No. 216, Eff. Oct. 12, 2004.

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## **[No. 219]**

### **(HB 5647)**

AN ACT to amend 1927 PA 175, entitled “An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for

criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending sections 1 and 3 of chapter XI (MCL 771.1 and 771.3), section 1 as amended by 2002 PA 666 and section 3 as amended by 2004 PA 116.

*The People of the State of Michigan enact:*

## CHAPTER XI

### **771.1 Requirements for probation; delayed sentence; fee; applicability of section to certain juveniles.**

Sec. 1. (1) In all prosecutions for felonies or misdemeanors other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, or major controlled substance offenses, if the defendant has been found guilty upon verdict or plea and the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer.

(2) In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant’s rehabilitation, such as participation in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court’s records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.

(3) If a defendant is before the circuit court and the court delays imposing sentence under subsection (2), the court shall include in the delayed sentence order that the department of corrections shall collect a supervision fee of not more than \$135.00 multiplied by the number of months of delay ordered, but not more than 12 months. The fee is payable when the delayed sentence order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that defendant. In determining the amount of the fee, the court shall consider the defendant’s projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$ 250.00-499.99	\$ 10.00

\$ 500.00-749.99	\$ 25.00
\$ 750.00-999.99	\$ 40.00
\$1,000.00 or more	5% of projected monthly income, but not more than \$135.00

The court may order a higher amount than indicated by the table, up to the maximum of \$135.00 multiplied by the number of months of delay ordered but not more than 12 months, if the court determines that the defendant has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the court order. The fee shall be collected as provided in section 25a of the corrections code of 1953, 1953 PA 232, MCL 791.225a. A person shall not be subject to more than 1 supervision fee at the same time. If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration.

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

### **771.3 Probation; conditions; entry of order into LEIN; costs as part of sentence of probation; compliance as condition of probation; revocation of probation.**

Sec. 3. (1) The sentence of probation shall include all of the following conditions:

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

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

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

(d) If convicted of a felony, the probationer shall pay a probation supervision fee as prescribed in section 3c of this chapter.

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

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

(g) If the probationer is required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, the probationer shall comply with that act.

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

(a) Be imprisoned in the county jail for not more than 12 months, at the time or intervals, which may be consecutive or nonconsecutive, within the probation as the court determines. However, the period of confinement shall not exceed the maximum period of imprisonment provided for the offense charged if the maximum period is less than 12 months.

The court may permit day parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The court may permit a work or school release from jail. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

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

(c) Pay costs pursuant to subsection (3).

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

(e) Engage in community service.

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

(g) Participate in inpatient or outpatient drug treatment or participate in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.

(h) Participate in mental health treatment.

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

(j) Participate in a community corrections program.

(k) Be under house arrest.

(l) Be subject to electronic monitoring.

(m) Participate in a residential probation program.

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

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

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

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

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

(4) If an order or amended order of probation contains a condition for the protection of 1 or more named persons as provided in subsection (2)(o), the court or a law enforcement agency within the court's jurisdiction shall enter the order or amended order into the law enforcement information network. If the court rescinds the order or amended order or the condition, the court shall remove the order or amended order or the condition from the law enforcement information network or notify that law enforcement agency and the law enforcement agency shall remove the order or amended order or the condition from the law enforcement information network.

(5) If the court requires the probationer to pay costs, the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer.

(6) If the court imposes costs as part of a sentence of probation, all of the following apply:

(a) The court shall not require a probationer to pay costs unless the probationer is or will be able to pay them during the term of probation. In determining the amount and method of payment of costs, the court shall take into account the probationer's financial

resources and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations.

(b) A probationer who is required to pay costs and who is not in willful default of the payment of the costs may petition the sentencing judge or his or her successor at any time for a remission of the payment of any unpaid portion of those costs. If the court determines that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

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

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

### **Effective date.**

Enacting section 1. This amendatory act takes effect January 1, 2005.

### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 998 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 21, 2004.

Filed with Secretary of State July 21, 2004.

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**Compiler's note:** Senate Bill No. 998, referred to in enacting section 2, was filed with the Secretary of State July 21, 2004, and became P.A. 2004, No. 224, Eff. Jan. 1, 2005.

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**[No. 220]**

**(HB 5674)**

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal

offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending sections 4a, 16a, and 31 of chapter IX and section 56 of chapter XVII (MCL 769.4a, 769.16a, 769.31, and 777.56), section 4a of chapter IX as amended by 2001 PA 208, section 16a of chapter IX as amended by 2001 PA 204, section 31 of chapter IX as amended by 2002 PA 31, and section 56 of chapter XVII as added by 1998 PA 317.

*The People of the State of Michigan enact:*

## CHAPTER IX

### **769.4a Assault on spouse, former spouse, individual with child in common, dating relationship, or household resident; plea or finding of guilty; deferral of proceedings and order of probation; previous convictions; adjudication of guilt upon violation of probation; mandatory counseling program; costs; circumstances for entering adjudication of guilt; discharge and dismissal; limitation; nonpublic record.**

Sec. 4a. (1) When an individual who has not been convicted previously of a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a violation of a local ordinance substantially corresponding to section 81 of that act, pleads guilty to, or is found guilty of, a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, and the victim of the assault is the offender's spouse or former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender, the court, without entering a judgment of guilt and with the consent of the accused and of the prosecuting attorney in consultation with the victim, may defer further proceedings and place the accused on probation as provided in this section. However, before deferring proceedings under this subsection, the court shall contact the department of state police and determine whether, according to the records of the department of state police, the accused has previously been convicted under section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or under a local ordinance substantially corresponding to section 81 of that act, or has previously availed himself or herself of this section. If the search of the records reveals an arrest for a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act but no disposition, the court shall contact the arresting agency and the court that had jurisdiction over the violation to determine the disposition of that arrest for purposes of this section. As used in this subsection, “dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(2) Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided in this chapter.

(3) An order of probation entered under subsection (1) may require the accused to participate in a mandatory counseling program. The court may order the accused to pay the reasonable costs of the mandatory counseling program. The court also may order the accused to participate in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.

(4) The court shall enter an adjudication of guilt and proceed as otherwise provided in this chapter if any of the following circumstances exist:

(a) The accused commits an assaultive crime during the period of probation. As used in this subdivision, “assaultive crime” means 1 or more of the following:

(i) That term as defined in section 9a of chapter X.

(ii) A violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90g.

(b) The accused violates an order of the court that he or she receive counseling regarding his or her violent behavior.

(c) The accused violates an order of the court that he or she have no contact with a named individual.

(5) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(6) There may be only 1 discharge and dismissal under this section with respect to any individual. The department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to a court or police agency upon request pursuant to subsection (1) or to an office of prosecuting attorney for the purpose of showing that a defendant in a criminal action under section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act has already once availed himself or herself of this section or for the purpose of determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076(5) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.

### **769.16a Report by clerk of final disposition to department of state police; forms; fingerprints; reporting conviction.**

Sec. 16a. (1) Except as otherwise provided in subsection (3), upon final disposition of an original charge against a person of a felony or a misdemeanor for which the maximum possible penalty exceeds 92 days' imprisonment or a local ordinance for which the maximum possible penalty is 93 days' imprisonment and that substantially corresponds to a violation of state law that is a misdemeanor for which the maximum possible penalty is 93 days' imprisonment, or a misdemeanor in a case in which the appropriate court was notified that fingerprints were forwarded to the department of state police, or upon final disposition of a charge of criminal contempt under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or final disposition of a charge of criminal contempt for violating a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i, the clerk of the court entering the disposition shall immediately report to the department of state police the final disposition of the charge on forms approved by the state court administrator and in a manner consistent with section 3 of 1925 PA 289,

MCL 28.243. The report to the department of state police shall include the finding of the judge or jury, including a finding of guilty, guilty but mentally ill, not guilty, or not guilty by reason of insanity, or the person's plea of guilty, nolo contendere, or guilty but mentally ill; if the person was convicted, the offense of which the person was convicted; and a summary of any sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. The report shall include the sentence if imposed under any of the following:

- (a) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.
- (b) Section 1076(4) of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1076.
- (c) Section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a.
- (d) Section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430.
- (e) Sections 11 to 15 of chapter II.
- (f) Section 4a of chapter IX.

(2) Upon sentencing a person convicted of a misdemeanor or of a violation of a local ordinance, other than a misdemeanor or local ordinance described in subsection (1), the clerk of the court imposing sentence immediately shall, if ordered by the court, advise the department of state police of the conviction on forms approved by the state court administrator.

(3) Except as otherwise provided in subsections (4) and (6), the clerk of a court shall not report a conviction of a misdemeanor offense under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a local ordinance substantially corresponding to a provision of that act unless 1 or more of the following apply:

- (a) The offense is punishable by imprisonment for more than 92 days.
- (b) The offense is an offense that would be punishable by more than 92 days as a second conviction.
- (c) A judge of the court orders the clerk to report the conviction.

(4) Unless ordered by the court, the clerk of a court is not required to report a conviction of a misdemeanor offense for a violation of section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local ordinance substantially corresponding to section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904.

(5) As part of the sentence for a conviction of an offense described in subsection (2), if fingerprints have not already been taken, the court shall order that the fingerprints of the person convicted be taken and forwarded to the department of state police.

(6) As part of the sentence for a conviction of a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall order that the fingerprints of the person convicted be taken and forwarded as provided in the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, if fingerprints have not already been taken and forwarded as provided in that act.

(7) Within 21 days after the date a person licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, is convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the clerk of the court entering the conviction shall report the conviction to the department of consumer and industry services on a form prescribed and furnished by that department.

### **769.31 Definitions.**

Sec. 31. As used in this section and section 34 of this chapter:

(a) "Departure" means a sentence imposed that is not within the appropriate minimum sentence range established under the sentencing guidelines set forth in chapter XVII.

(b) “Intermediate sanction” means probation or any sanction, other than imprisonment in a state prison or state reformatory, that may lawfully be imposed. Intermediate sanction includes, but is not limited to, 1 or more of the following:

(i) Inpatient or outpatient drug treatment or participation in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.

(ii) Probation with any probation conditions required or authorized by law.

(iii) Residential probation.

(iv) Probation with jail.

(v) Probation with special alternative incarceration.

(vi) Mental health treatment.

(vii) Mental health or substance abuse counseling.

(viii) Jail.

(ix) Jail with work or school release.

(x) Jail, with or without authorization for day parole under 1962 PA 60, MCL 801.251 to 801.258.

(xi) Participation in a community corrections program.

(xii) Community service.

(xiii) Payment of a fine.

(xiv) House arrest.

(xv) Electronic monitoring.

(c) “Offender characteristics” means only the prior criminal record of an offender.

(d) “Offense characteristics” means the elements of the crime and the aggravating and mitigating factors relating to the offense that the legislature determines are appropriate. For purposes of this subdivision, an offense described in section 33b of the corrections code of 1953, 1953 PA 232, MCL 791.233b, that resulted in a conviction and that arose out of the same transaction as the offense for which the sentencing guidelines are being scored shall be considered as an aggravating factor.

(e) “Prior criminal record” means all of the following:

(i) Misdemeanor and felony convictions.

(ii) Probation and parole violations involving criminal activity.

(iii) Dispositions entered under section 18 of chapter XIIA of 1939 PA 288, MCL 712A.18, for acts that would have been crimes if committed by an adult.

(iv) Assignment to youthful trainee status under sections 11 to 15 of chapter II.

(v) A conviction set aside under 1965 PA 213, MCL 780.621 to 780.624.

(vi) Dispositions described in subparagraph (iii) that have been set aside under section 18e of chapter XIIA of 1939 PA 288, MCL 712A.18e, or expunged.

## CHAPTER XVII

### **777.56 Relationship to criminal justice system.**

Sec. 56. (1) Prior record variable 6 is relationship to the criminal justice system. Score prior record variable 6 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) The offender is a prisoner of the department of corrections or serving a sentence in jail..... 20 points

(b) The offender is incarcerated in jail awaiting adjudication or sentencing on a conviction or probation violation ..... 15 points

(c) The offender is on parole, probation, or delayed sentence status or on bond awaiting adjudication or sentencing for a felony ..... 10 points

(d) The offender is on probation or delayed sentence status or on bond awaiting adjudication or sentencing for a misdemeanor ..... 5 points

(e) The offender has no relationship to the criminal justice system..... 0 points

(2) Score the appropriate points under this section if the offender is involved with the criminal justice system in another state or United States.

(3) As used in this section:

(a) “Delayed sentence status” includes, but is not limited to, an individual assigned or deferred under any of the following:

(i) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.

(ii) Section 1076(4) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.

(iii) Section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a.

(iv) Section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430.

(v) Sections 11 to 15 of chapter II.

(vi) Section 4a of chapter IX.

(b) “Prisoner of the department of corrections or serving a sentence in jail” includes an individual who is an escapee.

**Effective date.**

Enacting section 1. This amendatory act takes effect January 1, 2005.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 998 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 21, 2004.

Filed with Secretary of State July 21, 2004.

**Compiler’s note:** Senate Bill No. 998, referred to in enacting section 2, was filed with the Secretary of State July 21, 2004, and became P.A. 2004, No. 224, Eff. Jan. 1, 2005.

**[No. 221]**

**(HB 5716)**

AN ACT to amend 1939 PA 288, entitled “An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain

actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties,” by amending sections 6 and 18 of chapter XIIA (MCL 712A.6 and 712A.18), section 6 as amended by 1996 PA 409 and section 18 as amended by 2004 PA 102.

*The People of the State of Michigan enact:*

## CHAPTER XIIA

### **712A.6 Jurisdiction; adults.**

Sec. 6. The court has jurisdiction over adults as provided in this chapter and as provided in chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082, and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.

### **712A.18 Orders of disposition; reimbursement; hearing; guidelines and model schedule; restitution; condition of probation; community service; fingerprints; report to state police; payment of assessment; registration of juvenile provided in MCL 28.721 to 28.732; release from placement in juvenile boot camp; alternative order of disposition; imposition of sentence in county jail facility; violation of personal protection order; costs; remission of costs.**

Sec. 18. (1) If the court finds that a juvenile concerning whom a petition is filed is not within this chapter, the court shall enter an order dismissing the petition. Except as otherwise provided in subsection (10), if the court finds that a juvenile is within this chapter, the court may enter any of the following orders of disposition that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained:

(a) Warn the juvenile or the juvenile’s parents, guardian, or custodian and, except as provided in subsection (7), dismiss the petition.

(b) Place the juvenile on probation, or under supervision in the juvenile’s own home or in the home of an adult who is related to the juvenile. As used in this subdivision, “related” means being a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt by marriage, blood, or adoption. The court shall order the terms and conditions of probation or supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court determines necessary for the physical, mental, or moral well-being and behavior of the juvenile. The court may order that the juvenile participate in a juvenile drug treatment court under chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. The court also shall order, as a condition of probation or supervision, that the juvenile shall pay the minimum state cost prescribed by section 18m of this chapter.

(c) If a juvenile is within the court’s jurisdiction under section 2(a) of this chapter, or under section 2(h) of this chapter for a supplemental petition, place the juvenile in a suitable

foster care home subject to the court's supervision. If a juvenile is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a juvenile in a foster care home subject to the court's supervision.

(d) Except as otherwise provided in this subdivision, place the juvenile in or commit the juvenile to a private institution or agency approved or licensed by the department of consumer and industry services for the care of juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or agency as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates.

(e) Except as otherwise provided in this subdivision, commit the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or facility as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates. If a child is not less than 17 years of age and is in violation of a personal protection order, the court may commit the child to a county jail within the adult prisoner population. In a placement under subdivision (d) or a commitment under this subdivision, except to a state institution or a county juvenile agency institution, the juvenile's religious affiliation shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available. Except for commitment to the family independence agency or a county juvenile agency, an order of commitment under this subdivision to a state institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, or in 1935 PA 220, MCL 400.201 to 400.214, the court shall name the superintendent of the institution to which the juvenile is committed as a special guardian to receive benefits due the juvenile from the government of the United States. An order of commitment under this subdivision to the family independence agency or a county juvenile agency shall name that agency as a special guardian to receive those benefits. The benefits received by the special guardian shall be used to the extent necessary to pay for the portions of the cost of care in the institution or facility that the parent or parents are found unable to pay.

(f) Provide the juvenile with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere, maintaining as much as possible a local physician-patient relationship, and with clothing and other incidental items the court determines are necessary.

(g) Order the parents, guardian, custodian, or any other person to refrain from continuing conduct that the court determines has caused or tended to cause the juvenile to come within or to remain under this chapter or that obstructs placement or commitment of the juvenile by an order under this section.

(h) Appoint a guardian under section 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204, in response to a petition filed with the court by a person interested in the juvenile's welfare. If the court appoints a guardian as authorized by this subdivision, it may dismiss the petition under this chapter.

(i) Order the juvenile to engage in community service.

(j) If the court finds that a juvenile has violated a municipal ordinance or a state or federal law, order the juvenile to pay a civil fine in the amount of the civil or penal fine provided by the ordinance or law. Money collected from fines levied under this subsection shall be distributed as provided in section 29 of this chapter.

(k) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, order the juvenile's parent or guardian to personally participate in treatment reasonably available in the parent's or guardian's location.

(l) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, place the juvenile in and order the juvenile to complete satisfactorily a program of training in a juvenile boot camp established by the family independence agency under the juvenile boot camp act, 1996 PA 263, MCL 400.1301 to 400.1309, as provided in that act. If the county is a county juvenile agency, however, the court shall commit the juvenile to that county juvenile agency for placement in the program under that act. Upon receiving a report of satisfactory completion of the program from the family independence agency, the court shall authorize the juvenile's release from placement in the juvenile boot camp. Following satisfactory completion of the juvenile boot camp program, the juvenile shall complete an additional period of not less than 120 days or more than 180 days of intensive supervised community reintegration in the juvenile's local community. To place or commit a juvenile under this subdivision, the court shall determine all of the following:

(i) Placement in a juvenile boot camp will benefit the juvenile.

(ii) The juvenile is physically able to participate in the program.

(iii) The juvenile does not appear to have any mental handicap that would prevent participation in the program.

(iv) The juvenile will not be a danger to other juveniles in the boot camp.

(v) There is an opening in a juvenile boot camp program.

(vi) If the court must commit the juvenile to a county juvenile agency, the county juvenile agency is able to place the juvenile in a juvenile boot camp program.

(m) If the court entered a judgment of conviction under section 2d of this chapter, enter any disposition under this section or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted. If the juvenile is convicted of a violation or conspiracy to commit a violation of section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7403, the court may impose the alternative sentence permitted under that section if the court determines that the best interests of the public would be served. The court may delay imposing a sentence of imprisonment under this subdivision for a period not longer than the period during which the court has jurisdiction over the juvenile under this chapter by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition under this section. If the court delays imposing sentence under this section, section 18i of this chapter applies. If the court imposes sentence, it shall enter a judgment of sentence. If the court imposes a sentence of imprisonment, the juvenile shall receive credit against the sentence for time served before sentencing. In determining whether to enter an order of disposition or impose a sentence under this subdivision, the court shall consider all of the following factors, giving greater weight to the seriousness of the offense and the juvenile's prior record:

(i) The seriousness of the offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(ii) The juvenile's culpability in committing the offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(iii) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(iv) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(v) The adequacy of the punishment or programming available in the juvenile justice system.

(vi) The dispositional options available for the juvenile.

(2) An order of disposition placing a juvenile in or committing a juvenile to care outside of the juvenile's own home and under state, county juvenile agency, or court supervision shall contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of care or service. The order shall be reasonable, taking into account both the income and resources of the juvenile, parent, guardian, or custodian. The amount may be based upon the guidelines and model schedule created under subsection (6). If the juvenile is receiving an adoption support subsidy under sections 115f to 115m of the social welfare act, 1939 PA 280, MCL 400.115f to 400.115m, the amount shall not exceed the amount of the support subsidy. The reimbursement provision applies during the entire period the juvenile remains in care outside of the juvenile's own home and under state, county juvenile agency, or court supervision, unless the juvenile is in the permanent custody of the court. The court shall provide for the collection of all amounts ordered to be reimbursed and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under state, county juvenile agency, or court supervision. Twenty-five percent of all amounts collected under an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected under an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under state, county juvenile agency, or court supervision. The court may also collect from the government of the United States benefits paid for the cost of care of a court ward. Money collected for juveniles placed by the court with or committed to the family independence agency or a county juvenile agency shall be accounted for and reported on an individual juvenile basis. In cases of delinquent accounts, the court may also enter an order to intercept state or federal tax refunds of a juvenile, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

(3) An order of disposition placing a juvenile in the juvenile's own home under subsection (1)(b) may contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of service. If an order is entered under this