

HOUSE BILL No. 5078

October 15, 2013, Introduced by Reps. Haveman, Poleski, Lauwers, Durhal, Irwin, Pscholka, Heise, O'Brien, Kowall, Howrylak, Victory, Price, Tlaib, Knezek, Pettalia, Stallworth, Singh, McMillin, Callton, Lori, Lyons, VerHeulen, Forlini, Schmidt, Graves, Kandrevas, Rendon, Schor, Dillon, Rogers, Hooker, Kurtz, Shirkey, McCready, Glardon, McBroom, Crawford, Pagel, Muxlow, Bumstead, Faris, Jacobsen, MacGregor, Olumba, Zorn, Denby, Hobbs, Santana, Jenkins, Lipton, Cotter, Walsh, Potvin, Kelly, Oakes, Kesto, Haines, Brinks, Lamonte and Robinson and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding sections 32 and 33 to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

SEC. 32. (1) A SENTENCING COMMISSION IS CREATED IN THE LEGISLATIVE COUNCIL. THE LEGISLATIVE COUNCIL SHALL PROVIDE THE COMMISSION WITH SUITABLE OFFICE SPACE, STAFF, AND NECESSARY EQUIPMENT. THE COMMISSION SHALL CONSIST OF THE FOLLOWING MEMBERS:

(A) FOUR INDIVIDUALS WHO ARE MEMBERS OF THE SENATE, CONSISTING OF 2 MEMBERS FROM EACH CAUCUS.

(B) FOUR INDIVIDUALS WHO ARE MEMBERS OF THE HOUSE OF REPRESENTATIVES, CONSISTING OF 2 MEMBERS FROM EACH CAUCUS.

(C) TWO INDIVIDUALS WHO ARE CIRCUIT COURT JUDGES.

1 (D) ONE INDIVIDUAL WHO REPRESENTS THE PROSECUTING ATTORNEYS OF
2 THIS STATE.

3 (E) ONE INDIVIDUAL WHO REPRESENTS CRIMINAL DEFENSE ATTORNEYS.

4 (F) ONE INDIVIDUAL WHO REPRESENTS LAW ENFORCEMENT.

5 (G) ONE INDIVIDUAL WHO REPRESENTS THE DEPARTMENT OF
6 CORRECTIONS.

7 (H) ONE INDIVIDUAL WHO REPRESENTS ADVOCATES OF ALTERNATIVES TO
8 INCARCERATION.

9 (I) ONE INDIVIDUAL WHO REPRESENTS CRIME VICTIMS.

10 (J) ONE INDIVIDUAL WHO REPRESENTS THE DEPARTMENT OF
11 TECHNOLOGY, MANAGEMENT, AND BUDGET.

12 (K) TWO INDIVIDUALS WHO REPRESENT THE GENERAL PUBLIC.

13 (2) THE LEADER OF EACH CAUCUS IN THE SENATE AND THE LEADER OF
14 EACH CAUCUS IN THE HOUSE OF REPRESENTATIVES SHALL APPOINT THE
15 COMMISSION MEMBERS DESCRIBED IN SUBSECTION (1) (A) AND (B) BY
16 JANUARY 1, 2014. BY AGREEMENT AND WITH THE GOVERNOR'S CONCURRENCE,
17 THE LEADER OF EACH CAUCUS IN THE SENATE AND THE LEADER OF EACH
18 CAUCUS IN THE HOUSE OF REPRESENTATIVES SHALL APPOINT THE REMAINING
19 COMMISSION MEMBERS DESCRIBED IN SUBSECTION (1) (C) TO (K) BY JANUARY
20 1, 2014. THE GOVERNOR SHALL DESIGNATE 1 OF THE MEMBERS REPRESENTING
21 THE GENERAL PUBLIC AS COMMISSION CHAIRPERSON.

22 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
23 COMMISSION MEMBERS SHALL BE APPOINTED FOR TERMS OF 4 YEARS. OF THE
24 MEMBERS FIRST APPOINTED UNDER SUBSECTION (1) (C) TO (K), 4 MEMBERS
25 SHALL SERVE FOR 2 YEARS, 4 MEMBERS SHALL SERVE FOR 3 YEARS, AND 3
26 MEMBERS SHALL SERVE FOR 4 YEARS, AS DESIGNATED BY THE CHAIRPERSON
27 AND ALTERNATE CHAIRPERSON OF THE LEGISLATIVE COUNCIL. THE MEMBERS

1 OF THE COMMISSION APPOINTED UNDER SUBSECTION (1) (A) AND (B) SHALL
2 BE APPOINTED FOR TERMS OF 2 YEARS.

3 (4) A VACANCY ON THE COMMISSION CAUSED BY THE EXPIRATION OF A
4 TERM OR A RESIGNATION OR DEATH SHALL BE FILLED IN THE SAME MANNER
5 AS THE ORIGINAL APPOINTMENT. A MEMBER APPOINTED TO FILL A VACANCY
6 CAUSED BY A RESIGNATION OR DEATH SHALL BE APPOINTED FOR THE BALANCE
7 OF THE UNEXPIRED TERM.

8 (5) A COMMISSION MEMBER SHALL NOT RECEIVE A SALARY FOR BEING A
9 COMMISSION MEMBER, BUT SHALL BE REIMBURSED FOR HIS OR HER
10 REASONABLE, ACTUAL, AND NECESSARY EXPENSES INCURRED IN THE
11 PERFORMANCE OF HIS OR HER DUTIES AS A COMMISSION MEMBER.

12 (6) THE COMMISSION'S BUSINESS SHALL BE CONDUCTED AT PUBLIC
13 MEETINGS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA
14 267, MCL 15.261 TO 15.275.

15 (7) A QUORUM CONSISTS OF A MAJORITY OF THE MEMBERS OF THE
16 SENTENCING COMMISSION. ALL COMMISSION BUSINESS SHALL BE CONDUCTED
17 BY NOT LESS THAN A QUORUM.

18 (8) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR
19 RETAINED BY THE COMMISSION IN THE PERFORMANCE OF AN OFFICIAL
20 FUNCTION SHALL BE MADE AVAILABLE TO THE PUBLIC IN COMPLIANCE WITH
21 THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

22 SEC. 33. (1) THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

23 (A) COLLECT, PREPARE, ANALYZE, AND DISSEMINATE INFORMATION
24 REGARDING STATE AND LOCAL SENTENCING PRACTICES FOR FELONIES AND THE
25 USE OF PRISONS AND JAILS. THE STATE COURT ADMINISTRATOR SHALL
26 CONTINUE TO COLLECT DATA REGARDING SENTENCING PRACTICES AND SHALL
27 PROVIDE THE DATA NECESSARY TO THE COMMISSION.

1 (B) CONDUCT ONGOING RESEARCH REGARDING THE IMPACT OF THE
2 SENTENCING GUIDELINES SET FORTH IN CHAPTER XVII.

3 (C) COLLECT, ANALYZE, AND COMPILE DATA AND MAKE PROJECTIONS
4 REGARDING THE POPULATIONS AND CAPACITIES OF STATE AND LOCAL
5 CORRECTIONAL FACILITIES AND THE IMPACT OF THE SENTENCING GUIDELINES
6 ON THOSE POPULATIONS AND CAPACITIES.

7 (D) IN COOPERATION WITH THE STATE COURT ADMINISTRATOR,
8 COLLECT, ANALYZE, AND COMPILE DATA REGARDING THE EFFECT OF
9 SENTENCING GUIDELINES ON THE CASELOAD, DOCKET FLOW, AND CASE
10 BACKLOG OF THE TRIAL AND APPELLATE COURTS OF THIS STATE.

11 (E) DEVELOP MODIFICATIONS TO THE SENTENCING GUIDELINES AS
12 PROVIDED IN SUBSECTION (4). ANY MODIFICATIONS TO THE SENTENCING
13 GUIDELINES SHALL ACCOMPLISH ALL OF THE FOLLOWING:

14 (i) PROVIDE FOR PROTECTION OF THE PUBLIC.

15 (ii) CONSIDER AN OFFENSE INVOLVING VIOLENCE AGAINST A PERSON AS
16 MORE SEVERE THAN OTHER OFFENSES.

17 (iii) BE PROPORTIONATE TO THE SERIOUSNESS OF THE OFFENSE AND THE
18 OFFENDER'S PRIOR CRIMINAL RECORD.

19 (iv) REDUCE SENTENCING DISPARITIES BASED ON FACTORS OTHER THAN
20 OFFENSE CHARACTERISTICS AND OFFENDER CHARACTERISTICS AND ENSURE
21 THAT OFFENDERS WITH SIMILAR OFFENSE AND OFFENDER CHARACTERISTICS
22 RECEIVE SUBSTANTIALLY SIMILAR SENTENCES.

23 (v) SPECIFY THE CIRCUMSTANCES UNDER WHICH A TERM OF
24 IMPRISONMENT IS PROPER AND THE CIRCUMSTANCES UNDER WHICH
25 INTERMEDIATE SANCTIONS ARE PROPER.

26 (vi) ESTABLISH SENTENCE RANGES FOR IMPRISONMENT THAT ARE WITHIN
27 THE MINIMUM AND MAXIMUM SENTENCES ALLOWED BY LAW FOR THE OFFENSES

1 TO WHICH THE RANGES APPLY.

2 (vii) MAINTAIN SEPARATE SENTENCE RANGES FOR CONVICTIONS UNDER
3 THE HABITUAL OFFENDER PROVISIONS IN SECTIONS 10, 11, 12, AND 13 OF
4 THIS CHAPTER, WHICH MAY INCLUDE AS AN AGGRAVATING FACTOR, AMONG
5 OTHER RELEVANT CONSIDERATIONS, THAT THE ACCUSED HAS ENGAGED IN A
6 PATTERN OF PROVEN OR ADMITTED CRIMINAL BEHAVIOR.

7 (viii) ESTABLISH SENTENCE RANGES THAT THE COMMISSION CONSIDERS
8 APPROPRIATE.

9 (2) IN DEVELOPING MODIFICATIONS TO THE SENTENCING GUIDELINES,
10 THE COMMISSION SHALL CONSIDER THE LIKELIHOOD THAT THE CAPACITY OF
11 STATE AND LOCAL CORRECTIONAL FACILITIES WILL BE EXCEEDED. THE
12 COMMISSION SHALL SUBMIT TO THE LEGISLATURE A PRISON IMPACT REPORT
13 RELATING TO ANY MODIFICATIONS TO SENTENCING GUIDELINES. THE REPORT
14 SHALL INCLUDE THE PROJECTED IMPACT ON TOTAL CAPACITY OF STATE
15 CORRECTIONAL FACILITIES.

16 (3) MODIFICATIONS TO SENTENCING GUIDELINES SHALL INCLUDE
17 RECOMMENDED INTERMEDIATE SANCTIONS FOR EACH CASE IN WHICH THE UPPER
18 LIMIT OF THE RECOMMENDED MINIMUM SENTENCE RANGE IS 18 MONTHS OR
19 LESS.

20 (4) THE COMMISSION MAY RECOMMEND MODIFICATIONS TO THE
21 SENTENCING GUIDELINES SET FORTH IN CHAPTER XVII.

22 (5) THE COMMISSION SHALL SUBMIT ANY RECOMMENDED MODIFICATIONS
23 TO THE SENTENCING GUIDELINES TO THE SECRETARY OF THE SENATE AND THE
24 CLERK OF THE HOUSE OF REPRESENTATIVES. IF THE LEGISLATURE DOES NOT
25 ENACT MODIFICATIONS TO THE SENTENCING GUIDELINES WITHIN 60 DAYS
26 AFTER INTRODUCTION OF A BILL TO ENACT SENTENCING GUIDELINES
27 MODIFICATIONS BASED ON THE RECOMMENDATIONS, THE COMMISSION SHALL

1 REVERSE THE RECOMMENDED MODIFICATIONS AND SUBMIT THEM TO THE
2 SECRETARY OF THE SENATE AND THE CLERK OF THE HOUSE OF
3 REPRESENTATIVES WITHIN 90 DAYS. THE REVISED MODIFICATIONS ARE
4 SUBJECT TO THE REQUIREMENTS OF SUBSECTIONS (1), (2), AND (3). UNTIL
5 THE LEGISLATURE ENACTS MODIFICATIONS TO THE SENTENCING GUIDELINES
6 INTO LAW, THE COMMISSION SHALL CONTINUE TO REVISE AND RESUBMIT THE
7 MODIFICATIONS TO THE LEGISLATURE UNDER THE SCHEDULE PROVIDED IN
8 THIS SUBSECTION.