

MODIFY PROBATION POLICIES

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House Bill 4137 (reported from committee as H-1)

Sponsor: Rep. Martin Howrylak

Committee: Criminal Justice

Complete to 9-15-15

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4137 would amend Chapters XI and XIA of the Code of Criminal Procedure to make changes to felony probation requirements and the Swift and Sure Sanctions Probation Program that include the following:

- Delineate the purposes of probation.
- Create the Swift and Sure Supervision Fund.
- Expend SSSF funds for the administration of the Probation Swift and Sure Sanction Act and provide grants to fund swift and sure probation programs.
- Allow a court to receive participants from other jurisdictions if it has received a grant under the SSSF.
- Establish eligibility criteria for participation in a swift and sure probation program.
- Require the DOC to notify the court when a felony probationer completes one-third of the probation period.
- Require the court to notify the prosecutor, defendant or defendant's attorney, and the victims at least 10 days before reducing or terminating a defendant's probation period.

FISCAL IMPACT: The bill would impact local corrections systems, as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

As part of a comprehensive review of how to reduce state and local correctional costs while keeping the public safe, some feel it is important to strengthen the Swift and Sure Sanctions Probation Program.

The Swift and Sure Sanctions Probation Program (SSSPP) is an intensive probation supervision program that targets high-risk felony offenders who have a history of violating probation conditions or failing probation altogether. After several years of pilot projects, Public Act 616 of 2012 created the Probation Swift and Sure Sanctions Act as a voluntary program to fund swift and sure probation supervision. The program is based on the principle that probation violations should be met not only with a swift response, but also a certain one. Whether through the imposition of additional probation conditions or a few days in jail (as opposed to automatically sending the probationer to prison to serve the remainder of the sentence), the program seeks to increase rehabilitation and successful reentry into the community by changing the offender's behaviors and conduct.

Studies show that SSSPP participants are significantly less likely to be arrested for a new crime, use drugs, skip appointments with probation agents, and/or have their probation revoked. This results in fewer days of incarceration than under traditional approaches.

Statewide, 19 counties operate an SSSPP. Because participation requires more frequent appearances before the judge; closer monitoring by the probation officer, SSSPP case manager, and treatment provider (if ordered); and more frequent random drug and alcohol screenings, participation in an SSSPP also costs about \$2,700 more per probationer. The costs for an SSSPP are borne by the local court.

For the past few years, the Legislature has appropriated funds that the Supreme Court Administrative Office (SCAO) has awarded via grants to courts with an eligible program. One issue the bill seeks to address is that if all of the money appropriated is not used in a given fiscal year, it lapses to the state General Fund. Having the money revert to the General Fund leaves courts uncertain whether their programs will be funded in the next fiscal year. Since the program is voluntary, expansion of the SSSVP is difficult if courts are unsure if the Legislature in any given year will provide adequate funding for the grant program in the next budget or end funding. It has been suggested that a restricted fund be created to receive appropriations or other sources of revenue that could be rolled over from year to year to ensure that funding for the grants supporting current and future SSSPPs will continue.

In addition, the bill addresses several other issues, as well, such as codifying eligibility for program participation, allowing a probationer in one jurisdiction without an SSSPP to transfer to a jurisdiction that does, and requiring notification to the prosecutor and victims before a judge shortens or terminates the term of probation for an SSSPP participant who successfully complies with all probation requirements.

THE CONTENT OF THE BILL:

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

Specifically, House Bill 4137 would amend the Code of Criminal Procedure to do the following (MCL 771.2 et al.):

Felony probation revisions

Generally speaking, the probation period for a felony conviction cannot exceed five years. A convicted felon serving a term of probation is supervised by the Department of Corrections under the jurisdiction of the sentencing court. The court may amend the

probation order, which fixes the length (up to the statutory maximum) and conditions of the probation, at any time.

The bill requires the Department of Corrections to notify the sentencing court after the defendant has completed one-third of the original felony period of the felony probation. (The bill does not specify how soon after this date the notification must be made.)

Not less than ten days before reducing or terminating a period of probation or conducting a review regarding the probation order, the court must notify the prosecuting attorney, the defendant (or defendant's attorney if the defendant has an attorney), and the victims, as required under the William Van Regenmorter Crime Victim's Rights Act.

Purposes of probation

Currently, the Code states that it is the intent of the legislature that the granting of probation is a matter of grace conferring no vested right to its continuance. The bill adds that the purposes of probation are to hold offenders accountable for making restitution to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs as needed and available, and to protect the public safety.

Swift and Sure Sanctions Probation Program (SSSPP)

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

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

Swift and Sure Probation Supervision Fund

The Swift and Sure Probation Supervision Fund (Fund) will be created within the state treasury. The state treasurer could receive money or other assets from any source and the treasurer would direct the investment of the Fund. Interest and earnings from fund investments would be credited to the Fund, and money in the Fund at the close of a fiscal year would remain in the Fund and not lapse to the General Fund.

Currently, the state court administrative office (SCAO) provides grants under Chapter XIA to fund programs of swift and sure probation supervision. The bill would require the state treasurer to allocate sufficient funds to allow SCAO to expend funds from the Fund to administer Chapter XIA and to provide the grants for swift and sure probation supervision programs.

Under the bill, a court that received a grant from the Fund could accept participants from any jurisdiction based upon either the residence of the participant in the receiving jurisdiction or the unavailability of an SSSPP in the jurisdiction where the participant is charged.

The transfer of the participant could occur at any time during the proceedings, including, but not limited to, prior to adjudication. The receiving court would have jurisdiction to impose sentence, including, but not limited to, sanctions, incentives, incarceration, and phase changes. A transfer would not be valid unless it is agreed to by all of the following:

- The defendant.
- The attorney representing the defendant or respondent.
- The judge of the transferring court and the prosecutor of the case.
- The judge of the receiving court and the prosecutor of the receiving court funding unit.

Eligibility

A person is eligible for the SSSPP if one of the following applies:

- The individual receives a risk score of high on a validated risk assessment.
- The individual is a violent offender and receives a risk score other than high on a validated risk assessment and the judge, prosecutor, and defendant agree to the defendant's placement in the program.
- The individual is not a violent offender and receives a risk score other than high or low on the validated risk assessment and the judge, prosecutor, and defendant agree to the defendant's placement in the program.

"Violent offender" means an individual who has been convicted of an assaultive crime as that term is defined in Section 9a of Chapter X.

BACKGROUND INFORMATION:

House Bill 5930 of the 2013-2014 legislative session would also have made changes to the probation statutes and the Swift and Sure Sanctions Probation Program, but was more comprehensive in its proposed reforms. The bill was passed by the House of Representatives but died during lame duck in the Senate.

FISCAL INFORMATION:

Currently, funding is appropriated annually, in the Judiciary appropriations act, to provide grants to courts administering a Swift and Sure Sanctions program. Funding that is not awarded and expended lapses to the General Fund. In fiscal year 2015, eighteen circuit courts received grant funding. Estimated expenditures for fiscal year 2015 are roughly \$3.3 million of the \$6.0 million appropriated. According to the State Court Administrative Office, roughly \$2,750 is spent per participant per year, in addition to annual administrative costs. Under House Bill 4137, the Swift and Sure Probation Supervision Fund would be created within the state Treasury. The state treasurer would direct the investment of the fund and would credit interest and earnings from fund investments to the fund. Money in

the fund at the close of the fiscal year would remain in the fund instead of lapsing to the General Fund. The intent is guaranteed availability of funding for courts to operate Swift and Sure Sanctions programs, leading to increased court participation. Also, under the bill, eligibility to participate in a Swift and Sure Sanctions program would be expanded. If increased usage of the program leads to decreased usage of jail and prison bed space, a savings to the state could be recognized.

ARGUMENTS:

For:

The bill addresses several important issues regarding the Swift and Sure Sanctions Probation Program (SSSPP). First, according to the Michigan Judge's Association, the bill allows the court to review a probationer's performance (for instance, compliance with conditions of probation) and determine if it would be appropriate to reduce the length of the probation or even terminate it. The judge who sentenced the defendant is often the most familiar with the individual and is in a good, if not the best, position to make such a determination. If the court decides to reduce or end the probation, the bill requires the court to notify the prosecutor and any and all victims beforehand. This will allow both the prosecutor and the victim or victims to have input.

For:

Creation of a restricted fund should encourage courts with existing SSSPP programs to accept more participants and could encourage more courts to create a program. Currently, funding for the programs are by grants administered by the State Court Administrative Office from money appropriated by the Legislature. If the money isn't spent all in one fiscal year, the unused revenue goes back into the state's General Fund. Courts have no reassurance that funds for the grants will be appropriated in the next fiscal year. Under the bill, any money not spent in one fiscal year can remain in the fund, along with interest from fund investments, and used in a subsequent fiscal year. This helps to foster the continuity courts need to plan and administer their programs and helps the Legislature in determining appropriate funding for any given year.

For:

The Probation Swift and Sure Sanctions Act authorizes the State Court Administrative Office to establish initial programming and SSSPP eligibility requirements. Instead, SCAO will continue to establish programming but the bill will place eligibility requirements in statute. The major changes from current SCAO eligibility criteria are that some offenders who currently are ineligible for participation because they are not scored as being high-risk could now participate if the judge, prosecutor, and defendant agree to the placement. In addition, participation would no longer require a defendant to have a history of probation failures or three or more probation violations that resulted in sanctions in a current case.

These changes will give more discretion to courts regarding participation, generating a larger pool of offenders eligible to participate in an SSSPP. The bill also allows, if approved, a probationer in a jurisdiction that does not operate an SSSPP to transfer his or her case to one that does.

Even though the per-probationer cost of participation in an SSSPP is higher than traditional probation supervision, expanding the program has the potential to lower local and state correctional costs. For instance, the increased supervision and accountability provided in SSSPPs is having a dramatic impact on probationers who have a history of violating the conditions of their probation. Instead of being sent back to prison for either new crimes or technical violations, probationers are having greater success in reintegrating into society. The bill would give courts more flexibility in fitting a probation program to a particular offender. Thus, an offender may be able to participate in an SSSPP before failing multiple times under traditional probation. If such expansion of the program results in fewer probationers being sent back to jail or prison for the duration of their original sentences, and reduces the number of new crimes being committed by probationers, then savings to the local and state correctional systems can be realized without compromising public safety.

POSITIONS:

The Michigan Judges Association submitted written testimony supporting the bill. (5-22-15)

A representative of the Michigan Department of Corrections testified in support of the bill. (5-26-15)

A representative of the Prosecuting Attorneys Association of Michigan testified in support of the bill on 5-26-15 and indicated support for the bill on 6-16-15.

The Libertarian Party of Michigan submitted written testimony supporting the bill. (6-16-15)

The ACLU of Michigan indicated support for the bill. (5-26 & 6-16-15)

The Criminal Defense Attorneys of Michigan indicated support for the bill. (5-26 & 6-16-15)

Citizens Alliance on Prisons & Public Spending (CAPPS) indicated support for the bill. (6-16-15)

The Michigan Association of Counties indicated a neutral position on the bill. (5-26-15)

The Michigan Sheriff's Association indicated a neutral position on the bill. (5-26 & 6-16-15)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.