

SUBSTITUTE FOR
HOUSE BILL NO. 4137

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 2 and 4 of chapter XI and the chapter heading
and sections 3, 4, 5, and 6 of chapter XIA (MCL 771.2, 771.4,
771A.3, 771A.4, 771A.5, and 771A.6), section 2 of chapter XI as
amended by 2010 PA 351, section 4 of chapter XI as amended by 1998
PA 520, and sections 3, 4, 5, and 6 of chapter XIA as added by 2012
PA 616.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER XI

2

Sec. 2. (1) Except as provided in section 2a of this chapter

3

AND SECTION 36 OF CHAPTER VIII, if the defendant is convicted for

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an offense that is not a felony, the probation period shall not

1 exceed 2 years. Except as provided in section 2a of this chapter
2 **AND SECTION 36 OF CHAPTER VIII**, if the defendant is convicted of a
3 felony, the probation period shall not exceed 5 years. **EXCEPT AS**
4 **PROVIDED IN SECTION 2A OF THIS CHAPTER AND SECTION 36 OF CHAPTER**
5 **VIII, AFTER THE DEFENDANT HAS COMPLETED 1/3 OF THE ORIGINAL FELONY**
6 **PROBATION PERIOD OF HIS OR HER FELONY PROBATION, THE DEPARTMENT**
7 **SHALL NOTIFY THE SENTENCING COURT. NOT LESS THAN 10 DAYS BEFORE**
8 **REDUCING OR TERMINATING A PERIOD OF PROBATION OR CONDUCTING A**
9 **REVIEW UNDER THIS SECTION, THE COURT SHALL NOTIFY THE PROSECUTING**
10 **ATTORNEY, THE DEFENDANT OR, IF THE DEFENDANT HAS AN ATTORNEY, THE**
11 **DEFENDANT'S ATTORNEY, AND THE VICTIMS, AS REQUIRED UNDER THE**
12 **WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL**
13 **780.751 TO 780.834.**

14 (2) The court shall, by order ~~to be filed or entered~~ in the
15 ~~cause~~**CASE** as the court ~~may direct~~**DIRECTS** by general rule or in
16 each case, fix and determine the period and conditions of
17 probation. The order is part of the record in the ~~cause~~**CASE**. The
18 court may amend the order in form or substance at any time.

19 (3) A defendant who was placed on probation under section 1(4)
20 of this chapter as it existed before March 1, 2003 for an offense
21 committed before March 1, 2003 is subject to the conditions of
22 probation specified in section 3 of this chapter, including payment
23 of a probation supervision fee as prescribed in section 3c of this
24 chapter, and to revocation for violation of these conditions, but
25 the probation period shall not be reduced other than by a
26 revocation that results in imprisonment or as otherwise provided by
27 law.

1 (4) If an individual is placed on probation for a listed
2 offense ~~enumerated~~ **AS THAT TERM IS DEFINED** in section 2 of the sex
3 offenders registration act, 1994 PA 295, MCL 28.722, the
4 individual's probation officer shall register the individual or
5 accept the individual's registration as provided in that act.

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

10 Sec. 4. It is the intent of the legislature that the granting
11 of probation is a matter of grace conferring no vested right to its
12 continuance. **THE PURPOSES OF PROBATION ARE TO HOLD OFFENDERS**
13 **ACCOUNTABLE FOR MAKING RESTITUTION TO ENSURE COMPLIANCE WITH THE**
14 **COURT'S JUDGMENT, TO EFFECTIVELY REHABILITATE OFFENDERS BY**
15 **DIRECTING THEM TO SPECIALIZED TREATMENT OR EDUCATION PROGRAMS AS**
16 **NEEDED AND AVAILABLE, AND TO PROTECT THE PUBLIC SAFETY.** If during
17 the probation period the sentencing court determines that the
18 probationer is likely again to engage in an offensive or criminal
19 course of conduct or that the public good requires revocation of
20 probation, the court may revoke probation. All probation orders are
21 revocable in any manner the court that imposed probation considers
22 applicable either for a violation or attempted violation of a
23 probation condition or for any other type of antisocial conduct or
24 action on the probationer's part for which the court determines
25 that revocation is proper in the public interest. Hearings on the
26 revocation shall be summary and informal and not subject to the
27 rules of evidence or of pleadings applicable in criminal trials. In

1 its probation order or by general rule, the court may provide for
 2 the apprehension, detention, and confinement of a probationer
 3 accused of violating a probation condition or conduct inconsistent
 4 with the public good. The method of hearing and presentation of
 5 charges are within the court's discretion, except that the
 6 probationer is entitled to a written copy of the charges
 7 constituting the claim that he or she violated probation and to a
 8 probation revocation hearing. The court may investigate and enter a
 9 disposition of the probationer as the court determines best serves
 10 the public interest. If a probation order is revoked, the court may
 11 sentence the probationer in the same manner and to the same penalty
 12 as the court might have done if the probation order had never been
 13 made. This section does not apply to a juvenile placed on probation
 14 and committed under section 1(3) or (4) of chapter IX to an
 15 institution or agency described in the youth rehabilitation
 16 services act, 1974 PA 150, MCL 803.301 to 803.309.

17 CHAPTER XIA

18 PROBATION SWIFT AND SURE SANCTIONS ACT

19 Sec. 3. It is the intent of the legislature to create a
 20 voluntary state program to fund swift and sure probation
 21 supervision ~~at the local level based upon~~ **ON** the immediate
 22 detection of probation violations and **THE** prompt ~~the~~ imposition of
 23 sanctions and remedies to address those violations. In furtherance
 24 of this intent, the state swift and sure sanctions program ~~is~~
 25 ~~created with the following objectives:~~ **SHALL BE IMPLEMENTED AND**
 26 **MAINTAINED AS PROVIDED IN THIS CHAPTER AS FOLLOWS:**

27 (a) Probationers are to be sentenced with prescribed terms of

1 probation meeting the objectives of this chapter. Probationers are
2 to be aware of their probation terms as well as the consequences
3 for violating the terms of their probation.

4 (b) Probationers are to be closely monitored and every
5 detected violation is to be promptly addressed by the court.

6 (c) Probationers are to be arrested as soon as a violation has
7 been detected and are to be promptly taken before a judge for a
8 hearing on the violation.

9 (d) Continued violations are to be addressed by increasing
10 sanctions and remedies as necessary to achieve results.

11 (e) To the extent possible and considering local resources,
12 probationers subject to swift and sure probation under this chapter
13 shall be treated uniformly throughout ~~the~~ **THIS** state.

14 Sec. 4. (1) ~~Beginning January 1, 2013, the~~ **THE SWIFT AND SURE**
15 **PROBATION SUPERVISION FUND IS CREATED WITHIN THE STATE TREASURY.**
16 **THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM ANY**
17 **SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER SHALL DIRECT**
18 **THE INVESTMENT OF THE FUND. THE STATE TREASURER SHALL CREDIT TO THE**
19 **FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS. MONEY IN THE FUND**
20 **AT THE CLOSE OF THE FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL**
21 **NOT LAPSE TO THE GENERAL FUND.**

22 (2) **THE STATE TREASURER SHALL ALLOCATE SUFFICIENT FUNDS TO**
23 **ALLOW THE** state court administrative office ~~shall,~~ **TO,** under the
24 supervision of the supreme court, **EXPEND FUNDS FROM THE SWIFT AND**
25 **SURE PROBATION SUPERVISION FUND TO ADMINISTER THIS CHAPTER AND TO**
26 provide grants under this chapter to fund programs of swift and
27 sure probation supervision in the circuit court that meet the

1 objectives set forth in section 3 **OF THIS CHAPTER** and the
2 requirements of section 5 **OF THIS CHAPTER**.

3 (3) ~~(2)~~—A court may apply for a grant to fund a program of
4 swift and sure probation supervision under this chapter by filing a
5 written application with the state court administrative office in
6 the manner required by that office. The funding of all grants under
7 this chapter is subject to appropriation.

8 (4) **A COURT THAT HAS RECEIVED A GRANT UNDER THIS CHAPTER TO**
9 **FUND PROGRAMS OF SWIFT AND SURE PROBATION SUPERVISION MAY ACCEPT**
10 **PARTICIPANTS FROM ANY OTHER JURISDICTION IN THIS STATE BASED UPON**
11 **EITHER THE RESIDENCE OF THE PARTICIPANT IN THE RECEIVING**
12 **JURISDICTION OR THE UNAVAILABILITY OF A SWIFT AND SURE PROBATION**
13 **SUPERVISION PROGRAM IN THE JURISDICTION WHERE THE PARTICIPANT IS**
14 **CHARGED. THE TRANSFER CAN OCCUR AT ANY TIME DURING THE PROCEEDINGS,**
15 **INCLUDING, BUT NOT LIMITED TO, PRIOR TO ADJUDICATION. THE RECEIVING**
16 **COURT SHALL HAVE JURISDICTION TO IMPOSE SENTENCE, INCLUDING, BUT**
17 **NOT LIMITED TO, SANCTIONS, INCENTIVES, INCARCERATION, AND PHASE**
18 **CHANGES. A TRANSFER UNDER THIS SUBSECTION IS NOT VALID UNLESS IT IS**
19 **AGREED TO BY ALL OF THE FOLLOWING:**

20 (A) **THE DEFENDANT OR RESPONDENT.**

21 (B) **THE ATTORNEY REPRESENTING THE DEFENDANT OR RESPONDENT.**

22 (C) **THE JUDGE OF THE TRANSFERRING COURT AND THE PROSECUTOR OF**
23 **THE CASE.**

24 (D) **THE JUDGE OF THE RECEIVING COURT AND THE PROSECUTOR OF THE**
25 **RECEIVING COURT FUNDING UNIT.**

26 Sec. 5. (1) ~~A program of swift and sure probation supervision~~
27 ~~funded under section 4~~ **JUDGE** shall do all of the following **IF SWIFT**

1 **AND SURE PROBATION APPLIES TO A PROBATIONER:**

2 (a) ~~Require the court to inform~~ **INFORM** the probationer in
3 person of the requirements of his or her probation and the
4 sanctions and remedies that may apply to probation violations.

5 (b) Require the probationer to initially meet in person with a
6 probation agent or probation officer and as otherwise required by
7 the court.

8 (c) Provide for an appearance before the judge **OR ANOTHER**
9 **JUDGE** for any probation violation as soon as possible but within 72
10 hours after the violation is reported to the court unless **THE**
11 **PROBATIONER WAIVES A HEARING OR** a departure from the 72-hour
12 requirement is authorized for good cause as determined by criteria
13 established by the state court administrative office.

14 (d) Provide for the immediate imposition of sanctions and
15 remedies approved by the state court administrative office to
16 effectively address probation violations. The sanctions and
17 remedies approved under this subdivision may include, but need not
18 be limited to, 1 or more of the following:

19 (i) Temporary incarceration in a jail or other facility
20 authorized by law to hold probation violators.

21 (ii) Extension of the period of supervision within the period
22 provided by law.

23 (iii) Additional reporting and compliance requirements.

24 (iv) Testing for the use of drugs and alcohol.

25 (v) Counseling and treatment for emotional or other mental
26 health problems, including for substance abuse.

27 (vi) Probation revocation.

1 (2) The state court administrative office may, under the
2 supervision of the supreme court, do any of the following regarding
3 programs funded under this chapter:

4 (a) Establish general eligibility requirements for offender
5 participation.

6 (b) Require courts and offenders to enter into written
7 participation agreements.

8 (c) Create recommended and mandatory sanctions and remedies
9 for use by participating courts.

10 (d) Establish criteria for deviating from recommended and
11 mandatory sanctions and remedies ~~when~~ **IF** necessary to address
12 special circumstances.

13 (e) Establish a system for determining sanctions and remedies
14 that should or may be imposed under subdivision (c) and for
15 alternative sanctions and remedies under subdivision (d).

16 Sec. 6. (1) The state court administrative office may, under
17 the supervision of the supreme court, consult with the department
18 of corrections when establishing ~~initial-programming and~~
19 ~~eligibility-requirements~~ under this chapter.

20 **(2) AN INDIVIDUAL IS ELIGIBLE FOR THE SWIFT AND SURE PROBATION**
21 **SUPERVISION PROGRAM IF 1 OF THE FOLLOWING APPLIES:**

22 **(A) HE OR SHE RECEIVES A RISK SCORE OF HIGH ON A VALIDATED**
23 **RISK ASSESSMENT.**

24 **(B) HE OR SHE IS A VIOLENT OFFENDER AND RECEIVES A RISK SCORE**
25 **OTHER THAN HIGH ON A VALIDATED RISK ASSESSMENT AND THE JUDGE,**
26 **PROSECUTOR, AND DEFENDANT AGREE TO THE DEFENDANT'S PLACEMENT IN THE**
27 **PROGRAM.**

1 (C) HE OR SHE IS NOT A VIOLENT OFFENDER AND RECEIVES A RISK
2 SCORE OTHER THAN HIGH OR LOW ON THE VALIDATED RISK ASSESSMENT AND
3 THE JUDGE, PROSECUTOR, AND DEFENDANT AGREE TO THE DEFENDANT'S
4 PLACEMENT IN THE PROGRAM.

5 (3) AS USED IN SUBSECTION (2), "VIOLENT OFFENDER" MEANS AN
6 INDIVIDUAL WHO HAS BEEN CONVICTED OF AN ASSAULTIVE CRIME AS THAT
7 TERM IS DEFINED IN SECTION 9A OF CHAPTER X.