

HOUSE BILL No. 5002

May 26, 2009, Introduced by Reps. Lori, Walsh, Proos, Lund, DeShazor, Bolger, Rick Jones, Elsenheimer, Kurtz, Opsommer, Haines, Pearce, Schuitmaker and Tyler and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 2a of chapter XI (MCL 771.2a), as amended by 2006 PA 507.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XI

1
2 Sec. 2a. (1) The court may place an individual convicted of
3 violating section 411h of the Michigan penal code, 1931 PA 328, MCL
4 750.411h, on probation for not more than 5 years. The sentence is
5 subject to the conditions of probation set forth in section 411h(3)
6 of the Michigan penal code, 1931 PA 328, MCL 750.411h, and section
7 3 of this chapter. The probation is subject to revocation for any
8 violation of a condition of that probation.

1 (2) The court may place an individual convicted of violating
2 section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i,
3 on probation for any term of years, but not less than 5 years. The
4 sentence is subject to the conditions of probation set forth in
5 section 411i(4) of the Michigan penal code, 1931 PA 328, MCL
6 750.411i, and section 3 of this chapter. The probation is subject
7 to revocation for any violation of a condition of that probation.

8 (3) The court may place an individual convicted of a violation
9 of section 136b of the Michigan penal code, 1931 PA 328, MCL
10 750.136b, that is designated as a misdemeanor on probation for not
11 more than 5 years.

12 **(4) THE COURT SHALL PLACE AN INDIVIDUAL CONVICTED OF A**
13 **VIOLATION DESCRIBED IN SECTION 7407(4) OF THE PUBLIC HEALTH CODE,**
14 **1978 PA 368, MCL 333.7404, ON PROBATION FOR 10 YEARS. THE SENTENCE**
15 **IS SUBJECT TO THE CONDITIONS OF PROBATION SET FORTH IN SECTION 3 OF**
16 **THIS CHAPTER. THE PROBATION IS SUBJECT TO REVOCATION FOR ANY**
17 **VIOLATION OF A CONDITION OF THAT PROBATION.**

18 (5) ~~(4)~~—The court shall by order, to be filed or entered in
19 the cause as the court directs by general rule or in each case, fix
20 and determine the period and conditions of probation. The order is
21 part of the record in the cause. The court may amend the order in
22 form or substance at any time.

23 (6) ~~(5)~~—Subsections (1), (2), (3), ~~and (4)~~, **AND (5)** do not
24 apply to a juvenile placed on probation and committed under section
25 1(3) or (4) of chapter IX to an institution or agency described in
26 the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
27 803.309.

1 (7) ~~(6)~~—Except as otherwise provided by law, the court may
2 place an individual convicted of a listed offense on probation
3 subject to the requirements of this subsection and subsections ~~(7)~~
4 (8) through ~~(12)~~—(13) for any term of years but not less than 5
5 years.

6 (8) ~~(7)~~—Except as otherwise provided in subsections ~~(8)~~—(9) to
7 ~~(12)~~—(13), if an individual is placed on probation under subsection
8 ~~(6)~~—(7), the court shall order the individual not to do any of the
9 following:

10 (a) Reside within a student safety zone.

11 (b) Work within a student safety zone.

12 (c) Loiter within a student safety zone.

13 (9) ~~(8)~~—The court shall not impose a condition of probation
14 described in subsection ~~(7)~~—~~(a)~~—(8) (A) if any of the following
15 apply:

16 (a) The individual is not more than 19 years of age and
17 attends secondary school or postsecondary school, and resides with
18 his or her parent or guardian. However, an individual described in
19 this subdivision shall be ordered not to initiate or maintain
20 contact with a minor within that student safety zone. The
21 individual shall be permitted to initiate or maintain contact with
22 a minor with whom he or she attends secondary school or
23 postsecondary school in conjunction with that school attendance.

24 (b) The individual is not more than 26 years of age, attends a
25 special education program, and resides with his or her parent or
26 guardian or in a group home or assisted living facility. However,
27 an individual described in this subdivision shall be ordered not to

1 initiate or maintain contact with a minor within that student
2 safety zone. The individual shall be permitted to initiate or
3 maintain contact with a minor with whom he or she attends a special
4 education program in conjunction with that attendance.

5 (c) The individual was residing within that student safety
6 zone ~~at the time the amendatory act that added this subdivision was~~
7 ~~enacted into law~~ **ON JANUARY 1, 2006**. However, if the individual was
8 residing within the student safety zone ~~at the time the amendatory~~
9 ~~act that added this subdivision was enacted into law~~ **ON JANUARY 1,**
10 **2006**, the court shall order the individual not to initiate or
11 maintain contact with any minors within that student safety zone.
12 This subdivision does not prohibit the court from allowing contact
13 with any minors named in the probation order for good cause shown
14 and as specified in the probation order.

15 (10) ~~(9)~~ An order issued under subsection ~~(7)(a)~~ **(8) (A)** shall
16 not prohibit an individual from being a patient in a hospital or
17 hospice that is located within a student safety zone. However, this
18 exception does not apply to an individual who initiates or
19 maintains contact with a minor within that student safety zone.

20 (11) ~~(10)~~ The court shall not impose a condition of probation
21 described in subsection ~~(7)(b)~~ **(8) (B)** if the individual was working
22 within the student safety zone ~~at the time the amendatory act that~~
23 ~~added this subsection was enacted into law~~ **ON JANUARY 1, 2006**.
24 However, if the individual was working within the student safety
25 zone ~~at the time the amendatory act that added this subsection was~~
26 ~~enacted into law~~ **ON JANUARY 1, 2006**, the court shall order the
27 individual not to initiate or maintain contact with any minors in

1 the course of his or her employment within that student safety
2 zone. This subsection does not prohibit the court from allowing
3 contact with any minors named in the probation order for good cause
4 shown and as specified in the probation order.

5 (12) ~~(11)~~—The court shall not impose a condition of probation
6 described in subsection ~~(7)(b)~~—(8) (B) if the individual only
7 intermittently or sporadically enters a student safety zone for
8 purposes of work. If the individual intermittently or sporadically
9 works within a student safety zone, the court shall order the
10 individual not to initiate or maintain contact with any minors in
11 the course of his or her employment within that safety zone. This
12 subsection does not prohibit the court from allowing contact with
13 any minors named in the probation order for good cause shown and as
14 specified in the probation order.

15 (13) ~~(12)~~—The court may exempt an individual from probation
16 under subsection ~~(6)~~—(7) if any of the following apply:

17 (a) The individual has successfully completed his or her
18 probationary period under sections 11 to 15 of chapter II for
19 committing a listed offense and has been discharged from youthful
20 trainee status.

21 (b) The individual was convicted of committing or attempting
22 to commit a violation solely described in section 520e(1)(a) of the
23 Michigan penal code, 1931 PA 328, MCL 750.520e, and at the time of
24 the violation was 17 years of age or older but less than 21 years
25 of age and is not more than 5 years older than the victim.

26 (14) ~~(13)~~—As used in this section:

27 (a) "Listed offense" means that term as defined in section 2

1 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

2 (b) "Loiter" means to remain for a period of time and under
3 circumstances that a reasonable person would determine is for the
4 primary purpose of observing or contacting minors.

5 (c) "Minor" means an individual less than 18 years of age.

6 (d) "School" means a public, private, denominational, or
7 parochial school offering developmental kindergarten, kindergarten,
8 or any grade from 1 through 12. School does not include a home
9 school.

10 (e) "School property" means a building, facility, structure,
11 or real property owned, leased, or otherwise controlled by a
12 school, other than a building, facility, structure, or real
13 property that is no longer in use on a permanent or continuous
14 basis, to which either of the following applies:

15 (i) It is used to impart educational instruction.

16 (ii) It is for use by students not more than 19 years of age
17 for sports or other recreational activities.

18 (f) "Student safety zone" means the area that lies 1,000 feet
19 or less from school property.

20 Enacting section 1. This amendatory act takes effect 90 days
21 after the date it is enacted into law.

22 Enacting section 2. This amendatory act does not take effect
23 unless all of the following bills of the 95th Legislature are
24 enacted into law:

25 (a) Senate Bill No. ____ or House Bill No. 4775(request no.
26 01864'09).

27 (b) Senate Bill No. ____ or House Bill No. 4928(request no.

1 01864'09 b) .