

**SUBSTITUTE FOR
SENATE BILL NO. 1048**

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 5, 31, and 34 (MCL 769.5, 769.31, and 769.34),
section 5 of chapter IX as amended by 2015 PA 216, section 31 of
chapter IX as amended by 2004 PA 220, and section 34 of chapter IX
as amended by 2002 PA 666.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX
2 Sec. 5. (1) ~~If~~**Subject to subsection (3), if** a statute
3 provides that an offense is punishable by imprisonment and a fine,
4 the court may impose imprisonment without the fine or the fine
5 without imprisonment.
6 (2) ~~If~~**Subject to subsection (3), if** a statute provides that



1 an offense is punishable by fine or imprisonment, the court may
2 impose both the fine and imprisonment in its discretion.

3 (3) There is a rebuttable presumption that the court shall
4 sentence an individual convicted of a misdemeanor, other than a
5 serious misdemeanor, with a fine, community service, or other
6 nonjail or nonprobation sentence.

7 (4) The court may depart from the presumption under subsection
8 (3) if the court finds reasonable grounds for the departure and
9 states on the record the grounds for the departure.

10 (5) If the court finds that the sentenced person has not
11 complied with his or her sentence, including a nonjail or
12 nonprobation sentence, the court may issue an order for the person
13 to show cause why he or she should not be held in contempt of court
14 for not complying with the sentence. If the court finds the person
15 in contempt, it may impose an additional sentence, including jail
16 or probation if appropriate.

17 (6) If the finding of contempt of court under subsection (5)
18 is for nonpayment of fines, costs, or other legal financial
19 obligations, the court must find on the record that the person is
20 able to comply with the payments without manifest hardship, and
21 that the person has not made a good-faith effort to do so, before
22 imposing an additional sentence.

23 (7) As used in this section, "serious misdemeanor" means that
24 term as defined in section 61 of the William Van Regenmorter crime
25 victim's rights act, 1985 PA 87, MCL 780.811.

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

28 (a) "Departure" means a sentence imposed that is not within
29 the appropriate minimum sentence range established under the



1 sentencing guidelines set forth in chapter XVII.

2 (b) "Intermediate sanction" means probation or any sanction,
3 other than imprisonment in a **county jail**, state prison, or state
4 reformatory, that may lawfully be imposed. Intermediate sanction
5 includes, but is not limited to, 1 or more of the following:

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

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

11 (iii) Residential probation.

12 ~~(iv) Probation with jail.~~

13 ~~(iv) (v) Probation with special alternative incarceration.~~

14 ~~(v) (vi) Mental health treatment.~~

15 ~~(vi) (vii) Mental health or substance abuse counseling.~~

16 ~~(viii) Jail.~~

17 ~~(ix) Jail with work or school release.~~

18 ~~(x) Jail, with or without authorization for day parole under
19 1962 PA 60, MCL 801.251 to 801.258.~~

20 ~~(vii) (xi) Participation in a community corrections program.~~

21 ~~(viii) (xii) Community service.~~

22 ~~(ix) (xiii) Payment of a fine.~~

23 ~~(x) (xiv) House arrest.~~

24 ~~(xi) (xv) Electronic monitoring.~~

25 (c) "Offender characteristics" means only the prior criminal
26 record of an offender.

27 (d) "Offense characteristics" means the elements of the crime
28 and the aggravating and mitigating factors relating to the offense



1 that the legislature determines are appropriate. For purposes of
 2 this subdivision, an offense described in section 33b of the
 3 corrections code of 1953, 1953 PA 232, MCL 791.233b, that resulted
 4 in a conviction and that arose out of the same transaction as the
 5 offense for which the sentencing guidelines are being scored shall
 6 be considered as an aggravating factor.

7 (e) "Prior criminal record" means all of the following:

8 (i) Misdemeanor and felony convictions.

9 (ii) Probation and parole violations involving criminal
 10 activity.

11 (iii) Dispositions entered under section 18 of chapter XIIA of
 12 1939 PA 288, MCL 712A.18, for acts that would have been crimes if
 13 committed by an adult.

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

16 (v) A conviction set aside under 1965 PA 213, MCL 780.621 to
 17 780.624.

18 (vi) Dispositions described in subparagraph (iii) that have been
 19 set aside under section 18e of chapter XIIA of 1939 PA 288, MCL
 20 712A.18e, or expunged.

21 Sec. 34. (1) The sentencing guidelines promulgated by order of
 22 the Michigan supreme court do not apply to felonies enumerated in
 23 part 2 of chapter XVII committed on or after January 1, 1999.

24 (2) Except as otherwise provided in this subsection or for a
 25 departure from the appropriate minimum sentence range provided for
 26 under subsection (3), the minimum sentence imposed by a court of
 27 this state for a felony enumerated in part 2 of chapter XVII
 28 committed on or after January 1, 1999 ~~shall~~**may** be within the
 29 appropriate sentence range under the version of those sentencing



1 guidelines in effect on the date the crime was committed. Both of
 2 the following apply to minimum sentences under this subsection:

3 (a) If a statute mandates a minimum sentence for an individual
 4 sentenced to the jurisdiction of the department of corrections, the
 5 court shall impose a sentence in accordance with that statute.
 6 Imposing a mandatory minimum sentence is not a departure under this
 7 section. If a statute mandates a minimum sentence for an individual
 8 sentenced to the jurisdiction of the department of corrections and
 9 the statute authorizes the sentencing judge to depart from that
 10 minimum sentence, imposing a sentence that exceeds the recommended
 11 sentence range but is less than the mandatory minimum sentence is
 12 not a departure under this section. If the Michigan vehicle code,
 13 1949 PA 300, MCL 257.1 to 257.923, mandates a minimum sentence for
 14 an individual sentenced to the jurisdiction of the department of
 15 corrections and the Michigan vehicle code, 1949 PA 300, MCL 257.1
 16 to 257.923, authorizes the sentencing judge to impose a sentence
 17 that is less than that minimum sentence, imposing a sentence that
 18 exceeds the recommended sentence range but is less than the
 19 mandatory minimum sentence is not a departure under this section.

20 (b) The court shall not impose a minimum sentence, including a
 21 departure, that exceeds 2/3 of the statutory maximum sentence.

22 (3) A court may depart from the appropriate sentence range
 23 established under the sentencing guidelines set forth in chapter
 24 XVII if **the departure is reasonable and** the court ~~has a substantial~~
 25 ~~and compelling reason for that departure and~~ states on the record
 26 the reasons for departure. All of the following apply to a
 27 departure:

28 (a) The court shall not use an individual's gender, race,
 29 ethnicity, alienage, national origin, legal occupation, lack of



1 employment, representation by appointed legal counsel,
2 representation by retained legal counsel, appearance in propria
3 persona, or religion to depart from the appropriate sentence range.

4 (b) The court shall not base a departure on an offense
5 characteristic or offender characteristic already taken into
6 account in determining the appropriate sentence range unless the
7 court finds from the facts contained in the court record, including
8 the presentence investigation report, that the characteristic has
9 been given inadequate or disproportionate weight.

10 (4) Intermediate sanctions ~~shall~~**must** be imposed under this
11 chapter as follows:

12 (a) If the upper limit of the recommended minimum sentence
13 range for a defendant determined under the sentencing guidelines
14 set forth in chapter XVII is 18 months or less, the court shall
15 impose an intermediate sanction unless the court states on the
16 record ~~a substantial and compelling reason~~**reasonable grounds** to
17 sentence the individual to **incarceration in a county jail for not**
18 **more than 12 months or to** the jurisdiction of the department of
19 corrections **for any sentence over 12 months.** ~~An intermediate~~
20 ~~sanction may include a jail term that does not exceed the upper~~
21 ~~limit of the recommended minimum sentence range or 12 months,~~
22 ~~whichever is less.~~

23 (b) If an attempt to commit a felony designated in offense
24 class H in part 2 of chapter XVII is punishable by imprisonment for
25 more than 1 year, the court shall impose an intermediate sanction
26 upon conviction of that offense absent a departure.

27 (c) If the upper limit of the recommended minimum sentence
28 exceeds 18 months and the lower limit of the recommended minimum
29 sentence is 12 months or less, the court shall sentence the



1 offender as follows absent a departure:

2 (i) To imprisonment with a minimum term within that range.

3 (ii) To an intermediate sanction ~~that may include~~ **with or**
4 **without** a term of ~~imprisonment~~ **jail incarceration** of not more than
5 12 months.

6 (5) If a crime has a mandatory determinant penalty or a
7 mandatory penalty of life imprisonment, the court shall impose that
8 penalty. This section does not apply to sentencing for that crime.

9 (6) As part of the sentence, the court may also order the
10 defendant to pay any combination of a fine, costs, or applicable
11 assessments. The court shall order payment of restitution as
12 provided by law.

13 (7) If the trial court imposes on a defendant a minimum
14 sentence that is longer or more severe than the appropriate
15 sentence range, as part of the court's advice of the defendant's
16 rights concerning appeal, the court shall advise the defendant
17 orally and in writing that he or she may appeal the sentence as
18 provided by law on grounds that it is longer or more severe than
19 the appropriate sentence range.

20 (8) All of the following ~~shall~~ **must** be part of the record
21 filed for an appeal of a sentence under this section:

22 (a) An entire record of the sentencing proceedings.

23 (b) The presentence investigation report. Any portion of the
24 presentence investigation report exempt from disclosure by law
25 ~~shall~~ **is** not ~~be~~ a public record.

26 (c) Any other reports or documents the sentencing court used
27 in imposing sentence.

28 (9) An appeal of a sentence under this section does not stay
29 execution of the sentence.



1 (10) If a minimum sentence is within the appropriate
2 guidelines sentence range, the court of appeals shall affirm that
3 sentence and shall not remand for resentencing absent an error in
4 scoring the sentencing guidelines or inaccurate information relied
5 upon in determining the defendant's sentence. A party shall not
6 raise on appeal an issue challenging the scoring of the sentencing
7 guidelines or challenging the accuracy of information relied upon
8 in determining a sentence that is within the appropriate guidelines
9 sentence range unless the party has raised the issue at sentencing,
10 in a proper motion for resentencing, or in a proper motion to
11 remand filed in the court of appeals.

12 ~~(11) If, upon a review of the record, the court of appeals~~
13 ~~finds the trial court did not have a substantial and compelling~~
14 ~~reason for departing from the appropriate sentence range, the court~~
15 ~~shall remand the matter to the sentencing judge or another trial~~
16 ~~court judge for resentencing under this chapter.~~

17 (11) ~~(12)~~ Time served on the sentence appealed under this
18 section is considered time served on any sentence imposed after
19 remand.

