

SENATE BILL NO. 1048

July 23, 2020, Introduced by Senators SANTANA, CHANG, WOJNO, BAYER, BULLOCK, ALEXANDER, IRWIN, MOSS, MCMORROW, GEISS, MCCANN, POLEHANKI, HERTEL and DALEY and referred to the Committee on Judiciary and Public Safety.

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

1 without imprisonment.

2 (2) ~~If~~ **Subject to subsection (3), if** a statute provides that
3 an offense is punishable by fine or imprisonment, the court may
4 impose both the fine and imprisonment in its discretion.

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

9 (4) **The court may depart from the presumption under subsection**
10 **(3) if the court finds reasonable grounds for the departure and**
11 **states on the record the grounds for the departure. If the court**
12 **imposes a probationary sentence, the ground for the departure must**
13 **include a specific rehabilitation goal or an articulable risk of**
14 **harm to a victim. If the court imposes a sentence that includes a**
15 **jail term, the ground for the departure must include a specific and**
16 **articulable risk of harm to a victim.**

17 (5) **As used in this section, "serious misdemeanor" means that**
18 **term as defined in section 61 of the William Van Regenmorter crime**
19 **victim's rights act, 1985 PA 87, MCL 780.811.**

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

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

1 the following apply to minimum sentences under this subsection:

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

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

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

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

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

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

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

11 (a) If the upper limit of the recommended minimum sentence
12 range for a defendant determined under the sentencing guidelines
13 set forth in chapter XVII is 18 months or less, the court shall
14 impose an intermediate sanction. ~~unless the court states on the~~
15 ~~record a substantial and compelling reason to sentence the~~
16 ~~individual to the jurisdiction of the department of corrections. An~~
17 ~~intermediate sanction may include a jail term that does not exceed~~
18 ~~the upper limit of the recommended minimum sentence range or 12~~
19 ~~months, whichever is less.~~**There is a presumption that an individual**
20 **who is eligible for an intermediate sanction must be sentenced to a**
21 **term of probation, a fine, or both, with no jail term. A court may**
22 **depart from the presumption under this subdivision if the court**
23 **finds reasonable grounds for the departure and states on the record**
24 **the grounds for the departure. The grounds for the departure under**
25 **this subdivision must include a specific and articulable risk of**
26 **harm to a victim or to the public.**

27 (b) ~~If~~**Subject to the presumption for intermediate sanctions**
28 **under subdivision (a), if** an attempt to commit a felony designated
29 in offense class H in part 2 of chapter XVII is punishable by

1 imprisonment for more than 1 year, the court shall impose an
2 intermediate sanction upon conviction of that offense absent a
3 departure.

4 (c) If the upper limit of the recommended minimum sentence
5 exceeds 18 months and the lower limit of the recommended minimum
6 sentence is 12 months or less, the court shall sentence the
7 offender as follows absent a departure:

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

9 (ii) To an intermediate sanction that may include a term of
10 imprisonment of not more than 12 months.

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

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

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

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

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

28 (b) The presentence investigation report. Any portion of the
29 presentence investigation report exempt from disclosure by law

1 ~~shall~~**is** not ~~be~~a public record.

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

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

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

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

22 **(11)** ~~(12)~~Time served on the sentence appealed under this
23 section is considered time served on any sentence imposed after
24 remand.