

FINAL DRAFT

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding sections 27a, 27b, 27c, 27d, 27e,
27f, 27g, and 27h to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

Sec. 27a. (1) Notwithstanding any other provision of law, an incarcerated individual who has served not less than 10 years of the sentence or sentences for any conviction or for a combination of any convictions, may petition the sentencing court for a reduction of any or all of the incarcerated individual's sentences imposed as provided under this section.

(2) A petition for a sentence reduction under this section may be filed 6 months after the date on which the ninth year of imprisonment begins for an incarcerated individual sentenced to more than 10 years of imprisonment.

(3) Except as otherwise provided in this subsection, if a petition for a reduction in sentence under this section has been denied, the incarcerated individual may not file a successive petition until not less than 2 years have elapsed after the date the petition was denied. The court may require a waiting period longer than 2 years, but in no case may require a waiting period longer than 5 years

after the date the most recent petition was denied.

(4) If a petition for a reduction in sentence under this section has been granted, and the total sentence to serve was reduced by at least 25%, the incarcerated individual may not file a petition for a second sentencing reduction until not less than 5 years have elapsed after the date the petition was granted.

(5) Notwithstanding any other provision of law to the contrary, an individual who has not yet served 10 years is eligible to petition for a reduction in sentence if the prosecuting attorney in the applicable jurisdiction consents to filing of the petition.

(6) No offense or sentence disqualifies an incarcerated individual from relief under this section, unless the applicant has been convicted of a mass shooting offense as defined by this section. For the purposes of this chapter, an individual has been convicted of a mass shooting offense if they have been convicted of three or more counts of first-degree premeditated murder arising out of a single incident and the sentencing judge or their successor determines, by clear and convincing evidence, that the murders resulted in physical, emotional, or psychological injury to a large number of people who were present for the offense; the murders significantly increased the burden of victim assistance and compensation for the responding jurisdiction; and the murders arose out of an incident where the applicant brought firearms and ammunition to a school, hospital, place of business, non-profit institution, or government institution with the intent to kill.

(7) The sentencing court may reduce the sentence or deny the petition. Notwithstanding any other law or provision, the court cannot increase a sentence. The court also has full discretion to reduce a mandatory sentence or a sentence imposed as the result of a binding plea or sentencing agreement.

Sec. 27b. (1) After an individual has served 10 years of imprisonment, the department of corrections shall, within 30 days of the date beginning the incarcerated individual's tenth year of incarceration, give written notice of the individual's eligibility to file a petition for a reduction of sentence under section 27a of this chapter to all of the following:

(a) The incarcerated individual.

(b) The sentencing court.

(c) The applicable prosecuting attorney.

(d) Any public defense authority in the judicial circuit in which the sentence was imposed.

(2) The petition must be filed by the incarcerated individual, counsel for the incarcerated individual, the prosecuting attorney, or the next friend of the incarcerated individual, if the incarcerated individual cannot bring the petition and the next friend is acting in the best interests of the incarcerated individual. As used in this subsection, "next friend" includes, but is not limited to, the incarcerated individual's next of kin or a qualified medical professional. (3) The petition must be filed in writing in the judicial circuit in which the sentence was imposed and may include affidavits, declarations, letters, prison records, or other written and electronic material.

(4) The petition must include, at a minimum, all of the following:

- (a) The name of the petitioner.
- (b) The name of the incarcerated individual.
- (c) The applicable case number or case numbers.
- (d) The offense or offenses of conviction.
- (e) The current sentence or sentences being served for each case number.
- (f) The date of the offense and sentence.
- (g) The name of the trial and sentencing judge.
- (h) The specific offenses for which the petitioner is requesting resentencing.
- (i) A factual statement explaining how the incarcerated individual meets the eligibility requirements described in section 27a of this chapter.
- (j) If the petition is filed by the next friend of the incarcerated individual, a factual statement explaining the petitioner's relationship to the incarcerated individual, why the incarcerated individual cannot bring the petition on the incarcerated individual's own behalf, and how the next friend is acting in the best interests of the incarcerated individual.

(5) Within 30 days of receipt of a petition, the court shall provide the applicable prosecuting attorney and the incarcerated individual with a copy of the petition, including any attached written or electronic

material.

(6) A petition must be assigned to the judge who imposed the original sentence upon the incarcerated individual for a determination. If, at the time of the petition, the original sentencing judge is no longer available, then the petition must be assigned to that judge's successor judge.

(7) After the filing of a petition for a sentencing reduction, the court may direct the parties to expand the record by submitting additional materials relating to the petition. A petition may be freely amended at any time prior to a hearing.

(8) The court shall not honor or permit a waiver of the right to petition for a resentencing under section 27a of this chapter.

Sec. 27c. (1) Upon receiving a petition made under section 27a of this chapter, the sentencing court shall determine whether the petitioner qualifies for a sentence reduction by confirming the person has served at least 10 years in prison, is not time barred by a prior application under this section, and is not excluded pursuant to section 27a(6). If so, the court shall set a resentencing hearing, unless petitioner is seeking a reduced sentence for a conviction of criminal sexual conduct against a child under 13 in violation of MCL 750.520b(1) (a) or MCL 750.520c(1) (a); domestic violence in violation of MCL 750.81(4)-(5); aggravated domestic violence in violation of MCL 750.81(3); aggravated production of child sexually abusive activity or material in violation of MCL 750.145c(2) (b); or human trafficking in violation of MCL 750.462c, MCL 750.462d, MCL 750.462e, or MCL 750.462f. If the petitioner is seeking a reduction of sentence for the aforementioned offenses, the hearing may be granted at the discretion of the court if the petitioner has served at least 10 years in prison, is not time-barred by a prior application under this section, and is not excluded pursuant to 27a(6).

(2) If the court determines that the petitioner has not yet served at least 9 years and 6 months at the time of the filing or is time-barred due to a prior application under this section, the court shall enter an order denying the petition and cause a copy of the order to be provided to the petitioner and, if the incarcerated individual is not the petitioner, the incarcerated individual.

(3) Unless the court finds good cause to hold the hearing at a later date or at the request of the petitioner, if the court determines that the facts stated in the petition meet the requirements under section 27a of this chapter, the court shall set a resentencing hearing not more than 45 days after the date the petition is filed with the court if 1 or more of the following circumstances apply to the petition:

(a) The incarcerated individual has 1 or more medical conditions leading to major limitations in activities of daily living, including, but not limited to, a serious mental illness or an intellectual or developmental disability.

(b) The incarcerated individual has 1 or more medical conditions that make the incarcerated individual more likely to contract an illness or disease while incarcerated that could lead to death or cause the incarcerated individual to develop a medical condition that prevents the performance of 1 or more activities of daily living without assistance. Such conditions include, but are not limited to, any condition related to a weakened immune system, including human immunodeficiency virus or acquired immune deficiency syndrome; debilitating health conditions that occur as a result of dementia, Alzheimer's disease, or similar degenerative brain disorders; cardiovascular disease; chronic lung disease or asthma; diabetes; hepatitis C; seizure disorders; the need for life-sustaining care such as feeding tubes or colostomy bags; disabling neurological disorders such as multiple sclerosis or amyotrophic lateral sclerosis; or any condition that requires or is expected to require specialty care or recurrent hospitalizations.

(c) The petition is filed by the prosecuting attorney.

(4) Unless the court finds good cause to hold the hearing at a later date or if the petitioner requests a delay, if the court determines that the facts stated in the petition meet the requirements under section 27a of this chapter, and if subsection (3) does not apply to a petition but 1 of the following circumstances do apply to the petition, the court shall set a resentencing hearing not more than 90 days after the date the petition is filed with the court:

(a) The incarcerated individual has served over 20 years of the incarcerated individual's sentence.

(b) The incarcerated individual is over 55 years of age.

(5) Unless the court finds good cause to hold the hearing at a later date or at the request of the petitioner, if the court determines that the facts stated in the petition meet the requirements under section 27a of this chapter and neither subsection (3) nor (4) apply to a petition, the court shall set a resentencing hearing not more than 180 days after the date the petition is filed with the court.

(6) If the court determines that the facts stated in the petition meet the requirements under section 27a of this chapter and the matter is subsequently assigned to a successor judge, the court shall not reconsider the sufficiency of the petition or decline to set a hearing.

(7) At the time the court sets a resentencing hearing under this section, the court will provide notification of the appointment to the incarcerated individual, the counsel appointed, the department of corrections, the prosecuting attorney, and the next friend of the incarcerated individual, if applicable.

(8) In a hearing under this section, the court may allow parties to present any evidence that the court deems relevant to the issue of the propriety of a reduction in sentencing. The evidence may include documents, live testimony, tangible objects, or any other class of evidence or information pertinent to sentencing. The court has exclusive discretion to determine the relevance of any proposed evidence. The incarcerated individual must be permitted to testify or to remain silent at the hearing.

(9) Unless the incarcerated individual waives the right to be present, the incarcerated individual must be present during a hearing under this section. The requirement under this subsection may be satisfied by the incarcerated individual appearing by video teleconference if the incarcerated individual consents to video appearance.

(10) A hearing under this section must be conducted on the record. Sec. 27d. (1) In a hearing conducted under section 27c of this chapter, the sentencing court shall consider all relevant evidence, which includes, but is not limited to, all of the following:

(a) The age of the incarcerated individual at the time of the offense and relevant research regarding child, adolescent, and young adult brain development.

(b) The age of the incarcerated individual at the time of the sentence modification petition and relevant research regarding the decline in criminal behavior as individuals grow older.

(c) The nature of the offense, including changing societal attitudes regarding the propriety of criminalizing the offense and the appropriate sentence for the offense.

(d) The history and characteristics of the incarcerated individual at the time of the petition for a reduction in sentence, including rehabilitation demonstrated by the incarcerated individual, the incarcerated individual's disciplinary record while incarcerated, and the incarcerated individual's efforts to participate in educational, therapeutic, and vocational opportunities while incarcerated.

(e) The circumstances of the offense, including the incarcerated individual's role in its commission, whether the incarcerated individual was under the influence of another, and the proportionality of the incarcerated individual's sentence compared to that received by other parties to the offense.

(f) The circumstances of the incarcerated individual's incarceration, including the incarcerated individual's conditions of confinement, the impact of the incarcerated individual's incarceration on the community, and any evidence that the incarcerated individual has been subjected to physical, sexual, or psychological abuse while incarcerated.

(g) Any evidence concerning the incarcerated individual's current physical or mental health and the incarcerated individual's health at the time of the offense.

(h) Any evidence concerning plea offers by the prosecuting attorney. (i) Any evidence that the incarcerated individual was denied effective assistance of counsel at any stage in the case resulting in the original sentence, including ineffective assistance of counsel during plea bargaining.

(j) Any oral or written statements provided by the victim's representative.

(k) Any evidence that the incarcerated individual was wrongfully convicted.

(l) Any evidence that the incarcerated individual was subjected to human trafficking and that the victimization was a contributing factor to the incarcerated individual's criminal behavior.

(m) Any evidence that the incarcerated individual was subjected to physical, sexual, or psychological abuse by an intimate partner or a family or household member and that the victimization was a contributing factor to the incarcerated individual's criminal behavior.

(n) The parole guidelines as calculated in accordance with MCL 791.233e, if available.

(o) The individual's family and home environment at the time of the offense, including evidence of childhood abuse or neglect, lack of adequate parenting or education, prior exposure to violence, and susceptibility to psychological damage or emotional disturbance.

(p) Any other information the court determines relevant to the decision of the court.

(q) Any information as to whether the individual might have been charged and convicted of a lesser offense if not for incompetencies associated with youth, intellectual disability, or mental illness—for example, the individual's inability to deal with police officers or prosecutors or his incapacity to assist his own attorneys.

(2) Upon the conclusion of the hearing, if the sentencing court finds that the petitioner has shown by a preponderance of the evidence that it is in the interest of justice to reduce the incarcerated individual's sentence, the court shall resentence the incarcerated individual to an appropriate reduced sentence.

(3) The court shall set forth, either on the record or in writing within 30 days of the hearing, the reasons for granting or denying a petition for resentencing.

Sec. 27e. (1) In calculating the new term to be served by the incarcerated individual, the court shall credit the incarcerated individual for any jail time credited toward the subject conviction as well as any period of incarceration credited toward the sentence originally imposed.

(2) If section 27c(3) of this chapter applies to the petition, there is a rebuttable presumption that the incarcerated individual's sentence must be reduced to time served.

(3) If the court finds that the incarcerated individual no longer poses a meaningful risk to the community, there is a rebuttable presumption that

the incarcerated individual's sentence must be reduced by at least 20% or to no longer than 5 years of incarceration from the date of the filing of the petition, whichever results in a shorter period of incarceration.

(4) If the prosecuting attorney is the petitioner, the new term of incarceration to be served by the incarcerated individual must not exceed the recommendation of the petitioner. The court may impose a shorter term of incarceration, including immediate release, than recommended by the petitioner.

(5) In calculating the new term to be served by the incarcerated individual, the court shall impose a sentence of time served, immediate parole, or a term of years. The court shall not impose life with parole.

Sec. 27f. (1) Upon receipt of a petition for resentencing under section 27a of this chapter, a prosecuting attorney shall promptly notify the victim of the incarcerated individual of the application and the hearing date, once calendared. The notice must be by first-class mail to the victim's last known address. The victim or the victim's designee has the right to appear and the right, as otherwise provided by law, to make an impact statement, oral or written, at the resentencing of the incarcerated individual regarding the impact of the offense conduct on the victim. The prosecuting attorney shall also promptly notify the victim of the incarcerated individual of any new sentence imposed pursuant to this chapter.

(2) If the incarcerated individual's underlying conviction is homicide, the prosecuting attorney shall consult with the victim's family before making any filing in relation to a petition for resentencing. (3) If the incarcerated individual would be otherwise ineligible for relief, except pursuant to the prosecuting attorney's consent under section 27a(5) of this chapter, the prosecuting attorney shall consult with the victim, if practicable, before consenting to the petition.

(4) Resentencing under section 27e of this chapter does not disturb any restitution awarded at the original sentencing.

(5) As used in this section, "victim" means that term as defined in section 2 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.752.

Sec. 27g. (1) An appeal from a resentencing under section 27e of this chapter may be taken by the incarcerated individual, petitioner, or prosecuting authority. An appeal from resentencing is an appeal as of

right or an appeal by leave, but an appeal is in the same manner as a first appeal from an initial sentence at the time of conviction. (2) An appeal from a denial of resentencing under sections 27c and 27d of this chapter may be taken by the incarcerated individual or petitioner. An appeal from a denial of resentencing is an appeal as of right or an appeal by leave, but an appeal is in the same manner as a first appeal from an initial sentence at the time of conviction.

Sec. 27h. (1) Resentencing under section 27e of this chapter does not abridge or modify any existing remedy an incarcerated individual may have for habeas corpus or judicial postconviction relief as provided by court rule or law, or any other legal framework.

(2) A petition filed under section 27a of this chapter does not impact and is not impacted by any pending petitions for habeas corpus or other postconviction proceeding provided for by court rule or law, nor shall the denial of a petition under section 27a of this chapter preclude such remedies from being granted.