



HOUSE BILL No. 5439

March 24 1994 Introduced by Rep Nye and referred to the Committee on Judiciary

A bill to amend sections 11, 12, and 13 of chapter IX and section 1 of chapter XI of Act No 175 of the Public Acts of 1927, entitled as amended

The code of criminal procedure, sections 11 and 12 of chapter IX as amended by Act No 90 of the Public Acts of 1988 and section 1 of chapter XI as amended by Act No 185 of the Public Acts of 1993, being sections 769 11, 769 12 769 13 and 771 1 of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 11 12, and 13 of chapter IX and sec-
2 tion 1 of chapter XI of Act No 175 of the Public Acts of 1927,
3 sections 11 and 12 of chapter IX as amended by Act No 90 of the
4 Public Acts of 1988 and section 1 of chapter XI as amended by Act
5 No 185 of the Public Acts of 1993, being sections 769 11,

1 769 12 769 13, and 771 1 of the Michigan Compiled Laws, are
2 amended to read as follows

3 CHAPTER IX

4 Sec 11 (1) ~~if~~ SUBJECT TO SUBSECTION (2), IF a person
5 has been convicted of 2 or more felonies attempts to commit fel-
6 onies, or both, whether the convictions occurred in this state or
7 would have been for felonies in this state if the convictions
8 obtained outside this state had been obtained in this state, and
9 that person commits a subsequent felony within this state the
10 person shall be punished upon conviction ~~as follows~~ BY IMPRIS-
11 ONMENT FOR LIFE A SENTENCE IMPOSED UNDER THIS SUBSECTION SHALL
12 NOT BE SUSPENDED

13 ~~(a) If the subsequent felony is punishable upon a first~~
14 ~~conviction by imprisonment for a term less than life then the~~
15 ~~court, except as otherwise provided in this section or section 1~~
16 ~~of chapter 11 may sentence the person to imprisonment for a max-~~
17 ~~imum term which is not more than twice the longest term pre-~~
18 ~~scribed by law for a first conviction of that offense or for a~~
19 ~~lesser term~~

20 ~~(b) If the subsequent felony is punishable upon a first con-~~
21 ~~viction by imprisonment for life, then the court, except as oth-~~
22 ~~erwise provided in this section or section 1 of chapter 11, may~~
23 ~~sentence the person to imprisonment for life or for a lesser~~
24 ~~term~~

25 (2) ~~(c)~~ If the subsequent felony is a major controlled
26 substance offense, the person shall be punished as provided ~~by~~
27 IN part 74 of the public health code Act No 368 of the Public

1 Acts of 1978 being sections 333 7401 to 333 7415 of the Michigan
2 Compiled Laws

3 ~~-(2) If the court pursuant to this section imposes a sen-~~
4 ~~tence of imprisonment for any term of years the court shall fix~~
5 ~~the length of both the minimum and maximum sentence within any~~
6 ~~specified limits in terms of years or fraction thereof and the~~
7 ~~sentence so imposed shall be considered an indeterminate~~
8 ~~sentence--~~

9 Sec 12 ~~-(1) If a person has been convicted of 3 or more~~
10 ~~felonies attempts to commit felonies, or both, whether the con-~~
11 ~~victions occurred in this state or would have been for felonies~~
12 ~~in this state if the convictions obtained outside this state had~~
13 ~~been obtained in this state, and that person commits a subsequent~~
14 ~~felony within this state the person shall be punished upon con-~~
15 ~~viction as follows--~~

16 ~~(a) If the subsequent felony is punishable upon a first con-~~
17 ~~viction by imprisonment for a maximum term of 5 years or more, or~~
18 ~~for life, then the court, except as otherwise provided in this~~
19 ~~section or section 1 of chapter 11 may sentence the person upon~~
20 ~~conviction of the fourth or subsequent offense to imprisonment in~~
21 ~~a state prison for the term of life or for a lesser term--~~

22 ~~(b) If the subsequent felony is punishable upon a first con-~~
23 ~~viction by imprisonment for a maximum term which is less than 5~~
24 ~~years, then the court, except as otherwise provided in this sec-~~
25 ~~tion or section 1 of chapter 11, may sentence the person to~~
26 ~~imprisonment for a term of 15 years or a lesser term--~~

1 ~~(c) If the subsequent felony is a major controlled substance~~
 2 ~~offense, the person shall be punished as provided by part 74 of~~
 3 ~~the public health code, Act No 368 of the Public Acts of 1978,~~
 4 ~~being sections 333-7401 to 333-7415 of the Michigan Compiled~~
 5 ~~Laws-~~

6 ~~(2) If the court pursuant to this section imposes a sentence~~
 7 ~~of imprisonment for any term of years, the court shall fix the~~
 8 ~~length of both the minimum and maximum sentence within any speci-~~
 9 ~~fied limits in terms of years or fraction thereof and the sen-~~
 10 ~~tence so imposed shall be considered an indeterminate sentence-~~

11 ~~(1) (3) Offenders sentenced under this section or sec-~~
 12 ~~tion 10 or 11 for offenses other than a major controlled sub-~~
 13 ~~stance offense shall~~ ARE not ~~be~~ eligible for parole before
 14 the expiration of the minimum term fixed by the sentencing judge
 15 at the time of sentence without the written approval of the sen-
 16 tencing judge or a successor A person to be punished under
 17 ~~this section or~~ section 10 or 11 need not have been indicted
 18 and convicted as a previous offender in order to receive the
 19 increased punishment provided in ~~this section or~~ section 11,
 20 but may be proceeded against as provided in section 13

21 ~~(2) (4) This section and sections~~ SECTIONS 10 and 11
 22 govern the length of sentence to be imposed for the commission of
 23 a subsequent felony and are not in derogation of other provisions
 24 of law ~~which~~ THAT permit or direct the imposition of a consecu-
 25 tive sentence for a subsequent felony

26 Sec 13 If after conviction and either before or after
 27 sentence it appears that a person convicted of a felony has

1 previously been convicted of ~~crimes~~ 1 OR MORE PRIOR FELONIES as
2 set forth in section 10 ~~, OR 11~~ ~~or 12~~ the prosecuting
3 attorney of the county in which the conviction was had may file a
4 separate or supplemental information in the cause accusing the
5 person of the previous convictions The court in which the con-
6 viction was had shall ~~cause~~ ORDER the person to be brought
7 before ~~it~~ THE COURT and shall inform him OR HER of the allega-
8 tions contained in the information and of his OR HER right to be
9 tried on the allegations and require the offender to say whether
10 he OR SHE is the same person as charged in the information ~~or~~
11 ~~not~~ If the offender says he OR SHE is not the same person or
12 remains silent, the court shall enter a plea of not guilty, and a
13 jury of 12 jurors shall be impaneled from the petit jurors serv-
14 ing at ~~the then~~ THAT TIME or FROM a following term of court to
15 determine the issues raised by the information and plea The
16 accused may waive trial by jury in the manner provided by this
17 act The usual practice in the trial of criminal actions shall
18 be followed in the impaneling of a jury and the trial of the
19 issue The prosecuting officer and the accused shall each be
20 allowed 5 peremptory challenges If the accused pleads guilty to
21 the information or if the jury returns a verdict of guilty, the
22 court may sentence the offender to the punishment prescribed in
23 section 10 ~~, OR 11~~ ~~, or 12,~~ and shall vacate the previous
24 sentence, deducting from the new sentence all time actually
25 served on the vacated sentence if required A warden, or prison,
26 probation, parole or other peace officer who knows that a person
27 charged with or convicted for the commission of a felony has been

1 previously convicted within the meaning of section 10 ~~7~~ OR 11
 2 ~~or 12~~ shall immediately report the facts to the prosecuting
 3 attorney of the county in which the person is charged or was
 4 sentenced

5 CHAPTER XI

6 Sec 1 (1) In ~~all prosecutions~~ A PROSECUTION for
 7 ~~felonies~~ A FELONY or ~~misdemeanors~~ A MISDEMEANOR except IN A
 8 PROSECUTION FOR murder treason criminal sexual conduct in the
 9 first or third degree ARMED robbery, ~~while armed and~~ A major
 10 controlled substance ~~offenses~~ OFFENSE not described in subsec-
 11 tion (4) OR A PROSECUTION UNDER SECTION 11 OF CHAPTER IX, if the
 12 defendant has been found guilty upon verdict or plea, and if it
 13 appears to the satisfaction of the court that the defendant is
 14 not likely again to engage in an offensive or criminal course of
 15 conduct and that the public good does not require that the
 16 defendant suffer the penalty imposed by law the court may place
 17 the defendant on probation under the charge and supervision of a
 18 probation officer

19 (2) Except as provided in subsection (4) in an action in
 20 which the court may place the defendant on probation the court
 21 may delay ~~the imposing of sentence of~~ SENTENCING the defendant
 22 for a period of not ~~to exceed~~ MORE THAN 1 year ~~for the purpose~~
 23 ~~of giving~~ TO GIVE the defendant an opportunity to prove to the
 24 court his or her eligibility for probation or other leniency com-
 25 patible with the ends of justice and the rehabilitation of the
 26 defendant When the sentencing is delayed, the court shall make
 27 an order stating the reason for the delay ~~, which~~ THE order

1 shall be entered upon the records of the court The delay in
 2 ~~passing sentence shall~~ SENTENCING THE DEFENDANT DOES not
 3 deprive the court of jurisdiction to sentence the defendant at
 4 any time during the period of delay

5 (3) If a defendant is before the circuit court and is ~~made~~
 6 subject to a delay in ~~imposing sentence~~ SENTENCING under sub-
 7 section (2) the court shall include in the delayed sentence
 8 order THE REQUIREMENT that the department of corrections ~~shall~~
 9 collect a supervision fee of not more than \$30 00 multiplied by
 10 the number of months of delay ordered but not more than 12
 11 months The fee is payable when the delayed sentence order is
 12 entered but the fee may be paid in monthly installments if the
 13 court approves installment payments for that defendant In
 14 determining the amount of the fee the court shall consider the
 15 defendant s projected income and financial resources The court
 16 shall use the following table of projected monthly income in
 17 determining the amount of the fee to be ordered

18	<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
19	\$ 0-249 99	\$ 0 00
20	\$ 250 00-499 99	\$10 00
21	\$ 500 00-749 99	\$20 00

1 \$ 750 00 or more \$30 00

2 The court may order a higher amount than indicated by the table
3 up to the maximum of \$30 00 multiplied by the number of months of
4 delay ordered but not more than 12 months if the court deter-
5 mines that the defendant has sufficient assets or other financial
6 resources to warrant the higher amount If the court orders a
7 higher amount, THE COURT SHALL STATE the amount and the reasons
8 for ordering that amount ~~shall be stated~~ in the ~~court~~ order
9 The fee shall be collected as provided in section 25a of Act
10 No 232 of the Public Acts of 1953, being section 791 225a of the
11 Michigan Compiled Laws A person shall not be subject to more
12 than 1 supervision fee at the same time If a supervision fee is
13 ordered for a person for any month or months during which that
14 person already is subject to a supervision fee, the court shall
15 waive the fee having the shorter remaining duration

16 (4) The sentencing judge may place a defendant on life pro-
17 bation pursuant to subsection (1) if the defendant is convicted
18 for a violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv) of
19 the public health code Act No 368 of the Public Acts of 1978
20 being sections 333 7401 or 333 7403 of the Michigan Compiled
21 Laws or conspiracy to commit either of those ~~2~~ offenses
22 Subsection (2) does not apply to this subsection

23 (5) Beginning June 1, 1988, this section does not apply to a
24 juvenile placed on probation and committed under section 1(3) or
25 (4) of chapter IX to a state institution or agency described in
26 the youth rehabilitation services act, Act No 150 of the Public

1 Acts of 1974 being sections 803 301 to 803 309 of the Michigan
2 Compiled Laws

3 Section 2 This amendatory act shall not take effect unless
4 all of the following bills of the 87th Legislature are enacted
5 into law

6 (a) Senate Bill No _____ or House Bill No 5440 (request
7 no 05948 94 a)

8 (b) Senate Bill No _____ or House Bill No 5441 (request
9 no 05948 94 b)