



SENATE BILL No. 1272

September 21, 1994, Introduced by Senators BERRYMAN and HART
and referred to the Committee on Judiciary

A bill to amend section 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,"

section 13 of chapter IX as amended by Act No 110 of the Public
Acts of 1994 and section 1 of chapter XI as amended by Act
No 185 of the Public Acts of 1993, being sections 769 13 and
771 1 of the Michigan Compiled Laws and to add section 12a to
chapter IX

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Section 13 of chapter IX and section 1 of chap-
2 ter XI of Act No 175 of the Public Acts of 1927, section 13 of
3 chapter IX as amended by Act No 110 of the Public Acts of 1994
4 and section 1 of chapter XI as amended by Act No 185 of the
5 Public Acts of 1993, being sections 769 13 and 771 1 of the

1 Michigan Compiled Laws, are amended and section 12a is added to
2 chapter IX to read as follows

3 CHAPTER IX

4 SEC 12A IF A PERSON HAS BEEN CONVICTED OF VIOLATING
5 SECTION 520B, 520C, OR 520D OF THE MICHIGAN PENAL CODE, ACT
6 NO 328 OF THE PUBLIC ACTS OF 1931, BEING SECTIONS 750 520B,
7 750 520C, AND 750 520D OF THE MICHIGAN COMPILED LAWS, OR A SUB-
8 STANTIALY SIMILAR LAW OF ANOTHER STATE OR OF THE UNITED STATES,
9 AND THAT PERSON COMMITS A VIOLATION OF SECTION 520B, 520C, OR
10 520D OF ACT NO 328 OF THE MICHIGAN PENAL CODE, THE PERSON SHALL
11 BE PUNISHED BY IMPRISONMENT FOR LIFE WITHOUT THE OPPORTUNITY FOR
12 PAROLE A SENTENCE IMPOSED UNDER THIS SECTION SHALL NOT BE
13 SUSPENDED

14 Sec 13 (1) In a criminal action, the prosecuting attorney
15 may seek to enhance the sentence of the defendant as provided
16 under section 10, 11, ~~or~~ 12, OR 12A of this chapter, by filing
17 a written notice of his or her intent to do so within 21 days
18 after the defendant's arraignment on the information charging the
19 underlying offense or, if arraignment is waived, within 21 days
20 after the filing of the information charging the underlying
21 offense

22 (2) A notice of intent to seek an enhanced sentence filed
23 under subsection (1) shall list the prior conviction or convic-
24 tions that will or may be relied upon for purposes of sentence
25 enhancement The notice shall be filed with the court and served
26 upon the defendant or his or her attorney within the time
27 provided in subsection (1) The notice may be personally served

1 upon the defendant or his or her attorney at the arraignment on
2 the information charging the underlying offense, or may be served
3 in the manner provided by law or court rule for service of writ-
4 ten pleadings The prosecuting attorney shall file a written
5 proof of service with the clerk of the court

6 (3) The prosecuting attorney may file notice of intent to
7 seek an enhanced sentence after the defendant has been convicted
8 of the underlying offense or a lesser offense upon his or her
9 plea of guilty or nolo contendere if the defendant pleads guilty
10 or nolo contendere at the arraignment on the information charging
11 the underlying offense, or within the time allowed for filing of
12 the notice under subsection (1)

13 (4) A defendant who has been given notice that the prosecut-
14 ing attorney will seek to enhance his or her sentence as provided
15 under section 10, 11, ~~or~~ 12, OR 12A of this chapter, may chal-
16 lenge the accuracy or constitutional validity of 1 or more of the
17 prior convictions listed in the notice by filing a written motion
18 with the court and by serving a copy of the motion upon the pros-
19 ecuting attorney in accordance with rules of the supreme court

20 (5) The existence of the defendant's prior conviction or
21 convictions shall be determined by the court, without a jury, at
22 sentencing, or at a separate hearing scheduled for that purpose
23 before sentencing The existence of a prior conviction may be
24 established by any evidence that is relevant for that purpose,
25 including, but not limited to, 1 or more of the following

26 (a) A copy of a judgment of conviction

1 (b) A transcript of a prior trial or a plea-taking or
2 sentencing proceeding

3 (c) Information contained in a presentence report

4 (d) A statement of the defendant

5 (6) The court shall resolve any challenges to the accuracy
6 or constitutional validity of a prior conviction or convictions
7 that have been raised in a motion filed under subsection (4) at
8 sentencing or at a separate hearing scheduled for that purpose
9 before sentencing The defendant, or his or her attorney, shall
10 be given an opportunity to deny, explain, or refute any evidence
11 or information pertaining to the defendant's prior conviction or
12 convictions before sentence is imposed, and shall be permitted to
13 present relevant evidence for that purpose The defendant shall
14 bear the burden of establishing a prima facie showing that an
15 alleged prior conviction is inaccurate or constitutionally
16 invalid If the defendant establishes a prima facie showing that
17 information or evidence concerning an alleged prior conviction is
18 inaccurate, the prosecuting attorney shall bear the burden of
19 proving, by a preponderance of the evidence, that the information
20 or evidence is accurate If the defendant establishes a prima
21 facie showing that an alleged prior conviction is constitution-
22 ally invalid, the prosecuting attorney shall bear the burden of
23 proving, by a preponderance of the evidence, that the prior con-
24 viction is constitutionally valid

25 CHAPTER XI

26 Sec 1 (1) In ~~all prosecutions~~ A PROSECUTION for
27 ~~felonies~~ A FELONY or ~~misdemeanors~~ A MISDEMEANOR, except IN A

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

12 (2) Except as provided in subsection (4), in an action in
13 which the court may place the defendant on probation, the court
14 may delay ~~the imposing of sentence of~~ SENTENCING the defendant
15 for a period of not ~~to exceed~~ MORE THAN 1 year ~~for the purpose~~
16 ~~of giving~~ TO GIVE the defendant an opportunity to prove to the
17 court his or her eligibility for probation or other leniency com-
18 patible with the ends of justice and the rehabilitation of the
19 defendant When the sentencing is delayed the court shall make
20 an order stating the reason for the delay ~~, which~~ THE order
21 shall be entered upon the records of the court The delay in
22 ~~passing sentence shall~~ SENTENCING THE DEFENDANT DOES not
23 deprive the court of jurisdiction to sentence the defendant at
24 any time during the period of delay

25 (3) If a defendant is before the circuit court and is ~~made~~
26 subject to a delay in ~~imposing sentence~~ SENTENCING under
27 subsection (2), the court shall include in the delayed sentence

1 order THE REQUIREMENT that the department of corrections ~~shall~~
 2 collect a supervision fee of not more than \$30 00 multiplied by
 3 the number of months of delay ordered, but not more than 12
 4 months The fee is payable when the delayed sentence order is
 5 entered, but the fee may be paid in monthly installments if the
 6 court approves installment payments for that defendant In
 7 determining the amount of the fee, the court shall consider the
 8 defendant's projected income and financial resources The court
 9 shall use the following table of projected monthly income in
 10 determining the amount of the fee to be ordered

11	<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
12	\$ 0-249 99	\$ 0 00
13	\$ 250 00-499 99	\$10 00
14	\$ 500 00-749 99	\$20 00
15	\$ 750 00 or more	\$30 00

16 The court may order a higher amount than indicated by the table,
 17 up to the maximum of \$30 00 multiplied by the number of months of
 18 delay ordered but not more than 12 months, if the court deter-
 19 mines that the defendant has sufficient assets or other financial
 20 resources to warrant the higher amount If the court orders a
 21 higher amount, THE COURT SHALL STATE the amount and the reasons
 22 for ordering that amount ~~shall be stated~~ in the ~~court~~ order

1 The fee shall be collected as provided in section 25a of Act
2 No 232 of the Public Acts of 1953, being section 791 225a of the
3 Michigan Compiled Laws A person shall not be subject to more
4 than 1 supervision fee at the same time If a supervision fee is
5 ordered for a person for any month or months during which that
6 person already is subject to a supervision fee, the court shall
7 waive the fee having the shorter remaining duration

8 (4) The sentencing judge may place a defendant on life pro-
9 bation pursuant to subsection (1) if the defendant is convicted
10 for a violation of section 7401(2)(a)(1v) or 7403(2)(a)(1v) of
11 the public health code, Act No 368 of the Public Acts of 1978,
12 being sections 333 7401 or 333 7403 of the Michigan Compiled
13 Laws, or conspiracy to commit either of those ~~2~~ offenses
14 Subsection (2) does not apply to this subsection

15 (5) Beginning June 1, 1988, this section does not apply to a
16 juvenile placed on probation and committed under section 1(3) or
17 (4) of chapter IX to a state institution or agency described in
18 the youth rehabilitation services act, Act No 150 of the Public
19 Acts of 1974, being sections 803 301 to 803 309 of the Michigan
20 Compiled Laws

21 Section 2 This amendatory act shall not take effect unless
22 Senate Bill No 1243

23 of the 87th Legislature is enacted into law