



SENATE BILL No. 1283

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

A bill to amend sections 10, 11, 12, and 13 of chapter IX of
Act No 175 of the Public Acts of 1927, entitled as amended
"The code of criminal procedure,"
sections 10, 11, and 12 as amended by Act No 90 of the Public
Acts of 1988 and section 13 as amended by Act No 110 of the
Public Acts of 1994, being sections 769 10, 769 11, 769 12, and
769 13 of the Michigan Compiled Laws and to add section 10a

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 10, 11, 12, and 13 of chapter IX of Act
2 No 175 of the Public Acts of 1927, sections 10, 11, and 12 as
3 amended by Act No 90 of the Public Acts of 1988 and section 13
4 as amended by Act No 110 of the Public Acts of 1994, being
5 sections 769 10, 769 11, 769 12, and 769 13 of the Michigan
6 Compiled Laws, are amended and section 10a is added to read as
7 follows

CHAPTER IX

1

2 Sec 10 (1) ~~If~~ EXCEPT AS PROVIDED IN SECTION 10A, IF a
3 person has been convicted of a felony, an attempt to commit a
4 felony, or both, whether the conviction occurred in this state or
5 would have been for a felony in this state if the conviction
6 obtained outside this state had been obtained in this state, and
7 that person commits a subsequent felony within this state, the
8 person shall be punished upon conviction as follows

9 (a) If the subsequent felony is punishable upon a first con-
10 viction by imprisonment for a term less than life, then the
11 court, except as otherwise provided in this section or in section
12 1 of chapter ~~11~~ XI, may place the person on probation or sen-
13 tence the person to imprisonment for a maximum term which is not
14 more than 1-1/2 times the longest term prescribed for a first
15 conviction of that offense or for a lesser term

16 (b) If the subsequent felony is punishable upon a first con-
17 viction by imprisonment for life then the court except as oth-
18 erwise provided in this section or in section 1 of chapter ~~11~~
19 XI, may place the person on probation or sentence the person to
20 imprisonment for life or for a lesser term

21 (c) If the subsequent felony is a major controlled substance
22 offense, the person shall be punished as provided ~~by~~ IN part 74
23 of the public health code, Act No 368 of the Public Acts of
24 1978, being sections 333 7401 to ~~333-7415~~ 333 7461 of the
25 Michigan Compiled Laws

26 (2) If the court pursuant to this section imposes a sentence
27 of imprisonment for any term of years, the court shall fix the

1 length of both the minimum and maximum sentence within any
2 specified limits in terms of years or fraction thereof and the
3 sentence so imposed shall be considered an indeterminate
4 sentence

5 SEC 10A (1) IF A PERSON HAS BEEN CONVICTED OF 1 OR MORE
6 SPECIFIED FELONIES, WHETHER THE CONVICTIONS OCCURRED IN THIS
7 STATE OR WOULD HAVE BEEN FOR SPECIFIED FELONIES IN THIS STATE IF
8 THE CONVICTIONS OBTAINED OUTSIDE THIS STATE HAD BEEN OBTAINED IN
9 THIS STATE, AND THAT PERSON SUBSEQUENTLY COMMITS A SPECIFIED
10 FELONY DESCRIBED IN SUBSECTION (2)(C) TO (N) WITHIN THIS STATE,
11 THE PERSON SHALL, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSEC-
12 TION, BE PUNISHED BY IMPRISONMENT FOR LIFE WITHOUT THE OPPORTU-
13 NITY FOR PAROLE A SENTENCE IMPOSED UNDER THIS SECTION SHALL NOT
14 BE SUSPENDED

15 (2) AS USED IN THIS SECTION, "SPECIFIED FELONY" MEANS 1 OR
16 MORE OF THE FOLLOWING

17 (A) MANUFACTURING, DELIVERING, OR POSSESSING WITH INTENT TO
18 MANUFACTURE OR DELIVER A CONTROLLED SUBSTANCE IN VIOLATION OF
19 SECTION 7401(2)(A)(1) TO (111) OF THE PUBLIC HEALTH CODE, ACT
20 NO 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333 7401 OF THE
21 MICHIGAN COMPILED LAWS

22 (B) KNOWINGLY OR INTENTIONALLY POSSESSING A CONTROLLED SUB-
23 STANCE IN VIOLATION OF SECTION 7403(2)(A)(1) TO (111) OF THE
24 PUBLIC HEALTH CODE, ACT NO 368 OF THE PUBLIC ACTS OF 1978, BEING
25 SECTION 333 7403 OF THE MICHIGAN COMPILED LAWS

1 (C) ASSAULT WITH INTENT TO MURDER IN VIOLATION OF SECTION 83
2 OF THE MICHIGAN PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF
3 1931, BEING SECTION 750 83 OF THE MICHIGAN COMPILED LAWS

4 (D) ASSAULT WITH INTENT TO DO GREAT BODILY HARM LESS THAN
5 MURDER IN VIOLATION OF SECTION 84 OF THE MICHIGAN PENAL CODE, ACT
6 NO 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION 750 84 OF THE
7 MICHIGAN COMPILED LAWS

8 (E) ATTEMPTED MURDER IN VIOLATION OF SECTION 91 OF THE
9 MICHIGAN PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF 1931,
10 BEING SECTION 750 91 OF THE MICHIGAN COMPILED LAWS

11 (F) FIRST DEGREE CHILD ABUSE IN VIOLATION OF SECTION 136B OF
12 THE MICHIGAN PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF 1931,
13 BEING SECTION 750 136B OF THE MICHIGAN COMPILED LAWS

14 (G) FIRST DEGREE MURDER IN VIOLATION OF SECTION 316 OF THE
15 MICHIGAN PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF 1931,
16 BEING SECTION 750 316 OF THE MICHIGAN COMPILED LAWS

17 (H) SECOND DEGREE MURDER IN VIOLATION OF SECTION 317 OF THE
18 MICHIGAN PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF 1931,
19 BEING SECTION 750 317 OF THE MICHIGAN COMPILED LAWS

20 (I) MANSLAUGHTER IN VIOLATION OF SECTION 321 OF THE MICHIGAN
21 PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION
22 750 321 OF THE MICHIGAN COMPILED LAWS

23 (J) MAYHEM IN VIOLATION OF SECTION 397 OF THE MICHIGAN PENAL
24 CODE, ACT NO 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION
25 750 397 OF THE MICHIGAN COMPILED LAWS

26 (K) FIRST DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF
27 SECTION 520B OF THE MICHIGAN PENAL CODE, ACT NO 328 OF THE

1 PUBLIC ACTS OF 1931, BEING SECTION 750 520B OF THE MICHIGAN
2 COMPILED LAWS

3 (1) SECOND DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF
4 SECTION 520C OF THE MICHIGAN PENAL CODE, ACT NO 328 OF THE
5 PUBLIC ACTS OF 1931, BEING SECTION 750 520C OF THE MICHIGAN
6 COMPILED LAWS

7 (M) THIRD DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF
8 SECTION 520D OF THE MICHIGAN PENAL CODE, ACT NO 328 OF THE
9 PUBLIC ACTS OF 1931, BEING SECTION 750 520D OF THE MICHIGAN
10 COMPILED LAWS

11 (N) ASSAULT WITH INTENT TO COMMIT FIRST DEGREE CRIMINAL
12 SEXUAL CONDUCT IN VIOLATION OF SECTION 520G OF THE MICHIGAN PENAL
13 CODE, ACT NO 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION
14 750 520G OF THE MICHIGAN COMPILED LAWS

15 (3) THIS SECTION DOES NOT APPLY TO A PERSON SUBJECT TO SEN-
16 TENCING UNDER SECTION 7413 OR 7413A OF THE PUBLIC HEALTH CODE,
17 ACT NO 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333 7413
18 AND 333 7413A OF THE MICHIGAN COMPILED LAWS

19 Sec 11 (1) ~~If~~ EXCEPT AS PROVIDED IN SECTION 10A IF a
20 person has been convicted of 2 or more felonies, attempts to
21 commit felonies, or both, whether the convictions occurred in
22 this state or would have been for felonies in this state if the
23 convictions obtained outside this state had been obtained in this
24 state, and that person commits a subsequent felony within this
25 state, the person shall be punished upon conviction as follows

26 (a) If the subsequent felony is punishable upon a first
27 conviction by imprisonment for a term less than life, then the

1 court, except as otherwise provided in this section or section 1
 2 of chapter ~~11~~ XI, may sentence the person to imprisonment for a
 3 maximum term which is not more than twice the longest term pre-
 4 scribed by law for a first conviction of that offense or for a
 5 lesser term

6 (b) If the subsequent felony is punishable upon a first con-
 7 viction by imprisonment for life, then the court, except as oth-
 8 erwise provided in this section or section 1 of chapter ~~11~~ XI,
 9 may sentence the person to imprisonment for life or for a lesser
 10 term

11 (c) If the subsequent felony is a major controlled substance
 12 offense, the person shall be punished as provided ~~by~~ IN part 74
 13 of the public health code, Act No 368 of the Public Acts of
 14 1978, being sections 333 7401 to ~~333-7415~~ 333 7461 of the
 15 Michigan Compiled Laws

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

21 Sec 12 (1) ~~If~~ EXCEPT AS PROVIDED IN SECTION 10A, IF a
 22 person has been convicted of 3 or more felonies, attempts to
 23 commit felonies, or both, whether the convictions occurred in
 24 this state or would have been for felonies in this state if the
 25 convictions obtained outside this state had been obtained in this
 26 state, and that person commits a subsequent felony within this
 27 state, the person shall be punished upon conviction as follows

1 (a) If the subsequent felony is punishable upon a first
2 conviction by imprisonment for a maximum term of 5 years or more,
3 or for life, then the court, except as otherwise provided in this
4 section or section 1 of chapter ~~11~~ XI, may sentence the person
5 upon conviction of the fourth or subsequent offense to imprison-
6 ment in a state prison for the term of life or for a lesser
7 term

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

13 (c) If the subsequent felony is a major controlled substance
14 offense, the person shall be punished as provided ~~by~~ IN part 74
15 of the public health code, Act No 368 of the Public Acts of
16 1978, being sections 333 7401 to ~~333 7415~~ 333 7461 of the
17 Michigan Compiled Laws

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

23 (3) Offenders sentenced under this section or section 10 or
24 11 OF THIS CHAPTER for offenses other than a major controlled
25 substance offense shall not be eligible for parole before the
26 expiration of the minimum term fixed by the sentencing judge at
27 the time of sentence without the written approval of the

1 sentencing judge or a successor A person to be punished under
2 this section or section 10 or 11 OF THIS CHAPTER need not have
3 been indicted and convicted as a previous offender in order to
4 receive the increased punishment provided in this section or sec-
5 tion 11, OF THIS CHAPTER but may be proceeded against as provided
6 in section 13 OF THIS CHAPTER

7 (4) This section and sections 10, 10A, and 11 OF THIS
8 CHAPTER govern the length of sentence to be imposed for the com-
9 mission of a subsequent felony and are not in derogation of other
10 provisions of law which permit or direct the imposition of a con-
11 secutive sentence for a subsequent felony

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

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

1 in the manner provided by law or court rule for service of
2 written pleadings The prosecuting attorney shall file a written
3 proof of service with the clerk of the court

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

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

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

24 (a) A copy of a judgment of conviction

25 (b) A transcript of a prior trial or a plea-taking or sen-
26 tencing proceeding

1 (c) Information contained in a presentence report

2 (d) A statement of the defendant

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

23 Section 2 This amendatory act shall not take effect unless
24 Senate Bill No 1282
25 of the 87th Legislature is enacted into law