

HOUSE BILL No. 5079

September 25, 2003, Introduced by Reps. Hardman, Stallworth and Plakas and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 1 of chapter IX (MCL 769.1), as amended by
1999 PA 87.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX

2 Sec. 1. (1) A judge of a court having jurisdiction may
3 pronounce judgment against and pass sentence upon a person
4 convicted of an offense in that court. The sentence shall not
5 exceed the sentence prescribed by law. The court shall sentence
6 a juvenile convicted of any of the following crimes in the same
7 manner as an adult:

8 (a) Arson of a dwelling in violation of section 72 of the
9 Michigan penal code, 1931 PA 328, MCL 750.72.

10 (b) Assault with intent to commit murder in violation of

1 section 83 of the Michigan penal code, 1931 PA 328, MCL 750.83.

2 (c) Assault with intent to maim in violation of section 86 of
3 the Michigan penal code, 1931 PA 328, MCL 750.86.

4 (d) Attempted murder in violation of section 91 of the
5 Michigan penal code, 1931 PA 328, MCL 750.91.

6 (e) Conspiracy to commit murder in violation of section 157a
7 of the Michigan penal code, 1931 PA 328, MCL 750.157a.

8 (f) Solicitation to commit murder in violation of section
9 157b of the Michigan penal code, 1931 PA 328, MCL 750.157b.

10 (g) First degree murder in violation of section 316 of the
11 Michigan penal code, 1931 PA 328, MCL 750.316.

12 (h) Second degree murder in violation of section 317 of the
13 Michigan penal code, 1931 PA 328, MCL 750.317.

14 (i) Kidnapping in violation of section 349 of the Michigan
15 penal code, 1931 PA 328, MCL 750.349.

16 (j) First degree criminal sexual conduct in violation of
17 section 520b of the Michigan penal code, 1931 PA 328, MCL
18 750.520b.

19 (k) Armed robbery in violation of section 529 of the Michigan
20 penal code, 1931 PA 328, MCL 750.529.

21 (l) Carjacking in violation of section 529a of the Michigan
22 penal code, 1931 PA 328, MCL 750.529a.

23 (2) A person convicted of a felony or of a misdemeanor
24 punishable by imprisonment for more than 92 days shall not be
25 sentenced until the court has examined the court file and has
26 determined that the person's fingerprints have been taken.

27 (3) Unless a juvenile is required to be sentenced in the same

1 manner as an adult under subsection (1), a judge of a court
2 having jurisdiction over a juvenile shall conduct a hearing at
3 the juvenile's sentencing to determine if the best interests of
4 the public would be served by placing the juvenile on probation
5 and committing the juvenile to an institution or agency described
6 in the youth rehabilitation services act, 1974 PA 150, MCL
7 803.301 to 803.309, or by imposing any other sentence provided by
8 law for an adult offender. Except as provided in subsection (5),
9 the court shall sentence the juvenile in the same manner as an
10 adult unless the court determines by a preponderance of the
11 evidence that the interests of the public would be best served by
12 placing the juvenile on probation and committing the juvenile to
13 an institution or agency described in the youth rehabilitation
14 services act, 1974 PA 150, MCL 803.301 to 803.309. The rules of
15 evidence do not apply to a hearing under this subsection. In
16 making the determination required under this subsection, the
17 judge shall consider all of the following, giving greater weight
18 to the seriousness of the alleged offense and the juvenile's
19 prior record of delinquency:

20 (a) The seriousness of the alleged offense in terms of
21 community protection, including, but not limited to, the
22 existence of any aggravating factors recognized by the sentencing
23 guidelines, the use of a firearm or other dangerous weapon, and
24 the impact on any victim.

25 (b) The juvenile's culpability in committing the alleged
26 offense, including, but not limited to, the level of the
27 juvenile's participation in planning and carrying out the offense

1 and the existence of any aggravating or mitigating factors
2 recognized by the sentencing guidelines.

3 (c) The juvenile's prior record of delinquency including, but
4 not limited to, any record of detention, any police record, any
5 school record, or any other evidence indicating prior delinquent
6 behavior.

7 (d) The juvenile's programming history, including, but not
8 limited to, the juvenile's past willingness to participate
9 meaningfully in available programming.

10 (e) The adequacy of the punishment or programming available
11 in the juvenile justice system.

12 (f) The dispositional options available for the juvenile.

13 (4) With the consent of the prosecutor and the defendant, the
14 court may waive the hearing required under subsection (3). If
15 the court waives the hearing required under subsection (3), the
16 court may place the juvenile on probation and commit the juvenile
17 to an institution or agency described in the youth rehabilitation
18 services act, 1974 PA 150, MCL 803.301 to 803.309, but shall not
19 impose any other sentence provided by law for an adult offender.

20 (5) If a juvenile is convicted of a violation or conspiracy
21 to commit a violation of section 7403(2)(a)(i) of the public
22 health code, 1978 PA 368, MCL 333.7403, **or a crime in which the**
23 **juvenile used a vehicle resulting in death**, the court shall
24 determine whether the best interests of the public would be
25 served by imposing the sentence provided by law for an adult
26 offender, by placing the individual on probation and committing
27 the individual to an institution or agency under subsection (3),

1 or by imposing a sentence of imprisonment for any term of years
2 but not less than 25 years. If the court determines by clear and
3 convincing evidence that the best interests of the public would
4 be served by imposing a sentence of imprisonment for any term of
5 years but not less than 25 years, the court may impose that
6 sentence. In making its determination, the court shall use the
7 criteria specified in subsection (3).

8 (6) The court shall state on the record the court's findings
9 of fact and conclusions of law for the probation and commitment
10 decision or sentencing decision made under subsection (3). If a
11 juvenile is committed under subsection (3) to an institution or
12 agency described in the youth rehabilitation services act, 1974
13 PA 150, MCL 803.301 to 803.309, a transcript of the court's
14 findings shall be sent to the family independence agency or
15 county juvenile agency, as applicable.

16 (7) If a juvenile is committed under subsection (3) or (4) to
17 an institution or agency described in the youth rehabilitation
18 services act, 1974 PA 150, MCL 803.301 to 803.309, the written
19 order of commitment shall contain a provision for the
20 reimbursement to the court by the juvenile or those responsible
21 for the juvenile's support, or both, for the cost of care or
22 service. The amount of reimbursement ordered shall be
23 reasonable, taking into account both the income and resources of
24 the juvenile and those responsible for the juvenile's support.
25 The amount may be based upon the guidelines and model schedule
26 prepared under section 18(6) of chapter XIIA of the probate code
27 of 1939, 1939 PA 288, MCL 712A.18. The reimbursement provision

1 applies during the entire period the juvenile remains in care
2 outside the juvenile's own home and under court supervision. The
3 court shall provide for the collection of all amounts ordered to
4 be reimbursed, and the money collected shall be accounted for and
5 reported to the county board of commissioners. Collections to
6 cover delinquent accounts or to pay the balance due on
7 reimbursement orders may be made after a juvenile is released or
8 discharged from care outside the juvenile's own home and under
9 court supervision. Twenty-five percent of all amounts collected
10 pursuant to an order entered under this subsection shall be
11 credited to the appropriate fund of the county to offset the
12 administrative cost of collections. The balance of all amounts
13 collected pursuant to an order entered under this subsection
14 shall be divided in the same ratio in which the county, state,
15 and federal government participate in the cost of care outside
16 the juvenile's own home and under county, state, or court
17 supervision. The court may also collect benefits paid by the
18 government of the United States for the cost of care of the
19 juvenile. Money collected for juveniles placed with or committed
20 to the family independence agency or a county juvenile agency
21 shall be accounted for and reported on an individual basis. In
22 cases of delinquent accounts, the court may also enter an order
23 to intercept state tax refunds or the federal income tax refund
24 of a child, parent, guardian, or custodian and initiate the
25 necessary offset proceedings in order to recover the cost of care
26 or service. The court shall send to the person who is the
27 subject of the intercept order advance written notice of the

1 proposed offset. The notice shall include notice of the
2 opportunity to contest the offset on the grounds that the
3 intercept is not proper because of a mistake of fact concerning
4 the amount of the delinquency or the identity of the person
5 subject to the order. The court shall provide for the prompt
6 reimbursement of an amount withheld in error or an amount found
7 to exceed the delinquent amount.

8 (8) If the court appoints an attorney to represent a
9 juvenile, an order entered under this section may require the
10 juvenile or person responsible for the juvenile's support, or
11 both, to reimburse the court for attorney fees.

12 (9) An order directed to a person responsible for the
13 juvenile's support under this section is not binding on the
14 person unless an opportunity for a hearing has been given and
15 until a copy of the order is served on the person, personally or
16 by first-class mail to the person's last known address.

17 (10) If a juvenile is placed on probation and committed under
18 subsection (3) or (4) to an institution or agency described in
19 the youth rehabilitation services act, 1974 PA 150, MCL 803.301
20 to 803.309, the court shall retain jurisdiction over the juvenile
21 while the juvenile is on probation and committed to that
22 institution or agency.

23 (11) If the court has retained jurisdiction over a juvenile
24 under subsection (10), the court shall conduct an annual review
25 of the services being provided to the juvenile, the juvenile's
26 placement, and the juvenile's progress in that placement. In
27 conducting this review, the court shall examine the juvenile's

1 annual report prepared under section 3 of the juvenile facilities
2 act, 1988 PA 73, MCL 803.223. The court may order changes in the
3 juvenile's placement or treatment plan including, but not limited
4 to, committing the juvenile to the jurisdiction of the department
5 of corrections, based on the review.

6 (12) If an individual who is under the court's jurisdiction
7 under section 4 of chapter XIIA of the probate code of 1939, 1939
8 PA 288, MCL 712A.4, is convicted of a violation or conspiracy to
9 commit a violation of section 7403(2)(a)(i) of the public health
10 code, 1978 PA 368, MCL 333.7403, **or a crime in which the**
11 **individual used a vehicle resulting in death**, the court shall
12 determine whether the best interests of the public would be
13 served by imposing the sentence provided by law for an adult
14 offender or by imposing a sentence of imprisonment for any term
15 of years but not less than 25 years. If the court determines by
16 clear and convincing evidence that the best interests of the
17 public would be served by imposing a sentence of imprisonment for
18 any term of years but not less than 25 years, the court may
19 impose that sentence. In making its determination, the court
20 shall use the criteria specified in subsection (3) to the extent
21 they apply.

22 (13) If the defendant is sentenced for an offense other than
23 a listed offense as defined in ~~section 2(d)(i) to (ix) and (xi)~~
24 ~~to (xiii)~~ **section 2(e)(i) to (ix) and (xi) to (xiii)** of the sex
25 offenders registration act, 1994 PA 295, MCL 28.722, the court
26 shall determine if the offense is a violation of a law of this
27 state or a local ordinance of a municipality of this state that

1 by its nature constitutes a sexual offense against an individual
2 who is less than 18 years of age. If so, the conviction is for a
3 listed offense as defined in ~~section 2(d)(x)~~ **section 2(e)(x)** of
4 the sex offenders registration act, 1994 PA 295, MCL 28.722, and
5 the court shall include the basis for that determination on the
6 record and include the determination in the judgment of
7 sentence.

8 (14) When sentencing a person convicted of a misdemeanor
9 involving the illegal delivery, possession, or use of alcohol or
10 a controlled substance or a felony, the court shall examine the
11 presentence investigation report and determine if the person
12 being sentenced is licensed or registered under article 15 of the
13 public health code, 1978 PA 368, MCL 333.16101 to 333.18838. The
14 court shall also examine the court file and determine if a report
15 of the conviction upon which the person is being sentenced has
16 been forwarded to the department of consumer and industry
17 services as provided in section 16a. If the report has not been
18 forwarded to the department of consumer and industry services,
19 the court shall order the clerk of the court to immediately
20 prepare and forward the report as provided in section 16a.