

# SENATE BILL NO. 431

June 28, 2023, Introduced by Senators MOSS, SANTANA, CHANG, IRWIN, WOJNO, BAYER, SHINK and GEISS and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

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~~**must** not  
5 exceed the sentence prescribed by law. The court shall sentence a  
6 juvenile convicted of any of the following crimes in the same

1 manner as an adult:

2 (a) ~~Arson of a dwelling~~ **First degree arson** in violation of  
3 section 72 of the Michigan penal code, 1931 PA 328, MCL 750.72.

4 (b) Assault with intent to commit murder in violation of  
5 section 83 of the Michigan penal code, 1931 PA 328, MCL 750.83.

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

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

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

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

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

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

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

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

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

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

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

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

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

25           (b) The juvenile's culpability in committing the alleged  
26 offense, including, but not limited to, the level of the juvenile's  
27 participation in planning and carrying out the offense and the  
28 existence of any aggravating or mitigating factors recognized by  
29 the sentencing guidelines.

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

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

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

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

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

18 (5) If a juvenile is convicted of a violation or conspiracy to  
19 commit a violation of section 7403(2)(a)(i) of the public health  
20 code, 1978 PA 368, MCL 333.7403, the court shall determine whether  
21 the best interests of the public would be served by imposing the  
22 sentence provided by law for an adult offender, by placing the  
23 individual on probation and committing the individual to an  
24 institution or agency under subsection (3), or by imposing a  
25 sentence of imprisonment for any term of years but not less than 25  
26 years. If the court determines by clear and convincing evidence  
27 that the best interests of the public would be served by imposing a  
28 sentence of imprisonment for any term of years but not less than 25  
29 years, the court may impose that sentence. In making its

1 determination, the court shall use the criteria specified in  
2 subsection (3).

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

11 (7) ~~If a juvenile is committed under subsection (3) or (4) to~~  
12 ~~an institution or agency described in the youth rehabilitation~~  
13 ~~services act, 1974 PA 150, MCL 803.301 to 803.309, the written~~  
14 ~~order of commitment shall contain a provision for the reimbursement~~  
15 ~~to the court by the juvenile or those responsible for the~~  
16 ~~juvenile's support, or both, for the cost of care or service. The~~  
17 ~~amount of reimbursement ordered shall be reasonable, taking into~~  
18 ~~account both the income and resources of the juvenile and those~~  
19 ~~responsible for the juvenile's support. The amount may be based~~  
20 ~~upon the guidelines and model schedule prepared under section 18(6)~~  
21 ~~of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL~~  
22 ~~712A.18. The reimbursement provision applies during the entire~~  
23 ~~period the juvenile remains in care outside the juvenile's own home~~  
24 ~~and under court supervision. The court shall provide for the~~  
25 ~~collection of all amounts ordered to be reimbursed, and the money~~  
26 ~~collected shall be accounted for and reported to the county board~~  
27 ~~of commissioners. Collections to cover delinquent accounts or to~~  
28 ~~pay the balance due on reimbursement orders may be made after a~~  
29 ~~juvenile is released or discharged from care outside the juvenile's~~

~~1 own home and under court supervision. Twenty five percent of all~~  
~~2 amounts collected pursuant to an order entered under this~~  
~~3 subsection shall be credited to the appropriate fund of the county~~  
~~4 to offset the administrative cost of collections. The balance of~~  
~~5 all amounts collected pursuant to an order entered under this~~  
~~6 subsection shall be divided in the same ratio in which the county,~~  
~~7 state, and federal government participate in the cost of care~~  
~~8 outside the juvenile's own home and under county, state, or court~~  
~~9 supervision. The court may also collect benefits paid by the~~  
~~10 government of the United States for the cost of care of the~~  
~~11 juvenile. Money collected for juveniles placed with or committed to~~  
~~12 the family independence agency~~ **department of health and human**  
~~13 services~~ or a county juvenile agency ~~shall~~ **must** be accounted for  
~~14 and reported on an individual basis. In cases of delinquent~~  
~~15 accounts, the court may also enter an order to intercept state tax~~  
~~16 refunds or the federal income tax refund of a child, parent,~~  
~~17 guardian, or custodian and initiate the necessary offset~~  
~~18 proceedings in order to recover the cost of care or service. The~~  
~~19 court shall send to the person who is the subject of the intercept~~  
~~20 order advance written notice of the proposed offset. The notice~~  
~~21 shall include notice of the opportunity to contest the offset on~~  
~~22 the grounds that the intercept is not proper because of a mistake~~  
~~23 of fact concerning the amount of the delinquency or the identity of~~  
~~24 the person subject to the order. The court shall provide for the~~  
~~25 prompt reimbursement of an amount withheld in error or an amount~~  
~~26 found to exceed the delinquent amount.~~

~~27 (8) If the court appoints an attorney to represent a juvenile,~~  
~~28 an order entered under this section may require the juvenile or~~  
~~29 person responsible for the juvenile's support, or both, to~~

1 ~~reimburse the court for attorney fees.~~

2       **(8)** ~~(9)~~—An order directed to a person responsible for the  
3 juvenile's support under this section is not binding on the person  
4 unless an opportunity for a hearing has been given and until a copy  
5 of the order is served on the person, personally or by first-class  
6 mail to the person's last known address.

7       **(9)** ~~(10)~~—If a juvenile is placed on probation and committed  
8 under subsection (3) or (4) to an institution or agency described  
9 in the youth rehabilitation services act, 1974 PA 150, MCL 803.301  
10 to 803.309, the court shall retain jurisdiction over the juvenile  
11 while the juvenile is on probation and committed to that  
12 institution or agency.

13       **(10)** ~~(11)~~—If the court has retained jurisdiction over a  
14 juvenile under subsection ~~(10)~~, **(9)**, the court shall conduct an  
15 annual review of the services being provided to the juvenile, the  
16 juvenile's placement, and the juvenile's progress in that  
17 placement. In conducting this review, the court shall examine the  
18 juvenile's annual report prepared under section 3 of the juvenile  
19 facilities act, 1988 PA 73, MCL 803.223. The court may order  
20 changes in the juvenile's placement or treatment plan including,  
21 but not limited to, committing the juvenile to the jurisdiction of  
22 the department of corrections, based on the review.

23       **(11)** ~~(12)~~—If an individual who is under the court's  
24 jurisdiction under section 4 of chapter XIIIA of the probate code of  
25 1939, 1939 PA 288, MCL 712A.4, is convicted of a violation or  
26 conspiracy to commit a violation of section 7403(2)(a)(i) of the  
27 public health code, 1978 PA 368, MCL 333.7403, the court shall  
28 determine whether the best interests of the public would be served  
29 by imposing the sentence provided by law for an adult offender or

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

8       **(12)** ~~(13)~~—If the defendant is sentenced for an offense other  
9 than a listed offense as defined in section ~~2(d)(i) to (ix) and (xi)~~  
10 ~~to (xiii)~~ **2** of the sex offenders registration act, 1994 PA 295, MCL  
11 28.722, the court shall determine if the offense is a violation of  
12 a law of this state or a local ordinance of a municipality of this  
13 state that by its nature constitutes a sexual offense against an  
14 individual who is less than 18 years of age. If so, the conviction  
15 is for a listed offense as defined in section ~~2(d)(x)~~ **2** of the sex  
16 offenders registration act, 1994 PA 295, MCL 28.722, and the court  
17 shall include the basis for that determination on the record and  
18 include the determination in the judgment of sentence.

19       **(13)** ~~(14)~~—When sentencing a person convicted of a misdemeanor  
20 involving the illegal delivery, possession, or use of alcohol or a  
21 controlled substance or a felony, the court shall examine the  
22 presentence investigation report and determine if the person being  
23 sentenced is licensed or registered under article 15 of the public  
24 health code, 1978 PA 368, MCL 333.16101 to 333.18838. The court  
25 shall also examine the court file and determine if a report of the  
26 conviction upon which the person is being sentenced has been  
27 forwarded to the department of ~~consumer and industry services~~  
28 **licensing and regulatory affairs** as provided in section 16a **of this**  
29 **chapter**. If the report has not been forwarded to the department of



1 ~~consumer and industry services,~~ **licensing and regulatory affairs,**  
2 the court shall order the clerk of the court to immediately prepare  
3 and forward the report as provided in section 16a **of this chapter.**

4       Enacting section 1. This amendatory act takes effect July 1,  
5 2024.