



SENATE BILL No. 291

February 16, 1995, Introduced by Senators BERRYMAN, KOIVISTO, HART, CHERRY, MILLER, DEBEAUSSAERT, PETERS and DINGELL 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 and 11 as amended by Act No. 90 of the Public Acts of 1988, section 12 as amended by Act No. 445 of the Public Acts of 1994, 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 to chapter IX.

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 and 11 as amended
3 by Act No. 90 of the Public Acts of 1988, section 12 as amended
4 by Act No. 445 of the Public Acts of 1994, and section 13 as
5 amended by Act No. 110 of the Public Acts of 1994, being
6 sections 769.10, 769.11, 769.12, and 769.13 of the Michigan

1 Compiled Laws, are amended and section 10a is added to chapter IX
2 to read as follows:

3 CHAPTER IX

4 Sec. 10. (1) ~~If~~ EXCEPT AS PROVIDED IN SECTION 10A, IF a
5 person has been convicted of a felony, an attempt to commit a
6 felony, or both, whether the conviction occurred in this state or
7 would have been for a felony in this state if the conviction
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:

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

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

23 (c) If the subsequent felony is a major controlled substance
24 offense, the person shall be punished as provided ~~by~~ IN part 74
25 of the public health code, Act No. 368 of the Public Acts of
26 1978, being sections 333.7401 to ~~333.7415~~ 333.7461 of the
27 Michigan Compiled Laws.

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

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

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

18 (A) MANUFACTURING, DELIVERING, OR POSSESSING WITH INTENT TO
19 MANUFACTURE OR DELIVER A CONTROLLED SUBSTANCE IN VIOLATION OF
20 SECTION 7401(2) (A) (i) TO (iii) OF THE PUBLIC HEALTH CODE, ACT
21 NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.7401 OF THE
22 MICHIGAN COMPILED LAWS.

23 (B) KNOWINGLY OR INTENTIONALLY POSSESSING A CONTROLLED SUB-
24 STANCE IN VIOLATION OF SECTION 7403(2) (A) (i) TO (iii) OF THE
25 PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING
26 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 (L) 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 OF THE PUBLIC HEALTH CODE, ACT NO. 368
17 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.7413 OF THE
18 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 any combination of 3 or more felo-
23 nies or attempts to commit felonies, whether the convictions
24 occurred in this state or would have been for felonies or
25 attempts to commit felonies in this state if obtained in this
26 state, and that person commits a subsequent felony within this
27 state, the person shall be punished upon conviction of the

1 subsequent felony and sentencing under section 13 of this chapter
2 as follows:

3 (a) If the subsequent felony is punishable upon a first con-
4 viction by imprisonment for a maximum term of 5 years or more or
5 for life, the court, except as otherwise provided in this section
6 or section 1 of chapter XI, may sentence the person upon convic-
7 tion of the fourth or subsequent offense to imprisonment for life
8 or for a lesser term.

9 (b) If the subsequent felony is punishable upon a first con-
10 viction by imprisonment for a maximum term that is less than 5
11 years, the court, except as otherwise provided in this section or
12 section 1 of chapter XI, may sentence the person to imprisonment
13 for a maximum term of not more than 15 years.

14 (c) If the subsequent felony is a major controlled substance
15 offense, the person shall be punished as provided by part 74 of
16 the public health code, Act No. 368 of the Public Acts of 1978,
17 being sections 333.7401 to 333.7461 of the Michigan Compiled
18 Laws.

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

25 (3) An offender sentenced under this section or section 10
26 or 11 of this chapter for an offense other than a major

1 controlled substance offense is not eligible for parole until
2 expiration of the following:

3 (a) For a prisoner other than a prisoner subject to disci-
4 plinary time, the minimum term fixed by the sentencing judge at
5 the time of sentence unless the sentencing judge or a successor
6 gives written approval for parole at an earlier date authorized
7 by law.

8 (b) For a prisoner subject to disciplinary time, the minimum
9 term fixed by the sentencing judge plus any disciplinary time
10 accumulated pursuant to section 34 of Act No. 118 of the Public
11 Acts of 1893, being section 800.34 of the Michigan Compiled
12 Laws.

13 (4) This section and sections 10 and 11 of this chapter are
14 not in derogation of other provisions of law that permit or
15 direct the imposition of a consecutive sentence for a subsequent
16 felony.

17 (5) As used in this section, "prisoner subject to disci-
18 plinary time" means that term as defined in section 34 of Act
19 No. 118 of the Public Acts of 1893, being section 800.34 of the
20 Michigan Compiled Laws. THE PROVISIONS OF THIS SECTION REGARDING
21 PRISONERS SUBJECT TO DISCIPLINARY TIME TAKE EFFECT BEGINNING ON
22 THE EFFECTIVE DATE OF ACT NO. 217 OF THE PUBLIC ACTS OF 1994, AS
23 PRESCRIBED IN ENACTING SECTION 2 OF THAT AMENDATORY ACT.

24 Sec. 13. (1) In a criminal action, the prosecuting attorney
25 may seek to enhance the sentence of the defendant as provided
26 under section 10, 10A, 11, or 12 of this chapter ~~—~~ by filing a
27 written notice of his or her intent to do so within 21 days after

1 the defendant's arraignment on the information charging the
2 underlying offense or, if arraignment is waived, within 21 days
3 after the filing of the information charging the underlying
4 offense.

5 (2) A notice of intent to seek an enhanced sentence filed
6 under subsection (1) shall list the prior conviction or convic-
7 tions that will or may be relied upon for purposes of sentence
8 enhancement. The notice shall be filed with the court and served
9 upon the defendant or his or her attorney within the time pro-
10 vided in subsection (1). The notice may be personally served
11 upon the defendant or his or her attorney at the arraignment on
12 the information charging the underlying offense, or may be served
13 in the manner provided by law or court rule for service of writ-
14 ten pleadings. The prosecuting attorney shall file a written
15 proof of service with the clerk of the court.

16 (3) The prosecuting attorney may file notice of intent to
17 seek an enhanced sentence after the defendant has been convicted
18 of the underlying offense or a lesser offense upon his or her
19 plea of guilty or nolo contendere if the defendant pleads guilty
20 or nolo contendere at the arraignment on the information charging
21 the underlying offense, or within the time allowed for filing of
22 the notice under subsection (1).

23 (4) A defendant who has been given notice that the prosecut-
24 ing attorney will seek to enhance his or her sentence as provided
25 under section 10, 10A, 11, or 12 of this chapter ~~—~~ may chal-
26 lenge the accuracy or constitutional validity of 1 or more of the
27 prior convictions listed in the notice by filing a written motion

1 with the court and by serving a copy of the motion upon the
2 prosecuting attorney in accordance with rules of the supreme
3 court.

4 (5) The existence of the defendant's prior conviction or
5 convictions shall be determined by the court, without a jury, at
6 sentencing, or at a separate hearing scheduled for that purpose
7 before sentencing. The existence of a prior conviction may be
8 established by any evidence that is relevant for that purpose,
9 including, but not limited to, 1 or more of the following:

10 (a) A copy of a judgment of conviction.

11 (b) A transcript of a prior trial or a plea-taking or sen-
12 tencing proceeding.

13 (c) Information contained in a presentence report.

14 (d) A statement of the defendant.

15 (6) The court shall resolve any challenges to the accuracy
16 or constitutional validity of a prior conviction or convictions
17 that have been raised in a motion filed under subsection (4) at
18 sentencing or at a separate hearing scheduled for that purpose
19 before sentencing. The defendant, or his or her attorney, shall
20 be given an opportunity to deny, explain, or refute any evidence
21 or information pertaining to the defendant's prior conviction or
22 convictions before sentence is imposed, and shall be permitted to
23 present relevant evidence for that purpose. The defendant shall
24 bear the burden of establishing a prima facie showing that an
25 alleged prior conviction is inaccurate or constitutionally
26 invalid. If the defendant establishes a prima facie showing that
27 information or evidence concerning an alleged prior conviction is

1 inaccurate, the prosecuting attorney shall bear the burden of
2 proving, by a preponderance of the evidence, that the information
3 or evidence is accurate. If the defendant establishes a prima
4 facie showing that an alleged prior conviction is constitution-
5 ally invalid, the prosecuting attorney shall bear the burden of
6 proving, by a preponderance of the evidence, that the prior con-
7 viction is constitutionally valid.

8 Section 2. This amendatory act shall not take effect unless
9 all of the following bills of the 88th Legislature are enacted
10 into law:

11 (a) Senate Bill No. 290.

12

13 (b) Senate Bill No. 292.

14