

SENATE BILL No. 1294

May 7, 2008, Introduced by Senators ANDERSON, PRUSI, CHERRY, SWITALSKI, BASHAM, CLARK-COLEMAN, SCOTT, THOMAS, JACOBS, SCHAUER, GLEASON, CLARKE, BARCIA, BRATER, WHITMER and HUNTER and referred to the Committee on Government Operations and Reform.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 39, 40, 43, and 46 of chapter XVII (MCL
777.39, 777.40, 777.43, and 777.46), section 39 as amended by
2006 PA 548, section 40 as added by 1998 PA 317, section 43 as
amended by 2002 PA 666, and section 46 as amended by 1999 PA 227,
and by adding section 36a to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

SEC. 36A. IF A PERSON IS CHARGED WITH AND CONVICTED OF MORE
THAN 1 CRIME AGAINST A VULNERABLE ADULT AS THAT TERM IS DEFINED
UNDER SECTION 145M OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL
750.145M, THE COURT MAY ORDER THE TERMS OF IMPRISONMENT TO BE
SERVED CONSECUTIVELY TO EACH OTHER.

CHAPTER XVII

Sec. 39. (1) Offense variable 9 is number of victims. Score offense variable 9 by determining which of the following apply and by assigning the number of points attributable to the ~~one~~1 that has the highest number of points:

(a) Multiple deaths occurred..... 100 points

(b) There were 10 or more victims who were placed in danger of physical injury or death, or 20 or more victims who were placed in danger of property loss..... 25 points

(c) There were 2 to 9 victims who were placed in danger of physical injury or death, or 4 to 19 victims who were placed in danger of property loss..... 10 points

(d) There were fewer than 2 victims who were placed in danger of physical injury or death, or fewer than 4 victims who were placed in danger of property loss..... 0 points

(2) All of the following apply to scoring offense variable 9:

(a) Count each person who was placed in danger of physical injury ~~or loss of life or~~ property as a victim.

(b) Score 100 points only in homicide cases.

Sec. 40. (1) Offense variable 10 is exploitation of a vulnerable victim. Score offense variable 10 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- 1 (A) **PREDATORY CONDUCT TOWARD A VULNERABLE**
 2 **ADULT WAS INVOLVED..... 40 POINTS**
 3 (B) ~~(a)~~ **Predatory conduct TOWARD A VICTIM**
 4 **OTHER THAN A VULNERABLE ADULT** was involved..... 15 points
 5 (C) ~~(b)~~ The offender exploited a victim's
 6 physical disability, mental disability, youth or
 7 agedness, or a domestic relationship, or the
 8 offender abused his or her authority status..... ~~10~~ 20 points
 9 (D) ~~(c)~~ The offender exploited a victim by
 10 his or her difference in size or strength, or
 11 both, or exploited a victim who was intoxicated,
 12 under the influence of drugs, asleep, or
 13 unconscious..... 5 points
 14 (E) ~~(d)~~ The offender did not exploit a
 15 victim's vulnerability..... 0 points

16 (2) The mere existence of 1 or more factors described in
 17 subsection (1) does not automatically equate with victim
 18 vulnerability.

19 (3) As used in this section:

20 (a) "Predatory conduct" means preoffense conduct directed at
 21 a victim for the primary purpose of victimization.

22 (b) "Exploit" means to manipulate a victim for selfish or
 23 unethical purposes.

24 (c) "Vulnerability" means the readily apparent
 25 susceptibility of a victim to injury, physical restraint,
 26 persuasion, or temptation.

27 (d) "Abuse of authority status" means a victim was exploited
 28 out of fear or deference to an authority figure, including, but

1 not limited to, a parent, physician, or teacher.

2 Sec. 43. (1) Offense variable 13 is continuing pattern of
3 criminal behavior. Score offense variable 13 by determining which
4 of the following apply and by assigning the number of points
5 attributable to the one that has the highest number of points:

6 (a) The offense was part of a pattern of
7 felonious criminal activity involving 3 or more
8 sexual penetrations against a person or persons
9 less than 13 years of age..... 50 points

10 **(B) THE OFFENSE WAS PART OF A PATTERN OF**
11 **FELONIOUS CRIMINAL ACTIVITY AGAINST A PERSON OR**
12 **PROPERTY IF THE VICTIM IS A VULNERABLE ADULT..... 50 POINTS**

13 (C) ~~(b)~~ The offense was part of a pattern of
14 felonious criminal activity involving 3 or more
15 crimes against a person..... 25 points

16 (D) ~~(c)~~ The offense was part of a pattern of
17 felonious criminal activity involving a
18 combination of 3 or more crimes against a person
19 or property or a violation of section 7401(2)(a)(i)
20 to (iii) or section 7403(2)(a)(i) to (iii)..... 10 points

21 (E) ~~(d)~~ The offense was part of a pattern of
22 felonious criminal activity directly related to
23 membership in an organized criminal group..... 10 points

24 (F) ~~(e)~~ The offense was part of a pattern of
25 felonious criminal activity involving a
26 combination of 3 or more violations of section
27 7401(2)(a)(i) to (iii) or section 7403(2)(a)(i)
28 to (iii)..... 10 points

29 (G) ~~(f)~~ The offense was part of a pattern of

1 felonious criminal activity involving 3 or more
 2 crimes against property..... 5 points
 3 (H) ~~(g)~~ No pattern of felonious criminal
 4 activity existed..... 0 points

5 (2) All of the following apply to scoring offense variable 13:

6 (a) For determining the appropriate points under this
 7 variable, all crimes within a 5-year period, including the
 8 sentencing offense, shall be counted regardless of whether the
 9 offense resulted in a conviction.

10 (b) The presence or absence of multiple offenders, the age
 11 of the offenders, or the degree of sophistication of the
 12 organized criminal group is not as important as the fact of the
 13 group's existence, which may be reasonably inferred from the
 14 facts surrounding the sentencing offense.

15 (c) Except for offenses related to membership in an
 16 organized criminal group, do not score conduct scored in offense
 17 variable 11 or 12.

18 (d) Score 50 points only if the sentencing offense is first
 19 degree criminal sexual conduct **OR THE VICTIM IS A VULNERABLE**
 20 **ADULT.**

21 (e) Do not count more than 1 controlled substance offense
 22 arising out of the criminal episode for which the person is being
 23 sentenced.

24 (f) Do not count more than 1 crime involving the same
 25 controlled substance. For example, do not count conspiracy and a
 26 substantive offense involving the same amount of controlled
 27 substances or possession and delivery of the same amount of

1 controlled substances.

2 Sec. 46. (1) Offense variable 16 is property obtained,
3 damaged, lost, or destroyed. Score offense variable 16 by
4 determining which of the following apply and by assigning the
5 number of points attributable to the one that has the highest
6 number of points:

7 **(A) THE PROPERTY STOLEN DEPRIVES A VULNERABLE**
8 **ADULT OF ALL INCOME OTHER THAN GOVERNMENT**
9 **ASSISTANCE..... 50 POINTS**

10 **(B) ~~(a)~~** Wanton or malicious damage occurred
11 beyond that necessary to commit the crime for
12 which the offender is not charged and will not be
13 charged..... 10 points

14 **(C) ~~(b)~~** The property had a value of more than
15 \$20,000.00 or had significant historical, social,
16 or sentimental value..... ~~10~~ 20 points

17 **(D) ~~(c)~~** The property had a value of \$1,000.00
18 or more but not more than \$20,000.00..... 5 points

19 **(E) ~~(d)~~** The property had a value of \$200.00
20 or more but not more than \$1,000.00..... 1 point

21 **(F) ~~(e)~~** No property was obtained, damaged,
22 lost, or destroyed or the property had a value of
23 less than \$200.00..... 0 points

24 (2) All of the following apply to scoring offense variable
25 16:

26 (a) In multiple offender or victim cases, the appropriate
27 points may be determined by adding together the aggregate value
28 of the property involved, including property involved in

1 uncharged offenses or charges dismissed under a plea agreement.

2 (b) In cases in which the property was obtained unlawfully,
3 lost to the lawful owner, or destroyed, use the value of the
4 property in scoring this variable. If the property was damaged,
5 use the monetary amount appropriate to restore the property to
6 pre-offense condition in scoring this variable.

7 (c) The amount of money or property involved in admitted but
8 uncharged offenses or in charges that have been dismissed under a
9 plea agreement may be considered.