

# SENATE BILL No. 343

March 5, 2009, Introduced by Senators ANDERSON, BARCIA, BASHAM, GLEASON, RICHARDVILLE, PRUSI, WHITMER, OLSHOVE, PAPPAGEORGE, BIRKHOLZ, HUNTER, JACOBS, SCOTT, CLARK-COLEMAN and SWITALSKI and referred to the Committee on Judiciary.

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 2008 PA 562, 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

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

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

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

10       (c) There were 2 to 9 victims who were  
 11 placed in danger of physical injury or death, or  
 12 4 to 19 victims who were placed in danger of  
 13 property loss..... 10 points

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

18       (2) All of the following apply to scoring offense variable  
 19 9:

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

22       (b) Score 100 points only in homicide cases.

23       Sec. 40. (1) Offense variable 10 is exploitation of a  
 24 vulnerable victim. Score offense variable 10 by determining which  
 25 of the following apply and by assigning the number of points  
 26 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 less  
9 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 directly related to  
15 causing, encouraging, recruiting, soliciting,  
16 or coercing membership in a gang or communicating  
17 a threat with intent to deter, punish, or retaliate  
18 against another for withdrawing from a gang ..... 25 points

19       (D) ~~(c)~~—The offense was part of a pattern of  
20 felonious criminal activity involving 3 or more  
21 crimes against a person ..... 25 points

22       (E) ~~(d)~~—The offense was part of a pattern of  
23 felonious criminal activity involving a combination  
24 of 3 or more crimes against a person or property or  
25 a violation of section 7401(2)(a)(i) to (iii) or  
26 section 7403(2)(a)(i) to (iii) of the public health  
27 code, 1978 PA 368, MCL 333.7401 and 333.7403 ..... 10 points

28       (F) ~~(e)~~—The offense was part of a pattern of  
29 felonious criminal activity involving a combination  
30 of 3 or more violations of section 7401(2)(a)(i) to

1 (iii) or section 7403(2)(a)(i) to (iii) of the public  
 2 health code, 1978 PA 368, MCL 333.7401 and  
 3 333.7403 ..... 10 points

4 (G) ~~(F)~~ The offense was part of a pattern of  
 5 felonious criminal activity involving 3 or more  
 6 crimes against property ..... 5 points

7 (H) ~~(G)~~ No pattern of felonious criminal activity  
 8 existed ..... 0 points

9 (2) All of the following apply to scoring offense variable  
 10 13:

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

15 (b) The presence or absence of multiple offenders, the age  
 16 of the offenders, or the degree of sophistication of the  
 17 organized criminal group is not as important as the fact of the  
 18 group's existence, which may be reasonably inferred from the  
 19 facts surrounding the sentencing offense.

20 (c) Except for offenses related to membership in an  
 21 organized criminal group or that are gang-related, do not score  
 22 conduct scored in offense variable 11 or 12.

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

26 (e) Do not count more than 1 controlled substance offense  
 27 arising out of the criminal episode for which the person is being

1 sentenced.

2 (f) Do not count more than 1 crime involving the same 1  
3 controlled substance. For example, do not count conspiracy and a  
4 substantive offense involving the same amount of controlled  
5 substances or possession and delivery of the same amount of  
6 controlled substances.

7 Sec. 46. (1) Offense variable 16 is property obtained,  
8 damaged, lost, or destroyed. Score offense variable 16 by  
9 determining which of the following apply and by assigning the  
10 number of points attributable to the one that has the highest  
11 number of points:

12 (A) THE PROPERTY STOLEN DEPRIVES A VULNERABLE  
13 ADULT OF ALL INCOME OTHER THAN GOVERNMENT  
14 ASSISTANCE..... 50 POINTS

15 (B) ~~(a)~~ Wanton or malicious damage occurred  
16 beyond that necessary to commit the crime for  
17 which the offender is not charged and will not be  
18 charged..... 10 points

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

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

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

26 (F) ~~(e)~~ No property was obtained, damaged,  
27 lost, or destroyed or the property had a value of  
28 less than \$200.00..... 0 points

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

(a) In multiple offender or victim cases, the appropriate points may be determined by adding together the aggregate value of the property involved, including property involved in uncharged offenses or charges dismissed under a plea agreement.

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

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