

HOUSE BILL No. 5190

December 11, 2013, Introduced by Reps. Lauwers, Daley, Rogers, LaFontaine, Hooker, Graves, Johnson and Heise and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 10, 11, 12, and 13 of chapter IX (MCL 769.10, 769.11, 769.12, and 769.13), sections 10, 11, and 13 as amended by 2006 PA 655 and section 12 as amended by 2012 PA 319.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

Sec. 10. (1) If a person has been convicted of a felony or an attempt to commit a felony, whether the conviction occurred in this state or would have been for a felony or attempt to commit a felony in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished

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

3 (a) If the subsequent felony is punishable upon a first
4 conviction by imprisonment for a term less than life, the court,
5 except as otherwise provided in this section or section 1 of
6 chapter XI, may place the person on probation or sentence the
7 person to imprisonment for a maximum term that is not more than 1-
8 1/2 times the longest term prescribed for a first conviction of
9 that offense or for a lesser term.

10 (b) If the subsequent felony is punishable upon a first
11 conviction by imprisonment for life, the court, except as otherwise
12 provided in this section or section 1 of chapter XI, may place the
13 person on probation or sentence the person to imprisonment for life
14 or for a lesser term.

15 (c) If the subsequent felony is a major controlled substance
16 offense, the person shall be punished as provided by part 74 of the
17 public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

18 (2) If the court ~~pursuant to this section~~ imposes a sentence
19 of imprisonment for any term of years **UNDER THIS SECTION**, the court
20 shall fix the length of both the minimum and maximum sentence
21 within any specified limits in terms of years or a fraction of a
22 year and the sentence so imposed shall be considered an
23 indeterminate sentence. The court shall not fix a maximum sentence
24 that is less than the maximum term for a first conviction.

25 (3) A conviction shall not be used to enhance a sentence under
26 this section if that conviction is used to enhance a sentence under
27 a statute that prohibits use of the conviction for further

enhancement under this section.

(4) AS USED IN THIS SECTION, "CONVICTED OF A FELONY OR AN ATTEMPT TO COMMIT A FELONY" INCLUDES AN ADJUDICATION THAT AN INDIVIDUAL AS A JUVENILE VIOLATED OR ATTEMPTED TO VIOLATE SECTION 520B, 520C, 520D, 520E, OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C, 750.520D, 750.520E, AND 750.520G, IF THE SUBSEQUENT FELONY IS A VIOLATION OR ATTEMPTED VIOLATION OF SECTION 520B, 520C, 520D, 520E, OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C, 750.520D, 750.520E, AND 750.520G.

Sec. 11. (1) If a person has been convicted of any combination of 2 or more felonies or attempts to commit felonies, whether the convictions occurred in this state or would have been for felonies or attempts to commit felonies in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished upon conviction of the subsequent felony and sentencing under section 13 of this chapter as follows:

(a) If the subsequent felony is punishable upon a first conviction by imprisonment for a term less than life, the court, except as otherwise provided in this section or section 1 of chapter XI, may sentence the person to imprisonment for a maximum term that is not more than twice the longest term prescribed by law for a first conviction of that offense or for a lesser term.

(b) If the subsequent felony is punishable upon a first conviction by imprisonment for life, the court, except as otherwise provided in this section or section 1 of chapter XI, may sentence

1 the person to imprisonment for life or for a lesser term.

2 (c) If the subsequent felony is a major controlled substance
3 offense, the person shall be punished as provided by part 74 of the
4 public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

5 (2) If the court ~~pursuant to this section~~ imposes a sentence
6 of imprisonment for any term of years **UNDER THIS SECTION**, the court
7 shall fix the length of both the minimum and maximum sentence
8 within any specified limits in terms of years or a fraction of a
9 year, and the sentence so imposed shall be considered an
10 indeterminate sentence. The court shall not fix a maximum sentence
11 that is less than the maximum term for a first conviction.

12 (3) A conviction shall not be used to enhance a sentence under
13 this section if that conviction is used to enhance a sentence under
14 a statute that prohibits use of the conviction for further
15 enhancement under this section.

16 (4) **AS USED IN THIS SECTION, "CONVICTED OF ANY COMBINATION OF**
17 **2 OR MORE FELONIES OR ATTEMPTS TO COMMIT FELONIES" INCLUDES 2 OR**
18 **MORE ADJUDICATIONS THAT AN INDIVIDUAL AS A JUVENILE VIOLATED OR**
19 **ATTEMPTED TO VIOLATE SECTION 520B, 520C, 520D, 520E, OR 520G OF THE**
20 **MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C, 750.520D,**
21 **750.520E, AND 750.520G, IF THE SUBSEQUENT FELONY IS A VIOLATION OR**
22 **ATTEMPTED VIOLATION OF SECTION 520B, 520C, 520D, 520E, OR 520G OF**
23 **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C,**
24 **750.520D, 750.520E, AND 750.520G.**

25 Sec. 12. (1) If a person has been convicted of any combination
26 of 3 or more felonies or attempts to commit felonies, whether the
27 convictions occurred in this state or would have been for felonies

1 or attempts to commit felonies in this state if obtained in this
2 state, and that person commits a subsequent felony within this
3 state, the person shall be punished upon conviction of the
4 subsequent felony and sentencing under section 13 of this chapter
5 as follows:

6 (a) If the subsequent felony is a serious crime or a
7 conspiracy to commit a serious crime, and 1 or more of the prior
8 felony convictions are listed prior felonies, the court shall
9 sentence the person to imprisonment for not less than 25 years. Not
10 more than 1 conviction arising out of the same transaction shall be
11 considered a prior felony conviction for the purposes of this
12 subsection only.

13 (b) If the subsequent felony is punishable upon a first
14 conviction by imprisonment for a maximum term of 5 years or more or
15 for life, the court, except as otherwise provided in this section
16 or section 1 of chapter XI, may sentence the person to imprisonment
17 for life or for a lesser term.

18 (c) If the subsequent felony is punishable upon a first
19 conviction by imprisonment for a maximum term that is less than 5
20 years, the court, except as otherwise provided in this section or
21 section 1 of chapter XI, may sentence the person to imprisonment
22 for a maximum term of not more than 15 years.

23 (d) If the subsequent felony is a major controlled substance
24 offense, the person shall be punished as provided by part 74 of the
25 public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

26 (2) If the court imposes a sentence of imprisonment for any
27 term of years under this section, the court shall fix the length of

1 both the minimum and maximum sentence within any specified limits
2 in terms of years or a fraction of a year, and the sentence so
3 imposed shall be considered an indeterminate sentence. The court
4 shall not fix a maximum sentence that is less than the maximum term
5 for a first conviction.

6 (3) A conviction shall not be used to enhance a sentence under
7 this section if that conviction is used to enhance a sentence under
8 a statute that prohibits use of the conviction for further
9 enhancement under this section.

10 (4) An offender sentenced under this section or section 10 or
11 11 of this chapter for an offense other than a major controlled
12 substance offense is not eligible for parole until expiration of
13 the following:

14 (a) For a prisoner other than a prisoner subject to
15 disciplinary time, the minimum term fixed by the sentencing judge
16 at the time of sentence unless the sentencing judge or a successor
17 gives written approval for parole at an earlier date authorized by
18 law.

19 (b) For a prisoner subject to disciplinary time, the minimum
20 term fixed by the sentencing judge.

21 (5) This section and sections 10 and 11 of this chapter are
22 not in derogation of other provisions of law that permit or direct
23 the imposition of a consecutive sentence for a subsequent felony.

24 (6) As used in this section:

25 (A) "CONVICTED OF ANY COMBINATION OF 3 OR MORE FELONIES OR
26 ATTEMPTS TO COMMIT FELONIES" INCLUDES 3 OR MORE ADJUDICATIONS THAT
27 AN INDIVIDUAL AS A JUVENILE VIOLATED OR ATTEMPTED TO VIOLATE

1 SECTION 520B, 520C, 520D, 520E, OR 520G OF THE MICHIGAN PENAL CODE,
2 1931 PA 328, MCL 750.520B, 750.520C, 750.520D, 750.520E, AND
3 750.520G, IF THE SUBSEQUENT FELONY IS A VIOLATION OR ATTEMPTED
4 VIOLATION OF SECTION 520B, 520C, 520D, 520E, OR 520G OF THE
5 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C, 750.520D,
6 750.520E, AND 750.520G.

7 (B) ~~(a)~~—"Listed prior felony" means a violation or attempted
8 violation of any of the following:

9 (i) Section 602a(4) or (5) or 625(4) of the Michigan vehicle
10 code, 1949 PA 300, MCL 257.602a and 257.625.

11 (ii) Article 7 of the public health code, 1978 PA 368, MCL
12 333.7101 to 333.7545, that is punishable by imprisonment for more
13 than 4 years.

14 (iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or
15 (3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a,
16 234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i,
17 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the
18 Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83,
19 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a,
20 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a,
21 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a,
22 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c,
23 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

24 (iv) A second or subsequent violation or attempted violation of
25 section 227b of the Michigan penal code, 1931 PA 328, MCL 750.227b.

26 (v) Section 2a of 1968 PA 302, MCL 752.542a.

27 (C) ~~(b)~~—"Prisoner subject to disciplinary time" means that

1 term as defined in section 34 of 1893 PA 118, MCL 800.34.

2 (D) ~~(e)~~—"Serious crime" means an offense against a person in
3 violation of section 83, 84, 86, 88, 89, 317, 321, 349, 349a, 350,
4 397, 520b, 520c, 520d, 520g(1), 529, or 529a of the Michigan penal
5 code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89,
6 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
7 750.520c, 750.520d, 750.520g, 750.529, and 750.529a.

8 Sec. 13. (1) In a criminal action, the prosecuting attorney
9 may seek to enhance the sentence of the defendant as provided under
10 section 10, 11, or 12 of this chapter, by filing a written notice
11 of his or her intent to do so within 21 days after the defendant's
12 arraignment on the information charging the underlying offense or,
13 if arraignment is waived, within 21 days after the filing of the
14 information charging the underlying offense.

15 (2) A notice of intent to seek an enhanced sentence filed
16 under subsection (1) shall list the prior conviction or convictions
17 that will or may be relied upon for purposes of sentence
18 enhancement. The notice shall be filed with the court and served
19 upon the defendant or his or her attorney within the time provided
20 in subsection (1). The notice may be personally served upon the
21 defendant or his or her attorney at the arraignment on the
22 information charging the underlying offense, or may be served in
23 the manner provided by law or court rule for service of written
24 pleadings. The prosecuting attorney shall file a written proof of
25 service with the clerk of the court.

26 (3) The prosecuting attorney may file notice of intent to seek
27 an enhanced sentence after the defendant has been convicted of the

1 underlying offense or a lesser offense, upon his or her plea of
2 guilty or nolo contendere if the defendant pleads guilty or nolo
3 contendere at the arraignment on the information charging the
4 underlying offense, or within the time allowed for filing of the
5 notice under subsection (1).

6 (4) A defendant who has been given notice that the prosecuting
7 attorney will seek to enhance his or her sentence as provided under
8 section 10, 11, or 12 of this chapter, may challenge the accuracy
9 or constitutional validity of 1 or more of the prior convictions
10 listed in the notice by filing a written motion with the court and
11 by serving a copy of the motion upon the prosecuting attorney in
12 accordance with rules of the supreme court.

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

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

20 **(B) IF THE DEFENDANT IS CHARGED WITH COMMITTING OR ATTEMPTING**
21 **TO COMMIT A VIOLATION OF SECTION 520B, 520C, 520D, 520E, OR 520G OF**
22 **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C,**
23 **750.520D, 750.520E, AND 750.520G, AND THE DEFENDANT IS ALLEGED AS A**
24 **JUVENILE TO HAVE PREVIOUSLY COMMITTED OR ATTEMPTED TO COMMIT A**
25 **VIOLATION OF SECTION 520B, 520C, 520D, 520E, OR 520G OF THE**
26 **MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C, 750.520D,**
27 **750.520E, AND 750.520G, A COPY OF THE JUVENILE ADJUDICATION.**

1 (C) ~~(b)~~—A transcript of a prior trial **OR JUVENILE PROCEEDING**
2 or a plea-taking or sentencing proceeding.

3 (D) ~~(c)~~—A copy of a court register of actions.

4 (E) ~~(d)~~—Information contained in a presentence report.

5 (F) ~~(e)~~—A statement of the defendant.

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

26 (7) **AS USED IN THIS SECTION, "PRIOR CONVICTION OR CONVICTIONS"**
27 **INCLUDES AN ADJUDICATION THAT AN INDIVIDUAL AS A JUVENILE COMMITTED**

1 OR ATTEMPTED TO COMMIT A VIOLATION OF SECTION 520B, 520C, 520D,
2 520E, OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL
3 750.520B, 750.520C, 750.520D, 750.520E, AND 750.520G, IF THE
4 SUBSEQUENT FELONY IS A VIOLATION OR ATTEMPTED VIOLATION OF SECTION
5 520B, 520C, 520D, 520E, OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA
6 328, MCL 750.520B, 750.520C, 750.520D, 750.520E, AND 750.520G.