

HOUSE BILL No. 4793

June 20, 2017, Introduced by Reps. Jones, Kosowski, Garrett, Peterson, Webber, Chang, Lucido, Hauck, Santana, Singh and Pagel and referred to the Committee on Law and Justice.

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:

CHAPTER IX

Sec. 1. (1) A judge of a court having jurisdiction may
pronounce judgment against and pass sentence upon a person
convicted of an offense in that court. The sentence ~~shall~~ **MUST** not
exceed the sentence prescribed by law. The court shall sentence a
juvenile convicted of any of the following crimes in the same
manner as an adult:

(a) ~~Arson of a dwelling~~ **FIRST DEGREE ARSON** in violation of
section 72 of the Michigan penal code, 1931 PA 328, MCL 750.72.

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

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

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

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

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

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

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

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

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

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

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

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

27 (3) Unless a juvenile is required to be sentenced in the same

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

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

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

1 the sentencing guidelines.

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

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

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

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

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

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

1 that the best interests of the public would be served by imposing a
2 sentence of imprisonment for any term of years but not less than 25
3 years, the court may impose that sentence. In making its
4 determination, the court shall use the criteria specified in
5 subsection (3).

6 (6) The court shall state on the record the court's findings
7 of fact and conclusions of law for the probation and commitment
8 decision or sentencing decision made under subsection (3). If a
9 juvenile is committed under subsection (3) to an institution or
10 agency described in the youth rehabilitation services act, 1974 PA
11 150, MCL 803.301 to 803.309, a transcript of the court's findings
12 ~~shall~~ **MUST** be sent to the ~~family independence agency~~ **DEPARTMENT OF**
13 **HEALTH AND HUMAN SERVICES** or county juvenile agency, as applicable.

14 (7) If a juvenile is committed under subsection (3) or (4) to
15 an institution or agency described in the youth rehabilitation
16 services act, 1974 PA 150, MCL 803.301 to 803.309, the written
17 order of commitment ~~shall~~ **MUST** contain a provision for the
18 reimbursement to the court by the juvenile or those responsible for
19 the juvenile's support, or both, for the cost of care or service.
20 The amount of reimbursement ordered ~~shall~~ **MUST** be reasonable,
21 taking into account both the income and resources of the juvenile
22 and those responsible for the juvenile's support. The amount may be
23 based upon the guidelines and model schedule prepared under section
24 18(6) of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
25 712A.18. The reimbursement provision applies during the entire
26 period the juvenile remains in care outside the juvenile's own home
27 and under court supervision. The court shall provide for the

1 collection of all amounts ordered to be reimbursed, and the money
2 collected ~~shall~~ **MUST** be accounted for and reported to the county
3 board of commissioners. Collections to cover delinquent accounts or
4 to pay the balance due on reimbursement orders may be made after a
5 juvenile is released or discharged from care outside the juvenile's
6 own home and under court supervision. Twenty-five percent of all
7 amounts collected ~~pursuant to~~ **UNDER** an order entered under this
8 subsection ~~shall~~ **MUST** be credited to the appropriate fund of the
9 county to offset the administrative cost of collections. The
10 balance of all amounts collected ~~pursuant to~~ **UNDER** an order entered
11 under this subsection ~~shall~~ **MUST** be divided in the same ratio in
12 which the county, state, and federal government participate in the
13 cost of care outside the juvenile's own home and under county,
14 state, or court supervision. The court may also collect benefits
15 paid by the government of the United States for the cost of care of
16 the juvenile. Money collected for juveniles placed with or
17 committed to the ~~family independence agency~~ **DEPARTMENT OF HEALTH**
18 **AND HUMAN SERVICES** or a county juvenile agency ~~shall~~ **MUST** be
19 accounted for and reported on an individual basis. In cases of
20 delinquent accounts, the court may also enter an order to intercept
21 state tax refunds or the federal income tax refund of a child,
22 parent, guardian, or custodian and initiate the necessary offset
23 proceedings in order to recover the cost of care or service. The
24 court shall send to the person who is the subject of the intercept
25 order advance written notice of the proposed offset. The notice
26 ~~shall~~ **MUST** include notice of the opportunity to contest the offset
27 on the grounds that the intercept is not proper because of a

1 mistake of fact concerning the amount of the delinquency or the
2 identity of the person subject to the order. The court shall
3 provide for the prompt reimbursement of an amount withheld in error
4 or an amount found to exceed the delinquent amount.

5 (8) If the court appoints an attorney to represent a juvenile,
6 an order entered under this section may require the juvenile or
7 person responsible for the juvenile's support, or both, to
8 reimburse the court for attorney fees.

9 (9) An order directed to a person responsible for the
10 juvenile's support under this section is not binding on the person
11 unless an opportunity for a hearing has been given and until a copy
12 of the order is served on the person, personally or by first-class
13 mail to the person's last known address.

14 (10) If a juvenile is placed on probation and committed under
15 subsection (3) or (4) to an institution or agency described in the
16 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
17 803.309, the court shall retain jurisdiction over the juvenile
18 while the juvenile is on probation and committed to that
19 institution or agency.

20 (11) If the court has retained jurisdiction over a juvenile
21 under subsection (10), the court shall conduct an annual review of
22 the services being provided to the juvenile, the juvenile's
23 placement, and the juvenile's progress in that placement. In
24 conducting this review, the court shall examine the juvenile's
25 annual report prepared under section 3 of the juvenile facilities
26 act, 1988 PA 73, MCL 803.223. The court may order changes in the
27 juvenile's placement or treatment plan including, but not limited

1 to, committing the juvenile to the jurisdiction of the department
2 of corrections, based on the review.

3 (12) If an individual who is under the court's jurisdiction
4 under section 4 of chapter XIIIA of the probate code of 1939, 1939
5 PA 288, MCL 712A.4, is convicted of a violation or conspiracy to
6 commit a violation of section 7403(2)(a)(i) of the public health
7 code, 1978 PA 368, MCL 333.7403, the court shall determine whether
8 the best interests of the public would be served by imposing the
9 sentence provided by law for an adult offender or by imposing a
10 sentence of imprisonment for any term of years but not less than 25
11 years. If the court determines by clear and convincing evidence
12 that the best interests of the public would be served by imposing a
13 sentence of imprisonment for any term of years but not less than 25
14 years, the court may impose that sentence. In making its
15 determination, the court shall use the criteria specified in
16 subsection (3) to the extent they apply.

17 (13) If the defendant is sentenced for an offense other than a
18 listed offense as defined in section ~~2(d)(i) to (ix) and (xi) to~~
19 ~~(xiii)~~ ~~2~~ of the sex offenders registration act, 1994 PA 295, MCL
20 28.722, the court shall determine if the offense is a violation of
21 a law of this state or a local ordinance of a municipality of this
22 state that by its nature constitutes a sexual offense against an
23 individual who is less than 18 years of age. If so, the conviction
24 is for a listed offense as defined in section ~~2(d)(x)~~ ~~2~~ of the sex
25 offenders registration act, 1994 PA 295, MCL 28.722, and the court
26 shall include the basis for that determination on the record and
27 include the determination in the judgment of sentence.

(14) When sentencing a person convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the court shall examine the presentence investigation report and determine if the person being sentenced is licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838. The court shall also examine the court file and determine if a report of the conviction upon which the person is being sentenced has been forwarded to the department of ~~consumer and industry services~~ **LICENSING AND REGULATORY AFFAIRS** as provided in section 16a **OF THIS CHAPTER**. If the report has not been forwarded to the department of ~~consumer and industry services~~, **LICENSING AND REGULATORY AFFAIRS** the court shall order the clerk of the court to immediately prepare and forward the report as provided in section 16a **OF THIS CHAPTER**.

Enacting section 1. This amendatory act takes effect October 1, 2018.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. _____ or House Bill No. 4675 (request no. 02827'17) of the 99th Legislature is enacted into law.