

HOUSE BILL NO. 4213

February 11, 2021, Introduced by Reps. Mueller and LaGrand 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:

1 CHAPTER IX

2 Sec. 10. (1) If a person has been convicted of a ~~felony or an~~
3 ~~attempt to commit a felony,~~ **serious assaultive crime**, whether the

conviction occurred in this state or would have been for a ~~felony~~
~~or attempt to commit a felony~~ **serious assaultive crime** in this
state if obtained in this state, and that person commits a
subsequent ~~felony~~ **serious assaultive crime** within this state, the
person ~~shall~~ **must** be punished upon conviction of the subsequent
~~felony~~ **serious assaultive crime** and ~~sentencing~~ **sentenced** under
section 13 of this chapter as follows:

(a) If the subsequent ~~felony~~ **serious assaultive crime** 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 place the person on probation or
sentence the person to imprisonment for a maximum term that is not
more than 1-1/2 times the longest term prescribed for a first
conviction of that offense or for a lesser term.

(b) If the subsequent ~~felony~~ **serious assaultive crime** 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 place the person on probation or sentence the
person to imprisonment for life or for a lesser term.

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

(2) If a person has been convicted of a **serious nonassaultive
crime**, whether the conviction occurred in this state or would have
been for a **serious nonassaultive crime** in this state if obtained in
this state, and that person commits a subsequent **serious
nonassaultive crime** within this state, the person **must** be punished
upon conviction of the subsequent **serious nonassaultive crime** and
sentenced as follows:

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

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

13 (3) If a person has been convicted of a major controlled
14 substance offense or an attempt to commit a major controlled
15 substance offense, whether the conviction occurred in this state or
16 would have been for a major controlled substance offense or attempt
17 to commit a major controlled substance offense in this state if
18 obtained in this state, and that person commits a subsequent major
19 controlled substance offense within this state, the person must be
20 punished as provided by part 74 of the public health code, 1978 PA
21 368, MCL 333.7401 to 333.7461.

22 (4) ~~(2)~~ If the court pursuant to this section imposes a
23 sentence of imprisonment for any term of years, the court shall fix
24 the length of both the minimum and maximum sentence within any
25 specified limits in terms of years or a fraction of a year and the
26 sentence so imposed ~~shall~~ **must** be considered an indeterminate
27 sentence. The court shall not fix a maximum sentence that is less
28 than the maximum term for a first conviction.

29 (5) ~~(3)~~ A conviction ~~shall~~ **must** not be used to enhance a

1 sentence under this section if that conviction is used to enhance a
 2 sentence under a statute that prohibits use of the conviction for
 3 further enhancement under this section.

4 (6) As used in this section and sections 11, 12, and 13 of
 5 this chapter:

6 (a) "Serious assaultive crime" includes a serious assaultive
 7 offense or an attempt to commit a serious assaultive offense that
 8 is punishable by imprisonment for 2 or more years.

9 (b) "Serious nonassaultive crime" includes a serious
 10 nonassaultive offense or an attempt to commit a serious
 11 nonassaultive offense that is not a major controlled substance
 12 offense and that is punishable by imprisonment for 2 or more years.

13 Sec. 11. (1) If a person has been convicted of ~~any combination~~
 14 ~~of 2 or more felonies or attempts to commit felonies,~~ **serious**
 15 **assaultive crimes**, whether the convictions occurred in this state
 16 or would have been for ~~felonies or attempts to commit felonies~~
 17 **serious assaultive crimes** in this state if obtained in this state,
 18 and that person commits a subsequent ~~felony~~ **serious assaultive**
 19 **crime** within this state, the person ~~shall~~ **must** be punished upon
 20 conviction of the subsequent ~~felony~~ **serious assaultive crime** and
 21 ~~sentencing~~ **sentenced** under section 13 of this chapter as follows:

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

29 (b) If the subsequent ~~felony~~ **serious assaultive crime** is

1 punishable upon a first conviction by imprisonment for life, the
2 court, except as otherwise provided in this section or section 1 of
3 chapter XI, may sentence the person to imprisonment for life or for
4 a lesser term.

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

8 (2) If a person has been convicted of 2 or more serious
9 nonassaultive crimes, whether the convictions occurred in this
10 state or would have been for serious nonassaultive crimes in this
11 state if obtained in this state, and that person commits a
12 subsequent serious nonassaultive crime within this state, the
13 person must be punished upon conviction of the subsequent serious
14 nonassaultive crime and sentenced under section 13 of this chapter
15 as follows:

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

23 (b) If the subsequent serious nonassaultive crime is
24 punishable upon a first conviction by imprisonment for life, the
25 court, except as otherwise provided in this section or section 1 of
26 chapter XI, may sentence the person to imprisonment for life or for
27 a lesser term.

28 (3) If a person has been convicted of 2 or more major
29 controlled substance offenses or an attempt to commit major

1 controlled substance offenses, whether the convictions occurred in
 2 this state or would have been for major controlled substance
 3 offenses or attempts to commit major controlled substance offenses
 4 in this state if obtained in this state, and that person commits a
 5 subsequent major controlled substance offense within this state,
 6 the person must be punished as provided by part 74 of the public
 7 health code, 1978 PA 368, MCL 333.7401 to 333.7461.

8 (4) ~~(2)~~—If the court pursuant to this section imposes a
 9 sentence of imprisonment for any term of years, the court shall fix
 10 the length of both the minimum and maximum sentence within any
 11 specified limits in terms of years or a fraction of a year, and the
 12 sentence so imposed ~~shall~~**must** be considered an indeterminate
 13 sentence. The court shall not fix a maximum sentence that is less
 14 than the maximum term for a first conviction.

15 (5) ~~(3)~~—A conviction ~~shall~~**must** not be used to enhance a
 16 sentence under this section if that conviction is used to enhance a
 17 sentence under a statute that prohibits use of the conviction for
 18 further enhancement under this section.

19 Sec. 12. (1) If a person has been convicted ~~of any combination~~
 20 ~~of 3 or more felonies or attempts to commit felonies,~~ **serious**
 21 **assaultive crimes**, whether the convictions occurred in this state
 22 or would have been for ~~felonies or attempts to commit felonies~~
 23 **serious assaultive crimes** in this state if obtained in this state,
 24 and that person commits a subsequent ~~felony~~**serious assaultive**
 25 **crime** within this state, the person ~~shall~~**must** be punished upon
 26 conviction of the subsequent ~~felony~~**serious assaultive crime** and
 27 ~~sentencing~~**sentenced** under section 13 of this chapter as follows:

28 (a) If the subsequent ~~felony is a~~ **serious assaultive** crime or
 29 ~~a conspiracy to commit a serious~~ **assaultive** crime ~~, and 1 or more~~

~~of the prior felony convictions are listed prior felonies, is~~
punishable upon a first conviction by imprisonment for a maximum
term of more than 5 years but less than life, the court shall
sentence the person to imprisonment for not less than 25 years. Not
more than 1 conviction arising out of the same transaction ~~shall~~
may be considered a prior ~~felony~~**serious assaultive crime**
conviction for the purposes of this subsection. ~~only.~~

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

(c) If the subsequent ~~felony~~**serious assaultive crime** is
punishable upon a first conviction by imprisonment for a maximum
term that is less than 5 years, 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 of not more than 15
years.

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

(2) If a person has been convicted of 3 or more serious
nonassaultive crimes, whether the convictions occurred in this
state or would have been for serious nonassaultive crimes in this
state if obtained in this state, and that person commits a
subsequent serious nonassaultive crime within this state, the
person must be punished upon conviction of the subsequent serious
nonassaultive crime and sentenced under section 13 of this chapter
as follows:

1 (a) If the subsequent serious nonassaultive crime is
 2 punishable upon a first conviction by imprisonment for a maximum
 3 term of more than 5 years but less than life, the court shall
 4 sentence the person to imprisonment for not less than 25 years. Not
 5 more than 1 conviction arising out of the same transaction may be
 6 considered a prior serious nonassaultive crime conviction for the
 7 purposes of this subsection.

8 (b) If the subsequent serious nonassaultive crime is
 9 punishable upon a first conviction by imprisonment for a maximum
 10 term of 5 years or more or for life, the court, except as otherwise
 11 provided in this section or section 1 of chapter XI, may sentence
 12 the person to imprisonment for life or for a lesser term.

13 (3) If a person has been convicted of 3 or more major
 14 controlled substance offenses or attempts to commit major
 15 controlled substance offenses, whether the convictions occurred in
 16 this state or would have been for major controlled substance
 17 offenses or attempts to commit major controlled substance offenses
 18 in this state if obtained in this state, and that person commits a
 19 subsequent major controlled substance offense within this state,
 20 the person must be punished as provided by part 74 of the public
 21 health code, 1978 PA 368, MCL 333.7401 to 333.7461.

22 (4) ~~(2)~~ If the court imposes a sentence of imprisonment for
 23 any term of years under this section, the court shall fix the
 24 length of both the minimum and maximum sentence within any
 25 specified limits in terms of years or a fraction of a year, and the
 26 sentence so imposed ~~shall~~ **must** be considered an indeterminate
 27 sentence. The court shall not fix a maximum sentence that is less
 28 than the maximum term for a first conviction.

29 (5) ~~(3)~~ A conviction ~~shall~~ **must** not be used to enhance a

1 sentence under this section if that conviction is used to enhance a
 2 sentence under a statute that prohibits use of the conviction for
 3 further enhancement under this section.

4 **(6)** ~~(4)~~—An offender sentenced under this section or section 10
 5 or 11 of this chapter for an offense other than a major controlled
 6 substance offense is not eligible for parole until expiration of
 7 the following:

8 (a) For a prisoner other than a prisoner subject to
 9 disciplinary time, the minimum term fixed by the sentencing judge
 10 at the time of sentence unless the sentencing judge or a successor
 11 gives written approval for parole at an earlier date authorized by
 12 law.

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

15 **(7)** ~~(5)~~—This section and sections 10 and 11 of this chapter
 16 are not in derogation of other provisions of law that permit or
 17 direct the imposition of a consecutive sentence for a subsequent
 18 felony.

19 **(8)** ~~(6)~~—As used in this section, ÷

20 ~~(a) "Listed prior felony" means a violation or attempted~~
 21 ~~violation of any of the following:~~

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

24 ~~(ii) Article 7 of the public health code, 1978 PA 368, MCL~~
 25 ~~333.7101 to 333.7545, that is punishable by imprisonment for more~~
 26 ~~than 4 years.~~

27 ~~(iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or~~
 28 ~~(3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a,~~
 29 ~~234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i,~~

~~479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83, 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a, 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a, 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a, 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.~~

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

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

~~(b) "Prisoner"~~**prisoner** subject to disciplinary time" means that term as defined in section 34 of 1893 PA 118, MCL 800.34.

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

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

(2) A notice of intent to seek an enhanced sentence filed under subsection (1) ~~shall~~**must** list the prior conviction or convictions that will or may be relied upon for purposes of sentence enhancement. The notice ~~shall~~**must** be filed with the court

1 and served upon the defendant or his or her attorney within the
2 time provided in subsection (1). The notice may be personally
3 served upon the defendant or his or her attorney at the arraignment
4 on the information charging the underlying offense, or may be
5 served in the manner provided by law or court rule for service of
6 written pleadings. The prosecuting attorney shall file a written
7 proof of service with the clerk of the court.

8 (3) The prosecuting attorney may file notice of intent to seek
9 an enhanced sentence after the defendant has been convicted of the
10 underlying offense or a lesser offense, upon his or her plea of
11 guilty or nolo contendere if the defendant pleads guilty or nolo
12 contendere at the arraignment on the information charging the
13 underlying offense, or within the time allowed for filing of the
14 notice under subsection (1).

15 (4) A defendant who has been given notice that the prosecuting
16 attorney will seek to enhance his or her sentence as provided under
17 section 10, 11, or 12 of this chapter, may challenge **whether or not**
18 **1 or more of the prior convictions was for a serious assaultive**
19 **crime, a serious nonassaultive crime, or** the accuracy or
20 constitutional validity of 1 or more of the prior convictions
21 listed in the notice by filing a written motion with the court and
22 by serving a copy of the motion upon the prosecuting attorney in
23 accordance with rules of the supreme court.

24 (5) The existence of the defendant's prior conviction or
25 convictions ~~shall~~**must** be determined by the court, without a jury,
26 at sentencing, or at a separate hearing scheduled for that purpose
27 before sentencing. The existence of a prior conviction may be
28 established by any evidence that is relevant for that purpose,
29 including, but not limited to, 1 or more of the following:

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

2 (b) A transcript of a prior trial or a plea-taking or
3 sentencing proceeding.

4 (c) A copy of a court register of actions.

5 (d) Information contained in a presentence report.

6 (e) A statement of the defendant.

7 (6) The court shall resolve any challenges to **whether or not**
8 **the prior conviction or convictions was for a serious assaultive**
9 **crime, a serious nonassaultive crime, or** the accuracy or
10 constitutional validity of a prior conviction or convictions that
11 have been raised in a motion filed under subsection (4) at
12 sentencing or at a separate hearing scheduled for that purpose
13 before sentencing. The defendant, or his or her attorney, ~~shall~~
14 **must** be given an opportunity to deny, explain, or refute any
15 evidence or information pertaining to the defendant's prior
16 conviction or convictions before sentence is imposed, and ~~shall~~
17 **must** be permitted to present relevant evidence for that purpose.
18 The defendant ~~shall bear~~ **bears** the burden of establishing a prima
19 facie showing that an alleged prior conviction is inaccurate or
20 constitutionally invalid, **or was not for a serious assaultive crime**
21 **or a serious nonassaultive crime**. If the defendant establishes a
22 prima facie showing that information or evidence concerning an
23 alleged prior conviction is inaccurate **or was not for a serious**
24 **assaultive crime or a serious nonassaultive crime**, the prosecuting
25 attorney ~~shall bear~~ **bears** the burden of proving, by a preponderance
26 of the evidence, that the information or evidence is accurate, **or**
27 **that the conviction was for a serious assaultive crime or a serious**
28 **nonassaultive crime**. If the defendant establishes a prima facie
29 showing that an alleged prior conviction is constitutionally

1 invalid, the prosecuting attorney ~~shall bear~~**bears** the burden of
2 proving, by a preponderance of the evidence, that the prior
3 conviction is constitutionally valid.

4 Enacting section 1. This amendatory act takes effect 90 days
5 after the date it is enacted into law.