



# HOUSE BILL No. 4703

April 5, 1995, Introduced by Reps. Gagliardi, Olshove, Pitoniak and DeMars and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 10, 11, 12, and 13 of chapter IX and section 1 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

sections 10, 11, and 12 as amended by Act No. 90 of the Public Acts of 1988, section 13 as amended by Act No. 110 of the Public Acts of 1994, and section 1 of chapter XI as amended by Act No. 185 of the Public Acts of 1993, being sections 769.10, 769.11, 769.12, 769.13, and 771.1 of the Michigan Compiled Laws; and to add sections 12a and 12b to chapter IX.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 10, 11, 12, and 13 of chapter IX and  
2 section 1 of chapter XI of Act No. 175 of the Public Acts of  
3 1927, sections 10, 11, and 12 as amended by Act No. 90 of the  
4 Public Acts of 1988, section 13 as amended by Act No. 110 of the

1 Public Acts of 1994, and section 1 of chapter XI as amended by  
2 Act No. 185 of the Public Acts of 1993, being sections 769.10,  
3 769.11, 769.12, 769.13, and 771.1 of the Michigan Compiled Laws,  
4 are amended and sections 12a and 12b are added to chapter IX to  
5 read as follows:

6 CHAPTER IX

7 Sec. 10. (1) If a person has been convicted of a felony, an  
8 attempt to commit a felony, or both, whether the conviction  
9 occurred in this state or would have been for a felony in this  
10 state if the conviction obtained outside this state had been  
11 obtained in this state, and that person commits a subsequent  
12 felony within this state, the person shall be punished upon con-  
13 viction as follows:

14 (a) If the subsequent felony is punishable upon a first con-  
15 viction by imprisonment for a term less than life, ~~then~~ the  
16 court, except as otherwise provided in this ~~section~~ CHAPTER or  
17 in section 1 of chapter ~~++~~ XI, may place the person on proba-  
18 tion or sentence the person to imprisonment for a maximum term  
19 ~~which~~ THAT is not more than 1-1/2 times the longest term pre-  
20 scribed for a first conviction of that offense or for a lesser  
21 term.

22 (b) If the subsequent felony is punishable upon a first con-  
23 viction by imprisonment for life, ~~then~~ the court, except as  
24 otherwise provided in this ~~section~~ CHAPTER or in section 1 of  
25 chapter ~~++~~ XI, may place the person on probation or sentence  
26 the person to imprisonment for life or for a lesser term.

1 (c) If the subsequent felony is a major controlled substance  
2 offense, the person shall be punished as provided ~~by~~ IN SECTION  
3 12A OR part 74 of the public health code, Act No. 368 of the  
4 Public Acts of 1978, being sections 333.7401 to 333.7415 of the  
5 Michigan Compiled Laws.

6 (2) If the court pursuant to this section imposes a sentence  
7 of imprisonment for any term of years, the court shall fix the  
8 length of both the minimum and maximum sentence within any speci-  
9 fied limits in terms of years or fraction ~~thereof~~ OF YEARS and  
10 the sentence ~~so imposed~~ shall be considered an indeterminate  
11 sentence.

12 Sec. 11. (1) If a person has been convicted of 2 or more  
13 felonies, attempts to commit felonies, or both, whether the con-  
14 victions occurred in this state or would have been for felonies  
15 in this state if the convictions obtained outside this state had  
16 been obtained in this state, and that person commits a subsequent  
17 felony within this state, the person shall be punished upon con-  
18 viction as follows:

19 (a) If the subsequent felony is punishable upon a first con-  
20 viction by imprisonment for a term less than life, ~~then~~ the  
21 court, except as otherwise provided in this ~~section~~ CHAPTER or  
22 section 1 of chapter ~~++~~ XI, may sentence the person to impris-  
23 onment for a maximum term ~~which~~ THAT is not more than twice the  
24 longest term prescribed by law for a first conviction of that  
25 offense or for a lesser term.

26 (b) If the subsequent felony is punishable upon a first  
27 conviction by imprisonment for life, ~~then~~ the court, except as

1 otherwise provided in this ~~section~~ CHAPTER or section 1 of  
2 chapter ~~++~~ XI, may sentence the person to imprisonment for life  
3 or for a lesser term.

4 (c) If the subsequent felony is a major controlled substance  
5 offense, the person shall be punished as provided ~~by~~ IN SECTION  
6 12A OR part 74 of the public health code, Act No. 368 of the  
7 Public Acts of 1978, being sections 333.7401 to 333.7415 of the  
8 Michigan Compiled Laws.

9 (2) If the court pursuant to this section imposes a sentence  
10 of imprisonment for any term of years, the court shall fix the  
11 length of both the minimum and maximum sentence within any speci-  
12 fied limits in terms of years or fraction ~~thereof~~ OF YEARS, and  
13 the sentence ~~so imposed~~ shall be considered an indeterminate  
14 sentence.

15 Sec. 12. (1) If a person has been convicted of 3 or more  
16 felonies, attempts to commit felonies, or both, whether the con-  
17 victions occurred in this state or would have been for felonies  
18 in this state if the convictions obtained outside this state had  
19 been obtained in this state, and that person commits a subsequent  
20 felony within this state, the person shall be punished upon con-  
21 viction as follows:

22 (a) If the subsequent felony is punishable upon a first con-  
23 viction by imprisonment for a maximum term of 5 years or more, or  
24 for life, ~~then~~ the court, except as otherwise provided in this  
25 ~~section~~ CHAPTER or section 1 of chapter ~~++~~ XI, may sentence  
26 the person upon conviction of the fourth or subsequent offense to

1 imprisonment in a state prison for ~~the term of~~ life or for a  
2 lesser term.

3 (b) If the subsequent felony is punishable upon a first con-  
4 viction by imprisonment for a maximum term ~~which~~ THAT is less  
5 than 5 years, ~~then~~ the court, except as otherwise provided in  
6 this ~~section~~ CHAPTER or section 1 of chapter ~~++~~ XI, may sen-  
7 tence the person to imprisonment for ~~a term of~~ 15 years or a  
8 lesser term.

9 (c) If the subsequent felony is a major controlled substance  
10 offense, the person shall be punished as provided ~~by~~ IN SECTION  
11 12A OR part 74 of the public health code, Act No. 368 of the  
12 Public Acts of 1978, being sections 333.7401 to 333.7415 of the .  
13 Michigan Compiled Laws.

14 (2) If the court pursuant to this section imposes a sentence  
15 of imprisonment for any term of years, the court shall fix the  
16 length of both the minimum and maximum sentence within any speci-  
17 fied limits in terms of years or fraction ~~thereof~~ OF YEARS, and  
18 the sentence ~~so imposed~~ shall be considered an indeterminate  
19 sentence.

20 (3) Offenders sentenced under this section or section 10 or  
21 11 for offenses other than a major controlled substance offense  
22 ~~shall~~ ARE not ~~be~~ eligible for parole before the expiration of  
23 the minimum term fixed by the sentencing judge at the time of  
24 sentence without the written approval of the sentencing judge or  
25 a successor. A person to be punished under this section or sec-  
26 tion 10 or 11 need not have been indicted and convicted as a  
27 previous offender in order to receive the increased punishment

1 provided in this section or section 11, but may be proceeded  
2 against as provided in section 13.

3 (4) This section and sections 10 and 11 govern the length of  
4 sentence to be imposed for the commission of a subsequent felony  
5 and are not in derogation of other provisions of law ~~which~~ THAT  
6 permit or direct the imposition of a consecutive sentence for a  
7 subsequent felony.

8 SEC. 12A. (1) IF A PERSON HAS BEEN CONVICTED OF 2 OR MORE  
9 SPECIFIED FELONIES, WHETHER THE CONVICTIONS OCCURRED IN THIS  
10 STATE OR WOULD HAVE BEEN FOR SPECIFIED FELONIES IN THIS STATE IF  
11 THE CONVICTIONS OBTAINED OUTSIDE THIS STATE HAD BEEN OBTAINED IN  
12 THIS STATE, AND THAT PERSON COMMITS A SPECIFIED FELONY DESCRIBED  
13 IN SUBSECTION (2)(C) TO (N) WITHIN THIS STATE, THE PERSON SHALL,  
14 EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, BE PUNISHED BY  
15 IMPRISONMENT FOR LIFE WITHOUT THE OPPORTUNITY FOR PAROLE. A  
16 PERSON WHO HAS SERVED 20 OR MORE YEARS OF A SENTENCE IMPOSED PUR-  
17 SUANT TO THIS SECTION AND WHO IS 65 YEARS OF AGE OR OLDER MAY BE  
18 CONSIDERED FOR PAROLE. A SENTENCE IMPOSED UNDER THIS SECTION  
19 SHALL NOT BE SUSPENDED.

20 (2) AS USED IN THIS SECTION, "SPECIFIED FELONY" MEANS 1 OR  
21 MORE OF THE FOLLOWING:

22 (A) MANUFACTURING, DELIVERING, OR POSSESSING WITH INTENT TO  
23 MANUFACTURE OR DELIVER A CONTROLLED SUBSTANCE IN VIOLATION OF  
24 SECTION 7401(2)(A)(i) TO (iii) OF THE PUBLIC HEALTH CODE, ACT  
25 NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.7401 OF THE  
26 MICHIGAN COMPILED LAWS.

1 (B) KNOWINGLY OR INTENTIONALLY POSSESSING A CONTROLLED  
2 SUBSTANCE IN VIOLATION OF SECTION 7403(2)(A)(i) TO (iii) OF THE  
3 PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING  
4 SECTION 333.7403 OF THE MICHIGAN COMPILED LAWS.

5 (C) ASSAULT WITH INTENT TO MURDER IN VIOLATION OF SECTION 83  
6 OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF  
7 1931, BEING SECTION 750.83 OF THE MICHIGAN COMPILED LAWS.

8 (D) ASSAULT WITH INTENT TO DO GREAT BODILY HARM LESS THAN  
9 MURDER IN VIOLATION OF SECTION 84 OF THE MICHIGAN PENAL CODE, ACT  
10 NO. 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION 750.84 OF THE  
11 MICHIGAN COMPILED LAWS.

12 (E) ATTEMPTED MURDER IN VIOLATION OF SECTION 91 OF THE  
13 MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931,  
14 BEING SECTION 750.91 OF THE MICHIGAN COMPILED LAWS.

15 (F) FIRST DEGREE CHILD ABUSE IN VIOLATION OF SECTION 136B OF  
16 THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931,  
17 BEING SECTION 750.136B OF THE MICHIGAN COMPILED LAWS.

18 (G) FIRST DEGREE MURDER IN VIOLATION OF SECTION 316 OF THE  
19 MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931,  
20 BEING SECTION 750.316 OF THE MICHIGAN COMPILED LAWS.

21 (H) SECOND DEGREE MURDER IN VIOLATION OF SECTION 317 OF THE  
22 MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931,  
23 BEING SECTION 750.317 OF THE MICHIGAN COMPILED LAWS.

24 (I) MANSLAUGHTER IN VIOLATION OF SECTION 321 OF THE MICHIGAN  
25 PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION  
26 750.321 OF THE MICHIGAN COMPILED LAWS.

1 (J) MAYHEM IN VIOLATION OF SECTION 397 OF THE MICHIGAN PENAL  
2 CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION  
3 750.397 OF THE MICHIGAN COMPILED LAWS.

4 (K) FIRST DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF  
5 SECTION 520B OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE  
6 PUBLIC ACTS OF 1931, BEING SECTION 750.520B OF THE MICHIGAN  
7 COMPILED LAWS.

8 (L) SECOND DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF  
9 SECTION 520C OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE  
10 PUBLIC ACTS OF 1931, BEING SECTION 750.520C OF THE MICHIGAN  
11 COMPILED LAWS.

12 (M) THIRD DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF  
13 SECTION 520D OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE  
14 PUBLIC ACTS OF 1931, BEING SECTION 750.520D OF THE MICHIGAN  
15 COMPILED LAWS.

16 (N) ASSAULT WITH INTENT TO COMMIT FIRST DEGREE CRIMINAL  
17 SEXUAL CONDUCT IN VIOLATION OF SECTION 520G OF THE MICHIGAN PENAL  
18 CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION  
19 750.520G OF THE MICHIGAN COMPILED LAWS.

20 (3) THIS SECTION DOES NOT APPLY TO A PERSON SUBJECT TO SEN-  
21 TENCING UNDER SECTION 7413 OR 7413A OF THE PUBLIC HEALTH CODE,  
22 ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.7413  
23 AND 333.7413A OF THE MICHIGAN COMPILED LAWS.

24 SEC. 12B. (1) IF A PERSON HAS BEEN CONVICTED OF CRIMINAL  
25 SEXUAL CONDUCT IN THE FIRST DEGREE IN VIOLATION OF SECTION 520B  
26 OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF  
27 1931, BEING SECTION 750.520B OF THE MICHIGAN COMPILED LAWS, OR A



1 SUBSTANTIALLY SIMILAR LAW OF ANOTHER STATE OR THE UNITED STATES,  
2 AND THE PERSON IS SUBSEQUENTLY CONVICTED OF CRIMINAL SEXUAL CON-  
3 DUCT IN THE FIRST DEGREE, THE COURT MAY ORDER THE PERSON TO  
4 SUBMIT TO CHEMICAL CASTRATION DURING ANY PORTION OF THE SENTENCE  
5 IN WHICH THE PERSON IS NOT INCARCERATED. IF THE COURT ORDERS THE  
6 PERSON TO SUBMIT TO CHEMICAL CASTRATION UNDER THIS SUBSECTION,  
7 THE ORDER SHALL NOT BE IMPOSED IN LIEU OF, OR TO REDUCE, ANY  
8 OTHER SENTENCING PROVISION REQUIRED BY LAW.

9 (2) A PERSON WHO IS SENTENCED PURSUANT TO THIS SECTION WHO  
10 FAILS TO COMPLY WITH AN ORDER ISSUED UNDER SUBSECTION (1) IS  
11 GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 4  
12 YEARS OR A FINE OF NOT MORE THAN \$2,000.00, OR BOTH.

13 (3) AS USED IN THIS SECTION, "CHEMICAL CASTRATION" MEANS  
14 TREATMENT WITH DEPO-PROVERA OR AN EQUIVALENT MEDICAL TREATMENT.

15 Sec. 13. (1) In a criminal action, the prosecuting attorney  
16 may seek to enhance the sentence of the defendant as provided  
17 under section 10, 11, ~~or~~ 12, 12A, OR 12B of this chapter ~~—~~ by  
18 filing a written notice of his or her intent to do so within 21  
19 days after the defendant's arraignment on the information charg-  
20 ing the underlying offense or, if arraignment is waived, within  
21 21 days after the filing of the information charging the underly-  
22 ing offense.

23 (2) A WRITTEN notice of intent to seek an enhanced sentence  
24 filed under subsection (1) shall list the prior conviction or  
25 convictions that will or may be relied upon for purposes of sen-  
26 tence enhancement. The notice shall be filed with the court and  
27 served upon the defendant or his or her attorney within the time

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

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

14 (4) A defendant who has been given notice that the prosecut-  
15 ing attorney will seek to enhance his or her sentence as provided  
16 under section 10, 11, ~~or~~ 12, 12A, OR 12B of this chapter ~~—~~  
17 may challenge the accuracy or constitutional validity of 1 or  
18 more of the prior convictions listed in the notice by filing a  
19 written motion with the court and by serving a copy of the motion  
20 upon the prosecuting attorney in accordance with rules of the  
21 supreme court.

22 (5) The existence of the defendant's prior conviction or  
23 convictions shall be determined by the court, without a jury, at  
24 sentencing, or at a separate hearing scheduled for that purpose  
25 before sentencing. The existence of a prior conviction may be  
26 established by any evidence that is relevant for that purpose,  
27 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 sen-  
3 tencing proceeding.

4 (c) Information contained in a presentence report.

5 (d) A statement of the defendant.

6 (6) The court shall resolve any challenges to the accuracy  
7 or constitutional validity of a prior conviction or convictions  
8 that 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  
11 be given an opportunity to deny, explain, or refute any evidence  
12 or 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  
17 invalid. If the defendant establishes a prima facie showing that  
18 information or evidence concerning an alleged prior conviction is  
19 inaccurate, the prosecuting attorney shall bear the burden of  
20 proving, by a preponderance of the evidence, that the information  
21 or evidence is accurate. If the defendant establishes a prima  
22 facie showing that an alleged prior conviction is constitution-  
23 ally invalid, the prosecuting attorney shall bear the burden of  
24 proving, by a preponderance of the evidence, that the prior con-  
25 viction is constitutionally valid.

## CHAPTER XI

1  
2       Sec. 1. (1) In ~~all prosecutions~~ A PROSECUTION for  
3 ~~felonies~~ A FELONY or ~~misdemeanors~~ A MISDEMEANOR, except IN A  
4 PROSECUTION FOR murder, treason, criminal sexual conduct in the  
5 first or third degree, ARMED robbery, ~~while armed, and~~ A major  
6 controlled substance ~~offenses~~ OFFENSE not described in subsec-  
7 tion (4), OR A PROSECUTION UNDER SECTION 12A OF CHAPTER IX, if  
8 the defendant has been found guilty upon verdict or plea, and if  
9 it appears to the satisfaction of the court that the defendant is  
10 not likely again to engage in an offensive or criminal course of  
11 conduct and that the public good does not require that the  
12 defendant suffer the penalty imposed by law, the court may place  
13 the defendant on probation under the charge and supervision of a  
14 probation officer.

15       (2) Except as provided in subsection (4), in an action in  
16 which the court may place the defendant on probation, the court  
17 may delay ~~the imposing of sentence of~~ SENTENCING the defendant  
18 for a period of not ~~to exceed~~ MORE THAN 1 year ~~for the purpose~~  
19 ~~of giving~~ TO GIVE the defendant an opportunity to prove to the  
20 court his or her eligibility for probation or other leniency com-  
21 patible with the ends of justice and the rehabilitation of the  
22 defendant. When the sentencing is delayed, the court shall make  
23 an order stating the reason for the delay. ~~which~~ THE order  
24 shall be entered upon the records of the court. The delay in  
25 ~~passing sentence shall~~ SENTENCING THE DEFENDANT DOES not  
26 deprive the court of jurisdiction to sentence the defendant at  
27 any time during the period of delay.

(3) If a defendant is before the circuit court and is ~~made~~ subject to a delay in ~~imposing sentence~~ SENTENCING under subsection (2), the court shall include in the delayed sentence order THE REQUIREMENT that the department of corrections ~~shall~~ collect a supervision fee of not more than \$30.00 multiplied by the number of months of delay ordered, but not more than 12 months. The fee is payable when the delayed sentence order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that defendant. In determining the amount of the fee, the court shall consider the defendant's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

	<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
	\$ 0-249.99	\$ 0.00
	\$ 250.00-499.99	\$10.00
	\$ 500.00-749.99	\$20.00
	\$ 750.00 or more	\$30.00

The court may order a higher amount than indicated by the table, up to the maximum of \$30.00 multiplied by the number of months of delay ordered but not more than 12 months, if the court determines that the defendant has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, THE COURT SHALL STATE the amount and the reasons for ordering that amount ~~shall be stated~~ in the ~~court~~ order. The fee shall be collected as provided in section 25a of Act

1 No. 232 of the Public Acts of 1953, being section 791.225a of the  
2 Michigan Compiled Laws. A person shall not be subject to more  
3 than 1 supervision fee at the same time. If a supervision fee is  
4 ordered for a person for any month or months during which that  
5 person already is subject to a supervision fee, the court shall  
6 waive the fee having the shorter remaining duration.

7 (4) The sentencing judge may place a defendant on life pro-  
8 bation pursuant to subsection (1) if the defendant is convicted  
9 for a violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv) of  
10 the public health code, Act No. 368 of the Public Acts of 1978,  
11 being sections 333.7401 or 333.7403 of the Michigan Compiled  
12 Laws, or conspiracy to commit either of those ~~2~~ offenses.  
13 Subsection (2) does not apply to this subsection.

14 (5) Beginning June 1, 1988, this section does not apply to a  
15 juvenile placed on probation and committed under section 1(3) or  
16 (4) of chapter IX to a state institution or agency described in  
17 the youth rehabilitation services act, Act No. 150 of the Public  
18 Acts of 1974, being sections 803.301 to 803.309 of the Michigan  
19 Compiled Laws.

20 Section 2. This amendatory act shall take effect October 1,  
21 1995.

22 Section 3. This amendatory act does not apply after the  
23 expiration of 2 years after its effective date.

24 Section 4. This amendatory act shall not take effect unless  
25 all of the following bills of the 88th Legislature are enacted  
26 into law:

1 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 4702  
2 (request no. 00011'95 a).

3 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 4704  
4 (request no. 00011'95 b).