

HOUSE BILL No. 6193

September 24, 1998, Introduced by Rep. Nye and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 34 of chapter IX (MCL 769.34), as amended by
1998 PA 317.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

Sec. 34. (1) The sentencing guidelines promulgated by order
of the Michigan supreme court shall not apply to felonies enumer-
ated in part 2 of chapter XVII committed on or after ~~January 1,~~
~~1999~~ DECEMBER 15, 1998.

(2) Except as otherwise provided in this subsection or for a
departure from the appropriate minimum sentence range provided
for under subsection (3), the minimum sentence imposed by a court
of this state for a felony enumerated in part 2 of chapter XVII
committed on or after ~~January 1, 1999~~ DECEMBER 15, 1998 shall

1 be within the appropriate sentence range under the version of
2 those sentencing guidelines in effect on the date the crime was
3 committed. Both of the following apply to minimum sentences
4 under this subsection:

5 (a) If a statute mandates a minimum sentence, the court
6 shall impose sentence in accordance with that statute. Imposing
7 a mandatory minimum sentence is not a departure under this
8 section.

9 (b) The court shall not impose a minimum sentence, including
10 a departure, that exceeds 2/3 of the statutory maximum sentence.

11 (3) A court may depart from the appropriate sentence range
12 established under the sentencing guidelines set forth in chapter
13 XVII if the court has a substantial and compelling reason for
14 that departure and states on the record the reasons for
15 departure. All of the following apply to a departure:

16 (a) The court shall not use an individual's gender, race,
17 ethnicity, alienage, national origin, legal occupation, lack of
18 employment, representation by appointed legal counsel, represen-
19 tation by retained legal counsel, appearance in propria persona,
20 or religion to depart from the appropriate sentence range.

21 (b) The court shall not base a departure on an offense char-
22 acteristic or offender characteristic already taken into account
23 in determining the appropriate sentence range unless the court
24 finds from the facts contained in the court record, including the
25 presentence investigation report, that the characteristic has
26 been given inadequate or disproportionate weight.

1 (4) Intermediate sanctions shall be imposed under this
2 chapter as follows:

3 (a) If the upper limit of the recommended minimum sentence
4 range for a defendant determined under the sentencing guidelines
5 set forth in chapter XVII is 18 months or less, the court shall
6 impose an intermediate sanction unless the court states on the
7 record a substantial and compelling reason to sentence the indi-
8 vidual to the jurisdiction of the department of corrections. An
9 intermediate sanction may include a jail term that does not
10 exceed the upper limit of the recommended minimum sentence range
11 or 12 months, whichever is less.

12 (b) If the offense is a violation of section 7401(2)(a)(iv)
13 or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL
14 333.7401 and 333.7403, and the upper limit of the recommended
15 minimum sentence range is 18 months or less, the court shall
16 impose a sentence of life probation absent a departure.

17 (c) If an attempt to commit a felony designated in offense
18 class H in part 2 of this chapter is punishable by imprisonment
19 for more than 1 year, the court shall impose an intermediate
20 sanction upon conviction of that offense absent a departure.

21 (d) If the upper limit of the recommended minimum sentence
22 exceeds 18 months and the lower limit of the recommended minimum
23 sentence is 12 months or less, the court shall sentence the
24 offender as follows absent a departure:

25 (i) To imprisonment with a minimum term within that range.

1 (ii) To an intermediate sanction that may include a term of
2 imprisonment of not less than the minimum range or more than 12
3 months.

4 (5) If a crime has a mandatory determinant penalty or a man-
5 datory penalty of life imprisonment, the court shall impose that
6 penalty. This section does not apply to sentencing for that
7 crime.

8 (6) As part of the sentence, the court may also order the
9 defendant to pay any combination of a fine, costs, or applicable
10 assessments. The court shall order payment of restitution as
11 provided by law.

12 (7) If the trial court imposes on a defendant a minimum sen-
13 tence that is longer or more severe than the appropriate sentence
14 range, as part of the court's advice of the defendant's rights
15 concerning appeal, the court shall advise the defendant orally
16 and in writing that he or she may appeal the sentence as provided
17 by law on grounds that it is longer or more severe than the
18 appropriate sentence range.

19 (8) All of the following shall be part of the record filed
20 for an appeal of a sentence under this section:

21 (a) An entire record of the sentencing proceedings.

22 (b) The presentence investigation report. Any portion of
23 the presentence investigation report exempt from disclosure by
24 law shall not be a public record.

25 (c) Any other reports or documents the sentencing court used
26 in imposing sentence.

1 (9) An appeal of a sentence under this section does not stay
2 execution of the sentence.

3 (10) If a minimum sentence is within the appropriate guide-
4 lines sentence range, the court of appeals shall affirm that sen-
5 tence and shall not remand for resentencing absent an error in
6 scoring the sentencing guidelines or inaccurate information
7 relied upon in determining the defendant's sentence. A party
8 shall not raise on appeal an issue challenging the scoring of the
9 sentencing guidelines or challenging the accuracy of information
10 relied upon in determining a sentence that is within the appro-
11 priate guidelines sentence range unless the party has raised the
12 issue at sentencing, in a proper motion for resentencing, or in a
13 proper motion to remand filed in the court of appeals.

14 (11) If, upon a review of the record, the court of appeals
15 finds the trial court did not have a substantial and compelling
16 reason for departing from the appropriate sentence range, the
17 court shall remand the matter to the sentencing judge or another
18 trial court judge for resentencing under this chapter.

19 (12) Time served on the sentence appealed under this section
20 is considered time served on any sentence imposed after remand.