

Act No. 87
Public Acts of 1999
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STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999

Introduced by Senator Goschka

ENROLLED SENATE BILL No. 568

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending sections 1 and 16a of chapter IX (MCL 769.1 and 769.16a), section 1 of chapter IX as amended by 1998 PA 520 and section 16a of chapter IX as amended by 1993 PA 85.

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 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 in violation of section 72 of the Michigan penal code, 1931 PA 328, MCL 750.72.
- (b) Assault with intent to commit murder in violation of section 83 of the Michigan penal code, 1931 PA 328, MCL 750.83.
- (c) Assault with intent to maim in violation of section 86 of the Michigan penal code, 1931 PA 328, MCL 750.86.
- (d) Attempted murder in violation of section 91 of the Michigan penal code, 1931 PA 328, MCL 750.91.
- (e) Conspiracy to commit murder in violation of section 157a of the Michigan penal code, 1931 PA 328, MCL 750.157a.
- (f) Solicitation to commit murder in violation of section 157b of the Michigan penal code, 1931 PA 328, MCL 750.157b.
- (g) First degree murder in violation of section 316 of the Michigan penal code, 1931 PA 328, MCL 750.316.

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

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

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

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

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

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

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

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

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

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

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

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

(f) The dispositional options available for the juvenile.

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

(5) If a juvenile is convicted of a violation or conspiracy to commit a violation of section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7403, the court shall determine whether the best interests of the public would be served by imposing the sentence provided by law for an adult offender, by placing the individual on probation and committing the individual to an institution or agency under subsection (3), or by imposing a sentence of imprisonment for any term of years but not less than 25 years. If the court determines by clear and convincing evidence that the best interests of the public would be served by imposing a sentence of imprisonment for any term of years but not less than 25 years, the court may impose that sentence. In making its determination, the court shall use the criteria specified in subsection (3).

(6) The court shall state on the record the court's findings of fact and conclusions of law for the probation and commitment decision or sentencing decision made under subsection (3). If a juvenile is committed under subsection (3) to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, a transcript of the court's findings shall be sent to the family independence agency or county juvenile agency, as applicable.

(7) If a juvenile is committed under subsection (3) or (4) to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, the written order of commitment shall contain a provision for the reimbursement to the court by the juvenile or those responsible for the juvenile's support, or both, for the cost of care or service. The amount of reimbursement ordered shall be reasonable, taking into account both the income and resources of the juvenile and those responsible for the juvenile's support. The amount may be based upon the guidelines and model schedule prepared under section 18(6) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. The reimbursement provision applies during the entire period the juvenile remains in care outside the juvenile's own home and under court supervision. The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of

commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under county, state, or court supervision. The court may also collect benefits paid by the government of the United States for the cost of care of the juvenile. Money collected for juveniles placed with or committed to the family independence agency or a county juvenile agency shall be accounted for and reported on an individual basis. In cases of delinquent accounts, the court may also enter an order to intercept state tax refunds or the federal income tax refund of a child, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

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

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

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

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

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

(13) If the defendant is sentenced for an offense other than a listed offense as defined in section 2(d)(i) to (ix) and (xi) to (xiii) of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall determine if the offense is a violation of a law of this state or a local ordinance of a municipality of this state that by its nature constitutes a sexual offense against an individual who is less than 18 years of age. If so, the conviction is for a listed offense as defined in section 2(d)(x) of the sex offenders registration act, 1994 PA 295, MCL 28.722, and the court shall include the basis for that determination on the record and 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 as provided in section 16a. If the report has not been forwarded to the department of consumer and industry services, the court shall order the clerk of the court to immediately prepare and forward the report as provided in section 16a.

Sec. 16a. (1) Except as otherwise provided in subsection (3), upon final disposition of an original charge against a person of a felony or a misdemeanor punishable by imprisonment for more than 92 days, the clerk of the court entering the disposition shall immediately advise the department of state police of the final disposition of the charge on forms approved by the state court administrator. The report to the department of state police shall include information as to the finding of the judge or jury, including a finding of guilty, guilty but mentally ill, not guilty, or not guilty by reason of insanity, or the person's plea of guilty, nolo contendere, or guilty but mentally ill; if the person was convicted, the offense of which the person was convicted; and a summary of any sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. If the sentence is imposed under any of the following sections, the report shall so indicate:

(a) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.

(b) Sections 11 to 15 of chapter II.

(c) Section 4a of chapter IX.

(2) Except as otherwise provided in subsection (3), upon sentencing of a person convicted of a misdemeanor or of a violation of a local ordinance substantially corresponding to state law, the clerk of the court imposing sentence immediately shall advise the department of state police of the conviction on forms approved by the state court administrator. The clerk of a court is not required to report a conviction under this subsection if the clerk is required to report the conviction under subsection (1).

(3) Except as otherwise provided in subsection (5), the clerk of a court is not required to and shall not, unless ordered by a judge of the court, report a conviction of a misdemeanor offense if either of the following apply:

(a) The conviction is under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or under a local ordinance substantially corresponding to a provision of that act unless the offense is punishable by imprisonment for more than 92 days or is an offense that would be punishable by more than 92 days as a second conviction.

(b) A sentence of imprisonment is not imposed, except as an alternative sentence, and any fine and costs ordered total less than \$100.00.

(4) As part of the sentence for a conviction of an offense described in subsection (2), the court shall order that the fingerprints of the person convicted be taken and forwarded to the department of state police if fingerprints have not already been taken.

(5) As part of the sentence for a conviction of a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall order that the fingerprints of the person convicted be taken and forwarded as provided in the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, if fingerprints have not already been taken and forwarded as provided in that act.

(6) Before the expiration of 21 days after the date a person licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, is convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the clerk of the court entering the conviction shall report the conviction to the department of consumer and industry services. The form of the report shall be prescribed and furnished by the department of consumer and industry services.

Enacting section 1. This amendatory act takes effect September 1, 1999.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 566 of the 90th Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E Randall

Clerk of the House of Representatives.

Approved _____

Governor.