

HOUSE BILL No. 5135

September 7, 2005, Introduced by Rep. Van Regenmorter and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 12, 13, and 20a of chapter VIII, sections 10, 11, and 12 of chapter IX, and section 3 of chapter XI (MCL 768.12, 768.13, 768.20a, 769.10, 769.11, 769.12, and 771.3), section 20a of chapter VIII as amended by 1983 PA 42, sections 10, 11, and 12 of chapter IX as amended by 1998 PA 317, and section 3 of chapter XI as amended by 2004 PA 330; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VIII

Sec. 12. (1) ~~Any~~ A person who is put on trial for an offense which ~~is~~ **THAT** is not punishable by death or life imprisonment shall

1 be allowed to challenge peremptorily 5 of the persons drawn to
 2 serve as jurors. ~~and no more; and the prosecuting officers on~~
 3 ~~behalf of the people shall be allowed to challenge peremptorily in~~
 4 ~~such cases 5 of such jurors and no more.~~ In ~~cases~~ **A CASE**
 5 involving 2 or more defendants who are being jointly tried for
 6 ~~such~~ an offense **THAT IS NOT PUNISHABLE BY DEATH OR LIFE**
 7 **IMPRISONMENT**, each of ~~said~~ **THE** defendants shall be allowed to
 8 challenge peremptorily 5 persons returned as jurors. ~~and no more;~~
 9 ~~and the~~ **THE** prosecuting officers on behalf of the people shall be
 10 allowed to challenge **5 JURORS** peremptorily ~~as many times 5 of the~~
 11 ~~persons returned as jurors as there may be defendants being so~~
 12 ~~jointly tried.~~ **IF A DEFENDANT IS BEING TRIED ALONE OR, IF**
 13 **DEFENDANTS ARE TRIED JOINTLY, SHALL BE ALLOWED THE TOTAL NUMBER OF**
 14 **PEREMPTORY CHALLENGES TO WHICH ALL THE DEFENDANTS ARE ENTITLED.**

15 (2) ON MOTION AND A SHOWING OF GOOD CAUSE, THE COURT MAY GRANT
 16 1 OR MORE OF THE PARTIES AN INCREASED NUMBER OF PEREMPTORY
 17 CHALLENGES. THE NUMBER OF ADDITIONAL PEREMPTORY CHALLENGES THE
 18 COURT GRANTS MAY CAUSE THE VARIOUS PARTIES TO HAVE UNEQUAL NUMBERS
 19 OF PEREMPTORY CHALLENGES.

20 Sec. 13. (1) ~~Any~~ **A** person who is ~~put on trial~~ **BEING TRIED**
 21 **ALONE** for an offense punishable by death or imprisonment for life,
 22 shall be allowed to challenge peremptorily ~~20~~ **12** of the persons
 23 drawn to serve as jurors. ~~, and no more; and the prosecuting~~
 24 ~~officers on behalf of the people shall be allowed to challenge~~
 25 ~~peremptorily 15 of such persons, and no more. In cases involving 2~~
 26 ~~or more defendants, who are being jointly tried for such an~~
 27 ~~offense, each of said defendants shall be allowed to challenge~~

1 ~~peremptorily 20 persons returned as jurors, and no more; and the~~
2 ~~prosecuting officers on behalf of the people shall be allowed to~~
3 ~~challenge peremptorily as many times 15 of the persons returned as~~
4 ~~jurors as there may be defendants being so jointly tried. IN A~~
5 **CASE PUNISHABLE BY DEATH OR IMPRISONMENT FOR LIFE THAT INVOLVES 2**
6 **OR MORE DEFENDANTS, A DEFENDANT SHALL BE ALLOWED THE FOLLOWING**
7 **NUMBER OF PEREMPTORY CHALLENGES:**

8 (A) TWO DEFENDANTS - 10 EACH.

9 (B) THREE DEFENDANTS - 9 EACH.

10 (C) FOUR DEFENDANTS - 8 EACH.

11 (D) FIVE OR MORE DEFENDANTS - 7 EACH.

12 (2) IN A CASE PUNISHABLE BY DEATH OR IMPRISONMENT FOR LIFE,
13 THE PROSECUTING OFFICERS ON BEHALF OF THE PEOPLE SHALL BE ALLOWED
14 TO CHALLENGE PEREMPTORILY 12 JURORS IF A DEFENDANT IS BEING TRIED
15 ALONE OR, IF DEFENDANTS ARE TRIED JOINTLY, SHALL BE ALLOWED THE
16 TOTAL NUMBER OF PEREMPTORY CHALLENGES TO WHICH ALL THE DEFENDANTS
17 ARE ENTITLED.

18 (3) ON MOTION AND A SHOWING OF GOOD CAUSE, THE COURT MAY GRANT
19 1 OR MORE OF THE PARTIES AN INCREASED NUMBER OF PEREMPTORY
20 CHALLENGES. THE NUMBER OF ADDITIONAL PEREMPTORY CHALLENGES THE
21 COURT GRANTS MAY CAUSE THE VARIOUS PARTIES TO HAVE UNEQUAL NUMBERS
22 OF PEREMPTORY CHALLENGES.

23 Sec. 20a. (1) If a defendant in a felony case proposes to
24 offer in his or her defense testimony to establish his or her
25 insanity at the time of an alleged offense, the defendant shall
26 file and serve upon the court and the prosecuting attorney a notice
27 in writing of his or her intention to assert the defense of

1 insanity not less than 30 days before the date set for the trial of
2 the case, or at such other time as the court directs.

3 (2) Upon receipt of a notice of an intention to assert the
4 defense of insanity, a court shall order the defendant to undergo
5 an examination relating to his or her claim of insanity by
6 personnel of the center for forensic psychiatry or by other
7 qualified personnel, as applicable, for a period not to exceed 60
8 days from the date of the order. When the defendant is to be held
9 in jail pending trial, the center or the other qualified personnel
10 may perform the examination in the jail, or may notify the sheriff
11 to transport the defendant to the center or facility used by the
12 qualified personnel for the examination, and the sheriff shall
13 return the defendant to the jail upon completion of the
14 examination. When the defendant is at liberty pending trial, on
15 bail or otherwise, the defendant shall make himself or herself
16 available for the examination at the place and time established by
17 the center or the other qualified personnel. If the defendant,
18 after being notified of the place and time of the examination,
19 fails to make himself or herself available for the examination, the
20 court may, without a hearing, order his or her commitment to the
21 center.

22 (3) The defendant may, at his or her own expense, ~~or if~~
23 ~~indigent, at the expense of the county,~~ secure an independent
24 psychiatric evaluation by a clinician of his or her choice on the
25 issue of his or her insanity at the time the alleged offense was
26 committed. **IF THE DEFENDANT IS INDIGENT, THE COURT MAY, UPON**
27 **SHOWING OF GOOD CAUSE, ORDER THAT THE COUNTY PAY FOR AN INDEPENDENT**

1 **PSYCHIATRIC EVALUATION.** The defendant shall notify the prosecuting
2 attorney at least 5 days before the day scheduled for the
3 independent evaluation that he or she intends to secure such an
4 evaluation. The prosecuting attorney may similarly obtain
5 independent psychiatric evaluation. A clinician secured by an
6 indigent defendant ~~shall be~~ **IS** entitled to receive a reasonable
7 fee as approved by the court.

8 (4) The defendant shall fully cooperate in his or her
9 examination by personnel of the center for forensic psychiatry or
10 by other qualified personnel, and by any other independent
11 examiners for the defense and prosecution. If he or she fails to
12 cooperate, and that failure is established to the satisfaction of
13 the court at a hearing prior to trial, the defendant shall be
14 barred from presenting testimony relating to his or her insanity at
15 the trial of the case.

16 (5) Statements made by the defendant to personnel of the
17 center for forensic psychiatry, to other qualified personnel, or to
18 any independent examiner during an examination shall not be
19 admissible or have probative value in court at the trial of the
20 case on any issues other than his or her mental illness or insanity
21 at the time of the alleged offense.

22 (6) Upon conclusion of the examination, the center for
23 forensic psychiatry or the other qualified personnel, and any
24 independent examiner, shall prepare a written report and shall
25 submit the report to the prosecuting attorney and defense counsel.
26 The report shall contain:

27 (a) The clinical findings of the center, the qualified

1 personnel, or any independent examiner.

2 (b) The facts, in reasonable detail, upon which the findings
3 were based.

4 (c) The opinion of the center or qualified personnel, and the
5 independent examiner on the issue of the defendant's insanity at
6 the time the alleged offense was committed and whether the
7 defendant was mentally ill or mentally retarded at the time the
8 alleged offense was committed.

9 (7) Within 10 days after the receipt of the report from the
10 center for forensic psychiatry or from the qualified personnel, or
11 within 10 days after the receipt of the report of an independent
12 examiner secured by the prosecution, whichever occurs later, but
13 not later than 5 days before the trial of the case, or at ~~such~~
14 ~~either~~ **ANOTHER** time ~~as~~ the court directs, the prosecuting
15 attorney shall file and serve upon the defendant a notice of
16 rebuttal of the defense of insanity which shall contain the names
17 of the witnesses whom the prosecuting attorney proposes to call in
18 rebuttal.

19 (8) The report of the center for forensic psychiatry, the
20 qualified personnel, or any independent examiner may be admissible
21 in evidence upon the stipulation of the prosecution and defense.

22 (9) As used in this section, "qualified personnel" means
23 ~~either of the following:~~

24 ~~—(a) Personnel~~ **PERSONNEL** meeting standards determined by the
25 department of ~~mental~~ **COMMUNITY** health under rules promulgated
26 pursuant to ~~Act No. 306 of the Public Acts of 1969, being sections~~
27 ~~24.301 to 24.315 of the Michigan Compiled Laws.~~

1 ~~_____ (b) Until the rules to which subdivision (a) refers, excluding~~
2 ~~emergency rules, are in effect, personnel of the psychiatric clinic~~
3 ~~of the recorder's court of the city of Detroit. THE ADMINISTRATIVE~~
4 **PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.**

5
6 CHAPTER IX

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

14 (a) If the subsequent felony is punishable upon a first
15 conviction by imprisonment for a term less than life, the court,
16 except as otherwise provided in this section or section 1 of
17 chapter XI, may place the person on probation or sentence the
18 person to imprisonment for a maximum term that is not more than 1-
19 1/2 times the longest term prescribed for a first conviction of
20 that offense or for a lesser term.

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

26 (c) If the subsequent felony is a major controlled substance
27 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.

1 (2) If the court pursuant to this section imposes a sentence
2 of imprisonment for any term of years, the court shall fix the
3 length of both the minimum and maximum sentence within any
4 specified limits in terms of years or a fraction of a year and the
5 sentence so imposed shall be considered an indeterminate sentence.
6 **THE COURT SHALL NOT FIX A MAXIMUM SENTENCE THAT IS LESS THAN THE**
7 **MAXIMUM TERM FOR A FIRST CONVICTION.**

8 (3) A conviction shall not be used to enhance a sentence under
9 this section if that conviction is used to enhance a sentence under
10 a statute that prohibits use of the conviction for further
11 enhancement under this section.

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

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

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

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

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

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
9 specified limits in terms of years or a fraction of a year, and the
10 sentence so imposed shall be considered an indeterminate sentence.

11 **THE COURT SHALL NOT FIX A MAXIMUM SENTENCE THAT IS LESS THAN THE**
12 **MAXIMUM TERM FOR A FIRST CONVICTION.**

13 (3) A conviction shall not be used to enhance a sentence under
14 this section if that conviction is used to enhance a sentence under
15 a statute that prohibits use of the conviction for further
16 enhancement under this section.

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

25 (a) If the subsequent felony is punishable upon a first
26 conviction by imprisonment for a maximum term of 5 years or more or
27 for life, the court, except as otherwise provided in this section

1 or section 1 of chapter XI, may sentence the person to imprisonment
2 for life or for a lesser term.

3 (b) If the subsequent felony is punishable upon a first
4 conviction by imprisonment for a maximum term that is less than 5
5 years, the court, except as otherwise provided in this section or
6 section 1 of chapter XI, may sentence the person to imprisonment
7 for a maximum term of not more than 15 years.

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

11 (2) If the court pursuant to this section imposes a sentence
12 of imprisonment for any term of years, the court shall fix the
13 length of both the minimum and maximum sentence within any
14 specified limits in terms of years or a fraction of a year, and the
15 sentence so imposed shall be considered an indeterminate sentence.
16 **THE COURT SHALL NOT FIX A MAXIMUM SENTENCE THAT IS LESS THAN THE**
17 **MAXIMUM TERM FOR A FIRST CONVICTION.**

18 (3) A conviction shall not be used to enhance a sentence under
19 this section if that conviction is used to enhance a sentence under
20 a statute that prohibits use of the conviction for further
21 enhancement under this section.

22 (4) An offender sentenced under this section or section 10 or
23 11 of this chapter for an offense other than a major controlled
24 substance offense is not eligible for parole until expiration of
25 the following:

26 (a) For a prisoner other than a prisoner subject to
27 disciplinary time, the minimum term fixed by the sentencing judge

1 at the time of sentence unless the sentencing judge or a successor
2 gives written approval for parole at an earlier date authorized by
3 law.

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

6 (5) This section and sections 10 and 11 of this chapter are
7 not in derogation of other provisions of law that permit or direct
8 the imposition of a consecutive sentence for a subsequent felony.

9 (6) As used in this section, "prisoner subject to disciplinary
10 time" means that term as defined in section 34 of 1893 PA 118, MCL
11 800.34.

12 CHAPTER XI

13 Sec. 3. (1) The sentence of probation shall include all of the
14 following conditions:

15 (a) During the term of his or her probation, the probationer
16 shall not violate any criminal law of this state, the United
17 States, or another state or any ordinance of any municipality in
18 this state or another state.

19 (b) During the term of his or her probation, the probationer
20 shall not leave the state without the consent of the court granting
21 his or her application for probation.

22 (c) The probationer shall report to the probation officer,
23 either in person or in writing, monthly or as often as the
24 probation officer requires. This subdivision does not apply to a
25 juvenile placed on probation and committed under section 1(3) or
26 (4) of chapter IX to an institution or agency described in the
27 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to

1 803.309.

2 (d) If sentenced in circuit court, the probationer shall pay a
3 probation supervision fee as prescribed in section 3c of this
4 chapter.

5 (e) The probationer shall pay restitution to the victim of the
6 defendant's course of conduct giving rise to the conviction or to
7 the victim's estate as provided in chapter IX. An order for payment
8 of restitution may be modified and shall be enforced as provided in
9 chapter IX.

10 (f) The probationer shall pay an assessment ordered under
11 section 5 of 1989 PA 196, MCL 780.905.

12 (g) The probationer shall pay the minimum state cost
13 prescribed by section 1j of chapter IX.

14 (h) If the probationer is required to be registered under the
15 sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732,
16 the probationer shall comply with that act.

17 (2) As a condition of probation, the court may require the
18 probationer to do 1 or more of the following:

19 (a) Be imprisoned in the county jail for not more than 12
20 months, at the time or intervals, which may be consecutive or
21 nonconsecutive, within the probation as the court determines.
22 However, the period of confinement shall not exceed the maximum
23 period of imprisonment provided for the offense charged if the
24 maximum period is less than 12 months. The court may permit day
25 parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The
26 court may permit a work or school release from jail. This
27 subdivision does not apply to a juvenile placed on probation and

1 committed under section 1(3) or (4) of chapter IX to an institution
2 or agency described in the youth rehabilitation services act, 1974
3 PA 150, MCL 803.301 to 803.309.

4 (b) Pay immediately or within the period of his or her
5 probation a fine imposed when placed on probation.

6 (c) Pay costs pursuant to subsection (5).

7 (d) Pay any assessment ordered by the court other than an
8 assessment described in subsection (1)(f).

9 (e) Engage in community service.

10 (f) Agree to pay by wage assignment any restitution,
11 assessment, fine, or cost imposed by the court.

12 (g) Participate in inpatient or outpatient drug treatment or,
13 beginning January 1, 2005, participate in a drug treatment court
14 under chapter 10A of the revised judicature act of 1961, 1961 PA
15 236, MCL 600.1060 to 600.1082.

16 (h) Participate in mental health treatment.

17 (i) Participate in mental health or substance abuse
18 counseling.

19 (j) Participate in a community corrections program.

20 (k) Be under house arrest.

21 (l) Be subject to electronic monitoring.

22 (m) Participate in a residential probation program.

23 (n) Satisfactorily complete a program of incarceration in a
24 special alternative incarceration unit as provided in section 3b of
25 this chapter.

26 (o) Be subject to conditions reasonably necessary for the
27 protection of 1 or more named persons.

1 (p) Reimburse the county for expenses incurred by the county
2 in connection with the conviction for which probation was ordered
3 as provided in the prisoner reimbursement to the county act, 1984
4 PA 118, MCL 801.81 to 801.93.

5 (q) Complete his or her high school education or obtain the
6 equivalency of a high school education in the form of a general
7 education development (GED) certificate.

8 (3) The court may impose other lawful conditions of probation
9 as the circumstances of the case require or warrant or as in its
10 judgment are proper.

11 (4) If an order or amended order of probation contains a
12 condition for the protection of 1 or more named persons as provided
13 in subsection (2)(o), the court or a law enforcement agency within
14 the court's jurisdiction shall enter the order or amended order
15 into the law enforcement information network. If the court rescinds
16 the order or amended order or the condition, the court shall remove
17 the order or amended order or the condition from the law
18 enforcement information network or notify that law enforcement
19 agency and the law enforcement agency shall remove the order or
20 amended order or the condition from the law enforcement information
21 network.

22 (5) If the court requires the probationer to pay costs under
23 subsection (2), the costs shall be limited to expenses specifically
24 incurred in prosecuting the defendant or providing legal assistance
25 to the defendant and supervision of the probationer.

26 (6) If the court imposes costs under subsection (2) as part of
27 a sentence of probation, all of the following apply:

1 (a) The court shall not require a probationer to pay costs
2 under subsection (2) unless the probationer is or will be able to
3 pay them during the term of probation. In determining the amount
4 and method of payment of costs under subsection (2), the court
5 shall take into account the probationer's financial resources and
6 the nature of the burden that payment of costs will impose, with
7 due regard to his or her other obligations.

8 (b) A probationer who is required to pay costs under
9 subsection (1)(g) or (2)(c) and who is not in willful default of
10 the payment of the costs may petition the sentencing judge or his
11 or her successor at any time for a remission of the payment of any
12 unpaid portion of those costs. If the court determines that payment
13 of the amount due will impose a manifest hardship on the
14 probationer or his or her immediate family, the court may remit all
15 or part of the amount due in costs or modify the method of payment.

16 (7) If a probationer is required to pay costs as part of a
17 sentence of probation, the court may require payment to be made
18 immediately or the court may provide for payment to be made within
19 a specified period of time or in specified installments.

20 (8) If a probationer is ordered to pay costs as part of a
21 sentence of probation, compliance with that order shall be a
22 condition of probation. The court may revoke probation if the
23 probationer fails to comply with the order and if the probationer
24 has not made a good faith effort to comply with the order. In
25 determining whether to revoke probation, the court shall consider
26 the probationer's employment status, earning ability, and financial
27 resources, the willfulness of the probationer's failure to pay, and

1 any other special circumstances that may have a bearing on the
2 probationer's ability to pay. The proceedings provided for in this
3 subsection are in addition to those provided in section 4 of this
4 chapter.

5 (9) If ~~sentencing~~ **ENTRY OF JUDGMENT** is deferred in the
6 circuit court, the court shall require the individual to pay a
7 supervision fee in the same manner as is prescribed for a delayed
8 sentence under section 1(3) of this chapter, shall require the
9 individual to pay the minimum state costs prescribed by section 1j
10 of chapter IX, and may impose, as applicable, the conditions of
11 probation described in subsections (1), (2), and (3).

12 (10) If sentencing is delayed or **ENTRY OF JUDGMENT IS** deferred
13 in the district court or in a municipal court, the court shall
14 require the individual to pay the minimum state costs prescribed by
15 section 1j of chapter IX and may impose, as applicable, the
16 conditions of probation described in subsections (1), (2), and (3).

17 Enacting section 1. Section 3a of chapter X of the code of
18 criminal procedure, 1927 PA 175, MCL 770.3a, is repealed.