

# HOUSE BILL No. 6328

July 21, 2010, Introduced by Reps. Smith, Durhal and Meadows and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 8, 9, 10, 11, and 12 of chapter IX (MCL 769.8, 769.9, 769.10, 769.11, and 769.12), section 8 as amended by 1998 PA 317 and sections 10, 11, and 12 as amended by 2006 PA 655; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER IX

Sec. 8. (1) When a person is convicted for the first time for committing a felony and the punishment prescribed by law for that offense may be imprisonment in a state prison, the court imposing sentence shall ~~not~~ fix a definite term of imprisonment. ~~, but shall fix a minimum term, except as otherwise provided in this chapter. The maximum penalty provided by law shall be the maximum sentence in all cases except as provided in this chapter and shall be stated~~

1 ~~by the judge in imposing the sentence.~~

2 (2) Before or at the time of imposing sentence, the judge  
3 shall ascertain by examining the defendant under oath, or  
4 otherwise, and by other evidence as can be obtained tending to  
5 indicate briefly the causes of the defendant's criminal character  
6 or conduct, which facts and other facts that appear to be pertinent  
7 in the case the judge shall cause to be entered upon the minutes of  
8 the court.

9 Sec. 9. ~~(1) The provisions of this chapter relative to~~  
10 ~~indeterminate sentences shall not apply to a person convicted for~~  
11 ~~the commission of an offense for which the only punishment~~  
12 ~~prescribed by law is imprisonment for life.~~

13 (1) ~~(2)~~—In all cases where the maximum sentence in the  
14 discretion of the court may be imprisonment for life or any number  
15 or term of years, the court may impose a sentence for life or may  
16 impose a sentence for any term of years. If the sentence imposed by  
17 the court is for any term of years, the court shall fix ~~both the~~  
18 ~~minimum and the maximum of that sentence in terms of years or A~~  
19 ~~fraction thereof, and sentences so imposed shall be considered~~  
20 ~~indeterminate sentences~~ **OF A YEAR**. The court shall not impose a  
21 sentence in which the maximum penalty is life imprisonment with a  
22 minimum for a term of years included in the same sentence.

23 (2) ~~(3)~~—In cases involving a major controlled substance  
24 offense for which the court is directed by law to impose a sentence  
25 ~~which~~ **THAT** cannot be less than a specified term of years nor more  
26 than a specified term of years, the court in imposing the sentence  
27 shall fix the length of both the minimum and maximum sentence

1 within those specified limits, in terms of years or fraction  
2 thereof.  ~~, and the sentence so imposed shall be considered an~~  
3  ~~indeterminate sentence.~~

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

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

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

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

26       (2) If the court pursuant to this section imposes a sentence  
27 of imprisonment for any term of years, the court shall fix the

1 length of ~~both the minimum and maximum~~ **THAT** sentence within any  
2 ~~specified limits~~ in terms of years or a fraction of a year. ~~and the~~  
3 ~~sentence so imposed shall be considered an indeterminate sentence.~~  
4 The court shall not fix a maximum sentence that is less than the  
5 maximum term for a first conviction.

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

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

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

24 (b) If the subsequent felony is punishable upon a first  
25 conviction by imprisonment for life, the court, except as otherwise  
26 provided in this section or section 1 of chapter XI, may sentence  
27 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 part 74 of the  
3 public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

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

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

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

23 (a) If the subsequent felony is punishable upon a first  
24 conviction by imprisonment for a maximum term of 5 years or more or  
25 for life, the court, except as otherwise provided in this section  
26 or section 1 of chapter XI, may sentence the person to imprisonment  
27 for life or for a lesser term.

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

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

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~~ **THAT** sentence within any  
12 ~~specified limits~~ in terms of years or a fraction of a year. ~~and~~  
13 ~~the sentence so imposed shall be considered an indeterminate~~  
14 ~~sentence.~~ The court shall not fix a maximum sentence that is less  
15 than the maximum term for a first conviction.

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

20 ~~—— (4) An offender sentenced under this section or section 10 or~~  
21 ~~11 of this chapter for an offense other than a major controlled~~  
22 ~~substance offense is not eligible for parole until expiration of~~  
23 ~~the following:~~

24 ~~—— (a) For a prisoner other than a prisoner subject to~~  
25 ~~disciplinary time, the minimum term fixed by the sentencing judge~~  
26 ~~at the time of sentence unless the sentencing judge or a successor~~  
27 ~~gives written approval for parole at an earlier date authorized by~~

1 law.

2 ~~—— (b) For a prisoner subject to disciplinary time, the minimum~~  
3 ~~term fixed by the sentencing judge.~~

4 (4) ~~(5)~~ This section and sections 10 and 11 of this chapter  
5 are not in derogation of other provisions of law that permit or  
6 direct the imposition of a consecutive sentence for a subsequent  
7 felony.

8 (5) ~~(6)~~ As used in this section, "prisoner subject to  
9 disciplinary time" means that term as defined in section 34 of 1893  
10 PA 118, MCL 800.34.

11 Enacting section 1. Chapter XVII of the code of criminal  
12 procedure, 1927 PA 175, MCL 777.1 to 777.69, is repealed.

13 Enacting section 2. This amendatory act takes effect October  
14 1, 2010.

15 Enacting section 3. This amendatory act does not take effect  
16 unless Senate Bill No. \_\_\_\_ or House Bill No. 6329 (request no.  
17 01035'09\*) of the 95th Legislature is enacted into law.