

# HOUSE BILL NO. 4163

March 02, 2023, Introduced by Reps. Hope, Grant, Arbit, Wilson, Byrnes, Rheingans, Glanville, Mentzer, Hood, Scott and Aiyash and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 1 and 1b of chapter IX (MCL 769.1 and 769.1b), section 1 as amended by 1999 PA 87 and section 1b as amended by 1998 PA 520; and to repeal acts and parts of acts.

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

**1** CHAPTER IX

**2** Sec. 1. (1) A judge of a court having jurisdiction may  
**3** pronounce judgment against and pass sentence upon a person  
**4** convicted of an offense in that court. The sentence ~~shall~~**must** not

1 exceed the sentence prescribed by law. ~~The~~ **Subject to subsection**  
2 **(15), the** court shall sentence a juvenile convicted of any of the  
3 following crimes in the same manner as an adult:

4 (a) ~~Arson of a dwelling~~ **First degree arson** in violation of  
5 section 72 of the Michigan penal code, 1931 PA 328, MCL 750.72.

6 (b) Assault with intent to commit murder in violation of  
7 section 83 of the Michigan penal code, 1931 PA 328, MCL 750.83.

8 (c) Assault with intent to maim in violation of section 86 of  
9 the Michigan penal code, 1931 PA 328, MCL 750.86.

10 (d) Attempted murder in violation of section 91 of the  
11 Michigan penal code, 1931 PA 328, MCL 750.91.

12 (e) Conspiracy to commit murder in violation of section 157a  
13 of the Michigan penal code, 1931 PA 328, MCL 750.157a.

14 (f) Solicitation to commit murder in violation of section 157b  
15 of the Michigan penal code, 1931 PA 328, MCL 750.157b.

16 (g) First degree murder in violation of section 316 of the  
17 Michigan penal code, 1931 PA 328, MCL 750.316.

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

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

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

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

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

28 (2) A person convicted of a felony or of a misdemeanor  
29 punishable by imprisonment for more than 92 days ~~shall~~ **must** not be

1 sentenced until the court has examined the court file and has  
2 determined that the person's fingerprints have been taken.

3 ~~(3) Unless a juvenile is required to be sentenced in the same~~  
4 ~~manner as an adult under subsection (1),~~ **If subsection (1) does not**  
5 **apply to a juvenile's sentence,** a judge of a court having  
6 jurisdiction over a juvenile shall conduct a hearing at the  
7 juvenile's sentencing to determine if the best interests of the  
8 public would be served by placing the juvenile on probation and  
9 committing the juvenile to an institution or agency described in  
10 the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to  
11 803.309, or by imposing any other sentence provided by law for an  
12 adult offender. Except as provided in ~~subsection~~ **subsections** (5)  
13 **and (15),** the court shall sentence the juvenile in the same manner  
14 as an adult unless the court determines by a preponderance of the  
15 evidence that the interests of the public would be best served by  
16 placing the juvenile on probation and committing the juvenile to an  
17 institution or agency described in the youth rehabilitation  
18 services act, 1974 PA 150, MCL 803.301 to 803.309. The rules of  
19 evidence do not apply to a hearing under this subsection. In making  
20 the determination required under this subsection, the judge shall  
21 consider all of the following, giving greater weight to the  
22 seriousness of the alleged offense and the juvenile's prior record  
23 of delinquency:

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

29 (b) The juvenile's culpability in committing the alleged

1 offense, including, but not limited to, the level of the juvenile's  
2 participation in planning and carrying out the offense and the  
3 existence of any aggravating or mitigating factors recognized by  
4 the sentencing guidelines.

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

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

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

14 (f) The dispositional options available for the juvenile.

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

22 (5) If a juvenile is convicted of a violation or conspiracy to  
23 commit a violation of section 7403(2)(a)(i) of the public health  
24 code, 1978 PA 368, MCL 333.7403, the court shall determine whether  
25 the best interests of the public would be served by imposing the  
26 sentence provided by law for an adult offender, by placing the  
27 individual on probation and committing the individual to an  
28 institution or agency under subsection (3), or by imposing a  
29 sentence of imprisonment for any term of years but not less than 25

1 years. If the court determines by clear and convincing evidence  
2 that the best interests of the public would be served by imposing a  
3 sentence of imprisonment for any term of years but not less than 25  
4 years, the court may impose that sentence. In making its  
5 determination, the court shall use the criteria specified in  
6 subsection (3).

7 (6) The court shall state on the record the court's findings  
8 of fact and conclusions of law for the probation and commitment  
9 decision or sentencing decision made under subsection (3). If a  
10 juvenile is committed under subsection (3) to an institution or  
11 agency described in the youth rehabilitation services act, 1974 PA  
12 150, MCL 803.301 to 803.309, a transcript of the court's findings  
13 ~~shall~~**must** be sent to the ~~family independence agency~~**department of**  
14 **health and human services** or county juvenile agency, as applicable.

15 (7) If a juvenile is committed under subsection (3) or (4) to  
16 an institution or agency described in the youth rehabilitation  
17 services act, 1974 PA 150, MCL 803.301 to 803.309, the written  
18 order of commitment ~~shall~~**must** contain a provision for the  
19 reimbursement to the court by the juvenile or those responsible for  
20 the juvenile's support, or both, for the cost of care or service.  
21 The amount of reimbursement ordered ~~shall~~**must** be reasonable,  
22 taking into account both the income and resources of the juvenile  
23 and those responsible for the juvenile's support. The amount may be  
24 based upon the guidelines ~~and model schedule prepared~~ under section  
25 18(6) of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL  
26 712A.18. The reimbursement provision applies during the entire  
27 period the juvenile remains in care outside the juvenile's own home  
28 and under court supervision. The court shall provide for the  
29 collection of all amounts ordered to be reimbursed, and the money

1 collected ~~shall~~**must** be accounted for and reported to the county  
2 board of commissioners. Collections to cover delinquent accounts or  
3 to pay the balance due on reimbursement orders may be made after a  
4 juvenile is released or discharged from care outside the juvenile's  
5 own home and under court supervision. Twenty-five percent of all  
6 amounts collected pursuant to an order entered under this  
7 subsection ~~shall~~**must** be credited to the appropriate fund of the  
8 county to offset the administrative cost of collections. The  
9 balance of all amounts collected pursuant to an order entered under  
10 this subsection ~~shall~~**must** be divided in the same ratio in which  
11 the county, state, and federal government participate in the cost  
12 of care outside the juvenile's own home and under county, state, or  
13 court supervision. The court may also collect benefits paid by the  
14 government of the United States for the cost of care of the  
15 juvenile. Money collected for juveniles placed with or committed to  
16 the ~~family independence agency~~**department of health and human**  
17 **services** or a county juvenile agency ~~shall~~**must** be accounted for  
18 and reported on an individual basis. In cases of delinquent  
19 accounts, the court may also enter an order to intercept state tax  
20 refunds or the federal income tax refund of a child, parent,  
21 guardian, or custodian and initiate the necessary offset  
22 proceedings in order to recover the cost of care or service. The  
23 court shall send to the person who is the subject of the intercept  
24 order advance written notice of the proposed offset. The notice  
25 ~~shall~~**must** include notice of the opportunity to contest the offset  
26 on the grounds that the intercept is not proper because of a  
27 mistake of fact concerning the amount of the delinquency or the  
28 identity of the person subject to the order. The court shall  
29 provide for the prompt reimbursement of an amount withheld in error

1 or an amount found to exceed the delinquent amount.

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

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

11 (10) If a juvenile is placed on probation and committed under  
12 subsection (3) or (4) to an institution or agency described in the  
13 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to  
14 803.309, the court shall retain jurisdiction over the juvenile  
15 while the juvenile is on probation and committed to that  
16 institution or agency.

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

27 (12) If an individual who is under the court's jurisdiction  
28 under section 4 of chapter XIIIA of the probate code of 1939, 1939  
29 PA 288, MCL 712A.4, is convicted of a violation or conspiracy to

1 commit a violation of section 7403(2) (a) (i) of the public health  
2 code, 1978 PA 368, MCL 333.7403, the court shall determine whether  
3 the best interests of the public would be served by imposing the  
4 sentence provided by law for an adult offender or by imposing a  
5 sentence of imprisonment for any term of years but not less than 25  
6 years. If the court determines by clear and convincing evidence  
7 that the best interests of the public would be served by imposing a  
8 sentence of imprisonment for any term of years but not less than 25  
9 years, the court may impose that sentence. In making its  
10 determination, the court shall use the criteria specified in  
11 subsection (3) to the extent they apply.

12 (13) If the defendant is sentenced for an offense other than a  
13 listed offense as defined in section ~~2(d) (i) to (ix) and (xi) to (xiii)~~  
14 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722,  
15 the court shall determine if the offense is a violation of a law of  
16 this state or a local ordinance of a municipality of this state  
17 that by its nature constitutes a sexual offense against an  
18 individual who is less than 18 years of age. If so, the conviction  
19 is for a listed offense as defined in section ~~2(d) (x)~~ 2 of the sex  
20 offenders registration act, 1994 PA 295, MCL 28.722, and the court  
21 shall include the basis for that determination on the record and  
22 include the determination in the judgment of sentence.

23 (14) When sentencing a person convicted of a misdemeanor  
24 involving the illegal delivery, possession, or use of alcohol or a  
25 controlled substance or a felony, the court shall examine the  
26 presentence investigation report and determine if the person being  
27 sentenced is licensed or registered under article 15 of the public  
28 health code, 1978 PA 368, MCL 333.16101 to 333.18838. The court  
29 shall also examine the court file and determine if a report of the



1 conviction upon which the person is being sentenced has been  
2 forwarded to the department of ~~consumer and industry services~~  
3 **licensing and regulatory affairs** as provided in section 16a of **this**  
4 **chapter**. If the report has not been forwarded to the department of  
5 ~~consumer and industry services, licensing and regulatory affairs,~~  
6 the court shall order the clerk of the court to immediately prepare  
7 and forward the report as provided in section 16a of **this chapter**.

8 **(15) The court shall not sentence an individual who was less**  
9 **than 19 years of age when the crime was committed to imprisonment**  
10 **for life without parole eligibility.**

11 Sec. 1b. (1) If a juvenile is placed on probation and  
12 committed under section 1(3) or (4) of this chapter to an  
13 institution or agency described in the youth rehabilitation  
14 services act, 1974 PA 150, MCL 803.301 to 803.309, the court shall  
15 conduct a review hearing to determine whether the juvenile has been  
16 rehabilitated and whether the juvenile presents a serious risk to  
17 public safety. If the court determines that the juvenile has not  
18 been rehabilitated or that the juvenile presents a serious risk to  
19 public safety, jurisdiction over the juvenile ~~shall~~**may** be  
20 continued or the court may commit the juvenile to the department of  
21 corrections as provided in this section. In making this  
22 determination, the court shall consider the following:

23 (a) The extent and nature of the juvenile's participation in  
24 education, counseling, or work programs.

25 (b) The juvenile's willingness to accept responsibility for  
26 prior behavior.

27 (c) The juvenile's behavior in ~~his or her~~**the juvenile's**  
28 current placement.

29 (d) The juvenile's prior record and character and ~~his or her~~

1 **the juvenile's** physical and mental maturity.

2 (e) The juvenile's potential for violent conduct as  
3 demonstrated by prior behavior.

4 (f) The recommendations of the institution or agency charged  
5 with the juvenile's care for the juvenile's release or continued  
6 custody.

7 (g) Other information the prosecuting attorney or juvenile may  
8 submit.

9 (2) A review hearing ~~shall~~**must** be scheduled and held unless  
10 adjourned for good cause as near as possible to, but before, the  
11 juvenile's nineteenth birthday. If the institution or agency to  
12 which the juvenile was committed believes that the juvenile has  
13 been rehabilitated and that the juvenile does not present a serious  
14 risk to public safety, that institution or agency may petition the  
15 court to conduct a review hearing at any time before the juvenile  
16 becomes 19 years of age or, if the court has continued jurisdiction  
17 under subsection (1), at any time before the juvenile becomes 21  
18 years of age.

19 (3) Not less than 14 days before a review hearing is to be  
20 conducted, the prosecuting attorney, juvenile, and, if addresses  
21 are known, the juvenile's parent or guardian ~~shall~~**must** be  
22 notified. The notice ~~shall~~**must** state that the court may extend  
23 jurisdiction over the juvenile and ~~shall~~**must** advise the juvenile  
24 and the juvenile's parent or guardian of the right to legal  
25 counsel. If legal counsel has not been retained or appointed to  
26 represent the juvenile, the court shall appoint legal counsel and  
27 may assess the cost of providing counsel as costs against the  
28 juvenile or those responsible for the juvenile's support, or both,  
29 if the persons to be assessed are financially able to comply.

1           (4) The institution or agency charged with the care of the  
2 juvenile shall prepare commitment reports as provided in section 5  
3 of the juvenile facilities act, 1988 PA 73, MCL 803.225, for use by  
4 the court at a review hearing held under this section.

5           (5) The court shall conduct a final review of the juvenile's  
6 probation and commitment under section 1(3) or (4) of this chapter  
7 not less than 3 months before the end of the period that the  
8 juvenile is on probation and committed to the institution or  
9 agency. If the court determines at this review that the best  
10 interests of the public would be served by imposing any other  
11 sentence provided by law for an adult offender, the court may,  
12 **subject to section 1(15) of this chapter**, impose the sentence. In  
13 making its determination, the court shall consider the criteria  
14 specified in subsection (1) and all of the following criteria:

15           (a) The effect of treatment on the juvenile's rehabilitation.

16           (b) Whether the juvenile is likely to be dangerous to the  
17 public if released.

18           (c) The best interests of the public welfare and the  
19 protection of public security.

20           (6) Not less than 14 days before a final review hearing under  
21 subsection (5) is to be conducted, the prosecuting attorney,  
22 juvenile, and, if addresses are known, the juvenile's parent or  
23 guardian ~~shall~~**must** be notified. The notice ~~shall~~**must** state that  
24 the court may impose a sentence upon the juvenile under subsection  
25 (5) and ~~shall~~**must** advise the juvenile and the juvenile's parent or  
26 guardian of the right to legal counsel. If legal counsel has not  
27 been retained or appointed to represent the juvenile, the court  
28 shall appoint legal counsel and may assess the cost of providing  
29 counsel as costs against the juvenile or those responsible for the

1 juvenile's support, or both, if the persons to be assessed are  
2 financially able to comply.

3 (7) After a sentence is imposed under subsection (1) or (5),  
4 the juvenile ~~shall~~**must** receive credit for the period of time  
5 served on probation and committed to an agency or institution under  
6 section 1(3) or (4) of this chapter.

7 Enacting section 1. Sections 25 and 25a of chapter IX of the  
8 code of criminal procedure, 1927 PA 175, MCL 769.25 and 769.25a,  
9 are repealed.

10 Enacting section 2. This amendatory act takes effect 90 days  
11 after the date it is enacted into law.

12 Enacting section 3. This amendatory act does not take effect  
13 unless all of the following bills of the 102nd Legislature are  
14 enacted into law:

15 (a) Senate Bill No. \_\_\_\_ or House Bill No. 4164 (request no.  
16 01612'23 a).

17 (b) Senate Bill No. \_\_\_\_ or House Bill No. 4162 (request no.  
18 01612'23 b).

19 (c) Senate Bill No. \_\_\_\_ or House Bill No. 4160 (request no.  
20 01612'23 c).

21 (d) Senate Bill No. \_\_\_\_ or House Bill No. 4161 (request no.  
22 01612'23 d).