

HOUSE BILL No. 5512

December 14, 2005, Introduced by Rep. Condino and referred to the Committee on Judiciary.

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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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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~~ **EXCEPT AS PROVIDED IN**
SUBSECTION (15), THE court shall sentence a juvenile convicted of
any of the following crimes in the same manner as an adult:

1 (a) Arson of a dwelling in violation of section 72 of the
2 Michigan penal code, 1931 PA 328, MCL 750.72.

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

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

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

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

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

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

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

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

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

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

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

25 (2) A person convicted of a felony or of a misdemeanor
26 punishable by imprisonment for more than 92 days shall not be
27 sentenced until the court has examined the court file and has

1 determined that the person's fingerprints have been taken.

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

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

26 (b) The juvenile's culpability in committing the alleged
27 offense, including, but not limited to, the level of the juvenile's

1 participation in planning and carrying out the offense and the
2 existence of any aggravating or mitigating factors recognized by
3 the sentencing guidelines.

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

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

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

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

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

21 (5) If a juvenile is convicted of a violation or conspiracy to
22 commit a violation of section 7403(2)(a)(i) of the public health
23 code, 1978 PA 368, MCL 333.7403, the court shall determine whether
24 the best interests of the public would be served by imposing the
25 sentence provided by law for an adult offender, by placing the
26 individual on probation and committing the individual to an
27 institution or agency under subsection (3), or by imposing a

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

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

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

1 period the juvenile remains in care outside the juvenile's own home
2 and under court supervision. The court shall provide for the
3 collection of all amounts ordered to be reimbursed, and the money
4 collected shall be accounted for and reported to the county board
5 of commissioners. Collections to cover delinquent accounts or to
6 pay the balance due on reimbursement orders may be made after a
7 juvenile is released or discharged from care outside the juvenile's
8 own home and under court supervision. Twenty-five percent of all
9 amounts collected pursuant to an order entered under this
10 subsection shall be credited to the appropriate fund of the county
11 to offset the administrative cost of collections. The balance of
12 all amounts collected pursuant to an order entered under this
13 subsection shall be divided in the same ratio in which the county,
14 state, and federal government participate in the cost of care
15 outside the juvenile's own home and under county, state, or court
16 supervision. The court may also collect benefits paid by the
17 government of the United States for the cost of care of the
18 juvenile. Money collected for juveniles placed with or committed to
19 the family independence agency or a county juvenile agency shall be
20 accounted for and reported on an individual basis. In cases of
21 delinquent accounts, the court may also enter an order to intercept
22 state tax refunds or the federal income tax refund of a child,
23 parent, guardian, or custodian and initiate the necessary offset
24 proceedings in order to recover the cost of care or service. The
25 court shall send to the person who is the subject of the intercept
26 order advance written notice of the proposed offset. The notice
27 shall include notice of the opportunity to contest the offset on

1 the grounds that the intercept is not proper because of a mistake
2 of fact concerning the amount of the delinquency or the identity of
3 the person subject to the order. The court shall provide for the
4 prompt reimbursement of an amount withheld in error or an amount
5 found to exceed the delinquent amount.

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

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

15 (10) If a juvenile is placed on probation and committed under
16 subsection (3) or (4) to an institution or agency described in the
17 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
18 803.309, the court shall retain jurisdiction over the juvenile
19 while the juvenile is on probation and committed to that
20 institution or agency.

21 (11) If the court has retained jurisdiction over a juvenile
22 under subsection (10), the court shall conduct an annual review of
23 the services being provided to the juvenile, the juvenile's
24 placement, and the juvenile's progress in that placement. In
25 conducting this review, the court shall examine the juvenile's
26 annual report prepared under section 3 of the juvenile facilities
27 act, 1988 PA 73, MCL 803.223. The court may order changes in the

1 juvenile's placement or treatment plan including, but not limited
2 to, committing the juvenile to the jurisdiction of the department
3 of corrections, based on the review.

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

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

1 record and include the determination in the judgment of sentence.

2 (14) When sentencing a person convicted of a misdemeanor
3 involving the illegal delivery, possession, or use of alcohol or a
4 controlled substance or a felony, the court shall examine the
5 presentence investigation report and determine if the person being
6 sentenced is licensed or registered under article 15 of the public
7 health code, 1978 PA 368, MCL 333.16101 to 333.18838. The court
8 shall also examine the court file and determine if a report of the
9 conviction upon which the person is being sentenced has been
10 forwarded to the department of consumer and industry services as
11 provided in section 16a. If the report has not been forwarded to
12 the department of consumer and industry services, the court shall
13 order the clerk of the court to immediately prepare and forward the
14 report as provided in section 16a.

15 **(15) THE COURT SHALL NOT SENTENCE AN INDIVIDUAL WHO WAS LESS**
16 **THAN 18 YEARS OF AGE WHEN THE CRIME WAS COMMITTED TO IMPRISONMENT**
17 **FOR LIFE WITHOUT PAROLE ELIGIBILITY.**

18 Sec. 1b. (1) If a juvenile is placed on probation and
19 committed under section 1(3) or (4) of this chapter to an
20 institution or agency described in the youth rehabilitation
21 services act, 1974 PA 150, MCL 803.301 to 803.309, the court shall
22 conduct a review hearing to determine whether the juvenile has been
23 rehabilitated and whether the juvenile presents a serious risk to
24 public safety. If the court determines that the juvenile has not
25 been rehabilitated or that the juvenile presents a serious risk to
26 public safety, jurisdiction over the juvenile shall be continued or
27 the court may commit the juvenile to the department of corrections

1 as provided in this section. In making this determination, the
2 court shall consider the following:

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

5 (b) The juvenile's willingness to accept responsibility for
6 prior behavior.

7 (c) The juvenile's behavior in his or her current placement.

8 (d) The juvenile's prior record and character and his or her
9 physical and mental maturity.

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

12 (f) The recommendations of the institution or agency charged
13 with the juvenile's care for the juvenile's release or continued
14 custody.

15 (g) Other information the prosecuting attorney or juvenile may
16 submit.

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

27 (3) Not less than 14 days before a review hearing is to be

1 conducted, the prosecuting attorney, juvenile, and, if addresses
2 are known, the juvenile's parent or guardian shall be notified. The
3 notice shall state that the court may extend jurisdiction over the
4 juvenile and shall advise the juvenile and the juvenile's parent or
5 guardian of the right to legal counsel. If legal counsel has not
6 been retained or appointed to represent the juvenile, the court
7 shall appoint legal counsel and may assess the cost of providing
8 counsel as costs against the juvenile or those responsible for the
9 juvenile's support, or both, if the persons to be assessed are
10 financially able to comply.

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

15 (5) The court shall conduct a final review of the juvenile's
16 probation and commitment under section 1(3) or (4) of this chapter
17 not less than 3 months before the end of the period that the
18 juvenile is on probation and committed to the institution or
19 agency. If the court determines at this review that the best
20 interests of the public would be served by imposing any other
21 sentence provided by law for an adult offender, the court may,
22 **EXCEPT AS PROVIDED IN SUBSECTION (8)**, impose the sentence. In
23 making its determination, the court shall consider the criteria
24 specified in subsection (1) and all of the following criteria:

- 25 (a) The effect of treatment on the juvenile's rehabilitation.
26 (b) Whether the juvenile is likely to be dangerous to the
27 public if released.

1 (c) The best interests of the public welfare and the
2 protection of public security.

3 (6) Not less than 14 days before a final review hearing under
4 subsection (5) is to be conducted, the prosecuting attorney,
5 juvenile, and, if addresses are known, the juvenile's parent or
6 guardian shall be notified. The notice shall state that the court
7 may impose a sentence upon the juvenile under subsection (5) and
8 shall advise the juvenile and the juvenile's parent or guardian of
9 the right to legal counsel. If legal counsel has not been retained
10 or appointed to represent the juvenile, the court shall appoint
11 legal counsel and may assess the cost of providing counsel as costs
12 against the juvenile or those responsible for the juvenile's
13 support, or both, if the persons to be assessed are financially
14 able to comply.

15 (7) After a sentence is imposed under subsection (1) or (5),
16 the juvenile shall receive credit for the period of time served on
17 probation and committed to an agency or institution under section
18 1(3) or (4) of this chapter.

19 **(8) THE COURT SHALL NOT SENTENCE AN INDIVIDUAL WHO WAS LESS**
20 **THAN 18 YEARS OF AGE WHEN THE CRIME WAS COMMITTED TO IMPRISONMENT**
21 **FOR LIFE WITHOUT PAROLE ELIGIBILITY.**