

HOUSE BILL No. 5541

February 22, 1990, Introduced by Reps. Pitoniak, DeMars, Stupak, Ciaramitaro, Profit, Bartnik and Gire and referred to the Committee on Towns and Counties.

A bill to amend sections 8 and 10 of chapter IX and section 14 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

section 10 of chapter IX as amended by Act No. 90 of the Public Acts of 1988 and section 14 of chapter XI as amended by Act No. 88 of the Public Acts of 1985, being sections 769.8, 769.10, and 771.14 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 8 and 10 of chapter IX and section 14
2 of chapter XI of Act No. 175 of the Public Acts of 1927, section
3 10 of chapter IX as amended by Act No. 90 of the Public Acts of
4 1988 and section 14 of chapter XI as amended by Act No. 88 of the
5 Public Acts of 1985, being sections 769.8, 769.10, and 771.14 of
6 the Michigan Compiled Laws, are amended to read as follows:

CHAPTER IX

1
2 Sec. 8. (1) ~~When~~ EXCEPT AS PROVIDED IN SUBSECTION (2),
3 WHEN a person is convicted for the first time for the commission
4 of a felony, and the punishment prescribed by law for that
5 offense may be imprisonment in a state prison, the court imposing
6 sentence shall not fix a ~~definite~~ DETERMINATE term of imprison-
7 ment, but shall fix a minimum term, except as otherwise provided
8 in this chapter. The maximum penalty provided by law shall be
9 the maximum sentence in all cases except as provided in this
10 chapter and shall be stated by the judge in imposing the
11 sentence.

12 (2) THE COURT MAY FIX A DETERMINATE TERM OF IMPRISONMENT OF
13 NOT MORE THAN 24 MONTHS FOR A CONVICTION DESCRIBED IN SUBSECTION
14 (1) IF THE PERSON BEING SENTENCED RECEIVES A SENTENCING GUIDE-
15 LINES SCORE IN WHICH THE UPPER LIMIT FOR THAT OFFENSE IS MORE
16 THAN 12 MONTHS. A DETERMINATE TERM OF IMPRISONMENT UNDER THIS
17 SUBSECTION IS SUBJECT TO BOTH OF THE FOLLOWING REQUIREMENTS:

18 (A) THE SENTENCE SHALL BE SERVED IN A COUNTY JAIL, SECURITY
19 CAMP, LOCAL COMMUNITY CORRECTIONS CENTER, OR A COMBINATION OF
20 THOSE FACILITIES, AND SHALL NOT BE SERVED IN A STATE CORRECTIONAL
21 FACILITY.

22 (B) IF THE SENTENCE IS GREATER THAN 12 MONTHS, NOT MORE THAN
23 12 MONTHS MAY BE SERVED IN A JAIL FACILITY OTHER THAN A SECURITY
24 CAMP, UNLESS FOR SECURITY REASONS THE PERSON MUST BE RETURNED
25 FROM A SECURITY CAMP TO A JAIL FACILITY.

26 (3) Before or at the time of imposing the sentence, the
27 judge shall ascertain by examination of the ~~convict~~ PERSON

1 CONVICTED on oath, or otherwise, and by other evidence as can be
2 obtained, ~~tending to indicate briefly~~ A BRIEF INDICATION OF the
3 causes of the criminal character or conduct of the ~~convict,~~
4 ~~which facts and other facts which appear to be pertinent in the~~
5 ~~case, the~~ PERSON CONVICTED. THE judge shall cause THE RESULTS
6 OF THE EXAMINATION OR OTHER INQUIRY, AND ANY OTHER FACTS THAT
7 APPEAR TO THE JUDGE TO BE PERTINENT IN THE CASE, to be entered
8 upon the minutes of the court.

9 Sec. 10. (1) If a person has been convicted of a felony, an
10 attempt to commit a felony, or both, whether the conviction
11 occurred in this state or would have been for a felony in this
12 state if the conviction obtained outside this state had been
13 obtained in this state, and that person commits a subsequent
14 felony within this state, the person shall be punished upon con-
15 viction as follows:

16 (a) If the subsequent felony is punishable upon a first con-
17 viction by imprisonment for a term less than life, then the
18 court, except as otherwise provided in this section or in section
19 1 of chapter 11, may place the person on probation or sentence
20 the person to imprisonment for a maximum term which is not more
21 than 1-1/2 times the longest term prescribed for a first convic-
22 tion of that offense or for a lesser term. IF THE UPPER LIMIT OF
23 THE SENTENCING GUIDELINES SCORE APPLICABLE TO THE SUBSEQUENT
24 FELONY IS MORE THAN 12 MONTHS, THE COURT MAY SENTENCE THE PERSON
25 TO A DETERMINATE TERM OF IMPRISONMENT OF NOT MORE THAN 24 MONTHS
26 IN A COUNTY JAIL FACILITY RATHER THAN A STATE CORRECTIONAL
27 FACILITY, SUBJECT TO BOTH OF THE FOLLOWING:

1 (i) THE SENTENCE SHALL BE SERVED IN A COUNTY JAIL, SECURITY
2 CAMP, LOCAL COMMUNITY CORRECTIONS CENTER, OR A COMBINATION OF
3 THOSE FACILITIES.

4 (ii) IF THE SENTENCE IS GREATER THAN 12 MONTHS, NOT MORE
5 THAN 12 MONTHS MAY BE SERVED IN A JAIL FACILITY OTHER THAN A
6 SECURITY CAMP, UNLESS FOR SECURITY REASONS THE PERSON MUST BE
7 RETURNED FROM A SECURITY CAMP TO A JAIL FACILITY.

8 (b) If the subsequent felony is punishable upon a first con-
9 viction by imprisonment for life, then the court, except as oth-
10 erwise provided in this section or in section 1 of chapter 11,
11 may place the person on probation or sentence the person to
12 imprisonment for life or for a lesser term.

13 (c) If the subsequent felony is a major controlled substance
14 offense, the person shall be punished as provided by part 74 of
15 the public health code, Act No. 368 of the Public Acts of 1978,
16 being sections 333.7401 to 333.7415 of the Michigan Compiled
17 Laws.

18 (2) ~~if~~ EXCEPT AS PROVIDED IN SUBSECTION (1)(A), IF the
19 court pursuant to this section imposes a sentence of imprisonment
20 for any term of years, the court shall fix the length of both the
21 minimum and maximum sentence within any specified limits in terms
22 of years or fraction thereof and the sentence so imposed shall be
23 considered an indeterminate sentence.

24 CHAPTER XI

25 Sec. 14. (1) Before sentencing ~~any~~ A person charged with
26 a felony, and, if directed by the court, in any other case in
27 which ~~any~~ A person is charged with a misdemeanor within the

1 jurisdiction of the court, the probation officer shall inquire
2 into the antecedents, character, and circumstances of the person,
3 and shall report in writing to the court.

4 (2) A presentence investigation report prepared pursuant to
5 subsection (1) shall include all of the following:

6 (a) An evaluation of and a prognosis for the person's
7 adjustment in the community based on factual information con-
8 tained in the report.

9 (b) A written statement, if provided by the victim, of any
10 physical or emotional injury or economic loss suffered by any
11 victim of the course of conduct giving rise to the conviction for
12 which the person is being sentenced.

13 (c) If requested by a victim, any written impact statement
14 submitted by the victim pursuant to the crime victim's rights
15 act.

16 (d) A specific written recommendation for disposition based
17 on the evaluation and other information as prescribed by the
18 assistant director of the department of corrections in charge of
19 probation.

20 (e) A statement prepared by the prosecuting attorney on the
21 applicability of any consecutive sentencing provision.

22 (F) IN ADDITION TO THE REQUIREMENTS OF SUBDIVISIONS (A) TO
23 (E), FOR A PERSON SUBJECT TO SECTION 10 OF CHAPTER IX, THE PRE-
24 SENTENCE INVESTIGATION REPORT SHALL INCLUDE BOTH OF THE
25 FOLLOWING:

1 (i) FOR EACH CONVICTION ENTERED, THE SENTENCING GUIDELINES
2 GRID THAT CONTAINS THE APPROPRIATE SENTENCE RANGE FOR THE
3 UNDERLYING FELONY OR FELONIES.

4 (ii) THE COMPUTATION THAT DETERMINES WHAT WOULD HAVE BEEN
5 THE APPROPRIATE SENTENCE RANGE UNDER THE SENTENCING GUIDELINES
6 FOR EACH CONVICTION ENTERED HAD THE PERSON NOT BEEN SUBJECT TO
7 SECTION 10 OF CHAPTER IX.

8 (3) The court may exempt from disclosure in the presentence
9 investigation report information or a diagnostic opinion ~~which~~
10 THAT might seriously disrupt a program of rehabilitation or
11 sources of information obtained on a promise of confidentiality.
12 If a part of the presentence investigation report is not dis-
13 closed, the court shall state on the record the reasons for its
14 action and inform the defendant and his or her attorney that
15 information has not been disclosed. The action of the court in
16 exempting information from disclosure shall be subject to appel-
17 late review. Information or a diagnostic opinion exempted from
18 disclosure pursuant to this subsection shall be specifically
19 noted in the presentence investigation report.

20 (4) The court shall permit the prosecutor, the defendant's
21 attorney, and the defendant to review the presentence investiga-
22 tion report prior to sentencing.

23 (5) At the time of sentencing, either party may challenge,
24 on the record, the accuracy or relevancy of any information con-
25 tained in the presentence investigation report. The court may
26 order an adjournment to permit the parties to prepare a challenge
27 or a response to a challenge. If the court finds ON THE RECORD

1 that the challenged information is inaccurate or irrelevant, that
2 finding shall be made a part of the record, ~~and~~ the presentence
3 investigation report shall be amended, and the inaccurate or
4 irrelevant information shall be stricken accordingly before the
5 report is transmitted to the department of corrections.

6 (6) On appeal, the defendant's attorney, or the defendant if
7 proceeding pro se, shall be provided with a copy of the presen-
8 tence investigation report and any attachments thereto with the
9 exception of any information exempted from disclosure, on the
10 record, by the court pursuant to subsection (3).

11 (7) If the person is committed to a state penal institution,
12 a copy or amended copy of the presentence investigation report
13 and, if a psychiatric examination of the person has been made for
14 the court, a copy of the psychiatric report shall accompany the
15 commitment papers. If the person is sentenced by fine or impris-
16 onment or placed on probation or other disposition of his or her
17 case is made by the court, a copy or amended copy of the presen-
18 tence investigation report, including a psychiatric examination
19 report made in the case, shall be filed with the department of
20 corrections.

21 (8) A prisoner under the jurisdiction of the department of
22 corrections shall be provided with a copy of any presentence
23 investigation report in the department's possession about that
24 prisoner, except for information exempted from disclosure pursu-
25 ant to subsection (3), not less than 30 days before a parole
26 hearing is held pursuant to section 35 of Act No. 232 of the

1 Public Acts of 1953, being section 791.235 of the Michigan
2 Compiled Laws.

3 Section 2. This amendatory act shall take effect April 1,
4 1992.

5 Section 3. This amendatory act shall not take effect unless
6 Senate Bill No. _____ or House Bill No. 5540 (request
7 no. 02250'89 **) of the 85th Legislature is enacted into law.