

HOUSE BILL No. 5349

December 3, 1991, Introduced by Reps. Bandstra, Dalman, Strand, Fitzgerald, McNutt, Horton, Willis Bullard, Jamian, Profit and Palamara and referred to the Committee on Judiciary.

A bill to amend section 13 of chapter IX of Act No. 175 of the Public Acts of 1927, entitled as amended
"The code of criminal procedure,"
being section 769.13 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 13 of chapter IX of Act No. 175 of the
2 Public Acts of 1927, being section 769.13 of the Michigan
3 Compiled Laws, is amended to read as follows:

CHAPTER IX

4
5 Sec. 13. (1) If ~~after conviction and either before or~~
6 ~~after sentence it appears that~~ a person convicted of a felony
7 has previously been convicted of ~~crimes~~ A FELONY as set forth
8 in section 10, 11, or 12, the prosecuting attorney ~~of the county~~
9 ~~in which the conviction was had~~ may file a separate or
10 supplemental information ~~in the cause~~ accusing the person of

1 ~~the previous convictions. The court in which the conviction was~~
2 ~~had shall cause~~ HAVING COMMITTED A PRIOR FELONY.

3 (2) IF A PERSON CONVICTED OF A FELONY IS ALLEGED BY SEPARATE
4 OR SUPPLEMENTAL INFORMATION TO HAVE COMMITTED A PRIOR FELONY AS
5 SET FORTH IN SECTION 10, 11, OR 12, THE COURT SHALL DO ALL OF THE
6 FOLLOWING:

7 (A) ORDER the person to ~~be brought~~ APPEAR before ~~it and~~
8 ~~shall inform him~~ THE COURT.

9 (B) INFORM THE PERSON of the allegations contained in the
10 SEPARATE OR SUPPLEMENTAL information. ~~, and of his~~

11 (C) INFORM THE PERSON THAT HE OR SHE HAS THE right to ~~be~~
12 ~~tried on~~ A HEARING BEFORE THE COURT AND NOT A JURY TO DETERMINE
13 the VALIDITY OF THE allegations. ~~, and require the offender to~~
14 ~~say~~

15 (D) INQUIRE OF THE PERSON whether he ~~is the same person as~~
16 ~~charged~~ OR SHE ADMITS THE ALLEGATIONS CONTAINED in the SEPARATE
17 OR SUPPLEMENTAL information. ~~or not. If the offender says he~~
18 ~~is not the same person, or remains silent, the court shall enter~~
19 ~~a plea of not guilty, and a jury of 12 jurors shall be impaneled~~
20 ~~from the petit jurors serving at the then or a following term of~~
21 ~~court to determine the issues raised by the information and~~
22 ~~plea. The accused may waive trial by jury in the manner provided~~
23 ~~by this act. The usual practice in the trial of criminal actions~~
24 ~~shall be followed in the impaneling of a jury and the trial of~~
25 ~~the issue. The prosecuting officer and the accused shall each be~~
26 ~~allowed 5 peremptory challenges.~~

1 (3) IF THE PERSON DENIES THE ALLEGATIONS CONTAINED IN THE
2 SEPARATE OR SUPPLEMENTAL INFORMATION, OR REFUSES TO PLEAD, OR
3 STANDS MUTE, THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER
4 THE PERSON WAS PREVIOUSLY CONVICTED OF A FELONY AS SET FORTH IN
5 SECTION 10, 11, OR 12. THE RULES OF CRIMINAL PROCEDURE, EXCEPT
6 THE RULES APPLICABLE TO TRIAL BY JURY, SHALL APPLY TO A HEARING
7 HELD PURSUANT TO THIS SECTION.

8 (4) A PERSON CONVICTED OF A FELONY WHO IS ACCUSED BY SEPA-
9 RATE OR SUPPLEMENTAL INFORMATION OF HAVING COMMITTED A PRIOR
10 FELONY AS SET FORTH IN SECTION 10, 11, OR 12 MAY CHALLENGE THE
11 EXISTENCE OR VALIDITY OF THE PRIOR FELONY FOR ANY REASON PERMIT-
12 TED BY LAW, INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOLLOWING
13 REASONS:

14 (A) THE PRIOR FELONY CONVICTION IS CONSTITUTIONALLY
15 INVALID.

16 (B) THE PRIOR FELONY CONVICTION HAS BEEN REVERSED BY A COURT
17 OF COMPETENT JURISDICTION.

18 (C) INFORMATION REGARDING THE PRIOR FELONY CONVICTION IS
19 INCOMPLETE OR INACCURATE.

20 (D) HE OR SHE IS NOT THE PERSON NAMED IN THE SEPARATE OR
21 SUPPLEMENTAL INFORMATION.

22 (E) HE OR SHE IS NOT THE PERSON WHO IS ALLEGED TO HAVE COM-
23 MITTED THE PRIOR FELONY.

24 (5) THE PROSECUTING ATTORNEY SHALL HAVE THE BURDEN OF PROV-
25 ING THE EXISTENCE AND VALIDITY OF A PRIOR CONVICTION BEYOND A
26 REASONABLE DOUBT.

1 (6) If the ~~accused pleads guilty to~~ PERSON ADMITS THE
2 ALLEGATIONS CONTAINED IN the SEPARATE OR SUPPLEMENTAL
3 information, or if the ~~jury returns a verdict of guilty~~ COURT
4 DETERMINES AFTER A HEARING HELD PURSUANT TO THIS SECTION THAT THE
5 ALLEGATIONS ARE TRUE, the court may sentence the ~~offender to the~~
6 ~~punishment prescribed in~~ PERSON PURSUANT TO section 10, 11, or
7 12. ~~and~~ BEFORE SENTENCING A PERSON PURSUANT TO SECTION 10,
8 11, OR 12, THE COURT shall vacate the previous sentence,
9 ~~deducting~~ AND DEDUCT from the new sentence ~~all~~ time
10 ~~actually~~ served on the vacated sentence. ~~if required.~~

11 (7) A warden, or prison, probation, OR parole OFFICER, or
12 other peace officer who knows that a person charged with, or con-
13 victed for, the commission of a felony, has been previously con-
14 victed within the meaning of section 10, 11, or 12, shall immedi-
15 ately report the ~~facts~~ PRIOR CONVICTION to the prosecuting
16 attorney of the county in which the person is charged or was
17 sentenced.