

HOUSE BILL No. 5835

May 13, 1992, Introduced by Rep. Strand and referred to the Committee on Judiciary.

A bill to amend section 1 of chapter IX of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

as amended by Act No. 113 of the Public Acts of 1989, being section 769.1 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1 of chapter IX of Act No. 175 of the
2 Public Acts of 1927, as amended by Act No. 113 of the Public Acts
3 of 1989, being section 769.1 of the Michigan Compiled Laws, is
4 amended to read as follows:

5 CHAPTER IX

6 Sec. 1. (1) A judge of a court having jurisdiction is
7 authorized and empowered to pronounce judgment against and pass
8 sentence upon a person convicted of an offense in that court.

1 The sentence shall not be in excess of the sentence prescribed by
2 law.

3 (2) The sentencing of a person convicted of a felony or a
4 misdemeanor punishable by imprisonment for more than 92 days
5 shall not occur until the court has examined the court file and
6 has determined that the fingerprints of the person have been
7 taken.

8 (3) A judge of a court having jurisdiction over a juvenile
9 shall conduct a hearing at the juvenile's sentencing to determine
10 if the best interests of the juvenile and the public would be
11 served by placing the juvenile on probation and committing the
12 juvenile to a state institution or agency described in the youth
13 rehabilitation services act, Act No. 150 of the Public Acts of
14 1974, being sections 803.301 to 803.309 of the Michigan Compiled
15 Laws, or by imposing any other sentence provided by law for an
16 adult offender. The rules of evidence do not apply to a hearing
17 under this subsection. In making this determination, the judge
18 shall consider the following criteria giving each weight as
19 appropriate to the circumstances:

20 (a) The prior record and character of the juvenile, his or
21 her physical and mental maturity, and his or her pattern of
22 living.

23 (b) The seriousness and the circumstances of the offense.

24 (c) Whether the offense is part of a repetitive pattern of
25 offenses ~~which~~ THAT would lead to 1 of the following
26 determinations:

1 (i) The juvenile is not amenable to treatment.

2 (ii) ~~That despite~~ DESPITE the juvenile's potential for
3 treatment, the nature of the juvenile's delinquent behavior is
4 likely to disrupt the rehabilitation of other juveniles in the
5 treatment program.

6 (d) Whether, despite the juvenile's potential for treatment,
7 the nature of the juvenile's delinquent behavior is likely to
8 render the juvenile dangerous to the public if released at the
9 age of 21.

10 (e) Whether the juvenile is more likely to be rehabilitated
11 by the services and facilities available in adult programs and
12 procedures than in juvenile programs and procedures.

13 (f) What is in the best interests of the public welfare and
14 the protection of the public security.

15 (4) With the consent of the prosecutor and the defendant,
16 the court may waive the hearing required under subsection (3).
17 If the court waives the hearing required under subsection (3),
18 the court may place the juvenile on probation and commit the
19 juvenile to a state institution or agency described in Act
20 No. 150 of the Public Acts of 1974, but may not impose any other
21 sentence provided by law for an adult offender.

22 (5) The court shall state on the record the court's findings
23 of fact and conclusions of law for the probation and commitment
24 decision or sentencing decision made under subsection (3). If a
25 juvenile is committed under subsection (3) to a state institution
26 or agency described in Act No. 150 of the Public Acts of 1974, a

1 transcript of the court's findings shall be sent to the
2 department of social services.

3 (6) If a juvenile is committed under subsection (3) or (4)
4 to a state institution or agency described in Act No. 150 of the
5 Public Acts of 1974, the written order of commitment shall con-
6 tain a provision for the reimbursement to the court by the juve-
7 nile or those responsible for the juvenile's support, or both,
8 for the cost of care or service. The amount of reimbursement
9 ordered shall be reasonable, taking into account both the income
10 and resources of the juvenile and those responsible for the
11 juvenile's support. The amount may be based upon the guidelines
12 and model schedule prepared under section 18(6) of chapter XIIA
13 of Act No. 288 of the Public Acts of 1939, being section 712A.18
14 of the Michigan Compiled Laws. The reimbursement provision shall
15 apply during the entire period the juvenile remains in care out-
16 side the juvenile's own home and under court supervision. The
17 court shall provide for the collection of all amounts ordered to
18 be reimbursed, and the money collected shall be accounted for and
19 reported to the county board of commissioners. Collections to
20 cover delinquent accounts or to pay the balance due on reimburse-
21 ment orders may be made after a juvenile is released or dis-
22 charged from care outside the juvenile's own home and under court
23 supervision. Twenty-five percent of all amounts collected pursu-
24 ant to an order entered under this subsection shall be credited
25 to the appropriate fund of the county to offset the administra-
26 tive cost of collections. The balance of all amounts collected
27 pursuant to an order entered under this subsection shall be

1 divided in the same ratio in which the county, state, and federal
2 government participate in the cost of care outside the juvenile's
3 own home and under state or court supervision. The court may
4 also collect benefits paid by the government of the United States
5 for the cost of care of the juvenile. Money collected for juve-
6 niles placed with or committed to the state department of social
7 services shall be accounted for and reported on an individual
8 basis. In cases of delinquent accounts, the court may also enter
9 an order to intercept state tax refunds or the federal income tax
10 refund of a child, parent, guardian, or custodian and initiate
11 the necessary offset proceedings in order to recover the cost of
12 care or service. The court shall send to the person who is the
13 subject of the intercept order advance written notice of the pro-
14 posed offset. The notice shall include notice of the opportunity
15 to contest the offset on the grounds that the intercept is not
16 proper because of a mistake of fact concerning the amount of the
17 delinquency or the identity of the person subject to the order.
18 The court shall provide for the prompt reimbursement of an amount
19 withheld in error or an amount found to exceed the delinquent
20 amount.

21 (7) If the court appoints an attorney to represent a juve-
22 nile, an order entered under this section may require the juve-
23 nile or person responsible for the juvenile's support, or both,
24 to reimburse the court for attorney fees.

25 (8) An order directed to a person responsible for the
26 juvenile's support under this section shall not be effectual and
27 binding on the person unless an opportunity for a hearing has

1 been given and until a copy of the order is served on the person,
2 personally or by first class mail to the person's last known
3 address.

4 (9) If a juvenile is placed on probation and committed under
5 subsection (3) or (4) to a state institution or agency described
6 in Act No. 150 of the Public Acts of 1974, the court shall retain
7 jurisdiction over the juvenile while the juvenile is on probation
8 and committed to that state institution or agency. A CHANGE IN A
9 JUVENILE'S PLACEMENT FROM A LESS RESTRICTIVE TO A MORE RESTRIC-
10 TIVE FACILITY SHALL NOT BE MADE WITHOUT A HEARING CONDUCTED BY
11 THE COURT. A CHANGE IN PLACEMENT TO A LESS RESTRICTIVE FACILITY
12 MAY BE MADE AT ANY TIME WITHOUT A HEARING BY THE COURT.

13 (10) If the court has retained jurisdiction over a juvenile
14 under subsection (9), the court shall conduct an annual review of
15 the services being provided to the juvenile, the juvenile's
16 placement, and the juvenile's progress in that placement. In
17 conducting this review, the court shall examine the juvenile's
18 annual report prepared pursuant to section 3 of the juvenile
19 facilities act, Act No. 73 of the Public Acts of 1988, being
20 section 803.223 of the Michigan Compiled Laws. The court may
21 order changes in the juvenile's placement or treatment plan based
22 on the review.