

HOUSE BILL No. 6003

July 8, 1992, Introduced by Reps. Jamian, McNutt, Johnson, Fitzgerald, Horton, Bandstra, Robertson, London, Martin, Willis Bullard, O'Connor, Rocca, McBryde, Bodem, Griffin, Wozniak, Owen and Middleton and referred to the Committee on Judiciary.

A bill to amend section 1 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 1 of chapter IX as amended by Act No. 113 of the Public Acts of 1989 and section 14 of chapter XI as amended by Act No. 88 of the Public Acts of 1985, being sections 769.1 and 771.14 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1 of chapter IX and section 14 of chap-
2 ter XI of Act No. 175 of the Public Acts of 1927, section 1 of
3 chapter IX as amended by Act No. 113 of the Public Acts of 1989
4 and section 14 of chapter XI as amended by Act No. 88 of the
5 Public Acts of 1985, being sections 769.1 and 771.14 of the
6 Michigan Compiled Laws, are amended to read as follows:

CHAPTER IX

1

2 Sec. 1. (1) A judge of a court having jurisdiction is
3 authorized and empowered to pronounce judgment against and pass
4 sentence upon a person convicted of an offense in that court.
5 The sentence shall not be in excess of the sentence prescribed by
6 law.

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

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

24 (a) The prior record and character of the juvenile, his or
25 her physical and mental maturity, and his or her pattern of
26 living.

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

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

(i) The juvenile is not amenable to treatment.

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

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

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

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

(4) With the consent of the prosecutor and the defendant, the court may waive the hearing required under subsection (3).

If the court waives the hearing required under subsection (3), the court may place the juvenile on probation and commit the

juvenile to a state institution or agency described in Act No. 150 of the Public Acts of 1974, but ~~may~~ SHALL not impose any other sentence provided by law for an adult offender.

(5) The court shall state on the record the court's findings of fact and conclusions of law for the probation and commitment decision or sentencing decision made under subsection (3). If a

1 juvenile is committed under subsection (3) to a state institution
2 or agency described in Act No. 150 of the Public Acts of 1974, a
3 transcript of the court's findings shall be sent to the depart-
4 ment of social services.

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

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

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

1 (8) An order directed to a person responsible for the
2 juvenile's support under this section shall not be effectual and
3 binding on the person unless an opportunity for a hearing has
4 been given and until a copy of the order is served on the person,
5 personally or by first class mail to the person's last known
6 address.

7 (9) If a juvenile is placed on probation and committed under
8 subsection (3) or (4) to a state institution or agency described
9 in Act No. 150 of the Public Acts of 1974, the court shall retain
10 jurisdiction over the juvenile while the juvenile is on probation
11 and committed to that state institution or agency.

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

22 (11) AT THE TIME OF SENTENCING FOR A PERSON CONVICTED OF, OR
23 SUBJECT TO A PROBATE COURT ORDER OF DISPOSITION FOR, AN ATTEMPT
24 TO VIOLATE, CONSPIRACY TO VIOLATE, OR A VIOLATION OF
25 SECTION 7401, 7407, 7410, 7416, 7453, OR 7455 OF THE PUBLIC
26 HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING
27 SECTIONS 333.7401, 333.7407, 333.7410, 333.7416, 333.7453, AND

1 333.7455 OF THE MICHIGAN COMPILED LAWS, THE COURT SHALL DO THE
2 FOLLOWING:

3 (A) DETERMINE WHETHER THE DEFENDANT HOLDS A LICENSE ISSUED
4 BY THE STATE OF MICHIGAN.

5 (B) DIRECT THE CLERK TO CERTIFY AND REPORT THE CONVICTION
6 AND LICENSING INFORMATION TO THE APPROPRIATE LICENSING
7 AUTHORITY.

8 (C) DIRECT THE LICENSING AUTHORITY TO REPORT BACK WITHIN 90
9 DAYS TO THE COURT AND PROSECUTING ATTORNEY A SUMMARY OF WHAT, IF
10 ANY, DISCIPLINARY ACTION WAS TAKEN AGAINST THE CONVICTED PERSON.

11 (12) AS USED IN THIS SECTION, "LICENSE" MEANS A LICENSE,
12 PERMIT, CERTIFICATION, REGISTRATION, OR OTHER LEGAL AUTHORIZATION
13 ISSUED OR GRANTED TO AN INDIVIDUAL BY A LICENSING AUTHORITY AND
14 REQUIRED FOR ENGAGING IN EMPLOYMENT OR AN OCCUPATION OR PROFES-
15 SION FOR ONLY THE FOLLOWING:

16 (A) A GROOM, HARNESS DRIVER, HORSE RIDING STABLE OPERATOR,
17 HORSE SALES BARN OPERATOR, JOCKEY, JOCKEY AGENT, RACEHORSE EXER-
18 CISE PERSON, RACEHORSE OWNER, RACEHORSE TRAINER, OR RACETRACK
19 VENDOR REGULATED BY THE RACING LAW OF 1980, ACT NO. 327 OF THE
20 PUBLIC ACTS OF 1980, BEING SECTIONS 431.61 TO 431.88 OF THE
21 MICHIGAN COMPILED LAWS.

22 (B) AN AERIAL PESTICIDE APPLICATOR OR REGISTERED PESTICIDE
23 APPLICATOR REGULATED BY THE PESTICIDE CONTROL ACT, ACT NO. 171 OF
24 THE PUBLIC ACTS OF 1976, BEING SECTIONS 286.551 TO 286.581 OF THE
25 MICHIGAN COMPILED LAWS.

26 (C) A TEACHER OR SCHOOL ADMINISTRATOR HOLDING STATE BOARD OF
27 EDUCATION APPROVAL AND CERTIFICATED UNDER THE SCHOOL CODE OF

1 1976, ACT NO. 451 OF THE PUBLIC ACTS OF 1976, BEING
2 SECTIONS 380.1 TO 380.1852 OF THE MICHIGAN COMPILED LAWS.

3 (D) AN INVESTMENT ADVISOR, SECURITIES AGENT, OR A SECURITIES
4 BROKER-DEALER REGULATED BY THE UNIFORM SECURITIES ACT, ACT
5 NO. 265 OF THE PUBLIC ACTS OF 1964, BEING SECTIONS 451.501 TO
6 451.818 OF THE MICHIGAN COMPILED LAWS.

7 (E) A COMMON MOTOR CARRIER OF PROPERTY OR A CONTRACT MOTOR
8 CARRIER OF PROPERTY REGULATED BY THE MOTOR CARRIER ACT, ACT
9 NO. 254 OF THE PUBLIC ACTS OF 1933, BEING SECTIONS 475.1 TO
10 479.20 OF THE MICHIGAN COMPILED LAWS.

11 (F) A PAROLE OFFICER, PROBATION OFFICER, CORRECTIONAL OFFI-
12 CER, OR MEDICAL AIDE REGULATED BY THE CORRECTIONAL OFFICERS'
13 TRAINING ACT OF 1982, ACT NO. 415 OF THE PUBLIC ACTS OF 1982,
14 BEING SECTIONS 791.501 TO 791.517 OF THE MICHIGAN COMPILED LAWS.

15 (G) AN ELEVATOR INSPECTOR REGULATED BY ACT NO. 227 OF THE
16 PUBLIC ACTS OF 1967, BEING SECTIONS 408.801 TO 408.824 OF THE
17 MICHIGAN COMPILED LAWS.

18 (H) AN INSPECTOR REGULATED BY THE BUILDING OFFICIALS AND
19 INSPECTORS REGISTRATION ACT, ACT NO. 54 OF THE PUBLIC ACTS OF
20 1986, BEING SECTIONS 338.2301 TO 338.2313 OF THE MICHIGAN
21 COMPILED LAWS.

22 (I) AN INSTALLER REGULATED BY THE BOILER ACT OF 1965, ACT
23 NO. 290 OF THE PUBLIC ACTS OF 1965, BEING SECTIONS 408.751 TO
24 408.776 OF THE MICHIGAN COMPILED LAWS.

25 (J) THE FOLLOWING INDIVIDUALS REGULATED BY THE OCCUPATIONAL
26 CODE, ACT NO. 299 OF THE PUBLIC ACTS OF 1980, BEING
27 SECTIONS 339.101 TO 339.2721 OF THE MICHIGAN COMPILED LAWS:

(i) A CERTIFIED PUBLIC ACCOUNTANT.

(ii) AN OCULARIST OR OCULARIST APPRENTICE.

(iii) A SOCIAL WORKER, SOCIAL WORKER TECHNICIAN, OR CERTIFIED SOCIAL WORKER.

(K) THE FOLLOWING INDIVIDUALS REGULATED BY ARTICLE 15 OF ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.16101 TO 333.18838 OF THE MICHIGAN COMPILED LAWS:

(i) A PHYSICIAN, PHYSICIAN'S ASSISTANT, OR A STUDENT WITH A LIMITED POSTGRADUATE LICENSE WHO IS ENGAGED IN THE PRACTICE OF MEDICINE.

(ii) A PHYSICIAN, PHYSICIAN'S ASSISTANT, OR A STUDENT WITH A LIMITED POSTGRADUATE LICENSE WHO IS ENGAGED IN THE PRACTICE OF OSTEOPATHIC MEDICINE AND SURGERY.

(iii) A VETERINARIAN.

(iv) A DENTIST, DENTAL ASSISTANT, OR DENTAL HYGIENIST.

(v) A NURSE OR REGISTERED PROFESSIONAL NURSE WHO IS ENGAGED IN THE PRACTICE OF NURSING OR A SUBFIELD OF THE PRACTICE OF NURSING.

(vi) A PHARMACIST OR PHARMACIST INTERN.

(vii) AN OPTOMETRIST.

(viii) A PHYSICAL THERAPIST.

(ix) A PSYCHOLOGIST.

(L) THE FOLLOWING INDIVIDUALS REGULATED BY ARTICLE 17 OF ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.20701 TO 333.22260 OF THE MICHIGAN COMPILED LAWS:

(i) AN EMERGENCY MEDICAL TECHNICIAN.

1 (ii) AN AMBULANCE ATTENDANT.

2 (iii) A LABORATORY DIRECTOR.

3 (M) A POLYGRAPH EXAMINER REGULATED BY THE FORENSIC POLYGRAPH
4 EXAMINERS ACT, ACT NO. 295 OF THE PUBLIC ACTS OF 1972, BEING
5 SECTIONS 338.1701 TO 338.1729 OF THE MICHIGAN COMPILED LAWS.

6 (N) A HAZARDOUS WASTE TRANSPORTER REGULATED BY THE HAZARDOUS
7 WASTE MANAGEMENT ACT, ACT NO. 64 OF THE PUBLIC ACTS OF 1979,
8 BEING SECTIONS 299.501 TO 299.551 OF THE MICHIGAN COMPILED LAWS.

9 (O) A LIQUID INDUSTRIAL WASTE REMOVER REGULATED BY ACT
10 NO. 136 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 323.271 TO
11 323.280 OF THE MICHIGAN COMPILED LAWS.

12 (P) A SHIP'S PILOT REGULATED BY THE CHARTER AND LIVERY BOAT
13 SAFETY ACT, ACT NO. 244 OF THE PUBLIC ACTS OF 1986, BEING
14 SECTIONS 281.571 TO 281.595 OF THE MICHIGAN COMPILED LAWS.

15 (Q) A DRIVER TRAINING INSTRUCTOR REGULATED BY ACT NO. 369 OF
16 THE PUBLIC ACTS OF 1974, BEING SECTIONS 256.601 TO 256.609 OF THE
17 MICHIGAN COMPILED LAWS.

18 (R) AN EXPLOSIVES HANDLER REGULATED BY THE EXPLOSIVES ACT OF
19 1970, ACT NO. 202 OF THE PUBLIC ACTS OF 1970, BEING
20 SECTIONS 29.41 TO 29.55 OF THE MICHIGAN COMPILED LAWS.

21 (S) A FIRE FIGHTER TRAINING INSTRUCTOR, FIRE INSTRUCTOR
22 ADVISOR, OR FIRE TRAINING ADMINISTRATOR REGULATED BY THE FIRE
23 FIGHTERS TRAINING COUNCIL ACT OF 1966, ACT NO. 291 OF THE PUBLIC
24 ACTS OF 1966, BEING SECTIONS 29.361 TO 29.377 OF THE MICHIGAN
25 COMPILED LAWS.

26 (T) A PRIVATE DETECTIVE OR PRIVATE INVESTIGATOR REGULATED BY
27 THE PRIVATE DETECTIVE LICENSE ACT OF 1965, ACT NO. 285 OF THE

1 PUBLIC ACTS OF 1965, BEING SECTIONS 338.821 TO 338.851 OF THE
2 MICHIGAN COMPILED LAWS.

3 (U) A PRIVATE SECURITY GUARD OR PRIVATE SECURITY GUARD OPER-
4 ATOR REGULATED BY THE PRIVATE SECURITY GUARD ACT OF 1968, ACT
5 NO. 330 OF THE PUBLIC ACTS OF 1968, BEING SECTIONS 338.1051 TO
6 338.1085 OF THE MICHIGAN COMPILED LAWS.

7 (V) A RAILROAD POLICE OFFICER REGULATED BY ACT NO. 114 OF
8 THE PUBLIC ACTS OF 1941, BEING SECTIONS 470.51 TO 470.61 OF THE
9 MICHIGAN COMPILED LAWS.

10 (W) AN AIRPORT MANAGER REGULATED BY THE AERONAUTICS CODE OF
11 THE STATE OF MICHIGAN, ACT NO. 327 OF THE PUBLIC ACTS OF 1945,
12 BEING SECTIONS 259.1 TO 259.208 OF THE MICHIGAN COMPILED LAWS.

13 (X) AN INDIVIDUAL HOLDING A CERTIFICATE OF AUTHORITY AS A
14 MOTOR CARRIER OF PASSENGERS FOR HIRE PURSUANT TO THE MOTOR BUS
15 TRANSPORTATION ACT, ACT NO. 432 OF THE PUBLIC ACTS OF 1982, BEING
16 SECTIONS 474.101 TO 474.141 OF THE MICHIGAN COMPILED LAWS.

17 CHAPTER XI

18 Sec. 14. (1) Before sentencing ~~any~~ A person WHO IS
19 charged with a felony, and, if directed by the court, in any
20 other case in which any person is charged with a misdemeanor
21 within the jurisdiction of the court, the probation officer shall
22 inquire into the antecedents, character, and circumstances of the
23 person, and shall report in writing to the court.

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

1 (a) An evaluation of and a prognosis for the person's
2 adjustment in the community based on factual information
3 contained in the report.

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

8 (c) If requested by a victim, any written impact statement
9 submitted by the victim pursuant to the crime victim's rights
10 act.

11 (d) A specific written recommendation for disposition based
12 on the evaluation and other information as prescribed by the
13 assistant director of the department of corrections in charge of
14 probation.

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

17 (F) IF A PERSON IS TO BE SENTENCED FOR A FELONY VIOLATION OF
18 SECTION 7401, 7407, 7410, 7416, 7453, OR 7455 OF THE PUBLIC
19 HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SEC-
20 TIONS 333.7401, 333.7407, 333.7410, 333.7416, 333.7453, AND
21 333.7455 OF THE MICHIGAN COMPILED LAWS, A STATEMENT OF WHETHER
22 THAT PERSON IS A HOLDER OF A LICENSE AS DESCRIBED IN
23 SECTION 1(11) OF CHAPTER IX, IF APPLICABLE.

24 (3) The court may exempt from disclosure in the presentence
25 investigation report information or a diagnostic opinion which
26 might seriously disrupt a program of rehabilitation or sources of
27 information obtained on a promise of confidentiality. If a part

1 of the presentence investigation report is not disclosed, the
2 court shall state on the record the reasons for its action and
3 inform the defendant and his or her attorney that information has
4 not been disclosed. The action of the court in exempting infor-
5 mation from disclosure shall be subject to appellate review.
6 Information or a diagnostic opinion exempted from disclosure pur-
7 suant to this subsection shall be specifically noted in the pre-
8 sentence investigation report.

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

12 (5) At the time of sentencing, either party may challenge,
13 on the record, the accuracy or relevancy of any information con-
14 tained in the presentence investigation report. The court may
15 order an adjournment to permit the parties to prepare a challenge
16 or a response to a challenge. If the court finds that the chal-
17 lenged information is inaccurate or irrelevant, that finding
18 shall be made a part of the record and the presentence investiga-
19 tion report shall be amended and the inaccurate or irrelevant
20 information shall be stricken accordingly before the report is
21 transmitted to the department of corrections.

22 (6) On appeal, the defendant's attorney, or the defendant if
23 proceeding pro se, shall be provided with a copy of the presen-
24 tence investigation report and any attachments ~~thereto~~ TO THE
25 REPORT with the exception of any information exempted from dis-
26 closure, on the record, by the court pursuant to subsection (3).

1 (7) If the person is committed to a state penal institution,
2 a copy or amended copy of the presentence investigation report
3 and, if a psychiatric examination of the person has been made for
4 the court, a copy of the psychiatric report shall accompany the
5 commitment papers. If the person is sentenced by fine or impris-
6 onment or placed on probation or other disposition of his or her
7 case is made by the court, a copy or amended copy of the presen-
8 tence investigation report, including a psychiatric examination
9 report made in the case, shall be filed with the department of
10 corrections.

11 (8) A prisoner under the jurisdiction of the department of
12 corrections shall be provided with a copy of any presentence
13 investigation report in the department's possession about that
14 prisoner, except for information exempted from disclosure pursu-
15 ant to subsection (3), not less than 30 days before a parole
16 hearing is held pursuant to section 35 of Act No. 232 of the
17 Public Acts of 1953, being section 791.235 of the Michigan
18 Compiled Laws.