

Act No. 85  
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**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Reps. Goschka, Bandstra, Jamian, Horton, Jaye, Bodem, McNutt, Hammerstrom,  
Gustafson and Crissman

# **ENROLLED HOUSE BILL No. 4290**

AN ACT to amend sections 1 and 16a of chapter IX and section 14 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," section 1 of chapter IX as amended by Act No. 113 of the Public Acts of 1989, section 16a of chapter IX as added by Act No. 232 of the Public Acts of 1986, and section 14 of chapter XI as amended by Act No. 88 of the Public Acts of 1985, being sections 769.1, 769.16a, and 771.14 of the Michigan Compiled Laws.

Section 1. Sections 1 and 16a of chapter IX and section 14 of chapter XI of Act No. 175 of the Public Acts of 1927, section 1 of chapter IX as amended by Act No. 113 of the Public Acts of 1989, section 16a of chapter IX as added by Act No. 232 of the Public Acts of 1986, and section 14 of chapter XI as amended by Act No. 88 of the Public Acts of 1985, being sections 769.1, 769.16a, and 771.14 of the Michigan Compiled Laws, are amended to read as follows:

## CHAPTER IX

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

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

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

(a) The prior record and character of the juvenile, his or her physical and mental maturity, and his or her pattern of 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 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 juvenile is committed under subsection (3) to a state institution or agency described in Act No. 150 of the Public Acts of 1974, a transcript of the court's findings shall be sent to the department of social services.

(6) If a juvenile is committed under subsection (3) or (4) to a state institution or agency described in Act No. 150 of the Public Acts of 1974, the written order of commitment shall contain a provision for the reimbursement to the court by the juvenile or those responsible for the juvenile's support, or both, for the cost of care or service. The amount of reimbursement ordered shall be reasonable, taking into account both the income and resources of the juvenile and those responsible for the juvenile's support. The amount may be based upon the guidelines and model schedule prepared under section 18(6) of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.18 of the Michigan Compiled Laws. The reimbursement provision shall apply during the entire period the juvenile remains in care outside the juvenile's own home and under court supervision. The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under state or court supervision. The

court may also collect benefits paid by the government of the United States for the cost of care of the juvenile. Money collected for juveniles placed with or committed to the state department of social services shall be accounted for and reported on an individual basis. In cases of delinquent accounts, the court may also enter an order to intercept state tax refunds or the federal income tax refund of a child, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

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

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

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

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

(11) At the time of sentencing a person convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the court shall examine the presentence investigation report and determine if the person being sentenced is licensed or registered under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws. The court shall also examine the court file and determine if a report of the conviction upon which the person is being sentenced has been forwarded to the department of commerce as provided in section 16a. If the report has not been forwarded to the department of commerce, the court shall order the clerk of the court to immediately prepare and forward the report as provided in section 16a.

Sec. 16a. (1) Except as otherwise provided in subsection (3), upon final disposition of an original charge against a person of a felony or a misdemeanor punishable by imprisonment for more than 92 days, the clerk of the court entering the disposition shall immediately advise the department of state police of the final disposition of the charge on forms approved by the state court administrator. The report to the department of state police shall include information as to the finding of the judge or jury, including a finding of guilty, guilty but mentally ill, not guilty, or not guilty by reason of insanity, or the person's plea of guilty, nolo contendere, or guilty but mentally ill; if the person was convicted, the offense of which the person was convicted; and a summary of any sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. If the sentence is imposed under any of the following sections, the report shall so indicate:

(a) Section 7411 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7411 of the Michigan Compiled Laws.

(b) Sections 11 to 15 of chapter II.

(c) Section 4a of chapter IX.

(2) Except as otherwise provided in subsection (3), upon sentencing of a person convicted of a misdemeanor or of a violation of a local ordinance substantially corresponding to state law, the clerk of the court imposing sentence immediately shall advise the department of state police of the conviction on forms approved by the state court administrator. The clerk of a court is not required to report a conviction under this subsection if the clerk is required to report the conviction under subsection (1).

(3) Except as otherwise provided in subsection (5), the clerk of a court is not required to and shall not, unless ordered by a judge of the court, report a conviction of a misdemeanor offense if either of the following apply:

(a) The conviction is under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or under a local ordinance substantially corresponding to a provision of Act No. 300 of the Public Acts of 1949, unless the offense is punishable by imprisonment for more than 92 days or is an offense which would be punishable by more than 92 days as a second conviction.

(b) A sentence of imprisonment is not imposed, except as an alternative sentence, and any fine and costs ordered total less than \$100.00.

(4) As part of the sentence for a conviction of an offense described in subsection (2), the court shall order that the fingerprints of the person convicted be taken and forwarded to the department of state police if fingerprints have not already been taken.

(5) Before the expiration of 21 days after the date a person licensed or registered under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws, is convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the clerk of the court entering the conviction shall report the conviction to the department of commerce. The form of the report shall be prescribed and furnished by the department of commerce.

## CHAPTER XI

Sec. 14. (1) Before sentencing a person charged with a felony, or a person who is a licensee or registrant under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws, as described in section 1(11) of chapter IX, and, if directed by the court, in any other case in which any person is charged with a misdemeanor within the jurisdiction of the court, the probation officer shall inquire into the antecedents, character, and circumstances of the person, and shall report in writing to the court.

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

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

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

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

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

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

(f) If a person is to be sentenced for a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, a statement that the person is licensed or registered under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws, if applicable.

(3) The court may exempt from disclosure in the presentence investigation report information or a diagnostic opinion which might seriously disrupt a program of rehabilitation or sources of information obtained on a promise of confidentiality. If a part of the presentence investigation report is not disclosed, the court shall state on the record the reasons for its action and inform the defendant and his or her attorney that information has not been disclosed. The action of the court in exempting information from disclosure is subject to appellate review. Information or a diagnostic opinion exempted from disclosure pursuant to this subsection shall be specifically noted in the presentence investigation report.

(4) The court shall permit the prosecutor, the defendant's attorney, and the defendant to review the presentence investigation report before sentencing.

(5) At the time of sentencing, either party may challenge, on the record, the accuracy or relevancy of any information contained in the presentence investigation report. The court may order an adjournment to permit the parties to prepare a challenge or a response to a challenge. If the court finds that the challenged information is inaccurate or irrelevant, that finding shall be made a part of the record and the presentence investigation report shall be amended and the inaccurate or irrelevant information shall be stricken accordingly before the report is transmitted to the department of corrections.

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

(7) If the person is committed to a state penal institution, a copy or amended copy of the presentence investigation report and, if a psychiatric examination of the person has been made for the court, a copy of the psychiatric report shall accompany the commitment papers. If the person is sentenced by fine or imprisonment or placed on probation or other disposition of his or her case is made by the court, a copy or amended copy of the presentence investigation report, including a psychiatric examination report made in the case, shall be filed with the department of corrections.

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

Section 2. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

(a) House Bill No. 4076.

(b) House Bill No. 4295.

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Co-Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.