

Act No. 110
Public Acts of 1994
Approved by the Governor
April 28, 1994
Filed with the Secretary of State
April 28, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Reps Mathieu and Nye

ENROLLED HOUSE BILL No. 5306

AN ACT to amend section 13 of chapter IX 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 being section 769 13 of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Section 13 of chapter IX of Act No 175 of the Public Acts of 1927 being section 769 13 of the Michigan Compiled Laws is amended to read as follows

CHAPTER IX

Sec 13 (1) In a criminal action the prosecuting attorney may seek to enhance the sentence of the defendant as provided under section 10 11 or 12 of this chapter by filing a written notice of his or her intent to do so within 21 days after the defendant's arraignment on the information charging the underlying offense or if arraignment is waived within 21 days after the filing of the information charging the underlying offense

(2) A notice of intent to seek an enhanced sentence filed under subsection (1) shall list the prior conviction or convictions that will or may be relied upon for purposes of sentence enhancement The notice shall be filed with the court and served upon the defendant or his or her attorney within the time provided in subsection (1) The notice may be personally served upon the defendant or his or her attorney at the arraignment on the information charging the underlying offense or may be served in the manner provided by law or court rule for service of written pleadings The prosecuting attorney shall file a written proof of service with the clerk of the court

(3) The prosecuting attorney may file notice of intent to seek an enhanced sentence after the defendant has been convicted of the underlying offense or a lesser offense upon his or her plea of guilty or nolo contendere if the defendant pleads guilty or nolo contendere at the arraignment on the information charging the underlying offense or within the time allowed for filing of the notice under subsection (1)

(4) A defendant who has been given notice that the prosecuting attorney will seek to enhance his or her sentence as provided under section 10 11 or 12 of this chapter may challenge the accuracy or constitutional validity of 1 or more of the prior convictions listed in the notice by filing a written motion with the court and by serving a copy of the motion upon the prosecuting attorney in accordance with rules of the supreme court

(5) The existence of the defendant's prior conviction or convictions shall be determined by the court without a jury at sentencing or at a separate hearing scheduled for that purpose before sentencing The existence of a prior conviction may be established by any evidence that is relevant for that purpose including but not limited to 1 or more of the following

- (a) A copy of a judgment of conviction
- (b) A transcript of a prior trial or a plea taking or sentencing proceeding
- (c) Information contained in a presentence report
- (d) A statement of the defendant

(6) The court shall resolve any challenges to the accuracy or constitutional validity of a prior conviction or convictions that have been raised in a motion filed under subsection (4) at sentencing or at a separate hearing scheduled for that purpose before sentencing The defendant or his or her attorney shall be given an opportunity to deny explain or refute any evidence or information pertaining to the defendant's prior conviction or convictions before sentence is imposed and shall be permitted to present relevant evidence for that purpose The defendant shall bear the burden of establishing a prima facie showing that an alleged prior conviction is inaccurate or constitutionally invalid If the defendant establishes a prima facie showing that information or evidence concerning an alleged prior conviction is inaccurate the prosecuting attorney shall bear the burden of proving by a preponderance of the evidence that the information or evidence is accurate If the defendant establishes a prima facie showing that an alleged prior conviction is constitutionally invalid the prosecuting attorney shall bear the burden of proving by a preponderance of the evidence that the prior conviction is constitutionally valid

Section 2 This amendatory act shall take effect May 1 1994 and shall apply to prosecutions for criminal offenses committed on or after that date

This act is ordered to take immediate effect

Co Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor