



# HOUSE BILL No. 5448

March 24 1994 Introduced by Rep Gagliardi and referred to the Committee on Judiciary

A bill to amend sections 10, 11, 12, and 13 of chapter IX and section 1 of chapter XI of Act No 175 of the Public Acts of 1927, entitled as amended

The code of criminal procedure,"

sections 10 11, and 12 as amended by Act No 90 of the Public Acts of 1988 and section 1 of chapter XI as amended by Act No 185 of the Public Acts of 1993 being sections 769 10 769 11, 769 12, 769 13, and 771 1 of the Michigan Compiled Laws and to add section 12a to chapter IX

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 10, 11, 12, and 13 of chapter IX and  
2 section 1 of chapter XI of Act No 175 of the Public Acts of  
3 1927, sections 10, 11, and 12 as amended by Act No 90 of the  
4 Public Acts of 1988 and section 1 of chapter XI as amended by Act  
5 No 185 of the Public Acts of 1993, being sections 769 10,

1 769 11, 769 12, 769 13, and 771 1 of the Michigan Compiled Laws,  
2 are amended and section 12a is added to chapter IX to read as  
3 follows

4 CHAPTER IX

5 Sec 10 (1) If a person has been convicted of a felony, an  
6 attempt to commit a felony, or both, whether the conviction  
7 occurred in this state or would have been for a felony in this  
8 state if the conviction obtained outside this state had been  
9 obtained in this state, and that person commits a subsequent  
10 felony within this state, the person shall be punished upon con-  
11 viction as follows

12 (a) If the subsequent felony is punishable upon a first con-  
13 viction by imprisonment for a term less than life, ~~then~~ the  
14 court except as otherwise provided in this ~~section~~ CHAPTER or  
15 in section 1 of chapter ~~++~~ XI may place the person on proba-  
16 tion or sentence the person to imprisonment for a maximum term  
17 ~~which~~ THAT is not more than 1-1/2 times the longest term pre-  
18 scribed for a first conviction of that offense or for a lesser  
19 term

20 (b) If the subsequent felony is punishable upon a first con-  
21 viction by imprisonment for life, ~~then~~ the court, except as  
22 otherwise provided in this ~~section~~ CHAPTER or in section 1 of  
23 chapter ~~++~~ XI, may place the person on probation or sentence  
24 the person to imprisonment for life or for a lesser term

25 (c) If the subsequent felony is a major controlled substance  
26 offense, the person shall be punished as provided ~~by~~ IN SECTION  
27 12A OR part 74 of the public health code, Act No 368 of the

1 Public Acts of 1978 being sections 333 7401 to 333 7415 of the  
2 Michigan Compiled Laws

3 (2) If the court pursuant to this section imposes a sentence  
4 of imprisonment for any term of years, the court shall fix the  
5 length of both the minimum and maximum sentence within any speci-  
6 fied limits in terms of years or fraction ~~thereof~~ OF YEARS and  
7 the sentence ~~so imposed~~ shall be considered an indeterminate  
8 sentence

9 Sec 11 (1) If a person has been convicted of 2 or more  
10 felonies, attempts to commit felonies, or both, whether the con-  
11 victions occurred in this state or would have been for felonies  
12 in this state if the convictions obtained outside this state had  
13 been obtained in this state and that person commits a subsequent  
14 felony within this state, the person shall be punished upon con-  
15 viction as follows

16 (a) If the subsequent felony is punishable upon a first con-  
17 viction by imprisonment for a term less than life, ~~then~~ the  
18 court, except as otherwise provided in this ~~section~~ CHAPTER or  
19 section 1 of chapter ~~++~~ XI may sentence the person to impris-  
20 onment for a maximum term ~~which~~ THAT is not more than twice the  
21 longest term prescribed by law for a first conviction of that  
22 offense or for a lesser term

23 (b) If the subsequent felony is punishable upon a first con-  
24 viction by imprisonment for life, ~~then~~ the court, except as  
25 otherwise provided in this ~~section~~ CHAPTER or section 1 of  
26 chapter ~~++~~ XI, may sentence the person to imprisonment for life  
27 or for a lesser term

1 (c) If the subsequent felony is a major controlled substance  
2 offense, the person shall be punished as provided ~~by~~ IN SECTION  
3 12A OR part 74 of the public health code, Act No 368 of the  
4 Public Acts of 1978, being sections 333 7401 to 333 7415 of the  
5 Michigan Compiled Laws

6 (2) If the court pursuant to this section imposes a sentence  
7 of imprisonment for any term of years, the court shall fix the  
8 length of both the minimum and maximum sentence within any speci-  
9 fied limits in terms of years or fraction ~~thereof~~ OF YEARS and  
10 the sentence ~~so imposed~~ shall be considered an indeterminate  
11 sentence

12 Sec 12 (1) If a person has been convicted of 3 or more  
13 felonies, attempts to commit felonies, or both, whether the con-  
14 victions occurred in this state or would have been for felonies  
15 in this state if the convictions obtained outside this state had  
16 been obtained in this state, and that person commits a subsequent  
17 felony within this state the person shall be punished upon con-  
18 viction as follows

19 (a) If the subsequent felony is punishable upon a first con-  
20 viction by imprisonment for a maximum term of 5 years or more or  
21 for life ~~then~~ the court, except as otherwise provided in this  
22 ~~section~~ CHAPTER or section 1 of chapter ~~++~~ XI, may sentence  
23 the person upon conviction of the fourth or subsequent offense to  
24 imprisonment in a state prison for ~~the term of~~ life or for a  
25 lesser term

26 (b) If the subsequent felony is punishable upon a first  
27 conviction by imprisonment for a maximum term ~~which~~ THAT is

1 less than 5 years ~~then~~ the court except as otherwise provided  
2 in this ~~section~~ CHAPTER or section 1 of chapter ~~++~~ XI, may  
3 sentence the person to imprisonment for ~~a term of~~ 15 years or a  
4 lesser term

5 (c) If the subsequent felony is a major controlled substance  
6 offense, the person shall be punished as provided ~~by~~ IN SECTION  
7 12A OR part 74 of the public health code Act No 368 of the  
8 Public Acts of 1978, being sections 333 7401 to 333 7415 of the  
9 Michigan Compiled Laws

10 (2) If the court pursuant to this section imposes a sentence  
11 of imprisonment for any term of years, the court shall fix the  
12 length of both the minimum and maximum sentence within any speci-  
13 fied limits in terms of years or fraction ~~thereof~~ OF YEARS, and  
14 the sentence ~~so imposed~~ shall be considered an indeterminate  
15 sentence

16 (3) Offenders sentenced under this section or section 10 or  
17 11 for offenses other than a major controlled substance offense  
18 ~~shall~~ ARE not ~~be~~ eligible for parole before the expiration of  
19 the minimum term fixed by the sentencing judge at the time of  
20 sentence without the written approval of the sentencing judge or  
21 a successor A person to be punished under this section or sec-  
22 tion 10 or 11 need not have been indicted and convicted as a pre-  
23 vious offender in order to receive the increased punishment pro-  
24 vided in this section or section 11 but may be proceeded against  
25 as provided in section 13

26 (4) This section and sections 10 and 11 govern the length of  
27 sentence to be imposed for the commission of a subsequent felony

1 and are not in derogation of other provisions of law ~~which~~ THAT  
2 permit or direct the imposition of a consecutive sentence for a  
3 subsequent felony

4 SEC 12A (1) IF A PERSON HAS BEEN CONVICTED OF 2 OR MORE  
5 SPECIFIED FELONIES, WHETHER THE CONVICTIONS OCCURRED IN THIS  
6 STATE OR WOULD HAVE BEEN FOR SPECIFIED FELONIES IN THIS STATE IF  
7 THE CONVICTIONS OBTAINED OUTSIDE THIS STATE HAD BEEN OBTAINED IN  
8 THIS STATE, AND THAT PERSON COMMITS A SPECIFIED FELONY WITHIN  
9 THIS STATE THE PERSON SHALL BE PUNISHED BY IMPRISONMENT FOR LIFE  
10 WITHOUT THE OPPORTUNITY FOR PAROLE A SENTENCE IMPOSED UNDER  
11 THIS SECTION SHALL NOT BE SUSPENDED

12 (2) AS USED IN THIS SECTION, 'SPECIFIED FELONY' MEANS 1 OR  
13 MORE OF THE FOLLOWING

14 (A) MANUFACTURING, DELIVERING, OR POSSESSING WITH INTENT TO  
15 MANUFACTURE OR DELIVER A CONTROLLED SUBSTANCE IN VIOLATION OF  
16 SECTION 7401(2)(A)(1) TO (111) OF THE PUBLIC HEALTH CODE, ACT  
17 NO 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333 7401 OF THE  
18 MICHIGAN COMPILED LAWS

19 (B) KNOWINGLY OR INTENTIONALLY POSSESSING A CONTROLLED SUB-  
20 STANCE IN VIOLATION OF SECTION 7403(2)(A)(1) TO (111) OF THE  
21 PUBLIC HEALTH CODE, ACT NO 368 OF THE PUBLIC ACTS OF 1978, BEING  
22 SECTION 333 7403 OF THE MICHIGAN COMPILED LAWS

23 (C) ASSAULT WITH INTENT TO MURDER IN VIOLATION OF SECTION 83  
24 OF THE MICHIGAN PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF  
25 1931 BEING SECTION 750 83 OF THE MICHIGAN COMPILED LAWS

26 (D) ASSAULT WITH INTENT TO DO GREAT BODILY HARM LESS THAN  
27 MURDER IN VIOLATION OF SECTION 84 OF THE MICHIGAN PENAL CODE, ACT

1 NO 328 OF THE PUBLIC ACTS OF 1931 BEING SECTION 750 84 OF THE  
2 MICHIGAN COMPILED LAWS

3 (E) ATTEMPTED MURDER IN VIOLATION OF SECTION 91 OF THE  
4 MICHIGAN PENAL CODE ACT NO 328 OF THE PUBLIC ACTS OF 1931,  
5 BEING SECTION 750 91 OF THE MICHIGAN COMPILED LAWS

6 (F) FIRST DEGREE CHILD ABUSE IN VIOLATION OF SECTION 136B OF  
7 THE MICHIGAN PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF 1931,  
8 BEING SECTION 750 136B OF THE MICHIGAN COMPILED LAWS

9 (G) FIRST DEGREE MURDER IN VIOLATION OF SECTION 316 OF THE  
10 MICHIGAN PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF 1931,  
11 BEING SECTION 750 316 OF THE MICHIGAN COMPILED LAWS

12 (H) SECOND DEGREE MURDER IN VIOLATION OF SECTION 317 OF THE  
13 MICHIGAN PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF 1931,  
14 BEING SECTION 750 317 OF THE MICHIGAN COMPILED LAWS

15 (I) MANSLAUGHTER IN VIOLATION OF SECTION 321 OF THE MICHIGAN  
16 PENAL CODE, ACT NO 328 OF THE PUBLIC ACTS OF 1931 BEING SECTION  
17 750 321 OF THE MICHIGAN COMPILED LAWS

18 (J) MAYHEM IN VIOLATION OF SECTION 397 OF THE MICHIGAN PENAL  
19 CODE ACT NO 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION  
20 750 397 OF THE MICHIGAN COMPILED LAWS

21 (K) FIRST DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF  
22 SECTION 520B OF THE MICHIGAN PENAL CODE, ACT NO 328 OF THE  
23 PUBLIC ACTS OF 1931, BEING SECTION 750 520B OF THE MICHIGAN  
24 COMPILED LAWS

25 (L) SECOND DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF  
26 SECTION 520C OF THE MICHIGAN PENAL CODE, ACT NO 328 OF THE

1 PUBLIC ACTS OF 1931, BEING SECTION 750 520C OF THE MICHIGAN  
2 COMPILED LAWS

3 (M) THIRD DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF  
4 SECTION 520D OF THE MICHIGAN PENAL CODE, ACT NO 328 OF THE  
5 PUBLIC ACTS OF 1931, BEING SECTION 750 520D OF THE MICHIGAN  
6 COMPILED LAWS

7 (N) ASSAULT WITH INTENT TO COMMIT FIRST DEGREE CRIMINAL  
8 SEXUAL CONDUCT IN VIOLATION OF SECTION 520G OF THE MICHIGAN PENAL  
9 CODE ACT NO 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION  
10 750 520G OF THE MICHIGAN COMPILED LAWS

11 Sec 13 If after conviction and either before or after  
12 sentence it appears that a person convicted of a felony has pre-  
13 viously been convicted of ~~crimes~~ 1 OR MORE PRIOR FELONIES as  
14 set forth in section 10, 11, ~~or~~ 12, OR 12A, the prosecuting  
15 attorney of the county in which the conviction was had may file a  
16 separate or supplemental information in the cause accusing the  
17 person of the previous convictions The court in which the con-  
18 viction was had shall ~~cause~~ ORDER the person to be brought  
19 before ~~it~~ THE COURT and shall inform him OR HER of the allega-  
20 tions contained in the information, and of his OR HER right to be  
21 tried on the allegations, and require the offender to say whether  
22 he OR SHE is the same person as charged in the information ~~or~~  
23 ~~not~~ If the offender says he OR SHE is not the same person, or  
24 remains silent, the court shall enter a plea of not guilty, and a  
25 jury of 12 jurors shall be impaneled from the petit jurors serv-  
26 ing at ~~the then~~ THAT TIME or FROM a following term of court to  
27 determine the issues raised by the information and plea The



1 accused may waive trial by jury in the manner provided by this  
 2 act. The usual practice in the trial of criminal actions shall  
 3 be followed in the impaneling of a jury and the trial of the  
 4 issue. The prosecuting officer and the accused shall each be  
 5 allowed 5 peremptory challenges. If the accused pleads guilty to  
 6 the information or if the jury returns a verdict of guilty, the  
 7 court may sentence the offender to the punishment prescribed in  
 8 section 10, 11 ~~or~~ 12, OR 12A, and shall vacate the previous  
 9 sentence deducting from the new sentence all time actually  
 10 served on the vacated sentence if required. A warden, or prison  
 11 probation, parole, or other peace officer who knows that a person  
 12 charged with or convicted for the commission of a felony has been  
 13 previously convicted within the meaning of section 10, 11, ~~or~~  
 14 12 OR 12A shall immediately report the facts to the prosecuting  
 15 attorney of the county in which the person is charged or was  
 16 sentenced.

#### 17 CHAPTER XI

18 Sec 1 (1) In ~~all prosecutions~~ A PROSECUTION for  
 19 ~~felonies~~ A FELONY or ~~misdemeanors~~ A MISDEMEANOR, except IN A  
 20 PROSECUTION FOR murder, treason, criminal sexual conduct in the  
 21 first or third degree, ARMED robbery, ~~while armed, and~~ A major  
 22 controlled substance ~~offenses~~ OFFENSE not described in subsec-  
 23 tion (4), OR A PROSECUTION UNDER SECTION 12A OF CHAPTER IX, if  
 24 the defendant has been found guilty upon verdict or plea, and if  
 25 it appears to the satisfaction of the court that the defendant is  
 26 not likely again to engage in an offensive or criminal course of  
 27 conduct and that the public good does not require that the

1 defendant suffer the penalty imposed by law, the court may place  
2 the defendant on probation under the charge and supervision of a  
3 probation officer

4 (2) Except as provided in subsection (4), in an action in  
5 which the court may place the defendant on probation, the court  
6 may delay ~~the imposing of sentence of~~ SENTENCING the defendant  
7 for a period of not ~~to exceed~~ MORE THAN 1 year ~~for the purpose~~  
8 ~~of giving~~ TO GIVE the defendant an opportunity to prove to the  
9 court his or her eligibility for probation or other leniency com-  
10 patible with the ends of justice and the rehabilitation of the  
11 defendant When the sentencing is delayed, the court shall make  
12 an order stating the reason for the delay ~~, which~~ THE order  
13 shall be entered upon the records of the court The delay in  
14 ~~passing sentence shall~~ SENTENCING THE DEFENDANT DOES not  
15 deprive the court of jurisdiction to sentence the defendant at  
16 any time during the period of delay

17 (3) If a defendant is before the circuit court and is ~~made~~  
18 subject to a delay in ~~imposing sentence~~ SENTENCING under sub-  
19 section (2) the court shall include in the delayed sentence  
20 order THE REQUIREMENT that the department of corrections ~~shall~~  
21 collect a supervision fee of not more than \$30 00 multiplied by  
22 the number of months of delay ordered, but not more than 12  
23 months The fee is payable when the delayed sentence order is  
24 entered, but the fee may be paid in monthly installments if the  
25 court approves installment payments for that defendant In  
26 determining the amount of the fee, the court shall consider the  
27 defendant s projected income and financial resources The court

1 shall use the following table of projected monthly income in  
 2 determining the amount of the fee to be ordered

3	<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
4	\$ 0-249 99	\$ 0 00
5	\$ 250 00-499 99	\$10 00
6	\$ 500 00-749 99	\$20 00
7	\$ 750 00 or more	\$30 00

8 The court may order a higher amount than indicated by the table,  
 9 up to the maximum of \$30 00 multiplied by the number of months of  
 10 delay ordered but not more than 12 months, if the court deter-  
 11 mines that the defendant has sufficient assets or other financial  
 12 resources to warrant the higher amount If the court orders a  
 13 higher amount, THE COURT SHALL STATE the amount and the reasons  
 14 for ordering that amount ~~shall be stated~~ in the ~~court~~ order  
 15 The fee shall be collected as provided in section 25a of Act  
 16 No 232 of the Public Acts of 1953, being section 791 225a of the  
 17 Michigan Compiled Laws A person shall not be subject to more  
 18 than 1 supervision fee at the same time If a supervision fee is  
 19 ordered for a person for any month or months during which that  
 20 person already is subject to a supervision fee, the court shall  
 21 waive the fee having the shorter remaining duration

1 (4) The sentencing judge may place a defendant on life  
 2 probation pursuant to subsection (1) if the defendant is  
 3 convicted for a violation of section 7401(2)(a)(iv) or  
 4 7403(2)(a)(iv) of the public health code, Act No 368 of the  
 5 Public Acts of 1978, being sections 333 7401 or 333 7403 of the  
 6 Michigan Compiled Laws, or conspiracy to commit either of those  
 7 ~~2~~ offenses Subsection (2) does not apply to this subsection

8 (5) Beginning June 1, 1988, this section does not apply to a  
 9 juvenile placed on probation and committed under section 1(3) or  
 10 (4) of chapter IX to a state institution or agency described in  
 11 the youth rehabilitation services act, Act No 150 of the Public  
 12 Acts of 1974, being sections 803 301 to 803 309 of the Michigan  
 13 Compiled Laws

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

17 (a) Senate Bill No \_\_\_\_\_ or House Bill No 5446 (request  
 18 no 05971 94 a)

19 (b) Senate Bill No \_\_\_\_\_ or House Bill No 5447 (request  
 20 no 05971 94 b)