



HOUSE BILL No. 5497

April 26 1994 Introduced by Rep Nye and referred to the Committee on Judiciary

A bill to amend sections 8, 9, 10, 11, and 12 of chapter IX 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, being sections 769 8, 769 9, 769 10, 769 11, and 769 12 of the Michigan Compiled Laws and to add section 8a to chapter IX

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 8 9, 10, 11, and 12 of chapter IX of
2 Act No 175 of the Public Acts of 1927, sections 10, 11, and 12
3 as amended by Act No 90 of the Public Acts of 1988, being sec-
4 tions 769 8, 769 9, 769 10, 769 11, and 769 12 of the Michigan
5 Compiled Laws, are amended and section 8a is added to chapter IX
6 to read as follows

CHAPTER IX

1
2 Sec 8 (1) When a person is convicted for the first time
3 for ~~the commission of~~ COMMITTING a felony ~~—~~ and the punish-
4 ment prescribed by law for that offense may be imprisonment in a
5 state prison, the court imposing sentence shall ~~not~~ fix a defi-
6 nite term of imprisonment ~~—, but shall fix a minimum term, except~~
7 ~~as otherwise provided in this chapter~~ ~~The~~ THAT SHALL NOT BE
8 MORE THAN THE maximum penalty provided by law ~~shall be the maxi-~~
9 ~~mum sentence in all cases except as provided in this chapter~~ and
10 shall be stated by the judge in imposing the sentence

11 (2) WHEN SENTENCING A DEFENDANT, THE COURT SHALL STATE THE
12 EARLIEST POSSIBLE SUPERVISED RELEASE AND COMMUNITY RESIDENTIAL
13 PROGRAM ELIGIBILITY DATES FOR THE DEFENDANT FAILURE TO STATE
14 THESE DATES HOWEVER, DOES NOT REQUIRE A REMAND FOR RESENTENCING

15 (3) Before or at the time of imposing the sentence the
16 judge shall ascertain by ~~examination of~~ EXAMINING the ~~convict~~
17 ~~on~~ DEFENDANT UNDER oath ~~—~~ or otherwise and by other evidence
18 as can be obtained tending to indicate briefly the causes of the
19 criminal character or conduct of the ~~convict~~ DEFENDANT which
20 facts and other facts ~~which~~ THAT appear to be ~~pertinent~~
21 RELEVANT in the case ~~—~~ the judge shall cause to be entered upon
22 the minutes of the court

23 SEC 8A (1) WHEN THE COURT IMPOSES A DETERMINATE SENTENCE
24 PURSUANT TO THIS CHAPTER, THE COURT SHALL ALSO IMPOSE A PERIOD OF
25 SUPERVISED RELEASE TO FOLLOW THE PERSON S DETERMINATE TERM OF
26 IMPRISONMENT, IN ACCORDANCE WITH THE SENTENCING GUIDELINES THE
27 COURT SHALL RETAIN JURISDICTION OVER THE PERSON DURING THE PERIOD

1 OF SUPERVISED RELEASE AND MAY IMPOSE A PENALTY INCLUDING
2 REVOCATION OF SUPERVISED RELEASE, FOR A VIOLATION OF THE PERSON S
3 SUPERVISED RELEASE CONDITIONS ALLEGED TO BE A FELONY

4 (2) THE SUPERVISED RELEASE ORDER SHALL SPECIFY THE PERIOD OF
5 SUPERVISED RELEASE

6 (3) THE SUPERVISED RELEASE ORDER SHALL SPECIFY THE CONDI-
7 TIONS OF SUPERVISED RELEASE

8 (4) THE CONDITIONS OF SUPERVISED RELEASE SHALL INCLUDE ALL
9 OF THE FOLLOWING

10 (A) DURING THE TERM OF SUPERVISED RELEASE, THE PERSON SHALL
11 NOT VIOLATE ANY CRIMINAL LAW OF THIS STATE OR ANY ORDINANCE OF
12 ANY MUNICIPALITY IN THE STATE

13 (B) DURING THE TERM OF SUPERVISED RELEASE, THE PERSON SHALL
14 NOT LEAVE THE STATE WITHOUT THE CONSENT OF THE COURT IMPOSING
15 SUPERVISED RELEASE

16 (C) THE PERSON SHALL REPORT TO AN EMPLOYEE OF THE DEPARTMENT
17 OF CORRECTIONS CONCERNED WITH SUPERVISED RELEASE IN PERSON OR IN
18 WRITING, MONTHLY OR AS OFTEN AS THE DEPARTMENT'S EMPLOYEE
19 REQUIRES

20 (D) THE PERSON SHALL PAY AN OFFENDER SUPERVISION FEE AS PRE-
21 SCRIBED IN SECTION 36A OF ACT NO 232 OF THE PUBLIC ACTS OF 1953,
22 BEING SECTION 791 236A OF THE MICHIGAN COMPILED LAWS

23 (E) THE PERSON SHALL PAY RESTITUTION ORDERED TO BE PAID TO
24 THE VICTIM OF THE PERSON S COURSE OF CONDUCT GIVING RISE TO THE
25 CONVICTION OR TO THE VICTIM S ESTATE AS PROVIDED IN THIS
26 CHAPTER AN ORDER FOR PAYMENT OF RESTITUTION MAY BE MODIFIED AND
27 SHALL BE ENFORCED AS PROVIDED IN THIS CHAPTER

1 (5) AS A CONDITION OF SUPERVISED RELEASE THE COURT MAY
2 REQUIRE THE PERSON TO DO 1 OR MORE OF THE FOLLOWING

3 (A) PAY IMMEDIATELY OR WITHIN THE PERIOD OF HIS OR HER
4 SUPERVISED RELEASE ANY OUTSTANDING FINE IMPOSED AT SENTENCING

5 (B) PAY COSTS LIMITED TO EXPENSES SPECIFICALLY INCURRED IN
6 SUPERVISING THE PERSON

7 (C) ENGAGE IN COMMUNITY SERVICE

8 (D) AGREE TO PAY ANY RESTITUTION, FINE, OR COST IMPOSED BY
9 THE COURT BY WAGE ASSIGNMENT

10 (6) THE COURT MAY IMPOSE OTHER LAWFUL CONDITIONS OF SUPER-
11 VISED RELEASE AS THE CIRCUMSTANCES OF THE CASE REQUIRE OR WARRANT
12 OR AS IN ITS JUDGMENT ARE PROPER

13 Sec 9 (1) The provisions of this chapter ~~relative to~~
14 ~~indeterminate~~ CONCERNING DETERMINATE sentences ~~shall~~ DO not
15 apply to a person convicted for ~~the commission of~~ COMMITTING an
16 offense for which the only punishment prescribed by law is
17 imprisonment for life

18 (2) In all cases ~~where~~ IN WHICH the maximum sentence in
19 the discretion of the court may be imprisonment for life or any
20 number or term of years the court may impose a sentence for life
21 or may impose a DETERMINATE sentence for any NUMBER OR term of
22 years ~~If the sentence imposed by the court is for any term of~~
23 ~~years, the court shall fix both the minimum and the maximum of~~
24 ~~that sentence in terms of years or fraction thereof, and sen~~
25 ~~tences so imposed shall be considered indeterminate sentences~~
26 ~~The court shall not impose a sentence in which the maximum~~

1 ~~penalty is life imprisonment with a minimum for a term of years~~
 2 ~~included in the same sentence~~

3 (3) In cases involving ~~a major controlled substance~~ AN
 4 offense for which the court is directed by law to impose a sen-
 5 tence ~~which~~ THAT cannot be less than a specified term of years
 6 ~~nor~~ OR more than a specified term of years, the court in impos-
 7 ing the sentence shall fix the length of ~~both the minimum and~~
 8 ~~maximum~~ THE sentence within those specified limits ~~, in terms~~
 9 ~~of years or fraction thereof,~~ and the sentence so imposed shall
 10 be considered ~~an indeterminate~~ A DETERMINATE sentence

11 Sec 10 ~~(+)~~ If a person WHO has been convicted of a
 12 felony ~~,~~ OR an attempt to commit a felony, ~~or both,~~ whether
 13 the conviction occurred in this state or would have been for a
 14 felony OR ATTEMPT TO COMMIT A FELONY in this state if the convic-
 15 tion ~~obtained outside this state~~ had been obtained in this
 16 state, ~~and that person~~ commits a subsequent felony within this
 17 state, the person shall be punished upon conviction as follows

18 (a) If the subsequent felony is punishable upon a first con-
 19 viction by imprisonment for a term less than life, ~~then~~ the
 20 court, except as otherwise provided in this section or in section
 21 1 of chapter ~~++~~ XI, may place the person on probation or sen-
 22 tence the person to imprisonment for a ~~maximum term which~~
 23 DETERMINATE SENTENCE THAT is not more than 1-1/2 times the long-
 24 est term prescribed for a first conviction of that offense ~~or~~
 25 ~~for a lesser term~~

26 (b) If the subsequent felony is punishable upon a first
 27 conviction by imprisonment for life, ~~then~~ the court, except as

1 otherwise provided in this section or in section 1 of chapter
 2 ~~++~~ XI, may place the person on probation or sentence the person
 3 to imprisonment for life or for a lesser DETERMINATE term

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

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

15 Sec 11 ~~++~~ If a person has been convicted of 2 ~~or~~
 16 ~~more~~ felonies, attempts to commit felonies, or both A FELONY AND
 17 AN ATTEMPT TO COMMIT A FELONY, whether the convictions occurred
 18 in this state or would have been for felonies OR ATTEMPTS TO
 19 COMMIT FELONIES in this state if the convictions ~~obtained out-~~
 20 ~~side this state~~ had been obtained in this state, ~~and that~~
 21 ~~person~~ commits a subsequent felony within this state, the person
 22 shall be punished upon conviction as follows

23 (a) If the subsequent felony is punishable upon a first con-
 24 viction by imprisonment for a term less than life, ~~then~~ the
 25 court, except as otherwise provided in this section or section 1
 26 of chapter ~~++~~ XI, may sentence the person to imprisonment for a
 27 ~~maximum term which~~ DETERMINATE SENTENCE THAT is not more than

1 twice the longest term prescribed by law for a first conviction
2 of that offense ~~or for a lesser term~~

3 (b) If the subsequent felony is punishable upon a first con-
4 viction by imprisonment for life, ~~then~~ the court, except as
5 otherwise provided in this section or section 1 of chapter ~~++~~
6 XI, may sentence the person to imprisonment for life or for a
7 lesser DETERMINATE term

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

13 ~~(2) If the court pursuant to this section imposes a sen-~~
14 ~~tence of imprisonment for any term of years, the court shall fix~~
15 ~~the length of both the minimum and maximum sentence within any~~
16 ~~specified limits in terms of years or fraction thereof, and the~~
17 ~~sentence so imposed shall be considered an indeterminate~~
18 ~~sentence~~

19 Sec 12 (1) If a person has been convicted of ANY COMBINA-
20 TION OF 3 or more felonies ~~—~~ OR attempts to commit felonies,
21 ~~or both,~~ whether the convictions occurred in this state or
22 would have been for felonies OR ATTEMPTS TO COMMIT FELONIES in
23 this state if the convictions ~~obtained outside this state~~ had
24 been obtained in this state, ~~and that person~~ commits a subse-
25 quent felony within this state, the person shall be punished upon
26 conviction as follows

1 (a) If the subsequent felony is punishable upon a first
2 conviction by imprisonment for a maximum term of 5 years or more
3 ~~/~~ or for life, ~~then~~ the court, except as otherwise provided
4 in this section or section 1 of chapter ~~++~~ XI may sentence the
5 person upon conviction of the fourth or subsequent offense to
6 imprisonment ~~in a state prison for the term of~~ FOR life or for
7 a lesser DETERMINATE term

8 (b) If the subsequent felony is punishable upon a first con-
9 viction by imprisonment for a maximum term which is less than 5
10 years, ~~then~~ the court, except as otherwise provided in this
11 section or section 1 of chapter ~~++~~ XI, may sentence the person
12 to imprisonment for a DETERMINATE term of NOT MORE THAN 15 years
13 ~~or a lesser term~~

14 (c) If the subsequent felony is a major controlled substance
15 offense, the person shall be punished as provided by part 74 of
16 the public health code Act No 368 of the Public Acts of 1978
17 being sections 333 7401 to 333 7415 of the Michigan Compiled
18 Laws

19 ~~(2) If the court pursuant to this section imposes a sen-~~
20 ~~tence of imprisonment for any term of years, the court shall fix~~
21 ~~the length of both the minimum and maximum sentence within any~~
22 ~~specified limits in terms of years or fraction thereof, and the~~
23 ~~sentence so imposed shall be considered an indeterminate~~
24 ~~sentence~~

25 (2) ~~(3) Offenders sentenced under this section or section~~
26 ~~10 or 11 for offenses other than a major controlled substance~~
27 ~~offense shall not be eligible for parole before the expiration of~~

1 ~~the minimum term fixed by the sentencing judge at the time of~~
 2 ~~sentence without the written approval of the sentencing judge or~~
 3 ~~a successor~~ A person to be punished under this section or sec-
 4 tion 10 or 11 OF THIS CHAPTER need not have been indicted and
 5 convicted as a previous offender ~~in order~~ to receive the
 6 increased punishment provided in this section or section 11 OF
 7 THIS CHAPTER, but may be proceeded against as provided in section
 8 13 OF THIS CHAPTER

9 (3) ~~(4)~~ This section and sections 10 and 11 OF THIS
 10 CHAPTER govern the length of sentence to be imposed for the com-
 11 mission of a subsequent felony and are not in derogation of other
 12 provisions of law ~~which~~ THAT permit or direct the imposition of
 13 a consecutive sentence for a subsequent felony

14 Section 2 This amendatory act shall take effect on the
 15 effective date of sentencing guidelines that are enacted into law
 16 after the sentencing commission submits its report to the secre-
 17 tary of the senate and the clerk of the house of representatives
 18 pursuant to chapter IX of the code of criminal procedure, Act
 19 No 175 of the Public Acts of 1927, as amended by the amendatory
 20 act resulting from Senate Bill No _____ or House Bill
 21 No _____ (request no 05909'94) of the 87th Legislature

22 Section 3 This amendatory act does not apply to an offense
 23 committed on or before the effective date of this amendatory
 24 act A person who committed an offense on or before the effec-
 25 tive date this amendatory act is subject to sentencing as pro-
 26 vided by law when the person committed the offense

1 Section 4 This amendatory act shall not take effect unless
2 all of the following bills of the 87th Legislature are enacted
3 into law

4 (a) Senate Bill No _____ or House Bill No _____ (request
5 no 05893'94)

6 (b) Senate Bill No _____ or House Bill No _____ (request
7 no 05894'94)

8 (c) Senate Bill No _____ or House Bill No _____ (request
9 no 05909 94)

10 (d) Senate Bill No _____ or House Bill No _____ (request
11 no 05910'94)