



HOUSE BILL No. 5516

April 27 1994 Introduced by Rep Bryant and referred to the Committee on Judiciary

A bill to amend section 2 of chapter I, section 1f of chapter IV, section 14 of chapter VI, sections 28a and 32 of chapter VIII, and section 1 of chapter XI of Act No 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

section 2 of chapter I and section 32 of chapter VIII as amended by Act No 90 of the Public Acts of 1988, section 1f of chapter IV as added and section 14 of chapter VI as amended by Act No 67 of the Public Acts of 1988, section 28a of chapter VIII as added by Act No 8 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 761 2, 764 1f, 766 14, 768 28a, 768 32, and 771 1 of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Section 2 of chapter I, section 1f of chapter
 2 IV, section 14 of chapter VI, sections 28a and 32 of chapter
 3 VIII, and section 1 of chapter XI of Act No 175 of the Public
 4 Acts of 1927, section 2 of chapter I and section 32 of chapter
 5 VIII as amended by Act No 90 of the Public Acts of 1988,
 6 section 1f of chapter IV as added and section 14 of chapter VI as
 7 amended by Act No 67 of the Public Acts of 1988, section 28a of
 8 chapter VIII as added by Act No 8 of the Public Acts of 1988,
 9 and section 1 of chapter XI as amended by Act No 185 of the
 10 Public Acts of 1993, being sections 761 2, 764 1f, 766 14,
 11 768 28a, 768 32, and 771 1 of the Michigan Compiled Laws, are
 12 amended to read as follows

13 CHAPTER I

14 Sec 2 As used in this act, "major controlled substance
 15 offense" means ~~either or both of the following (a) A violation~~
 16 ~~of section 7401(2)(a) of the public health code, Act No 368 of~~
 17 ~~the Public Acts of 1978 being section 333 7401 of the Michigan~~
 18 ~~Compiled Laws (b) A A violation of section 7403(2)(a)(1) to~~
 19 (1v) of THE PUBLIC HEALTH CODE, Act No 368 of the Public Acts of
 20 1978, being section 333 7403 of the Michigan Compiled Laws, —
 21 ~~(c) Conspiracy OR CONSPIRACY to commit an offense listed in~~
 22 ~~subdivision (a) or (b) A VIOLATION OF SECTION 7403(2)(A)(1) TO~~
 23 (1v) OF ACT NO 368 OF THE PUBLIC ACTS OF 1978

24 CHAPTER IV

25 Sec 1f If the prosecuting attorney has reason to believe
 26 that a juvenile 15 years of age and less than 17 years of age has
 27 violated section 83, 89, 91, 316, 317, 520b, or 529 of the

1 Michigan penal code, Act No 328 of the Public Acts of 1931,
 2 being sections 750 83, 750 89, 750 91, 750 316, 750 317,
 3 750 520b, and 750 529 of the Michigan Compiled Laws, or section
 4 ~~7401(2)(a)(i) or~~ 7403(2)(a)(i) of the public health code, Act
 5 No 368 of the Public Acts of 1978, being ~~sections 333 7401 and~~
 6 SECTION 333 7403 of the Michigan Compiled Laws, the prosecuting
 7 attorney may authorize the filing of a complaint and warrant on
 8 the charge with a magistrate concerning the juvenile

9 CHAPTER VI

10 Sec 14 (1) If at the conclusion of the preliminary exami-
 11 nation of a person charged with a felony it appears that the
 12 offense charged is not a felony or that an included offense which
 13 is not a felony has been committed, the accused shall not be dis-
 14 missed but the magistrate shall proceed in the same manner as if
 15 the accused had initially been charged with an offense which is
 16 not a felony

17 (2) If at the conclusion of the preliminary examination of a
 18 juvenile the magistrate finds that a violation of section 83, 89,
 19 91, 316, 317, 520b, or 529 of the Michigan penal code, Act
 20 No 328 of the Public Acts of 1931, being sections 750 83,
 21 750 89, 750 91, 750 316, 750 317, 750 520b, and 750 529 of the
 22 Michigan Compiled Laws, or section ~~7401(2)(a)(i) or~~
 23 7403(2)(a)(i) of the public health code, Act No 368 of the
 24 Public Acts of 1978, being ~~sections 333 7401 and~~
 25 SECTION 333 7403 of the Michigan Compiled Laws, did not occur or
 26 that there is not probable cause to believe that the juvenile
 27 committed the violation, but that there is probable cause to

1 believe that some other offense occurred and that the juvenile
 2 committed that other offense, the magistrate shall transfer the
 3 case to the juvenile division of the probate court of the county
 4 where the offense is alleged to have been committed A transfer
 5 under this subsection shall not prevent the juvenile division of
 6 the probate court from waiving jurisdiction over the juvenile
 7 under section 4 of chapter XIIA of Act No 288 of the Public Acts
 8 of 1939, being section 712A 4 of the Michigan Compiled Laws

9 CHAPTER VIII

10 Sec 28a Evidence obtained pursuant to an order authoriz-
 11 ing or approving the interception of wire or oral communications
 12 issued by a federal court in compliance with section 802 of title
 13 III of the omnibus crime control and safe streets act of 1968,
 14 Public Law 90-351, 18 U S C 2510 to 2513 and 2515 to 2521, that
 15 is otherwise admissible under the rules of evidence of this
 16 state, may be admitted in evidence in a court of this state in a
 17 criminal prosecution for any of the following offenses

18 (a) A violation of section ~~7401(2)(a)(i), 7401(2)(a)(ii),~~
 19 ~~7401(2)(a)(iii), 7401(2)(a)(iv),~~ 7402(2)(a), 7403(2)(a)(i),
 20 7403(2)(a)(ii), 7403(2)(a)(iii), or 7403(2)(a)(iv) of the public
 21 health code, Act No 368 of the Public Acts of 1978, being sec-
 22 tions ~~333-7401,~~ 333 7402 —, and 333 7403 of the Michigan
 23 Compiled Laws

24 (b) A violation of section 83, 89, 91, 157b, 316, 317, 327,
 25 328, 349, 350, 422, 436, 520b, 529, 531, or 544 of the Michigan
 26 penal code, Act No 328 of the Public Acts of 1931, being
 27 sections 750 83, 750 89, 750 91, 750 157b, 750 316, 750 317,

1 750 327, 750 328, 750 349, 750 350, 750 422, 750 436, 750 520b,
 2 750 529, 750 531, and 750 544 of the Michigan Compiled Laws, that
 3 is punishable by imprisonment for life

4 (c) A conspiracy to commit an offense listed in subdivision
 5 (a) or (b)

6 Sec 32 (1) Except as provided in subsection (2), upon an
 7 indictment for an offense, consisting of different degrees, as
 8 prescribed in this chapter, the jury, or the judge in a trial
 9 without a jury, may find the accused not guilty of the offense in
 10 the degree charged in the indictment and may find the accused
 11 person guilty of a degree of that offense inferior to that
 12 charged in the indictment, or of an attempt to commit that
 13 offense

14 (2) Upon an indictment for an offense specified in section
 15 ~~7401(2)(a)(i) or (ii) or~~ section 7403(2)(a)(i) or (ii) of the
 16 public health code, Act No 368 of the Public Acts of 1978, being
 17 ~~sections 333-7401 and~~ SECTION 333 7403 of the Michigan Compiled
 18 Laws, or conspiracy to commit 1 or more of these offenses, the
 19 jury, or judge in a trial without a jury, may find the accused
 20 not guilty of the offense in the degree charged in the indictment
 21 but may find the accused guilty of a degree of that offense infe-
 22 rior to that charged in the indictment only if the lesser
 23 included offense is a major controlled substance offense A jury
 24 shall not be instructed as to other lesser included offenses
 25 involving the same controlled substance nor as to an attempt to
 26 commit either a major controlled substance offense or a lesser
 27 included offense involving the same controlled substance The

1 jury shall be instructed to return a verdict of not guilty of an
2 offense involving the controlled substance at issue if it finds
3 that the evidence does not establish the defendant's guilt as to
4 the commission of a major controlled substance offense involving
5 that controlled substance. A judge in a trial without a jury
6 shall find the defendant not guilty of an offense involving the
7 controlled substance at issue if the judge finds that the evi-
8 dence does not establish the defendant's guilt as to the commis-
9 sion of a major controlled substance offense involving that con-
10 trolled substance

11 CHAPTER XI

12 Sec 1 (1) In all prosecutions for felonies or misdemean-
13 ors, except murder, treason, criminal sexual conduct in the first
14 or third degree, robbery while armed, and major controlled sub-
15 stance offenses not described in subsection (4), if the defendant
16 has been found guilty upon verdict or plea, and if it appears to
17 the satisfaction of the court that the defendant is not likely
18 again to engage in an offensive or criminal course of conduct and
19 that the public good does not require that the defendant suffer
20 the penalty imposed by law, the court may place the defendant on
21 probation under the charge and supervision of a probation
22 officer

23 (2) Except as provided in subsection (4), in an action in
24 which the court may place the defendant on probation, the court
25 may delay the imposing of sentence of the defendant for a period
26 of not to exceed 1 year for the purpose of giving the defendant
27 an opportunity to prove to the court his or her eligibility for

1 probation or other leniency compatible with the ends of justice
 2 and the rehabilitation of the defendant When the sentencing is
 3 delayed, the court shall make an order stating the reason for the
 4 delay, which order shall be entered upon the records of the
 5 court The delay in passing sentence shall not deprive the court
 6 of jurisdiction to sentence the defendant at any time during the
 7 period of delay

8 (3) If a defendant is before the circuit court and is made
 9 subject to a delay in imposing sentence under subsection (2), the
 10 court shall include in the delayed sentence order that the
 11 department of corrections shall collect a supervision fee of not
 12 more than \$30 00 multiplied by the number of months of delay
 13 ordered, but not more than 12 months The fee is payable when
 14 the delayed sentence order is entered, but the fee may be paid in
 15 monthly installments if the court approves installment payments
 16 for that defendant In determining the amount of the fee, the
 17 court shall consider the defendant's projected income and finan-
 18 cial resources The court shall use the following table of
 19 projected monthly income in determining the amount of the fee to
 20 be ordered

| | | |
|----|---------------------------------|----------------------|
| 21 | <u>Projected Monthly Income</u> | <u>Amount of Fee</u> |
| 22 | \$ 0-249 99 | \$ 0 00 |
| 23 | \$ 250 00-499 99 | \$10 00 |

1 \$ 500 00-749 99 \$20 00

2 \$ 750 00 or more \$30 00

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

17 (4) The sentencing judge may place a defendant on life pro-
18 bation pursuant to subsection (1) if the defendant is convicted
19 for a violation of section ~~7401(2)(a)(iv) or~~ 7403(2)(a)(iv) of
20 the public health code, Act No 368 of the Public Acts of 1978,
21 being ~~sections 333-7401 or~~ SECTION 333 7403 of the Michigan
22 Compiled Laws, or conspiracy to commit ~~either of those 2~~
23 ~~offenses~~ THAT OFFENSE Subsection (2) does not apply to this
24 subsection

25 (5) Beginning June 1, 1988, this section does not apply to a
26 juvenile placed on probation and committed under section 1(3) or

1 (4) of chapter IX to a state institution or agency described in
2 the youth rehabilitation services act, Act No 150 of the Public
3 Acts of 1974, being sections 803 301 to 803 309 of the Michigan
4 Compiled Laws

5 Section 2 This amendatory act shall not take effect unless
6 Senate Bill No _____ or House Bill No 5511 (request
7 no 04358 93) of the 87th Legislature is enacted into law