



# SENATE BILL No. 259

January 26, 1993, Introduced by Senator VAN REGENMORTER  
and referred to the Committee on Judiciary.

A bill to amend section 13 of chapter IX of Act No. 175 of  
the Public Acts of 1927, entitled as amended  
"The code of criminal procedure,"  
being section 769.13 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 13 of chapter IX of Act No. 175 of the  
2 Public Acts of 1927, being section 769.13 of the Michigan  
3 Compiled Laws, is amended to read as follows:

### CHAPTER IX

4  
5 Sec. 13. ~~If after conviction and either before or after~~  
6 ~~sentence it appears that a person convicted of a felony has pre-~~  
7 ~~viously been convicted of crimes as set forth in section 10, 11,~~  
8 ~~or 12, the prosecuting attorney of the county in which the~~  
9 ~~conviction was had may file a separate or supplemental~~  
10 ~~information in the cause accusing the person of the previous~~

~~1 convictions. The court in which the conviction was had shall  
2 cause the person to be brought before it and shall inform him of  
3 the allegations contained in the information, and of his right to  
4 be tried on the allegations, and require the offender to say  
5 whether he is the same person as charged in the information or  
6 not. If the offender says he is not the same person, or remains  
7 silent, the court shall enter a plea of not guilty, and a jury of  
8 12 jurors shall be impaneled from the petit jurors serving at the  
9 then or a following term of court to determine the issues raised  
10 by the information and plea. The accused may waive trial by jury  
11 in the manner provided by this act. The usual practice in the  
12 trial of criminal actions shall be followed in the impaneling of  
13 a jury and the trial of the issue. The prosecuting officer and  
14 the accused shall each be allowed 5 peremptory challenges. If  
15 the accused pleads guilty to the information or if the jury  
16 returns a verdict of guilty, the court may sentence the offender  
17 to the punishment prescribed in section 10, 11, or 12, and shall  
18 vacate the previous sentence, deducting from the new sentence all  
19 time actually served on the vacated sentence if required. A  
20 warden, or prison, probation, parole, or other peace officer who  
21 knows that a person charged with or convicted for the commission  
22 of a felony has been previously convicted within the meaning of  
23 section 10, 11, or 12 shall immediately report the facts to the  
24 prosecuting attorney of the county in which the person is charged  
25 or was sentenced.~~

26 (1) THE PROSECUTING ATTORNEY IN A CRIMINAL ACTION MAY, BY  
27 WRITTEN NOTICE TO THE DEFENDANT AND THE COURT FILED 21 DAYS OR

1 MORE BEFORE THE DEFENDANT IS SENTENCED IN THAT CRIMINAL ACTION,  
2 SEEK TO ENHANCE THE SENTENCE OF THAT CRIMINAL DEFENDANT AS PRO-  
3 VIDED UNDER SECTION 10, 11, OR 12. THE NOTICE SHALL CONTAIN A  
4 STATEMENT OF THE ALLEGED PRIOR CRIMINAL CONVICTIONS THAT WILL BE  
5 RELIED UPON FOR ENHANCEMENT PURPOSES.

6 (2) A DEFENDANT WHO IS NOTIFIED UNDER SUBSECTION (1) THAT  
7 THE PROSECUTING ATTORNEY WILL SEEK TO ENHANCE HIS OR HER SENTENCE  
8 AS PROVIDED UNDER SECTION 10, 11, OR 12 MAY, BY WRITTEN NOTICE TO  
9 THE PROSECUTING ATTORNEY AND THE COURT FILED 7 DAYS OR MORE  
10 BEFORE THE DEFENDANT IS SENTENCED IN THAT CRIMINAL CASE, CHAL-  
11 LENGE THE ACCURACY OR CONSTITUTIONALITY OF 1 OR MORE OF THE  
12 ALLEGED PRIOR CONVICTIONS.

13 (3) AT SENTENCING, THE COURT AND NOT A JURY, SHALL DETERMINE  
14 THE ACCURACY AND CONSTITUTIONALITY OF ALLEGED PRIOR CONVICTIONS  
15 CHALLENGED BY THE DEFENDANT UNDER SUBSECTION (2). THE DEFENDANT  
16 SHALL BEAR THE BURDEN OF ESTABLISHING A PRIMA FACIE CASE BY A  
17 PREPONDERANCE OF THE EVIDENCE THAT AN ALLEGED PRIOR CONVICTION IS  
18 INACCURATE OR UNCONSTITUTIONAL. IF THE DEFENDANT IS ABLE TO  
19 ESTABLISH A PRIMA FACIE CASE THAT AN ALLEGED PRIOR CONVICTION IS  
20 INACCURATE, THE PROSECUTING ATTORNEY SHALL BEAR THE BURDEN OF  
21 PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE PRIOR CONVIC-  
22 TION IS ACCURATE. IF THE DEFENDANT IS ABLE TO ESTABLISH A PRIMA  
23 FACIE CASE THAT AN ALLEGED PRIOR CONVICTION IS UNCONSTITUTIONAL,  
24 THE PROSECUTING ATTORNEY SHALL BEAR THE BURDEN OF PROVING BY A  
25 PREPONDERANCE OF THE EVIDENCE THAT THE PRIOR CONVICTION IS  
26 CONSTITUTIONAL.