



SENATE BILL No. 556

March 31, 1993, Introduced by Senators BOUCHARD and
GOUGEON 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 of chapter IX and section 1 of chapter XI
as amended by Act No. 90 of the Public Acts of 1988, being
sections 769.10, 769.11, 769.12, 769.13, and 771.1 of the
Michigan Compiled Laws.

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 of chapter IX and section 1 of
4 chapter XI as amended by Act No. 90 of the Public Acts of 1988,
5 being sections 769.10, 769.11, 769.12, 769.13, and 771.1 of the
6 Michigan Compiled Laws, are amended to read as follows:

CHAPTER IX

1

2 Sec. 10. (1) If a person WHO has been convicted of a felony
3 ~~OR~~ OR an attempt to commit a felony, ~~or both,~~ whether the con-
4 viction occurred in this state or would have been for a felony OR
5 ATTEMPT TO COMMIT A FELONY in this state if the conviction
6 ~~obtained outside this state~~ had been obtained in this state,
7 ~~and that person~~ commits a subsequent felony within this state,
8 the person shall be punished upon conviction as follows:

9 (a) If the subsequent felony is punishable upon a first con-
10 viction by imprisonment for a term less than life, ~~then~~ the
11 court, except as otherwise provided in this section, ~~or in~~
12 ~~section 1 of chapter 11, may place the person on probation or~~
13 SHALL sentence the person to imprisonment for a maximum term
14 ~~which is not more than~~ THAT IS 1-1/2 times the longest term
15 prescribed for a first conviction of that offense. ~~or for a~~
16 ~~lesser term.~~

17 (b) If the subsequent felony is punishable upon a first con-
18 viction by imprisonment for life, ~~then~~ the court, except as
19 otherwise provided in this section, ~~or in section 1 of chapter~~
20 ~~11, may place the person on probation or~~ SHALL sentence the
21 person to imprisonment for life. ~~or for a lesser term.~~

22 (c) If the subsequent felony is a major controlled substance
23 offense, the person shall be punished as provided by part 74 of
24 the public health code, Act No. 368 of the Public Acts of 1978,
25 being sections 333.7401 to ~~333.7415~~ 333.7461 of the Michigan
26 Compiled Laws.

1 (2) If the court pursuant to this section imposes a sentence
2 of imprisonment ~~for any~~ WITH A MAXIMUM term of years, the court
3 shall ALSO fix the length of ~~both~~ the minimum ~~and maximum sen-~~
4 ~~tence within any specified limits in terms of years or fraction~~
5 ~~thereof~~ SENTENCE and the sentence so imposed ~~shall be~~
6 ~~considered~~ IS an indeterminate sentence.

7 Sec. 11. (1) If a person WHO has been convicted of 2 ~~or~~
8 ~~more~~ felonies, attempts to commit felonies, or both A FELONY AND
9 AN ATTEMPT TO COMMIT A FELONY, whether the convictions occurred
10 in this state or would have been for felonies OR ATTEMPTS TO
11 COMMIT FELONIES in this state if the convictions ~~obtained out-~~
12 ~~side this state~~ had been obtained in this state, ~~and that~~
13 ~~person~~ commits a subsequent felony within this state, the person
14 shall be punished upon conviction as follows:

15 (a) If the subsequent felony is punishable upon a first con-
16 viction by imprisonment for a term less than life, ~~then~~ the
17 court, except as otherwise provided in this section, ~~or~~
18 ~~section 1 of chapter 11, may~~ SHALL sentence the person to
19 imprisonment for a maximum term ~~which is not more than~~ THAT IS
20 twice the longest term prescribed by law for a first conviction
21 of that offense. ~~or for a lesser term.~~

22 (b) If the subsequent felony is punishable upon a first con-
23 viction by imprisonment for life, ~~then~~ the court, except as
24 otherwise provided in this section, ~~or section 1 of chapter 11,~~
25 ~~may~~ SHALL sentence the person to imprisonment for life. ~~or for~~
26 ~~a lesser term.~~

1 (c) If the subsequent felony is a major controlled substance
2 offense, the person shall be punished as provided by part 74 of
3 the public health code, Act No. 368 of the Public Acts of 1978,
4 being sections 333.7401 to ~~333.7415~~ 333.7461 of the Michigan
5 Compiled Laws.

6 (2) If the court pursuant to this section imposes a sentence
7 of imprisonment ~~for any~~ WITH A MAXIMUM term of years, the court
8 shall ALSO fix the length of ~~both the minimum and maximum sen-~~
9 ~~tence within any specified limits in terms of years or fraction~~
10 ~~thereof,~~ THE MINIMUM SENTENCE and the sentence so imposed ~~shall~~
11 ~~be considered~~ IS an indeterminate sentence.

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

20 (a) If the subsequent felony is punishable upon a first con-
21 viction by imprisonment for a maximum term of 5 years or more, or
22 for life, ~~then~~ the court, except as otherwise provided in this
23 section, ~~or section 1 of chapter 11, may~~ SHALL sentence the
24 person upon conviction of the fourth or subsequent offense to
25 imprisonment ~~in a state prison for the term of~~ FOR life. ~~or~~
26 ~~for a lesser term.~~

1 (b) If the subsequent felony is punishable upon a first
2 conviction by imprisonment for a maximum term ~~which~~ THAT is
3 less than 5 years, ~~then~~ the court, except as otherwise provided
4 in this section, ~~or section 1 of chapter 11, may~~ SHALL sentence
5 the person to imprisonment for a MAXIMUM term of 15 years. ~~or a~~
6 ~~lesser term.~~

7 (c) If the subsequent felony is a major controlled substance
8 offense, the person shall be punished as provided by part 74 of
9 the public health code, Act No. 368 of the Public Acts of 1978,
10 being sections 333.7401 to ~~333.7415~~ 333.7461 of the Michigan
11 Compiled Laws.

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

18 (3) Offenders ~~sentenced~~ WHO RECEIVE AN INDETERMINATE
19 SENTENCE under this section or section 10 or 11 OF THIS CHAPTER
20 for offenses other than a major controlled substance offense
21 ~~shall not be~~ ARE NOT eligible for parole before the expiration
22 of the minimum term fixed by the sentencing judge at the time of
23 sentence without the written approval of the sentencing judge or
24 a successor. ~~A person to be punished under this section or~~
25 ~~section 10 or 11 need not have been indicted and convicted as a~~
26 ~~previous offender in order to receive the increased punishment~~
27 ~~provided in this section or section 11, but may be proceeded~~

1 ~~against as provided in section 13.~~ A MANDATORY MINIMUM SENTENCE
2 IMPOSED PURSUANT TO THIS SECTION OR SECTION 10 OR 11 OF THIS
3 CHAPTER SHALL NOT BE REDUCED BY DISCIPLINARY CREDITS OR GOOD
4 TIME.

5 (4) ~~This section and sections 10 and 11 govern the length~~
6 ~~of sentence to be imposed for the commission of a subsequent~~
7 ~~felony and are not in derogation of other provisions of law which~~
8 ~~permit or direct the imposition of a consecutive sentence for a~~
9 ~~subsequent felony.~~ A SENTENCE IMPOSED UNDER THIS SECTION OR
10 SECTION 10 OR 11 OF THIS CHAPTER SHALL BE SERVED CONSECUTIVELY TO
11 ANY OTHER SENTENCE IMPOSED UPON THE PERSON.

12 Sec. 13. If ~~after conviction and either before or after~~
13 ~~sentence it appears~~ THE PROSECUTING ATTORNEY DETERMINES that a
14 person convicted of a felony has previously been convicted of
15 crimes as set forth in section 10, 11, or 12 OF THIS CHAPTER, the
16 prosecuting attorney of the county in which the conviction was
17 ~~had may file a separate or supplemental information in the cause~~
18 ~~accusing the person~~ ENTERED SHALL NOTIFY THE COURT of the previ-
19 ous convictions BEFORE SENTENCING. The court ~~in which the con-~~
20 ~~viction was had shall cause the person to be brought before it~~
21 ~~and shall inform him~~ THE PERSON of the allegations ~~contained~~
22 ~~in the information,~~ and of ~~his~~ THE right to ~~be tried on the~~
23 CHALLENGE THOSE allegations. ~~, and require the offender to say~~
24 ~~whether he is the same person as charged in the information or~~
25 ~~not. If the offender says he is not the same person, or remains~~
26 ~~silent, the court shall enter a plea of not guilty, and a jury of~~
27 ~~12 jurors shall be impaneled from the petit jurors serving at the~~

~~1 then or a following term of court to determine the issues raised~~
~~2 by the information and plea. The accused may waive trial by jury~~
~~3 in the manner provided by this act. The usual practice in the~~
~~4 trial of criminal actions shall be followed in the impaneling of~~
~~5 a jury and the trial of the issue. The prosecuting officer and~~
~~6 the accused shall each be allowed 5 peremptory challenges. If~~
~~7 the accused pleads guilty to the information or if the jury~~
~~8 returns a verdict of guilty,~~ IF THE COURT DETERMINES THE PERSON
9 HAS PREVIOUSLY BEEN CONVICTED OF CRIMES AS SET FORTH IN
10 SECTION 10, 11, OR 12 OF THIS CHAPTER, the court ~~may~~ SHALL sen-
11 tence the offender to the punishment prescribed in section 10,
12 11, or 12 OF THIS CHAPTER. ~~, and shall vacate the previous sen-~~
13 ~~tence, deducting from the new sentence all time actually served~~
14 ~~on the vacated sentence if required. A warden, or prison, proba-~~
15 ~~tion, parole, or other peace officer who knows that a person~~
16 ~~charged with or convicted for the commission of a felony has been~~
17 ~~previously convicted within the meaning of section 10, 11, or 12~~
18 ~~shall immediately report the facts to the prosecuting attorney of~~
19 ~~the county in which the person is charged or was sentenced.~~

20

CHAPTER XI

21 Sec. 1. (1) In all prosecutions for felonies or misdemean-
22 ors, except murder, treason, criminal sexual conduct in the first
23 or third degree, robbery while armed, ~~and~~ major controlled sub-
24 stance offenses not described in subsection (3), OR SUBSEQUENT
25 FELONIES PURSUANT TO SECTION 10, 11, OR 12 OF CHAPTER IX, if the
26 defendant has been found guilty upon verdict or plea, and if ~~it~~
27 ~~appears to the satisfaction of the court that~~ THE COURT

1 DETERMINES the defendant is not likely again to engage in an
2 offensive or criminal course of conduct and ~~that~~ the public
3 good does not require that the defendant ~~shall~~ suffer the pen-
4 alty imposed by law, the court may place the defendant on proba-
5 tion under the charge and supervision of a probation officer.

6 (2) Except as provided in subsection (3), in an action in
7 which the court may place the defendant on probation, the court
8 may delay ~~the~~ imposing ~~of~~ THE DEFENDANT'S sentence ~~of the~~
9 ~~defendant~~ for ~~a period of~~ not ~~to exceed~~ MORE THAN 1 year
10 ~~for the purpose of giving~~ TO GIVE the defendant an opportunity
11 to prove to the court his or her eligibility for probation or
12 other leniency compatible with the ends of justice and the reha-
13 bilitation of the defendant. When the sentencing is delayed, the
14 court shall make AND ENTER INTO THE RECORDS an order stating the
15 reason for the delay. ~~, which order shall be entered upon the~~
16 ~~records of the court.~~ The delay in passing sentence shall not
17 deprive the court of jurisdiction to sentence the defendant at
18 any time during the extended period.

19 (3) The sentencing judge may place a defendant on life pro-
20 bation pursuant to subsection (1) if the defendant is convicted
21 for a violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv) of
22 the public health code, Act No. 368 of the Public Acts of 1978,
23 being sections 333.7401 ~~or~~ AND 333.7403 of the Michigan
24 Compiled Laws, or conspiracy to commit either of those ~~2~~
25 offenses. Subsection (2) does not apply to this subsection.

26 (4) ~~Beginning June 1, 1988, this~~ THIS section does not
27 apply to a juvenile placed on probation and committed under

1 section 1(3) or (4) of chapter IX to a state institution or
2 agency described in the youth rehabilitation services act, Act
3 No. 150 of the Public Acts of 1974, being sections 803.301 to
4 803.309 of the Michigan Compiled Laws.