

Act No. 247
Public Acts of 1996
Approved by the Governor
June 11, 1996
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senators Posthumus, Rogers, Gougeon, Stille, Bennett, Steil, DeGrow, Schuette and McManus

ENROLLED SENATE BILL No. 699

AN ACT to amend sections 1 and 1b of chapter IX and section 7 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," section 1 of chapter IX as amended by Act No. 85 of the Public Acts of 1993, section 1b of chapter IX as added by Act No. 78 of the Public Acts of 1988, and section 7 of chapter XI as amended by Act No. 343 of the Public Acts of 1993, being sections 769.1, 769.1b, and 771.7 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 1 and 1b of chapter IX and section 7 of chapter XI of Act No. 175 of the Public Acts of 1927, section 1 of chapter IX as amended by Act No. 85 of the Public Acts of 1993, section 1b of chapter IX as added by Act No. 78 of the Public Acts of 1988, and section 7 of chapter XI as amended by Act No. 343 of the Public Acts of 1993, being sections 769.1, 769.1b, and 771.7 of the Michigan Compiled Laws, are amended to read as follows:

CHAPTER IX

Sec. 1. (1) A judge of a court having jurisdiction may pronounce judgment against and pass sentence upon a person convicted of an offense in that court. The sentence shall not exceed the sentence prescribed by law. The court shall sentence a juvenile convicted of any of the following crimes in the same manner as an adult:

(a) Arson of a dwelling in violation of section 72 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.72 of the Michigan Compiled Laws.

(b) Assault with intent to commit murder in violation of section 83 of Act No. 328 of the Public Acts of 1931, being section 750.83 of the Michigan Compiled Laws.

(c) Assault with intent to maim in violation of section 86 of Act No. 328 of the Public Acts of 1931, being section 750.86 of the Michigan Compiled Laws.

(d) Attempted murder in violation of section 91 of Act No. 328 of the Public Acts of 1931, being section 750.91 of the Michigan Compiled Laws.

(e) Conspiracy to commit murder in violation of section 157a of Act No. 328 of the Public Acts of 1931, being section 750.157a of the Michigan Compiled Laws.

(f) Solicitation to commit murder in violation of section 157b of Act No. 328 of the Public Acts of 1931, being section 750.157b of the Michigan Compiled Laws.

(g) First degree murder in violation of section 316 of Act No. 328 of the Public Acts of 1931, being section 750.316 of the Michigan Compiled Laws.

(h) Second degree murder in violation of section 317 of Act No. 328 of the Public Acts of 1931, being section 750.317 of the Michigan Compiled Laws.

(i) Kidnapping in violation of section 349 of Act No. 328 of the Public Acts of 1931, being section 750.349 of the Michigan Compiled Laws.

(j) First degree criminal sexual conduct in violation of section 520b of Act No. 328 of the Public Acts of 1931, being section 750.520b of the Michigan Compiled Laws.

(k) Armed robbery in violation of section 529 of Act No. 328 of the Public Acts of 1931, being section 750.529 of the Michigan Compiled Laws.

(l) Carjacking in violation of section 529a of Act No. 328 of the Public Acts of 1931, being section 750.529a of the Michigan Compiled Laws.

(2) A person convicted of a felony or of a misdemeanor punishable by imprisonment for more than 92 days shall not be sentenced until the court has examined the court file and has determined that the fingerprints of the person have been taken.

(3) Unless a juvenile is required to be sentenced in the same manner as an adult under subsection (1), a judge of a court having jurisdiction over a juvenile shall conduct a hearing at the juvenile's sentencing to determine if the best interests of the public would be served by placing the juvenile on probation and committing the juvenile to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws, or by imposing any other sentence provided by law for an adult offender. The court shall sentence the juvenile in the same manner as an adult unless the court determines by a preponderance of the evidence that the interests of the public would be best served by placing the juvenile on probation and committing the juvenile to a state institution or agency described in Act No. 150 of the Public Acts of 1974. The rules of evidence do not apply to a hearing under this subsection. In making the determination required under this subsection, the judge shall consider all of the following, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency:

(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(b) The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(e) The adequacy of the punishment or programming available in the juvenile justice system.

(f) The dispositional options available for the juvenile.

(4) With the consent of the prosecutor and the defendant, the court may waive the hearing required under subsection (3). If the court waives the hearing required under subsection (3), the court may place the juvenile on probation and commit the juvenile to a state institution or agency described in Act No. 150 of the Public Acts of 1974, but shall not impose any other sentence provided by law for an adult offender.

(5) The court shall state on the record the court's findings of fact and conclusions of law for the probation and commitment decision or sentencing decision made under subsection (3). If a juvenile is committed under subsection (3) to a state institution or agency described in Act No. 150 of the Public Acts of 1974, a transcript of the court's findings shall be sent to the family independence agency.

(6) If a juvenile is committed under subsection (3) or (4) to a state institution or agency described in Act No. 150 of the Public Acts of 1974, the written order of commitment shall contain a provision for the reimbursement to the court by the juvenile or those responsible for the juvenile's support, or both, for the cost of care or service. The amount of reimbursement ordered shall be reasonable, taking into account both the income and resources of the juvenile and those responsible for the juvenile's support. The amount may be based upon the guidelines and model schedule prepared under section 18(6) of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.18 of the Michigan Compiled Laws. The reimbursement provision shall apply during the entire period the juvenile remains in care outside the juvenile's own home and under court supervision. The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under state or court supervision. The court may also collect benefits paid by the government of the United States for the cost of care of the juvenile. Money collected for juveniles placed with or committed to the family independence agency shall be accounted for and reported on an individual basis. In cases of delinquent accounts, the court may also enter an order to intercept state tax refunds or the federal income tax refund of a child, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

(7) If the court appoints an attorney to represent a juvenile, an order entered under this section may require the juvenile or person responsible for the juvenile's support, or both, to reimburse the court for attorney fees.

(8) An order directed to a person responsible for the juvenile's support under this section shall not be effectual and binding on the person unless an opportunity for a hearing has been given and until a copy of the order is served on the person, personally or by first class mail to the person's last known address.

(9) If a juvenile is placed on probation and committed under subsection (3) or (4) to a state institution or agency described in Act No. 150 of the Public Acts of 1974, the court shall retain jurisdiction over the juvenile while the juvenile is on probation and committed to that state institution or agency.

(10) If the court has retained jurisdiction over a juvenile under subsection (9), the court shall conduct an annual review of the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in that placement. In conducting this review, the court shall examine the juvenile's annual report prepared pursuant to section 3 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section 803.223 of the Michigan Compiled Laws. The court may order changes in the juvenile's placement or treatment plan including, but not limited to, committing the juvenile to the jurisdiction of the department of corrections, based on the review.

(11) When sentencing a person convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the court shall examine the presentence investigation report and determine if the person being sentenced is licensed or registered under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws. The court shall also examine the court file and determine if a report of the conviction upon which the person is being sentenced has been forwarded to the department of consumer and industry services as provided in section 16a. If the report has not been forwarded to the department of consumer and industry services, the court shall order the clerk of the court to immediately prepare and forward the report as provided in section 16a.

Sec. 1b. (1) If a juvenile is placed on probation and committed under section 1(3) or (4) of this chapter to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety. If the court determines that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety, jurisdiction over the juvenile shall be continued or the court may commit the juvenile to the department of corrections as provided in this section. In making this determination, the court shall consider the following:

(a) The extent and nature of the juvenile's participation in education, counseling, or work programs.

- (b) The juvenile's willingness to accept responsibility for prior behavior.
- (c) The juvenile's behavior in his or her current placement.
- (d) The prior record and character of the juvenile and his or her physical and mental maturity.
- (e) The juvenile's potential for violent conduct as demonstrated by prior behavior.
- (f) The recommendations of the state institution or agency charged with the juvenile's care for the juvenile's release or continued custody.

(g) Other information the prosecuting attorney or juvenile may submit.

(2) A review hearing shall be scheduled and held unless adjourned for good cause as near as possible to, but before, the juvenile's nineteenth birthday. If the state institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and that the juvenile does not present a serious risk to public safety, the state institution or agency may petition the court to conduct a review hearing at any time before the juvenile becomes 19 years of age or, if the court has continued jurisdiction under subsection (1), at any time before the juvenile becomes 21 years of age.

(3) Not less than 14 days before a review hearing is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may extend jurisdiction over the juvenile and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(4) The state institution or agency charged with the care of the juvenile shall prepare commitment reports as provided in section 5 of the juvenile facilities act, Act No. 73 of the Public Acts of 1988, being section 803.225 of the Michigan Compiled Laws, for use by the court at a review hearing held under this section.

(5) The court shall conduct a final review of the juvenile's probation and commitment under section 1(3) or (4) not less than 3 months before the end of the period that the juvenile is on probation and committed to the state institution or agency. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose the sentence. In making its determination, the court shall consider the criteria specified in subsection (1) and all of the following criteria:

- (a) The effect of treatment on the juvenile's rehabilitation.
- (b) Whether the juvenile is likely to be dangerous to the public if released.
- (c) The best interests of the public welfare and the protection of public security.

(6) Not less than 14 days before a final review hearing under subsection (5) is to be conducted, the prosecuting attorney, juvenile, and, if addresses are known, the juvenile's parent or guardian shall be notified. The notice shall state that the court may impose a sentence upon the juvenile under subsection (5) and shall advise the juvenile and the juvenile's parent or guardian of the right to legal counsel. If legal counsel has not been retained or appointed to represent the juvenile, the court shall appoint legal counsel and may assess the cost of providing counsel as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(7) After a sentence is imposed under subsection (1) or (5), the juvenile shall receive credit for the period of time served on probation and committed to a state agency or institution under section 1(3) or (4) of this chapter.

CHAPTER XI

Sec. 7. (1) If a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws, is found by the court to have violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, the court shall revoke probation and order the juvenile committed to the department of corrections for a term of years that shall not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation with credit granted against the sentence for the period of time the juvenile served on probation.

(2) If a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to a state institution or agency described in Act No. 150 of the Public Acts of 1974 is found by the court to have violated probation other than as provided in subsection (1), the court may order the juvenile committed to the department of corrections or may order any of the following for the juvenile:

- (a) A change of placement.
- (b) Community service.
- (c) Substance abuse counseling.

- (d) Mental health counseling.
- (e) Participation in a vocational-technical education program.
- (f) Incarceration in a county jail for not more than 30 days. If a juvenile is under 17 years of age, the juvenile shall be placed in a room or ward out of sight and sound from adult prisoners.
- (g) Other participation or performance as the court considers necessary.

Section 2. This amendatory act applies to offenses committed on or after its effective date.

Section 3. This amendatory act shall take effect January 1, 1997.

Section 4. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

- (a) Senate Bill No. 281.
- (b) Senate Bill No. 283.
- (c) Senate Bill No. 682.
- (d) Senate Bill No. 689.
- (e) Senate Bill No. 700.
- (f) Senate Bill No. 724.
- (g) Senate Bill No. 867.
- (h) Senate Bill No. 870.
- (i) House Bill No. 4037.
- (j) House Bill No. 4038.
- (k) House Bill No. 4044.
- (l) House Bill No. 4371.
- (m) House Bill No. 4445.
- (n) House Bill No. 4486.
- (o) House Bill No. 4487.
- (p) House Bill No. 4490.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.