



HOUSE BILL No. 6108

September 19, 1996, Introduced by Reps. Nye, Cropsey, Ryan, Bush and Galloway and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 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,"

section 11 of chapter IX as amended by Act No. 90 of the Public Acts of 1988, section 12 of chapter IX as amended by Act No. 445 of the Public Acts of 1994, section 13 of chapter IX as amended by Act No. 110 of the Public Acts of 1994, and section 1 of chapter XI as amended by Act No. 185 of the Public Acts of 1993, being sections 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 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, section 11 of chapter IX as amended by Act No. 90 of the

1 Public Acts of 1988, section 12 of chapter IX as amended by Act
 2 No. 445 of the Public Acts of 1994, section 13 of chapter IX as
 3 amended by Act No. 110 of the Public Acts of 1994, and section 1
 4 of chapter XI as amended by Act No. 185 of the Public Acts of
 5 1993, being sections 769.11, 769.12, 769.13, and 771.1 of the
 6 Michigan Compiled Laws, are amended to read as follows:

7
 8 CHAPTER IX

9 Sec. 11. (1) ~~If~~ SUBJECT TO SUBSECTION (2), IF a person
 10 has been convicted of 2 or more felonies, attempts to commit fel-
 11 onies, or both, whether the convictions occurred in this state or
 12 would have been for felonies in this state if the convictions
 13 obtained outside this state had been obtained in this state, and
 14 that person commits a subsequent felony within this state, the
 15 person shall be punished upon conviction ~~as follows:~~ BY IMPRIS-
 16 ONMENT FOR LIFE WITHOUT THE OPPORTUNITY FOR PAROLE. A SENTENCE
 17 IMPOSED UNDER THIS SUBSECTION SHALL NOT BE SUSPENDED.

18 ~~(a) If the subsequent felony is punishable upon a first~~
 19 ~~conviction by imprisonment for a term less than life, then the~~
 20 ~~court, except as otherwise provided in this section or section 1~~
 21 ~~of chapter 11, may sentence the person to imprisonment for a max-~~
 22 ~~imum term which is not more than twice the longest term pre-~~
 23 ~~scribed by law for a first conviction of that offense or for a~~
 24 ~~lesser term.~~

25 ~~(b) If the subsequent felony is punishable upon a first con-~~
 26 ~~viction by imprisonment for life, then the court, except as oth-~~
 otherwise provided in this section or section 1 of chapter 11, may

1 ~~sentence the person to imprisonment for life or for a lesser~~
2 ~~term.~~

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

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

14 Sec. 12. ~~(1) If a person has been convicted of any combi-~~
15 ~~nation of 3 or more felonies or attempts to commit felonies,~~
16 ~~whether the convictions occurred in this state or would have been~~
17 ~~for felonies or attempts to commit felonies in this state if~~
18 ~~obtained in this state, and that person commits a subsequent~~
19 ~~felony within this state, the person shall be punished upon con-~~
20 ~~viction of the subsequent felony and sentencing under section 13~~
21 ~~of this chapter as follows:~~

22 (a) ~~If the subsequent felony is punishable upon a first con-~~
23 ~~viction by imprisonment for a maximum term of 5 years or more or~~
24 ~~for life, the court, except as otherwise provided in this section~~
25 ~~or section 1 of chapter XI, may sentence the person upon convic-~~
26 ~~tion of the fourth or subsequent offense to imprisonment for life~~
27 ~~or for a lesser term.~~

1 ~~(b) If the subsequent felony is punishable upon a first~~
2 ~~conviction by imprisonment for a maximum term that is less than 5~~
3 ~~years, the court, except as otherwise provided in this section or~~
4 ~~section 1 of chapter XI, may sentence the person to imprisonment~~
5 ~~for a maximum term of not more than 15 years.~~

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

11 ~~(2) If the court pursuant to this section imposes a sentence~~
12 ~~of imprisonment for any term of years, the court shall fix the~~
13 ~~length of both the minimum and maximum sentence within any speci-~~
14 ~~fied limits in terms of years or a fraction of a year, and the~~
15 ~~sentence so imposed shall be considered an indeterminate~~
16 ~~sentence.~~

17 (1) ~~(3)~~ An offender sentenced under ~~this section or~~ sec-
18 tion 10 ~~or 11~~ of this chapter for an offense other than a major
19 controlled substance offense is not eligible for parole until
20 expiration of the following:

21 (a) For a prisoner other than a prisoner subject to disci-
22 plinary time, the minimum term fixed by the sentencing judge at
23 the time of sentence unless the sentencing judge or a successor
24 gives written approval for parole at an earlier date authorized
25 by law.

26 (b) For a prisoner subject to disciplinary time, the minimum
27 term fixed by the sentencing judge plus any disciplinary time

1 accumulated pursuant to section 34 of Act No. 118 of the Public
2 Acts of 1893, being section 800.34 of the Michigan Compiled
3 Laws.

4 (2) ~~(4) This section and sections~~ SECTIONS 10 and 11 of
5 this chapter are not in derogation of other provisions of law
6 that permit or direct the imposition of a consecutive sentence
7 for a subsequent felony.

8 (3) ~~(5)~~ As used in this section, "prisoner subject to dis-
9 ciplinary time" means that term as defined in section 34 of Act
10 No. 118 of the Public Acts of 1893, being section 800.34 of the
11 Michigan Compiled Laws.

12 Sec. 13. (1) In a criminal action, the prosecuting attorney
13 may seek to enhance the sentence of the defendant as provided
14 under section 10 ~~OR 11~~ ~~OR 12~~ of this chapter ~~OR~~ by
15 filing a written notice of his or her intent to do so within 21
16 days after the defendant's arraignment on the information charg-
17 ing the underlying offense or, if arraignment is waived, within
18 21 days after the filing of the information charging the underly-
19 ing offense.

20 (2) A notice of intent to seek an enhanced sentence filed
21 under subsection (1) shall list the prior conviction or convic-
22 tions that will or may be relied upon for purposes of sentence
23 enhancement. The notice shall be filed with the court and served
24 upon the defendant or his or her attorney within the time pro-
25 vided in subsection (1). The notice may be personally served
26 upon the defendant or his or her attorney at the arraignment on
27 the information charging the underlying offense, or may be served

1 in the manner provided by law or court rule for service of
2 written pleadings. The prosecuting attorney shall file a written
3 proof of service with the clerk of the court.

4 (3) The prosecuting attorney may file notice of intent to
5 seek an enhanced sentence after the defendant has been convicted
6 of the underlying offense or a lesser offense upon his or her
7 plea of guilty or nolo contendere if the defendant pleads guilty
8 or nolo contendere at the arraignment on the information charging
9 the underlying offense, or within the time allowed for filing of
10 the notice under subsection (1).

11 (4) A defendant who has been given notice that the prosecut-
12 ing attorney will seek to enhance his or her sentence as provided
13 under section 10 ~~7~~ OR 11 ~~7, or 12~~ of this chapter ~~7~~ may
14 challenge the accuracy or constitutional validity of 1 or more of
15 the prior convictions listed in the notice by filing a written
16 motion with the court and by serving a copy of the motion upon
17 the prosecuting attorney in accordance with rules of the supreme
18 court.

19 (5) The existence of the defendant's prior conviction or
20 convictions shall be determined by the court, without a jury, at
21 sentencing, or at a separate hearing scheduled for that purpose
22 before sentencing. The existence of a prior conviction may be
23 established by any evidence that is relevant for that purpose,
24 including, but not limited to, 1 or more of the following:

25 (a) A copy of a judgment of conviction.

26 (b) A transcript of a prior trial or a plea-taking or
27 sentencing proceeding.

1 (c) Information contained in a presentence report.

2 (d) A statement of the defendant.

3 (6) The court shall resolve any challenges to the accuracy
4 or constitutional validity of a prior conviction or convictions
5 that have been raised in a motion filed under subsection (4) at
6 sentencing or at a separate hearing scheduled for that purpose
7 before sentencing. The defendant, or his or her attorney, shall
8 be given an opportunity to deny, explain, or refute any evidence
9 or information pertaining to the defendant's prior conviction or
10 convictions before sentence is imposed, and shall be permitted to
11 present relevant evidence for that purpose. The defendant shall
12 bear the burden of establishing a prima facie showing that an
13 alleged prior conviction is inaccurate or constitutionally
14 invalid. If the defendant establishes a prima facie showing that
15 information or evidence concerning an alleged prior conviction is
16 inaccurate, the prosecuting attorney shall bear the burden of
17 proving, by a preponderance of the evidence, that the information
18 or evidence is accurate. If the defendant establishes a prima
19 facie showing that an alleged prior conviction is constitution-
20 ally invalid, the prosecuting attorney shall bear the burden of
21 proving, by a preponderance of the evidence, that the prior con-
22 viction is constitutionally valid.

23 CHAPTER XI

24 Sec. 1. (1) In ~~all prosecutions~~ A PROSECUTION for
25 ~~felonies~~ A FELONY or ~~misdemeanors~~ A MISDEMEANOR, except IN A
26 PROSECUTION FOR murder, treason, criminal sexual conduct in the
27 first or third degree, ARMED robbery, ~~while armed, and~~ OR A

1 major controlled substance ~~offenses~~ OFFENSE not described in
2 subsection (4), OR A PROSECUTION UNDER SECTION 11 OF CHAPTER IX,
3 if the defendant has been found guilty upon verdict or plea, and
4 if it appears to the satisfaction of the court that the defendant
5 is not likely again to engage in an offensive or criminal course
6 of conduct and that the public good does not require that the
7 defendant suffer the penalty imposed by law, the court may place
8 the defendant on probation under the charge and supervision of a
9 probation officer.

10 (2) Except as provided in subsection (4), in an action in
11 which the court may place the defendant on probation, the court
12 may delay ~~the imposing of sentence of~~ SENTENCING the defendant
13 for a period of not ~~to exceed~~ MORE THAN 1 year ~~for the purpose~~
14 ~~of giving~~ TO GIVE the defendant an opportunity to prove to the
15 court his or her eligibility for probation or other leniency com-
16 patible with the ends of justice and the rehabilitation of the
17 defendant. When the sentencing is delayed, the court shall make
18 an order stating the reason for the delay. ~~which~~ THE order
19 shall be entered upon the records of the court. The delay in
20 ~~passing sentence shall~~ SENTENCING THE DEFENDANT DOES not
21 deprive the court of jurisdiction to sentence the defendant at
22 any time during the period of delay.

23 (3) If a defendant is before the circuit court and is ~~made~~
24 subject to a delay in ~~imposing sentence~~ SENTENCING under sub-
25 section (2), the court shall include in the delayed sentence
26 order THE REQUIREMENT that the department of corrections ~~shall~~
27 collect a supervision fee of not more than \$30.00 multiplied by

1 the number of months of delay ordered, but not more than 12
 2 months. The fee is payable when the delayed sentence order is
 3 entered, but the fee may be paid in monthly installments if the
 4 court approves installment payments for that defendant. In
 5 determining the amount of the fee, the court shall consider the
 6 defendant's projected income and financial resources. The court
 7 shall use the following table of projected monthly income in
 8 determining the amount of the fee to be ordered:

9	<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
10	\$ 0-249.99	\$ 0.00
11	\$ 250.00-499.99	\$10.00
12	\$ 500.00-749.99	\$20.00
13	\$ 750.00 or more	\$30.00

14 The court may order a higher amount than indicated by the table,
 15 up to the maximum of \$30.00 multiplied by the number of months of
 16 delay ordered but not more than 12 months, if the court deter-
 17 mines that the defendant has sufficient assets or other financial
 18 resources to warrant the higher amount. If the court orders a
 19 higher amount, THE COURT SHALL STATE the amount and the reasons
 20 for ordering that amount ~~shall be stated~~ in the ~~court~~ order.
 21 The fee shall be collected as provided in section 25a of Act
 22 No. 232 of the Public Acts of 1953, being section 791.225a of the

1 Michigan Compiled Laws. A person shall not be subject to more
2 than 1 supervision fee at the same time. If a supervision fee is
3 ordered for a person for any month or months during which that
4 person already is subject to a supervision fee, the court shall
5 waive the fee having the shorter remaining duration.

6 (4) The sentencing judge may place a defendant on life pro-
7 bation pursuant to subsection (1) if the defendant is convicted
8 for a violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv) of
9 the public health code, Act No. 368 of the Public Acts of 1978,
10 being sections 333.7401 or 333.7403 of the Michigan Compiled
11 Laws, or conspiracy to commit either of those ~~2~~ offenses.
12 Subsection (2) does not apply to this subsection.

13 (5) Beginning June 1, 1988, this section does not apply to a
14 juvenile placed on probation and committed under section 1(3) or
15 (4) of chapter IX to a state institution or agency described in
16 the youth rehabilitation services act, Act No. 150 of the Public
17 Acts of 1974, being sections 803.301 to 803.309 of the Michigan
18 Compiled Laws.

19 Section 2. This amendatory act shall not take effect unless
20 all of the following bills of the 88th Legislature are enacted
21 into law:

22 (a) Senate Bill No. _____ or House Bill No. 6106 (request
23 no. 07236'96 a).

24 (b) Senate Bill No. _____ or House Bill No. 6107 (request
25 no. 07236'96 b).