

SENATE BILL NO. 755

October 14, 1997, Introduced by Senator BENNETT and referred to the Committee on Education.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," (MCL 760.1 to 776.22) by adding section 15 to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX

2 SEC. 15. (1) IF AN INDIVIDUAL IS CONVICTED OF A CRIME AND
3 THE CRIME OCCURRED ON SCHOOL PROPERTY AND WAS AGAINST A TEACHER,
4 ADMINISTRATOR, EMPLOYEE, OR VOLUNTEER OF THAT SCHOOL OR A STUDENT
5 AT THAT SCHOOL, THE FOLLOWING APPLY IF THE PROSECUTING ATTORNEY
6 SEEKS TO ENHANCE THE DEFENDANT'S SENTENCE UNDER THIS SECTION:

7 (A) IF THE CRIME IS PUNISHABLE BY IMPRISONMENT FOR LIFE OR
8 ANY TERM OF YEARS, THE INDIVIDUAL IS GUILTY OF A FELONY AND SHALL
9 BE PUNISHED BY IMPRISONMENT FOR LIFE OR ANY TERM OF YEARS BUT NOT
10 LESS THAN 20 YEARS.

1 (B) IF THE CRIME IS A FELONY OTHER THAN A CRIME DESCRIBED IN
2 SUBDIVISION (A) OR IS PUNISHABLE BY IMPRISONMENT FOR MORE THAN 1
3 YEAR, THE INDIVIDUAL IS GUILTY OF A FELONY PUNISHABLE BY IMPRIS-
4 ONMENT FOR NOT MORE THAN TWICE THE TERM AUTHORIZED FOR THE CRIME
5 OR A FINE OF NOT MORE THAN TWICE THE FINE AUTHORIZED FOR THE
6 CRIME, OR BOTH.

7 (C) IF THE CRIME IS A MISDEMEANOR PUNISHABLE BY IMPRISONMENT
8 FOR NOT MORE THAN 1 YEAR, THE INDIVIDUAL IS GUILTY OF A MISDE-
9 MEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN TWICE THE
10 TERM AUTHORIZED FOR THE CRIME OR A FINE OF NOT MORE THAN TWICE
11 THE FINE AUTHORIZED FOR THE CRIME, OR BOTH.

12 (2) IF A MANDATORY MINIMUM SENTENCE IS PRESCRIBED FOR A
13 CRIME FOR WHICH THE COURT IMPOSES AN ENHANCED SENTENCE OF IMPRIS-
14 ONMENT UNDER THIS SECTION, THE COURT SHALL IMPOSE A MINIMUM SEN-
15 TENCE THAT IS EQUAL TO OR GREATER THAN THAT MANDATORY MINIMUM.

16 (3) THE PROSECUTING ATTORNEY MAY SEEK TO ENHANCE A
17 DEFENDANT'S SENTENCE UNDER THIS SECTION BY FILING A WRITTEN
18 NOTICE OF HIS OR HER INTENT TO DO SO WITHIN 21 DAYS AFTER THE
19 DEFENDANT'S ARRAIGNMENT ON THE COMPLAINT OR INFORMATION CHARGING
20 THE OFFENSE OR, IF ARRAIGNMENT IS WAIVED, WITHIN 21 DAYS AFTER
21 THE FILING OF THE COMPLAINT OR INFORMATION CHARGING THE OFFENSE.

22 (4) A NOTICE OF INTENT TO SEEK AN ENHANCED SENTENCE UNDER
23 THIS SECTION SHALL LIST THE FACTS THAT WILL OR MAY BE RELIED UPON
24 FOR SENTENCE ENHANCEMENT. THE NOTICE SHALL BE FILED WITH THE
25 COURT AND SERVED UPON THE DEFENDANT OR HIS OR HER ATTORNEY WITHIN
26 THE TIME PROVIDED IN SUBSECTION (3). THE NOTICE MAY BE
27 PERSONALLY SERVED UPON THE DEFENDANT OR HIS OR HER ATTORNEY AT

1 THE ARRAIGNMENT ON THE COMPLAINT OR INFORMATION CHARGING THE
2 OFFENSE OR MAY BE SERVED IN THE MANNER PROVIDED BY LAW OR COURT
3 RULE FOR SERVICE OF WRITTEN PLEADINGS.

4 (5) THE PROSECUTING ATTORNEY MAY FILE NOTICE OF INTENT TO
5 SEEK AN ENHANCED SENTENCE UNDER THIS SECTION AFTER THE DEFENDANT
6 HAS BEEN CONVICTED OF THE OFFENSE OR A LESSER OFFENSE UPON HIS OR
7 HER PLEA OF GUILTY OR NOLO CONTENDERE IF THE DEFENDANT PLEADS
8 GUILTY OR NOLO CONTENDERE AT THE ARRAIGNMENT ON THE COMPLAINT OR
9 INFORMATION CHARGING THE OFFENSE, OR WITHIN THE TIME ALLOWED FOR
10 FILING OF THE NOTICE UNDER SUBSECTION (3). IF THE PROSECUTING
11 ATTORNEY FILES A NOTICE UNDER THIS SUBSECTION, THE DEFENDANT
12 SHALL HAVE AN OPPORTUNITY TO WITHDRAW HIS OR HER PLEA BEFORE
13 SENTENCING.

14 (6) THE COURT SHALL DETERMINE BY A PREPONDERANCE OF THE EVI-
15 DENCE AND WITHOUT A JURY WHETHER THE CRIME OCCURRED ON SCHOOL
16 PROPERTY AND WAS AGAINST A TEACHER, ADMINISTRATOR, EMPLOYEE, OR
17 VOLUNTEER OF THAT SCHOOL OR A STUDENT AT THAT SCHOOL. THE COURT
18 SHALL MAKE THIS DETERMINATION AT SENTENCING OR AT A SEPARATE
19 HEARING SCHEDULED FOR THAT PURPOSE BEFORE SENTENCING. THE BASIS
20 FOR ENHANCEMENT MAY BE ESTABLISHED BY ANY EVIDENCE THAT IS RELE-
21 VANT FOR THAT PURPOSE, INCLUDING, BUT NOT LIMITED TO, 1 OR MORE
22 OF THE FOLLOWING:

23 (A) A TRANSCRIPT OF THE TRIAL, A PRIOR TRIAL, OR A
24 PLEA-TAKING OR SENTENCING PROCEEDING.

25 (B) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

26 (C) A STATEMENT OF THE DEFENDANT.

1 (7) AS USED IN THIS SECTION:

2 (A) "SCHOOL" MEANS A PUBLIC OR PRIVATE SCHOOL OFFERING
3 DEVELOPMENTAL KINDERGARTEN, KINDERGARTEN, OR ANY GRADE FROM 1
4 THROUGH 12.

5 (B) "SCHOOL PROPERTY" MEANS ANY BUILDING OR REAL PROPERTY
6 USED BY A SCHOOL FOR SCHOOL PURPOSES OR FOR FUNCTIONS OR EVENTS
7 SPONSORED BY A SCHOOL.