

HOUSE BILL No. 5703

March 17, 1998, Introduced by Reps. Schauer, Gire, Bogardus and Hammerstrom and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

SEC. 15C. IF THE PROSECUTING ATTORNEY SEEKS UNDER SECTION
15E OF THIS CHAPTER TO ENHANCE THE SENTENCE OF AN INDIVIDUAL CON-
VICTED OF A MISDEMEANOR THAT OCCURRED ON SCHOOL PROPERTY AND WAS
AGAINST A TEACHER, ADMINISTRATOR, EMPLOYEE, OR VOLUNTEER OF THAT
SCHOOL OR A STUDENT AT THAT SCHOOL, THE INDIVIDUAL IS GUILTY OF A
MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN TWICE
THE TERM AUTHORIZED FOR THE CRIME OR A FINE OF NOT MORE THAN
TWICE THE FINE AUTHORIZED FOR THE CRIME, OR BOTH.

1 SEC. 15E. (1) THE PROSECUTING ATTORNEY MAY SEEK TO ENHANCE
2 A DEFENDANT'S SENTENCE UNDER SECTION 15A, 15B, OR 15C OF THIS
3 CHAPTER BY FILING A WRITTEN NOTICE OF HIS OR HER INTENT TO DO SO
4 WITHIN 21 DAYS AFTER THE DEFENDANT'S ARRAIGNMENT ON THE COMPLAINT
5 OR INFORMATION CHARGING THE OFFENSE OR, IF ARRAIGNMENT IS WAIVED,
6 WITHIN 21 DAYS AFTER THE FILING OF THE COMPLAINT OR INFORMATION
7 CHARGING THE OFFENSE.

8 (2) A NOTICE OF INTENT TO SEEK AN ENHANCED SENTENCE UNDER
9 SUBSECTION (1) SHALL LIST THE FACTS THAT WILL OR MAY BE RELIED
10 UPON FOR SENTENCE ENHANCEMENT. THE NOTICE SHALL BE FILED WITH
11 THE COURT AND SERVED UPON THE DEFENDANT OR HIS OR HER ATTORNEY
12 WITHIN THE TIME PROVIDED IN SUBSECTION (1). THE NOTICE MAY BE
13 PERSONALLY SERVED UPON THE DEFENDANT OR HIS OR HER ATTORNEY AT
14 THE ARRAIGNMENT ON THE COMPLAINT OR INFORMATION CHARGING THE
15 OFFENSE OR MAY BE SERVED IN THE MANNER PROVIDED BY LAW OR COURT
16 RULE FOR SERVICE OF WRITTEN PLEADINGS.

17 (3) THE PROSECUTING ATTORNEY MAY FILE A NOTICE OF INTENT TO
18 SEEK AN ENHANCED SENTENCE UNDER THIS SECTION AFTER THE DEFENDANT
19 HAS BEEN CONVICTED OF THE OFFENSE OR A LESSER OFFENSE, UPON HIS
20 OR HER PLEA OF GUILTY OR NOLO CONTENDERE IF THE DEFENDANT PLEADS
21 GUILTY OR NOLO CONTENDERE AT THE ARRAIGNMENT ON THE COMPLAINT OR
22 INFORMATION CHARGING THE OFFENSE, OR WITHIN THE TIME ALLOWED FOR
23 FILING OF THE NOTICE UNDER SUBSECTION (1). IF THE PROSECUTING
24 ATTORNEY FILES A NOTICE UNDER SUBSECTION (1), THE DEFENDANT SHALL
25 HAVE AN OPPORTUNITY TO WITHDRAW HIS OR HER PLEA BEFORE
26 SENTENCING.

1 (4) THE COURT SHALL DETERMINE BY A PREPONDERANCE OF THE
2 EVIDENCE AND WITHOUT A JURY WHETHER THE CRIME OCCURRED ON SCHOOL
3 PROPERTY AND WAS AGAINST A TEACHER, ADMINISTRATOR, EMPLOYEE, OR
4 VOLUNTEER OF THAT SCHOOL OR A STUDENT AT THAT SCHOOL. THE COURT
5 SHALL MAKE THIS DETERMINATION AT SENTENCING OR AT A SEPARATE
6 HEARING SCHEDULED FOR THAT PURPOSE BEFORE SENTENCING. THE BASIS
7 FOR ENHANCEMENT MAY BE ESTABLISHED BY ANY EVIDENCE THAT IS RELE-
8 VANT FOR THAT PURPOSE, INCLUDING, BUT NOT LIMITED TO, 1 OR MORE
9 OF THE FOLLOWING:

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

12 (B) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

13 (C) A STATEMENT OF THE DEFENDANT.

14 Enacting section 1. This amendatory act does not take
15 effect unless Senate Bill No. 755 of the 89th Legislature is
16 enacted into law.