

SENATE BILL NO. 1202

June 11, 1998, Introduced by Senator BOUCHARD and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 13 of chapter IX, (MCL 769.13), as amended by 1994 PA 110, and by adding section 12a to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX

2 SEC. 12A. (1) AN INDIVIDUAL CONVICTED OF A CRIME DESCRIBED
3 IN SUBSECTION (2) IS SUBJECT TO SENTENCING AS A HABITUAL SEXUAL
4 OFFENDER UNDER THIS SECTION.

5 (2) THIS SECTION APPLIES TO AN INDIVIDUAL CONVICTED OF ANY
6 OF THE FOLLOWING CRIMES:

7 (A) A VIOLATION OF SECTION 145C (2) OR (3) OF THE MICHIGAN
8 PENAL CODE, 1931 PA 328, MCL 750.145C, REGARDING CHILD SEXUALLY
9 ABUSIVE ACTIVITY OR MATERIAL.

1 (B) A VIOLATION OF SECTION 520B OF THE MICHIGAN PENAL CODE,
2 1931 PA 328, MCL 750.520B, REGARDING CRIMINAL SEXUAL CONDUCT IN
3 THE FIRST DEGREE.

4 (C) A VIOLATION OF SECTION 520C OF THE MICHIGAN PENAL CODE,
5 1931 PA 328, MCL 750.520C, REGARDING CRIMINAL SEXUAL CONDUCT IN
6 THE SECOND DEGREE.

7 (D) A VIOLATION OF SECTION 520D OF THE MICHIGAN PENAL CODE,
8 1931 PA 328, MCL 750.520D, REGARDING CRIMINAL SEXUAL CONDUCT IN
9 THE THIRD DEGREE.

10 (E) A VIOLATION OF SECTION 520E OF THE MICHIGAN PENAL CODE,
11 1931 PA 328, MCL 750.520E, REGARDING CRIMINAL SEXUAL CONDUCT IN
12 THE FOURTH DEGREE.

13 (F) A VIOLATION OF SECTION 520G OF THE MICHIGAN PENAL CODE,
14 1931 PA 328, MCL 750.520G, REGARDING ASSAULT WITH INTENT TO
15 COMMIT CRIMINAL SEXUAL CONDUCT.

16 (3) IF AN INDIVIDUAL IS CONVICTED OF A CRIME DESCRIBED IN
17 SUBSECTION (2), THE COURT SHALL REVIEW ALL PRIOR CONVICTIONS
18 ENTERED AGAINST THE INDIVIDUAL AND ASSESS POINTS AGAINST THE
19 INDIVIDUAL FOR EACH OF THOSE PRIOR CONVICTIONS AND FOR THE
20 INSTANT OFFENSE AS PROVIDED IN THIS SUBSECTION. IN DETERMINING
21 POINTS UNDER THIS SUBSECTION, THE COURT SHALL APPLY THE APPROPRI-
22 ATE POINTS FOR A PRIOR OFFENSE COMMITTED IN VIOLATION OF THE LAW
23 OF ANOTHER STATE, A POLITICAL SUBDIVISION OF ANOTHER STATE, OR
24 THE UNITED STATES IF THAT OFFENSE SUBSTANTIALLY CORRESPONDS TO A
25 CRIME DESCRIBED IN SUBSECTION (2). THE COURT SHALL ASSESS POINTS
26 AS FOLLOWS:

1 (A) CRIMINAL SEXUAL CONDUCT IN THE FIRST
2 DEGREE..... 3 POINTS.

3 (B) CRIMINAL SEXUAL CONDUCT IN THE SECOND
4 DEGREE..... 2 POINTS.

5 (C) CRIMINAL SEXUAL CONDUCT IN THE THIRD
6 DEGREE..... 2 POINTS.

7 (D) CRIMINAL SEXUAL CONDUCT IN THE FOURTH
8 DEGREE..... 2 POINTS.

9 (E) ASSAULT WITH INTENT TO COMMIT CRIMINAL
10 SEXUAL CONDUCT..... 2 POINTS.

11 (F) CHILD SEXUALLY ABUSIVE ACTIVITY OR
12 MATERIAL..... 2 POINTS.

13 (4) IF THE INDIVIDUAL IS CONVICTED OF COMMITTING 2 OR MORE
14 CRIMES DESCRIBED IN SUBSECTION (2) IN THE SAME TRANSACTION, THE
15 COURT SHALL ASSESS POINTS ONLY FOR THE CRIME HAVING THE GREATEST
16 NUMBER OF POINTS.

17 (5) IF THE COURT DETERMINES THE INDIVIDUAL HAS 4 OR MORE
18 POINTS UNDER SUBSECTION (3), THE COURT SHALL SENTENCE THE INDI-
19 VIDUAL AS A HABITUAL SEXUAL OFFENDER AS FOLLOWS:

20 (A) IF THE INDIVIDUAL HAS 4 POINTS, THE COURT SHALL SENTENCE
21 THE INDIVIDUAL TO IMPRISONMENT FOR NOT LESS THAN 5 YEARS OR MORE
22 THAN 50 YEARS.

23 (B) IF THE INDIVIDUAL HAS 5 POINTS, THE COURT SHALL SENTENCE
24 THE INDIVIDUAL TO IMPRISONMENT FOR LIFE OR ANY TERM OF YEARS BUT
25 NOT LESS THAN 15 YEARS.

1 (C) IF THE INDIVIDUAL HAS 6 OR MORE POINTS, THE COURT SHALL
2 SENTENCE THE INDIVIDUAL TO IMPRISONMENT FOR LIFE OR ANY TERM OF
3 YEARS BUT NOT LESS THAN 25 YEARS.

4 (6) A SENTENCE UNDER THIS SECTION IS IN ADDITION TO ANY
5 OTHER SENTENCE PROVIDED BY LAW FOR THE VIOLATION INCLUDING, BUT
6 NOT LIMITED TO, A SENTENCE IMPOSED UNDER SECTION 10, 11, OR 12 OF
7 THIS CHAPTER.

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

16 (2) A notice of intent to seek an enhanced sentence filed
17 under subsection (1) shall list the prior conviction or convic-
18 tions that will or may be relied upon for purposes of sentence
19 enhancement. The notice shall be filed with the court and served
20 upon the defendant or his or her attorney within the time pro-
21 vided in subsection (1). The notice may be personally served
22 upon the defendant or his or her attorney at the arraignment on
23 the information charging the underlying offense, or may be served
24 in the manner provided by law or court rule for service of writ-
25 ten pleadings. The prosecuting attorney shall file a written
26 proof of service with the clerk of the court.

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

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

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

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

23 (b) A transcript of a prior trial or a plea-taking or sen-
24 tencing proceeding.

25 (c) Information contained in a presentence report.

26 (d) A statement of the defendant.

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