

SENATE BILL NO. 568

May 4, 1999, Introduced by Senator GOSCHKA and referred to the
Committee on Families, Mental Health and Human Services.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 1 and 16a of chapter IX (MCL 769.1 and
769.16a), section 1 of chapter IX as amended by 1998 PA 520 and
section 16a of chapter IX as amended by 1993 PA 85.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX

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

8 (a) Arson of a dwelling in violation of section 72 of the
9 Michigan penal code, 1931 PA 328, MCL 750.72.

1 (b) Assault with intent to commit murder in violation of
2 section 83 of the Michigan penal code, 1931 PA 328, MCL 750.83.

3 (c) Assault with intent to maim in violation of section 86
4 of the Michigan penal code, 1931 PA 328, MCL 750.86.

5 (d) Attempted murder in violation of section 91 of the
6 Michigan penal code, 1931 PA 328, MCL 750.91.

7 (e) Conspiracy to commit murder in violation of section 157a
8 of the Michigan penal code, 1931 PA 328, MCL 750.157a.

9 (f) Solicitation to commit murder in violation of section
10 157b of the Michigan penal code, 1931 PA 328, MCL 750.157b.

11 (g) First degree murder in violation of section 316 of the
12 Michigan penal code, 1931 PA 328, MCL 750.316.

13 (h) Second degree murder in violation of section 317 of the
14 Michigan penal code, 1931 PA 328, MCL 750.317.

15 (i) Kidnapping in violation of section 349 of the Michigan
16 penal code, 1931 PA 328, MCL 750.349.

17 (j) First degree criminal sexual conduct in violation of
18 section 520b of the Michigan penal code, 1931 PA 328, MCL
19 750.520b.

20 (k) Armed robbery in violation of section 529 of the
21 Michigan penal code, 1931 PA 328, MCL 750.529.

22 (l) Carjacking in violation of section 529a of the Michigan
23 penal code, 1931 PA 328, MCL 750.529a.

24 (2) A person convicted of a felony or of a misdemeanor pun-
25 ishable by imprisonment for more than 92 days shall not be sen-
26 tenced until the court has examined the court file and has
27 determined that the person's fingerprints have been taken.

1 (3) Unless a juvenile is required to be sentenced in the
2 same manner as an adult under subsection (1), a judge of a court
3 having jurisdiction over a juvenile shall conduct a hearing at
4 the juvenile's sentencing to determine if the best interests of
5 the public would be served by placing the juvenile on probation
6 and committing the juvenile to an institution or agency described
7 in the youth rehabilitation services act, 1974 PA 150, MCL
8 803.301 to 803.309, or by imposing any other sentence provided by
9 law for an adult offender. Except as provided in subsection (5),
10 the court shall sentence the juvenile in the same manner as an
11 adult unless the court determines by a preponderance of the evi-
12 dence that the interests of the public would be best served by
13 placing the juvenile on probation and committing the juvenile to
14 an institution or agency described in the youth rehabilitation
15 services act, 1974 PA 150, MCL 803.301 to 803.309. The rules of
16 evidence do not apply to a hearing under this subsection. In
17 making the determination required under this subsection, the
18 judge shall consider all of the following, giving greater weight
19 to the seriousness of the alleged offense and the juvenile's
20 prior record of delinquency:

21 (a) The seriousness of the alleged offense in terms of com-
22 munity protection, including, but not limited to, the existence
23 of any aggravating factors recognized by the sentencing guide-
24 lines, the use of a firearm or other dangerous weapon, and the
25 impact on any victim.

26 (b) The juvenile's culpability in committing the alleged
27 offense, including, but not limited to, the level of the

1 juvenile's participation in planning and carrying out the offense
2 and the existence of any aggravating or mitigating factors recog-
3 nized by the sentencing guidelines.

4 (c) The juvenile's prior record of delinquency including,
5 but not limited to, any record of detention, any police record,
6 any school record, or any other evidence indicating prior delin-
7 quent behavior.

8 (d) The juvenile's programming history, including, but not
9 limited to, the juvenile's past willingness to participate mean-
10 ingfully in available programming.

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

13 (f) The dispositional options available for the juvenile.

14 (4) With the consent of the prosecutor and the defendant,
15 the court may waive the hearing required under subsection (3).
16 If the court waives the hearing required under subsection (3),
17 the court may place the juvenile on probation and commit the
18 juvenile to an institution or agency described in the youth reha-
19 bilitation services act, 1974 PA 150, MCL 803.301 to 803.309, but
20 shall not impose any other sentence provided by law for an adult
21 offender.

22 (5) If a juvenile is convicted of a violation or conspiracy
23 to commit a violation of section ~~7401(2)(a)(i) or~~ 7403(2)(a)(i)
24 of the public health code, 1978 PA 368, MCL ~~333.7401 and~~
25 333.7403, the court shall determine whether the best interests of
26 the public would be served by imposing the sentence provided by
27 law for an adult offender, by placing the individual on probation

1 and committing the individual to an institution or agency under
2 subsection (3), or by imposing a sentence of imprisonment for any
3 term of years but not less than 25 years. If the court deter-
4 mines by clear and convincing evidence that the best interests of
5 the public would be served by imposing a sentence of imprisonment
6 for any term of years but not less than 25 years, the court may
7 impose that sentence. In making its determination, the court
8 shall use the criteria specified in subsection (3).

9 (6) The court shall state on the record the court's findings
10 of fact and conclusions of law for the probation and commitment
11 decision or sentencing decision made under subsection (3). If a
12 juvenile is committed under subsection (3) to an institution or
13 agency described in the youth rehabilitation services act, 1974
14 PA 150, MCL 803.301 to 803.309, a transcript of the court's find-
15 ings shall be sent to the family independence agency or county
16 juvenile agency, as applicable.

17 (7) If a juvenile is committed under subsection (3) or (4)
18 to an institution or agency described in the youth rehabilitation
19 services act, 1974 PA 150, MCL 803.301 to 803.309, the written
20 order of commitment shall contain a provision for the reimburse-
21 ment to the court by the juvenile or those responsible for the
22 juvenile's support, or both, for the cost of care or service.
23 The amount of reimbursement ordered shall be reasonable, taking
24 into account both the income and resources of the juvenile and
25 those responsible for the juvenile's support. The amount may be
26 based upon the guidelines and model schedule prepared under
27 section 18(6) of chapter XIIIA of THE PROBATE CODE OF 1939, 1939

1 PA 288, MCL 712A.18. The reimbursement provision applies during
2 the entire period the juvenile remains in care outside the
3 juvenile's own home and under court supervision. The court shall
4 provide for the collection of all amounts ordered to be reim-
5 bursed, and the money collected shall be accounted for and
6 reported to the county board of commissioners. Collections to
7 cover delinquent accounts or to pay the balance due on reimburse-
8 ment orders may be made after a juvenile is released or dis-
9 charged from care outside the juvenile's own home and under court
10 supervision. Twenty-five percent of all amounts collected pursu-
11 ant to an order entered under this subsection shall be credited
12 to the appropriate fund of the county to offset the administra-
13 tive cost of collections. The balance of all amounts collected
14 pursuant to an order entered under this subsection shall be
15 divided in the same ratio in which the county, state, and federal
16 government participate in the cost of care outside the juvenile's
17 own home and under county, state, or court supervision. The
18 court may also collect benefits paid by the government of the
19 United States for the cost of care of the juvenile. Money col-
20 lected for juveniles placed with or committed to the family inde-
21 pendence agency or a county juvenile agency shall be accounted
22 for and reported on an individual basis. In cases of delinquent
23 accounts, the court may also enter an order to intercept state
24 tax refunds or the federal income tax refund of a child, parent,
25 guardian, or custodian and initiate the necessary offset proceed-
26 ings in order to recover the cost of care or service. The court
27 shall send to the person who is the subject of the intercept

1 order advance written notice of the proposed offset. The notice
2 shall include notice of the opportunity to contest the offset on
3 the grounds that the intercept is not proper because of a mistake
4 of fact concerning the amount of the delinquency or the identity
5 of the person subject to the order. The court shall provide for
6 the prompt reimbursement of an amount withheld in error or an
7 amount found to exceed the delinquent amount.

8 (8) If the court appoints an attorney to represent a juve-
9 nile, an order entered under this section may require the juve-
10 nile or person responsible for the juvenile's support, or both,
11 to reimburse the court for attorney fees.

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

17 (10) If a juvenile is placed on probation and committed
18 under subsection (3) or (4) to an institution or agency described
19 in the youth rehabilitation services act, 1974 PA 150, MCL
20 803.301 to 803.309, the court shall retain jurisdiction over the
21 juvenile while the juvenile is on probation and committed to that
22 institution or agency.

23 (11) If the court has retained jurisdiction over a juvenile
24 under subsection (10), the court shall conduct an annual review
25 of the services being provided to the juvenile, the juvenile's
26 placement, and the juvenile's progress in that placement. In
27 conducting this review, the court shall examine the juvenile's

1 annual report prepared under section 3 of the juvenile facilities
2 act, 1988 PA 73, MCL 803.223. The court may order changes in the
3 juvenile's placement or treatment plan including, but not limited
4 to, committing the juvenile to the jurisdiction of the department
5 of corrections, based on the review.

6 (12) If an individual who is under the court's jurisdiction
7 under section 4 of chapter XIIA of THE PROBATE CODE OF 1939, 1939
8 PA 288, MCL 712A.4, is convicted of a violation or conspiracy to
9 commit a violation of section ~~7401(2)(a)(i) or~~
10 section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL
11 ~~333.7401 and~~ 333.7403, the court shall determine whether the
12 best interests of the public would be served by imposing the sen-
13 tence provided by law for an adult offender or by imposing a sen-
14 tence of imprisonment for any term of years but not less than 25
15 years. If the court determines by clear and convincing evidence
16 that the best interests of the public would be served by imposing
17 a sentence of imprisonment for any term of years but not less
18 than 25 years, the court may impose that sentence. In making its
19 determination, the court shall use the criteria specified in
20 subsection (3) to the extent they apply.

21 (13) IF THE DEFENDANT IS SENTENCED FOR AN OFFENSE OTHER THAN
22 A LISTED OFFENSE AS DEFINED IN SECTION 2(D)(i) TO (ix) AND (xi)
23 TO (xiii) OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL
24 28.722, THE COURT SHALL DETERMINE IF THE OFFENSE IS A VIOLATION
25 OF A LAW OF THIS STATE OR A LOCAL ORDINANCE OF A MUNICIPALITY OF
26 THIS STATE THAT BY ITS NATURE CONSTITUTES A SEXUAL OFFENSE
27 AGAINST AN INDIVIDUAL WHO IS LESS THAN 18 YEARS OF AGE. IF SO,

1 THE CONVICTION IS FOR A LISTED OFFENSE AS DEFINED IN
2 SECTION 2(D)(x) OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA
3 295, MCL 28.722, AND THE COURT SHALL INCLUDE THE BASIS FOR THAT
4 DETERMINATION ON THE RECORD AND INCLUDE THE DETERMINATION IN THE
5 JUDGMENT OF SENTENCE.

6 (14) ~~(13)~~ When sentencing a person convicted of a misde-
7 meanor involving the illegal delivery, possession, or use of
8 alcohol or a controlled substance or a felony, the court shall
9 examine the presentence investigation report and determine if the
10 person being sentenced is licensed or registered under article 15
11 of the public health code, 1978 PA 368, MCL 333.16101 to
12 333.18838. The court shall also examine the court file and
13 determine if a report of the conviction upon which the person is
14 being sentenced has been forwarded to the department of consumer
15 and industry services as provided in section 16a. If the report
16 has not been forwarded to the department of consumer and industry
17 services, the court shall order the clerk of the court to immedi-
18 ately prepare and forward the report as provided in section 16a.

19 Sec. 16a. (1) Except as otherwise provided in subsection
20 (3), upon final disposition of an original charge against a
21 person of a felony or a misdemeanor punishable by imprisonment
22 for more than 92 days, the clerk of the court entering the dispo-
23 sition shall immediately advise the department of state police of
24 the final disposition of the charge on forms approved by the
25 state court administrator. The report to the department of state
26 police shall include information as to the finding of the judge
27 or jury, including a finding of guilty, guilty but mentally ill,

1 not guilty, or not guilty by reason of insanity, or the person's
2 plea of guilty, nolo contendere, or guilty but mentally ill; if
3 the person was convicted, the offense of which the person was
4 convicted; and a summary of any sentence imposed. The summary of
5 the sentence shall include any probationary term; any minimum,
6 maximum, or alternative term of imprisonment; the total of all
7 fines, costs, and restitution ordered; and any modification of
8 sentence. If the sentence is imposed under any of the following
9 sections, the report shall so indicate:

10 (a) Section 7411 of the public health code, ~~Act No. 368 of~~
11 ~~the Public Acts of 1978, being section 333.7411 of the Michigan~~
12 ~~Compiled Laws~~ 1978 PA 368, MCL 333.7411.

13 (b) Sections 11 to 15 of chapter II.

14 (c) Section 4a of chapter IX.

15 (2) Except as otherwise provided in subsection (3), upon
16 sentencing of a person convicted of a misdemeanor or of a viola-
17 tion of a local ordinance substantially corresponding to state
18 law, the clerk of the court imposing sentence immediately shall
19 advise the department of state police of the conviction on forms
20 approved by the state court administrator. The clerk of a court
21 is not required to report a conviction under this subsection if
22 the clerk is required to report the conviction under
23 subsection (1).

24 (3) Except as otherwise provided in subsection (5), the
25 clerk of a court is not required to and shall not, unless ordered
26 by a judge of the court, report a conviction of a misdemeanor
27 offense if either of the following apply:

1 (a) The conviction is under the Michigan vehicle code, ~~Act~~
2 ~~No. 300 of the Public Acts of 1949, being sections 257.1 to~~
3 ~~257.923 of the Michigan Compiled Laws~~ 1949 PA 300, MCL 257.1 TO
4 257.923, or under a local ordinance substantially corresponding
5 to a provision of ~~Act No. 300 of the Public Acts of 1949,~~ THAT
6 ACT unless the offense is punishable by imprisonment for more
7 than 92 days or is an offense ~~which~~ THAT would be punishable by
8 more than 92 days as a second conviction.

9 (b) A sentence of imprisonment is not imposed, except as an
10 alternative sentence, and any fine and costs ordered total less
11 than \$100.00.

12 (4) As part of the sentence for a conviction of an offense
13 described in subsection (2), the court shall order that the fin-
14 gerprints of the person convicted be taken and forwarded to the
15 department of state police if fingerprints have not already been
16 taken.

17 (5) AS PART OF THE SENTENCE FOR A CONVICTION OF A LISTED
18 OFFENSE AS DEFINED IN SECTION 2 OF THE SEX OFFENDERS REGISTRATION
19 ACT, 1994 PA 295, MCL 28.722, THE COURT SHALL ORDER THAT THE FIN-
20 GERPRINTS OF THE PERSON CONVICTED BE TAKEN AND FORWARDED AS PRO-
21 VIDED IN THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL
22 28.721 TO 28.732, IF FINGERPRINTS HAVE NOT ALREADY BEEN TAKEN AND
23 FORWARDED AS PROVIDED IN THAT ACT.

24 (6) ~~(5)~~ Before the expiration of 21 days after the date a
25 person licensed or registered under article 15 of the public
26 health code, ~~Act No. 368 of the Public Acts of 1978, being~~
27 ~~sections 333.16101 to 333.18838 of the Michigan Compiled Laws~~

