

HOUSE BILL No. 5667

February 28, 2018, Introduced by Reps. Howrylak and LaGrand and referred to the Committee on Law and Justice.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 12 of chapter IX (MCL 769.12), as amended by
2012 PA 319.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER IX

Sec. 12. (1) If a person has been convicted of any combination
of 3 or more felonies or attempts to commit felonies, whether the
convictions occurred in this state or would have been for felonies
or attempts to commit felonies in this state if obtained in this
state, and that person commits a subsequent felony within this
state, the person ~~shall~~ **MUST** be punished upon conviction of the
subsequent felony and ~~sentencing~~ **SENTENCED** under section 13 of this
chapter as follows:

1 (a) If the subsequent felony is a serious crime or a
2 conspiracy to commit a serious crime, and 1 or more of the prior
3 felony convictions are listed prior felonies, the court shall
4 sentence the person to imprisonment for not less than 25 years. Not
5 more than 1 conviction arising out of the same transaction ~~shall be~~
6 **IS** considered a prior felony conviction for the purposes of this
7 subsection only.

8 (b) If the subsequent felony is punishable upon a first
9 conviction by imprisonment for a maximum term of 5 years or more or
10 for life, the court, except as otherwise provided in this section
11 or section 1 of chapter XI, may sentence the person to imprisonment
12 for life or for a lesser term.

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

18 (d) If the subsequent felony is a major controlled substance
19 offense, the person ~~shall~~ **MUST** be punished as provided by part 74
20 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

21 (2) If the court imposes a sentence of imprisonment for any
22 term of years under this section, the court shall fix the length of
23 both the minimum and maximum sentence within any specified limits
24 in terms of years or a fraction of a year, and the sentence so
25 imposed ~~shall~~ **MUST** be considered an indeterminate sentence. The
26 court shall not fix a maximum sentence that is less than the
27 maximum term for a first conviction.

1 (3) A conviction ~~shall~~ **MUST** not be used to enhance a sentence
2 under this section if that conviction is used to enhance a sentence
3 under a statute that prohibits use of the conviction for further
4 enhancement under this section.

5 (4) An offender sentenced under this section or section 10 or
6 11 of this chapter for an offense other than a major controlled
7 substance offense is not eligible for parole until expiration of
8 ~~the following:~~

9 ~~—— (a) For a prisoner other than a prisoner subject to~~
10 ~~disciplinary time, the minimum term fixed by the sentencing judge~~
11 ~~at the time of sentence unless the sentencing judge or a successor~~
12 ~~gives written approval for parole at an earlier date authorized by~~
13 ~~law.~~

14 ~~—— (b) For a prisoner subject to disciplinary time, the minimum~~
15 ~~term fixed by the sentencing judge.~~

16 (5) This section and sections 10 and 11 of this chapter are
17 not in derogation of other provisions of law that permit or direct
18 the imposition of a consecutive sentence for a subsequent felony.

19 (6) As used in this section:

20 (a) "Listed prior felony" means a violation or attempted
21 violation of any of the following:

22 (i) Section 602a(4) or (5) or 625(4) of the Michigan vehicle
23 code, 1949 PA 300, MCL 257.602a and 257.625.

24 (ii) Article 7 of the public health code, 1978 PA 368, MCL
25 333.7101 to 333.7545, that is punishable by imprisonment for more
26 than 4 years.

27 (iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2)

1 or (3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a,
 2 234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i,
 3 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the
 4 Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83,
 5 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a,
 6 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a,
 7 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a,
 8 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c,
 9 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

10 (iv) A second or subsequent violation or attempted violation
 11 of section 227b of the Michigan penal code, 1931 PA 328, MCL
 12 750.227b.

13 (v) Section 2a of 1968 PA 302, MCL 752.542a.

14 ~~—— (b) "Prisoner subject to disciplinary time" means that term as~~
 15 ~~defined in section 34 of 1893 PA 118, MCL 800.34.~~

16 **(B)** ~~(c)~~ "Serious crime" means an offense against a person in
 17 violation of section 83, 84, 86, 88, 89, 317, 321, 349, 349a, 350,
 18 397, 520b, 520c, 520d, 520g(1), 529, or 529a of the Michigan penal
 19 code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89,
 20 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
 21 750.520c, 750.520d, 750.520g, 750.529, and 750.529a.

22 Enacting section 1. This amendatory act takes effect 90 days
 23 after the date it is enacted into law.

24 Enacting section 2. This amendatory act does not take effect
 25 unless Senate Bill No. ____ or House Bill No. 5665 (request no.
 26 02131'17) of the 99th Legislature is enacted into law.