

# SENATE BILL NO. 1241

December 03, 2020, Introduced by Senator IRWIN and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
by amending sections 12 and 31 of chapter IX and section 17f of  
chapter XVII (MCL 769.12, 769.31, and 777.17f), section 12 of  
chapter IX as amended by 2012 PA 319, section 31 of chapter IX as  
amended by 2004 PA 220, and section 17f of chapter XVII as amended  
by 2012 PA 611.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER IX

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

9           (a) If the subsequent felony is a serious crime or a  
10 conspiracy to commit a serious crime, and 1 or more of the prior  
11 felony convictions are listed prior felonies, the court shall  
12 sentence the person to imprisonment for not less than 25 years. Not  
13 more than 1 conviction arising out of the same transaction ~~shall be~~  
14 **is** considered a prior felony conviction for the purposes of this  
15 subsection only.

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

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

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

29           (2) If the court imposes a sentence of imprisonment for any

1 term of years under this section, the court shall fix the length of  
2 both the minimum and maximum sentence within any specified limits  
3 in terms of years or a fraction of a year, and the sentence so  
4 imposed ~~shall~~**must** be considered an indeterminate sentence. The  
5 court shall not fix a maximum sentence that is less than the  
6 maximum term for a first conviction.

7 (3) A conviction ~~shall~~**must** not be used to enhance a sentence  
8 under this section if that conviction is used to enhance a sentence  
9 under a statute that prohibits use of the conviction for further  
10 enhancement under this section.

11 (4) An offender sentenced under this section or section 10 or  
12 11 of this chapter for an offense other than a major controlled  
13 substance offense is not eligible for parole until expiration of  
14 ~~the following:~~

15 ~~(a) For a prisoner other than a prisoner subject to~~  
16 ~~disciplinary time,~~ the minimum term fixed by the sentencing judge  
17 at the time of sentence unless the sentencing judge or a successor  
18 gives written approval for parole at an earlier date authorized by  
19 law.

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

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

25 (6) As used in this section:

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

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

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

(iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or (3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a, 234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i, 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83, 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a, 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a, 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a, 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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

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

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

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

Sec. 31. As used in this section and section 34 of this chapter:

(a) "Departure" means a sentence imposed that is not within the appropriate minimum sentence range established under the sentencing guidelines set forth in chapter XVII.

1 (b) "Intermediate sanction" means probation or any sanction,  
2 other than imprisonment in a state prison or state reformatory,  
3 that may lawfully be imposed. Intermediate sanction includes, but  
4 is not limited to, 1 or more of the following:

5 (i) Inpatient or outpatient drug treatment or participation in  
6 a drug treatment court under chapter 10A of the revised judicature  
7 act of 1961, 1961 PA 236, MCL 600.1060 to ~~600.1082~~. **600.1088**.

8 (ii) Probation with any probation conditions required or  
9 authorized by law.

10 (iii) Residential probation.

11 (iv) Probation with jail.

12 (v) Probation with special alternative incarceration.

13 (vi) Mental health treatment.

14 (vii) Mental health or substance abuse counseling.

15 (viii) Jail.

16 (ix) Jail with work or school release.

17 (x) Jail, with or without authorization for day parole under  
18 1962 PA 60, MCL 801.251 to 801.258.

19 (xi) Participation in a community corrections program.

20 (xii) Community service.

21 (xiii) Payment of a fine.

22 (xiv) House arrest.

23 (xv) Electronic monitoring.

24 (c) "Offender characteristics" means only the prior criminal  
25 record of an offender.

26 (d) "Offense characteristics" means the elements of the crime  
27 and the aggravating and mitigating factors relating to the offense  
28 that the legislature determines are appropriate. For purposes of

1 this subdivision, an offense described in **former** section 33b of the  
 2 corrections code of 1953, 1953 PA 232, ~~MCL 791.233b~~, that resulted  
 3 in a conviction and that arose out of the same transaction as the  
 4 offense for which the sentencing guidelines are being scored ~~shall~~  
 5 ~~be considered as~~ **is** an aggravating factor.

6 (e) "Prior criminal record" means all of the following:

7 (i) Misdemeanor and felony convictions.

8 (ii) Probation and parole violations involving criminal  
 9 activity.

10 (iii) Dispositions entered under section 18 of chapter XIIA of  
 11 **the probate code of 1939**, 1939 PA 288, MCL 712A.18, for acts that  
 12 would have been crimes if committed by an adult.

13 (iv) Assignment to youthful trainee status under sections 11 to  
 14 15 of chapter II.

15 (v) A conviction set aside under 1965 PA 213, MCL 780.621 to  
 16 780.624.

17 (vi) Dispositions described in subparagraph (iii) that have been  
 18 set aside under section 18e of chapter XIIA of **the probate code of**  
 19 **1939**, 1939 PA 288, MCL 712A.18e, or expunged.

## 20 CHAPTER XVII

21 Sec. 17f. This chapter applies to the following felonies  
 22 enumerated in chapters 760 to 799 of the Michigan Compiled Laws:

23 M.C.L.	Category	Class	Description	Stat Max
24 764.1e	Pub trst	C	Peace officer – making	15
25			false statement in a	
26			complaint	

1	767.4a	Pub trst	F	Disclosing or	4
2				possessing grand jury	
3				information	
4	767A.9(1)(a)	Pub trst	C	Perjury committed in	15
5				prosecutor's	
6				investigative hearing	
7	767A.9(1)(b)	Pub trst	B	Perjury committed in	Life
8				prosecutor's	
9				investigative hearing	
10				regarding a crime	
11				punishable by	
12				imprisonment for life	
13				or by imprisonment for	
14				life or any term of	
15				years	
16	771.3f	Pub ord	G	Tampering with or	2
17				removing electronic	
18				monitoring device	
19	<del>791.236(17)</del>	Pub ord	F	Failure to provide	4
20	<b>791.236(16)</b>			correct notice of	
21				proposed domicile by	
22				sex offender	

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

25       Enacting section 2. This amendatory act does not take effect  
 26 unless Senate Bill No. 1243 of the 100th Legislature is enacted  
 27 into law.