

HOUSE BILL No. 4955

October 7, 2015, Introduced by Reps. Santana, Chang, Kosowski, Webber, Byrd, Robinson, Geiss, Banks, Gay-Dagnogo, Greig, Yanez, Darany, Forlini, Lucido, Howrylak, LaVoy, Durhal, Rutledge, Irwin, Neeley, Hovey-Wright, Guerra, Plawecki, Moss, Love, Callton and Zemke and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 1 of chapter IX (MCL 769.1), as amended by 1999 PA 87.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

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

(a) ~~Arson of a dwelling~~ **FIRST DEGREE ARSON** in violation of

1 section 72 of the Michigan penal code, 1931 PA 328, MCL 750.72.

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

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

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

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

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

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

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

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

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

20 (k) Armed robbery in violation of section 529 of the Michigan
21 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
25 punishable by imprisonment for more than 92 days shall not be
26 sentenced 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 same
2 manner as an adult under subsection (1), a judge of a court having
3 jurisdiction over a juvenile shall conduct a hearing at the
4 juvenile's sentencing to determine if the best interests of the
5 public would be served by placing the juvenile on probation and
6 committing the juvenile to an institution or agency described in
7 the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
8 803.309, or by imposing any other sentence provided by law for an
9 adult offender. Except as provided in subsection (5), the court
10 shall sentence the juvenile in the same manner as an adult unless
11 the court determines by a preponderance of the evidence that the
12 interests of the public would be best served by placing the
13 juvenile on probation and committing the juvenile to an institution
14 or agency described in the youth rehabilitation services act, 1974
15 PA 150, MCL 803.301 to 803.309. The rules of evidence do not apply
16 to a hearing under this subsection. In making the determination
17 required under this subsection, the judge shall consider all of the
18 following: ~~, giving greater weight to the seriousness of the~~
19 ~~alleged offense and the juvenile's prior record of delinquency.~~

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

25 (b) The juvenile's culpability in committing the alleged
26 offense, including, but not limited to, the level of the juvenile's
27 participation in planning and carrying out the offense and the

1 existence of any aggravating or mitigating factors recognized by
2 the sentencing guidelines.

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

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

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

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

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

20 (5) If a juvenile is convicted of a violation or conspiracy to
21 commit a violation of section 7403(2)(a)(i) of the public health
22 code, 1978 PA 368, MCL 333.7403, the court shall determine whether
23 the best interests of the public would be served by imposing the
24 sentence provided by law for an adult offender, by placing the
25 individual on probation and committing the individual to an
26 institution or agency under subsection (3), or by imposing a
27 sentence of imprisonment for any term of years but not less than 25

1 years. If the court determines by clear and convincing evidence
2 that the best interests of the public would be served by imposing a
3 sentence of imprisonment for any term of years but not less than 25
4 years, the court may impose that sentence. In making its
5 determination, the court shall use the criteria specified in
6 subsection (3).

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

15 (7) If a juvenile is committed under subsection (3) or (4) to
16 an institution or agency described in the youth rehabilitation
17 services act, 1974 PA 150, MCL 803.301 to 803.309, the written
18 order of commitment shall contain a provision for the reimbursement
19 to the court by the juvenile or those responsible for the
20 juvenile's support, or both, for the cost of care or service. The
21 amount of reimbursement ordered shall be reasonable, taking into
22 account both the income and resources of the juvenile and those
23 responsible for the juvenile's support. The amount may be based
24 upon the guidelines and model schedule prepared under section 18(6)
25 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
26 712A.18. The reimbursement provision applies during the entire
27 period the juvenile remains in care outside the juvenile's own home

1 and under court supervision. The court shall provide for the
2 collection of all amounts ordered to be reimbursed, and the money
3 collected shall be accounted for and reported to the county board
4 of commissioners. Collections to cover delinquent accounts or to
5 pay the balance due on reimbursement orders may be made after a
6 juvenile is released or discharged from care outside the juvenile's
7 own home and under court supervision. Twenty-five percent of all
8 amounts collected ~~pursuant to~~ **UNDER** an order entered under this
9 subsection shall be credited to the appropriate fund of the county
10 to offset the administrative cost of collections. The balance of
11 all amounts collected ~~pursuant to~~ **UNDER** an order entered under this
12 subsection shall be divided in the same ratio in which the county,
13 state, and federal government participate in the cost of care
14 outside the juvenile's own home and under county, state, or court
15 supervision. The court may also collect benefits paid by the
16 government of the United States for the cost of care of the
17 juvenile. Money collected for juveniles placed with or committed to
18 the ~~family independence agency~~ **DEPARTMENT OF HEALTH AND HUMAN**
19 **SERVICES** or a county juvenile agency shall be accounted for and
20 reported on an individual basis. In cases of delinquent accounts,
21 the court may also enter an order to intercept state tax refunds or
22 the federal income tax refund of a child, parent, guardian, or
23 custodian and initiate the necessary offset proceedings in order to
24 recover the cost of care or service. The court shall send to the
25 person who is the subject of the intercept order advance written
26 notice of the proposed offset. The notice shall include notice of
27 the opportunity to contest the offset on the grounds that the

1 intercept is not proper because of a mistake of fact concerning the
2 amount of the delinquency or the identity of the person subject to
3 the order. The court shall provide for the prompt reimbursement of
4 an amount withheld in error or an amount found to exceed the
5 delinquent amount.

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

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

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

21 (11) If the court has retained jurisdiction over a juvenile
22 under subsection (10), the court shall conduct an annual review of
23 the services being provided to the juvenile, the juvenile's
24 placement, and the juvenile's progress in that placement. In
25 conducting this review, the court shall examine the juvenile's
26 annual report prepared under section 3 of the juvenile facilities
27 act, 1988 PA 73, MCL 803.223. The court may order changes in the

1 juvenile's placement or treatment plan including, but not limited
2 to, committing the juvenile to the jurisdiction of the department
3 of corrections, based on the review.

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

18 (13) If the defendant is sentenced for an offense other than a
19 listed offense as defined in section ~~2(d)(i) to (ix) and (xi) to~~
20 ~~(xiii)~~ 2 of the sex offenders registration act, 1994 PA 295, MCL
21 28.722, the court shall determine if the offense is a violation of
22 a law of this state or a local ordinance of a municipality of this
23 state that by its nature constitutes a sexual offense against an
24 individual who is less than 18 years of age. If so, the conviction
25 is for a listed offense as defined in section ~~2(d)(x)~~ 2 of the sex
26 offenders registration act, 1994 PA 295, MCL 28.722, and the court
27 shall include the basis for that determination on the record and

1 include the determination in the judgment of sentence.

2 (14) When sentencing a person convicted of a misdemeanor
3 involving the illegal delivery, possession, or use of alcohol or a
4 controlled substance or a felony, the court shall examine the
5 presentence investigation report and determine if the person being
6 sentenced is licensed or registered under article 15 of the public
7 health code, 1978 PA 368, MCL 333.16101 to 333.18838. The court
8 shall also examine the court file and determine if a report of the
9 conviction upon which the person is being sentenced has been
10 forwarded to the department of ~~consumer and industry services~~
11 **LICENSING AND REGULATORY AFFAIRS** as provided in section 16a **OF THIS**
12 **CHAPTER**. If the report has not been forwarded to the department of
13 ~~consumer and industry services~~, **LICENSING AND REGULATORY AFFAIRS**
14 the court shall order the clerk of the court to immediately prepare
15 and forward the report as provided in section 16a **OF THIS CHAPTER**.

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

18 Enacting section 2. This amendatory act does not take effect
19 unless Senate Bill No. ____ or House Bill No. 4956 (request no.
20 03220'15) of the 98th Legislature is enacted into law.