

HOUSE BILL No. 4689

April 24, 1989, Introduced by Reps. Rocca, Gubow, Clack, Hart, Stabenow, Spaniola, Weeks, Varga, Niederstadt, Ciaramitaro, Sofio, Maynard, Dutko, Webb, Stupak, DeBeaussaert, Kosteva, Pitoniak, Hickner, DeMars, Palamara, Brown, Emerson, Gire, Power, Miller, Krause, Willis Bullard, Gnodtke, Middaugh, Stacey, Runco, Honigman, Bartnik, Hertel, Barns, Porreca, Martin, Johnson, Gilmer, Trim, Bennett, Hoffman, Nye, Sparks, Van Regenmorter, Law, London, Bankes, Munsell, Emmons, Camp, Dunaskiss, Hoekman, Crandall, DeLange, Ouwinga, Mathieu, Jaye and Profit and referred to the Committee on Judiciary.

A bill to amend chapter IX of Act No. 175 of the Public Acts
of 1927, entitled as amended

"The code of criminal procedure,"

as amended, being sections 769.1 to 769.28 of the Michigan
Compiled Laws, by adding section 15.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Chapter IX of Act No. 175 of the Public Acts of
2 1927, as amended, being sections 769.1 to 769.28 of the Michigan
3 Compiled Laws, is amended by adding section 15 to read as
4 follows:

5 CHAPTER IX

6 SEC. 15. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
7 (2), PRIOR TO THE SENTENCING OF A DEFENDANT, THE PROSECUTING
8 ATTORNEY MAY REQUEST A HEARING TO DETERMINE WHETHER A SENTENCE OF

1 IMPRISONMENT FOR LIFE WITHOUT PAROLE SHOULD BE IMPOSED, IF 1 OR
2 MORE OF THE FOLLOWING APPLY:

3 (A) THE PERSON IS CONVICTED OF AN ASSAULTIVE CRIME AND HAS 1
4 OR MORE PRIOR CONVICTIONS FOR AN ASSAULTIVE CRIME, IF THE CONVIC-
5 TIONS OCCURRED WITHIN A PERIOD OF 10 YEARS BEFORE THE COMMISSION
6 OF THE PRESENT CRIME. THE 10-YEAR PERIOD SHALL BE MEASURED BY
7 EXCLUDING ANY PERIOD DURING WHICH THE DEFENDANT WAS IMPRISONED
8 FOR A CRIMINAL CONVICTION.

9 (B) THE DEFENDANT IS CONVICTED OF 1 OR MORE OF THE FOLLOWING
10 CRIMES:

11 (i) ARMED ROBBERY, IN VIOLATION OF SECTION 529 OF THE
12 MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931,
13 BEING SECTION 750.529 OF THE MICHIGAN COMPILED LAWS.

14 (ii) CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, IN VIOLA-
15 TION OF SECTION 520B OF ACT NO. 328 OF THE PUBLIC ACTS OF 1931,
16 BEING SECTION 750.520B OF THE MICHIGAN COMPILED LAWS.

17 (iii) MURDER IN THE SECOND DEGREE, IN VIOLATION OF SECTION
18 317 OF ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION
19 750.317 OF THE MICHIGAN COMPILED LAWS.

20 (iv) A PRISONER TAKING A HOSTAGE, IN VIOLATION OF
21 SECTION 349A OF ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING
22 SECTION 750.349A OF THE MICHIGAN COMPILED LAWS.

23 (v) A LESSER INCLUDED OFFENSE OF A CRIME LISTED IN SUBPARA-
24 GRAPHS (i) TO (iv).

25 (2) IF A PROSECUTING ATTORNEY INTENDS TO REQUEST ENHANCEMENT
26 OF A DEFENDANT'S SENTENCE UNDER THIS SECTION, AT OR BEFORE THE
27 ARRAIGNMENT OF THE DEFENDANT ON THE INFORMATION, THE PROSECUTING

1 ATTORNEY SHALL FILE WITH THE COURT AND SERVE UPON THE DEFENDANT
2 AND HIS OR HER ATTORNEY A WRITTEN NOTICE OF THE PROSECUTING
3 ATTORNEY'S INTENTION TO REQUEST A HEARING AND THE IMPOSITION OF A
4 SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT PAROLE UNDER THIS
5 SECTION. IF ENHANCEMENT IS SOUGHT UNDER SUBSECTION (1)(A), THE
6 PROSECUTING ATTORNEY SHALL SPECIFY IN THE WRITTEN NOTICE THE
7 PRIOR CONVICTIONS UPON WHICH THE ENHANCEMENT IS BASED. IF THE
8 PROSECUTING ATTORNEY FAILS TO COMPLY WITH THIS SUBSECTION, THE
9 DEFENDANT'S SENTENCE SHALL NOT BE ENHANCED PURSUANT TO THIS
10 SECTION.

11 (3) THE HEARING REQUESTED UNDER SUBSECTION (1) SHALL BE A
12 FORMAL HEARING AT WHICH THE MICHIGAN RULES OF EVIDENCE SHALL
13 APPLY. AT THE HEARING, THE PROSECUTING ATTORNEY AND THE
14 DEFENDANT OR HIS OR HER ATTORNEY MAY CALL WITNESSES TO TESTIFY
15 AND SHALL PRESENT ARGUMENTS FOR OR AGAINST A SENTENCE OF IMPRIS-
16 ONMENT FOR LIFE WITHOUT PAROLE.

17 (4) AFTER HEARING THE EVIDENCE AND ARGUMENTS, THE COURT
18 SHALL DETERMINE EACH OF THE FOLLOWING:

19 (A) WHETHER 1 OR MORE OF THE AGGRAVATING CIRCUMSTANCES ENU-
20 MERATED IN SUBSECTION (5) EXIST.

21 (B) WHETHER 1 OR MORE OF THE MITIGATING CIRCUMSTANCES ENU-
22 MERATED IN SUBSECTION (6) EXIST AND, IF SO, WHETHER THE MITIGAT-
23 ING CIRCUMSTANCES OUTWEIGH ANY AGGRAVATING CIRCUMSTANCES FOUND TO
24 EXIST.

25 (C) BASED ON THE CONSIDERATIONS LISTED IN SUBSECTION (7),
26 WHETHER THE BEST INTERESTS OF THE PUBLIC ARE SERVED BY SENTENCING
27 THE DEFENDANT TO IMPRISONMENT FOR LIFE WITHOUT PAROLE.

1 (D) BASED ON THE CONSIDERATIONS LISTED IN SUBDIVISIONS (A)
2 TO (C), WHETHER THE DEFENDANT SHOULD BE SENTENCED TO IMPRISONMENT
3 FOR LIFE WITHOUT PAROLE.

4 (5) THE AGGRAVATING CIRCUMSTANCES THAT MAY BE CONSIDERED
5 UNDER SUBSECTION (4) ARE THE FOLLOWING:

6 (A) THAT THE CRIME RESULTED IN MULTIPLE DEATHS.

7 (B) THAT THE CRIME INVOLVED TORTURE, SADISM, OR AGGRAVATED
8 PHYSICAL INJURY.

9 (C) THAT THE DEFENDANT'S CONDUCT CONSTITUTED EXTREME RECK-
10 LESSNESS OR DISREGARD FOR THE POSSIBLE SERIOUS INJURY THAT COULD
11 OCCUR TO THE VICTIM OF THE CRIME.

12 (D) THAT THE DEFENDANT'S CONDUCT CREATED A SUBSTANTIAL RISK
13 OF DEATH OR BODILY DISFIGUREMENT OR IMPAIRMENT OF THE FUNCTION OF
14 A BODY ORGAN OR LIMB.

15 (E) THAT THE VICTIM OF THE CRIME LACKED SUBSTANTIAL CAPACITY
16 TO DEFEND AGAINST THE CRIME AND THE VICTIM'S VULNERABILITY WAS
17 APPARENT AT THE TIME OF THE CRIME.

18 (F) THAT THE NATURE OF THE DEFENDANT'S CONDUCT SHOCKED THE
19 CONSCIENCE OF THE COURT.

20 (6) THE MITIGATING CIRCUMSTANCES THAT MAY BE CONSIDERED
21 UNDER SUBSECTION (4) ARE THE FOLLOWING:

22 (A) THAT THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR
23 CRIMINAL ACTIVITY.

24 (B) THAT THE VICTIM WAS A PARTICIPANT IN THE DEFENDANT'S
25 CONDUCT OR CONSENTED TO THE ACT.

26 (C) THAT THE DEFENDANT WAS AN ACCOMPLICE TO THE CRIME BUT
27 HIS OR HER PARTICIPATION WAS RELATIVELY MINOR.

1 (D) THAT THE DEFENDANT ACTED UNDER DURESS OR UNDER THE
2 SUBSTANTIAL DOMINATION OF ANOTHER PERSON.

3 (E) THAT THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE
4 CRIMINALITY OF HIS OR HER CONDUCT OR TO CONFORM HIS OR HER CON-
5 DUCT TO THE REQUIREMENTS OF THE LAW WAS SUBSTANTIALLY IMPAIRED.

6 (F) THE AGE OF THE DEFENDANT AT THE TIME OF THE CRIME.

7 (7) IN DETERMINING UNDER SUBSECTION (4) WHETHER THE BEST
8 INTERESTS OF THE PUBLIC ARE SERVED BY SENTENCING THE DEFENDANT TO
9 IMPRISONMENT FOR LIFE WITHOUT PAROLE, THE COURT SHALL CONSIDER
10 ALL OF THE FOLLOWING:

11 (A) THE PRIOR RECORD AND CHARACTER OF THE DEFENDANT, INCLUD-
12 ING HIS OR HER MENTAL CONDITION AND MATURITY.

13 (B) WHETHER THE DEFENDANT IS LIKELY TO BE REHABILITATED BY
14 THE SERVICES AND FACILITIES OFFERED BY THE DEPARTMENT OF
15 CORRECTIONS.

16 (C) WHETHER THE NATURE OF THE OFFENSE AND THE DEFENDANT'S
17 PRIOR JUVENILE AND CRIMINAL RECORD IS LIKELY TO RENDER THE
18 DEFENDANT DANGEROUS TO THE PUBLIC IF HE OR SHE IS RELEASED FROM
19 PRISON.

20 (D) WHAT IS IN THE BEST INTERESTS OF THE PUBLIC WELFARE AND
21 THE PROTECTION OF THE PUBLIC SECURITY.

22 (8) THE COURT SHALL STATE ON THE RECORD THE REASONS FOR ITS
23 DECISION WHETHER THE DEFENDANT SHOULD BE SENTENCED TO IMPRISON-
24 MENT FOR LIFE WITHOUT PAROLE, INCLUDING ITS FINDINGS UNDER SUB-
25 SECTIONS (4) AND (7) AND SPECIFYING WHICH, IF ANY, AGGRAVATING
26 AND MITIGATING CIRCUMSTANCES WERE FOUND TO EXIST. A TRANSCRIPT

1 OF THE HEARING HELD PURSUANT TO THIS SECTION SHALL BE PROVIDED TO
2 THE DEFENDANT AS PART OF THE RECORD OF SENTENCING.

3 (9) IF THE COURT DETERMINES UNDER SUBSECTION (4) THAT THE
4 DEFENDANT SHOULD BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT
5 PAROLE, THE COURT SHALL SENTENCE THE DEFENDANT TO IMPRISONMENT
6 FOR LIFE WITHOUT PAROLE AT A SENTENCING PROCEEDING CONDUCTED AS
7 PROVIDED BY LAW. IF THE COURT DETERMINES UNDER SUBSECTION (4)
8 THAT THE DEFENDANT SHOULD NOT BE SENTENCED TO IMPRISONMENT FOR
9 LIFE WITHOUT PAROLE, THE COURT SHALL NOT IMPOSE A SENTENCE OF
10 IMPRISONMENT FOR LIFE WITHOUT PAROLE BUT MAY IMPOSE, AT A SEN-
11 TENCING PROCEEDING CONDUCTED AS PROVIDED BY LAW, ANY SENTENCE,
12 INCLUDING IMPRISONMENT FOR LIFE, THAT IS AUTHORIZED BY LAW FOR
13 THE CRIME FOR WHICH THE DEFENDANT WAS CONVICTED.

14 (10) A PERSON SENTENCED UNDER THIS SECTION TO IMPRISONMENT
15 FOR LIFE WITHOUT PAROLE SHALL BE IMPRISONED FOR LIFE AND MAY BE
16 RELEASED ONLY THROUGH A REPRIEVE, COMMUTATION, OR PARDON GRANTED
17 BY THE GOVERNOR.

18 (11) AS USED IN THIS SECTION, "ASSAULTIVE CRIME" MEANS AN
19 OFFENSE AGAINST A PERSON DESCRIBED IN ANY OF THE FOLLOWING
20 SECTIONS: 82 TO 89, 317, 321, 349 TO 350, 397, 520A TO 520G,
21 529, AND 530 OF ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING
22 SECTIONS 750.82 TO 750.89, 750.317, 750.321, 750.349 TO 750.350,
23 750.397, 750.520A TO 750.520G, 750.529, AND 750.530 OF THE
24 MICHIGAN COMPILED LAWS.

25 Section 2. This amendatory act shall not take effect unless
26 Senate Bill No. ____ or House Bill No. 4690 (request
27 no. 02252'89) of the 85th Legislature is enacted into law.