

HOUSE BILL No. 5909

June 21, 1990, Introduced by Reps. Niederstadt, Gubow, Bandstra, Saunders, Fitzgerald, Stupak, Law, Berman, Scott and Leland and referred to the Committee on Judiciary.

A bill to amend sections 1 and 16a of chapter IX and section 14 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

section 1 of chapter IX as amended by Act No. 113 of the Public Acts of 1989, section 16a of chapter IX as added by Act No. 232 of the Public Acts of 1986, and section 14 of chapter XI as amended by Act No. 88 of the Public Acts of 1985, being sections 769.1, 769.16a, and 771.14 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1 and 16a of chapter IX and section 14
2 of chapter XI of Act No. 175 of the Public Acts of 1927, section
3 1 of chapter IX as amended by Act No. 113 of the Public Acts of
4 1989, section 16a of chapter IX as added by Act No. 232 of the
5 Public Acts of 1986, and section 14 of chapter XI as amended by

1 Act No. 88 of the Public Acts of 1985, being sections 769.1,
2 769.16a, and 771.14 of the Michigan Compiled Laws, are amended to
3 read as follows:

4 CHAPTER IX

5 Sec. 1. (1) A judge of a court having jurisdiction is
6 authorized and empowered to pronounce judgment against and pass
7 sentence upon a person convicted of an offense in that court.
8 The sentence shall not be in excess of the sentence prescribed by
9 law.

10 (2) The sentencing of a person convicted of a felony or a
11 misdemeanor punishable by imprisonment for more than 92 days
12 shall not occur until the court has examined the court file and
13 has determined that the fingerprints of the person have been
14 taken.

15 (3) A judge of a court having jurisdiction over a juvenile
16 shall conduct a hearing at the juvenile's sentencing to determine
17 if the best interests of the juvenile and the public would be
18 served by placing the juvenile on probation and committing the
19 juvenile to a state institution or agency described in the youth
20 rehabilitation services act, Act No. 150 of the Public Acts of
21 1974, being sections 803.301 to 803.309 of the Michigan Compiled
22 Laws, or by imposing any other sentence provided by law for an
23 adult offender. The rules of evidence do not apply to a hearing
24 under this subsection. In making this determination, the judge
25 shall consider the following criteria giving each weight as
26 appropriate to the circumstances:

1 (a) The prior record and character of the juvenile, his or
2 her physical and mental maturity, and his or her pattern of
3 living.

4 (b) The seriousness and the circumstances of the offense.

5 (c) Whether the offense is part of a repetitive pattern of
6 offenses which would lead to 1 of the following determinations:

7 (i) The juvenile is not amenable to treatment.

8 (ii) That despite the juvenile's potential for treatment,
9 the nature of the juvenile's delinquent behavior is likely to
10 disrupt the rehabilitation of other juveniles in the treatment
11 program.

12 (d) Whether, despite the juvenile's potential for treatment,
13 the nature of the juvenile's delinquent behavior is likely to
14 render the juvenile dangerous to the public if released at the
15 age of 21.

16 (e) Whether the juvenile is more likely to be rehabilitated
17 by the services and facilities available in adult programs and
18 procedures than in juvenile programs and procedures.

19 (f) What is in the best interests of the public welfare and
20 the protection of the public security.

21 (4) With the consent of the prosecutor and the defendant,
22 the court may waive the hearing required under subsection (3).
23 If the court waives the hearing required under subsection (3),
24 the court may place the juvenile on probation and commit the
25 juvenile to a state institution or agency described in Act
26 No. 150 of the Public Acts of 1974, but ~~may~~ SHALL not impose
27 any other sentence provided by law for an adult offender.

1 (5) The court shall state on the record the court's findings
2 of fact and conclusions of law for the probation and commitment
3 decision or sentencing decision made under subsection (3). If a
4 juvenile is committed under subsection (3) to a state institution
5 or agency described in Act No. 150 of the Public Acts of 1974, a
6 transcript of the court's findings shall be sent to the depart-
7 ment of social services.

8 (6) If a juvenile is committed under subsection (3) or (4)
9 to a state institution or agency described in Act No. 150 of the
10 Public Acts of 1974, the written order of commitment shall con-
11 tain a provision for the reimbursement to the court by the juve-
12 nile or those responsible for the juvenile's support, or both,
13 for the cost of care or service. The amount of reimbursement
14 ordered shall be reasonable, taking into account both the income
15 and resources of the juvenile and those responsible for the
16 juvenile's support. The amount may be based upon the guidelines
17 and model schedule prepared under section 18(6) of chapter XIIIA
18 of Act No. 288 of the Public Acts of 1939, being section 712A.18
19 of the Michigan Compiled Laws. The reimbursement provision shall
20 apply during the entire period the juvenile remains in care out-
21 side the juvenile's own home and under court supervision. The
22 court shall provide for the collection of all amounts ordered to
23 be reimbursed, and the money collected shall be accounted for and
24 reported to the county board of commissioners. Collections to
25 cover delinquent accounts or to pay the balance due on reimburse-
26 ment orders may be made after a juvenile is released or
27 discharged from care outside the juvenile's own home and under

1 court supervision. Twenty-five percent of all amounts collected
2 pursuant to an order entered under this subsection shall be cred-
3 ited to the appropriate fund of the county to offset the adminis-
4 trative cost of collections. The balance of all amounts col-
5 lected pursuant to an order entered under this subsection shall
6 be divided in the same ratio in which the county, state, and fed-
7 eral government participate in the cost of care outside the
8 juvenile's own home and under state or court supervision. The
9 court may also collect benefits paid by the government of the
10 United States for the cost of care of the juvenile. Money col-
11 lected for juveniles placed with or committed to the state
12 department of social services shall be accounted for and reported
13 on an individual basis. In cases of delinquent accounts, the
14 court may also enter an order to intercept state tax refunds or
15 the federal income tax refund of a child, parent, guardian, or
16 custodian and initiate the necessary offset proceedings in order
17 to recover the cost of care or service. The court shall send to
18 the person who is the subject of the intercept order advance
19 written notice of the proposed offset. The notice shall include
20 notice of the opportunity to contest the offset on the grounds
21 that the intercept is not proper because of a mistake of fact
22 concerning the amount of the delinquency or the identity of the
23 person subject to the order. The court shall provide for the
24 prompt reimbursement of an amount withheld in error or an amount
25 found to exceed the delinquent amount.

26 (7) If the court appoints an attorney to represent a
27 juvenile, an order entered under this section may require the

1 juvenile or person responsible for the juvenile's support, or
2 both, to reimburse the court for attorney fees.

3 (8) An order directed to a person responsible for the
4 juvenile's support under this section shall not be effectual and
5 binding on the person unless an opportunity for a hearing has
6 been given and until a copy of the order is served on the person,
7 personally or by first class mail to the person's last known
8 address.

9 (9) If a juvenile is placed on probation and committed under
10 subsection (3) or (4) to a state institution or agency described
11 in Act No. 150 of the Public Acts of 1974, the court shall retain
12 jurisdiction over the juvenile while the juvenile is on probation
13 and committed to that state institution or agency.

14 (10) If the court has retained jurisdiction over a juvenile
15 under subsection (9), the court shall conduct an annual review of
16 the services being provided to the juvenile, the juvenile's
17 placement, and the juvenile's progress in that placement. In
18 conducting this review, the court shall examine the juvenile's
19 annual report prepared pursuant to section 3 of the juvenile
20 facilities act, Act No. 73 of the Public Acts of 1988, being
21 section 803.223 of the Michigan Compiled Laws. The court may
22 order changes in the juvenile's placement or treatment plan based
23 on the review.

24 (11) AT THE TIME OF SENTENCING A PERSON CONVICTED OF A
25 FELONY; A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE
26 THAN 2 YEARS; OR A MISDEMEANOR INVOLVING THE ILLEGAL DELIVERY,
27 POSSESSION, OR USE OF ALCOHOL OR A CONTROLLED SUBSTANCE, THE

1 COURT SHALL EXAMINE THE PRESENTENCE INVESTIGATION REPORT AND
2 DETERMINE IF THE PERSON BEING SENTENCED IS LICENSED UNDER ARTICLE
3 15 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF
4 1978, BEING SECTIONS 333.16101 TO 333.18838 OF THE MICHIGAN
5 COMPILED LAWS. THE COURT SHALL ALSO EXAMINE THE COURT FILE AND
6 DETERMINE IF A REPORT OF THE CONVICTION UPON WHICH THE PERSON IS
7 BEING SENTENCED HAS BEEN FORWARDED TO THE DEPARTMENT OF LICENSING
8 AND REGULATION AS PROVIDED IN SECTION 16A. IF THE REPORT HAS NOT
9 BEEN FORWARDED TO THE DEPARTMENT OF LICENSING AND REGULATION, THE
10 COURT SHALL ORDER THE CLERK OF THE COURT TO IMMEDIATELY PREPARE
11 AND FORWARD THE REPORT AS PROVIDED IN SECTION 16A.

12 Sec. 16a. (1) Except as otherwise provided in subsection
13 (3), upon final disposition of an original charge against a
14 person of a felony or a misdemeanor punishable by imprisonment
15 for more than 92 days, the clerk of the court entering the dispo-
16 sition shall immediately advise the department of state police of
17 the final disposition of the charge on forms approved by the
18 state court administrator. The report to the department of state
19 police shall include information as to the finding of the judge
20 or jury, including a finding of guilty, guilty but mentally ill,
21 not guilty, or not guilty by reason of insanity, or the person's
22 plea of guilty, nolo contendere, or guilty but mentally ill; if
23 the person was convicted, the offense of which the person was
24 convicted; and a summary of any sentence imposed. The summary of
25 the sentence shall include any probationary term; any minimum,
26 maximum, or alternative term of imprisonment; the total of all
27 fines, costs, and restitution ordered; and any modification of

1 sentence. If the sentence is imposed under any of the following
2 sections, the report shall so indicate:

3 (a) Section 7411 of the public health code, Act No. 368 of
4 the Public Acts of 1978, being section 333.7411 of the Michigan
5 Compiled Laws.

6 (b) Sections 11 to 15 of chapter II. ~~of the code of crimi-~~
7 ~~nal procedure, Act No. 175 of the Public Acts of 1927, being sec-~~
8 ~~tions 762.11 to 762.15 of the Michigan Compiled Laws.~~

9 (c) Section 4a of chapter IX. ~~of the code of criminal pro-~~
10 ~~cedure, Act No. 175 of the Public Acts of 1927, being section~~
11 ~~769.4a of the Michigan Compiled Laws.~~

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

21 (3) ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5),
22 THE clerk of a court is not required to and shall not, unless
23 ordered by a judge of the court, report a conviction of a misde-
24 meanor offense if either of the following apply:

25 (a) The conviction is under the Michigan vehicle code, Act
26 No. 300 of the Public Acts of 1949, being sections 257.1 to
27 257.923 of the Michigan Compiled Laws, or under a local ordinance

1 substantially corresponding to a provision of Act No. 300 of the
2 Public Acts of 1949, unless the offense is punishable by impris-
3 onment for more than 92 days or is an offense which would be pun-
4 ishable by more than 92 days as a second conviction.

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

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

13 (5) BEFORE THE EXPIRATION OF 21 DAYS AFTER THE DATE A PERSON
14 LICENSED UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, ACT NO. 368
15 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.16101 TO 333.18838
16 OF THE MICHIGAN COMPILED LAWS, IS CONVICTED OF A FELONY; A MISDE-
17 MEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS; OR A
18 MISDEMEANOR INVOLVING THE ILLEGAL DELIVERY, POSSESSION, OR USE OF
19 ALCOHOL OR A CONTROLLED SUBSTANCE, THE CLERK OF THE COURT ENTER-
20 ING THE CONVICTION SHALL REPORT THE CONVICTION TO THE DEPARTMENT
21 OF LICENSING AND REGULATION. THE FORM OF THE REPORT SHALL BE
22 PRESCRIBED AND FURNISHED BY THE DEPARTMENT OF LICENSING AND
23 REGULATION.

24 CHAPTER XI

25 Sec. 14. (1) Before sentencing ~~any~~ A person charged with
26 a felony, OR A PERSON WHO IS A LICENSEE UNDER ARTICLE 15 OF THE
27 PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING

1 SECTIONS 333.16101 TO 333.18838 OF THE MICHIGAN COMPILED LAWS, AS
2 DESCRIBED IN SECTION 1(11) OF CHAPTER IX, and, if directed by the
3 court, in any other case in which any person is charged with a
4 misdemeanor within the jurisdiction of the court, the probation
5 officer shall inquire into the antecedents, character, and cir-
6 cumstances of the person, and shall report in writing to the
7 court.

8 (2) A presentence investigation report prepared pursuant to
9 subsection (1) shall include all of the following:

10 (a) An evaluation of and a prognosis for the person's
11 adjustment in the community based on factual information con-
12 tained in the report.

13 (b) A written statement, if provided by the victim, of any
14 physical or emotional injury or economic loss suffered by any
15 victim of the course of conduct giving rise to the conviction for
16 which the person is being sentenced.

17 (c) If requested by a victim, any written impact statement
18 submitted by the victim pursuant to the crime victim's rights
19 act.

20 (d) A specific written recommendation for disposition based
21 on the evaluation and other information as prescribed by the
22 assistant director of the department of corrections in charge of
23 probation.

24 (e) A statement prepared by the prosecuting attorney on the
25 applicability of any consecutive sentencing provision.

26 (F) IF A PERSON IS TO BE SENTENCED FOR A FELONY CONVICTION;
27 A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2

1 YEARS; OR A MISDEMEANOR INVOLVING THE ILLEGAL DELIVERY,
2 POSSESSION, OR USE OF ALCOHOL OR A CONTROLLED SUBSTANCE, A STATE-
3 MENT THAT THE PERSON IS LICENSED UNDER ARTICLE 15 OF THE PUBLIC
4 HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING
5 SECTIONS 333.16101 TO 333.18838 OF THE MICHIGAN COMPILED LAWS, IF
6 APPLICABLE.

7 (3) The court may exempt from disclosure in the presentence
8 investigation report information or a diagnostic opinion which
9 might seriously disrupt a program of rehabilitation or sources of
10 information obtained on a promise of confidentiality. If a part
11 of the presentence investigation report is not disclosed, the
12 court shall state on the record the reasons for its action and
13 inform the defendant and his or her attorney that information has
14 not been disclosed. The action of the court in exempting infor-
15 mation from disclosure shall be subject to appellate review.
16 Information or a diagnostic opinion exempted from disclosure pur-
17 suant to this subsection shall be specifically noted in the pre-
18 sentence investigation report.

19 (4) The court shall permit the prosecutor, the defendant's
20 attorney, and the defendant to review the presentence investiga-
21 tion report prior to sentencing.

22 (5) At the time of sentencing, either party may challenge,
23 on the record, the accuracy or relevancy of any information con-
24 tained in the presentence investigation report. The court may
25 order an adjournment to permit the parties to prepare a challenge
26 or a response to a challenge. If the court finds that the
27 challenged information is inaccurate or irrelevant, that finding

1 shall be made a part of the record and the presentence
2 investigation report shall be amended and the inaccurate or
3 irrelevant information shall be stricken accordingly before the
4 report is transmitted to the department of corrections.

5 (6) On appeal, the defendant's attorney, or the defendant if
6 proceeding pro se, shall be provided with a copy of the presen-
7 tence investigation report and any attachments ~~thereto~~ TO THE
8 REPORT with the exception of any information exempted from dis-
9 closure, on the record, by the court pursuant to subsection (3).

10 (7) If the person is committed to a state penal institution,
11 a copy or amended copy of the presentence investigation report
12 and, if a psychiatric examination of the person has been made for
13 the court, a copy of the psychiatric report shall accompany the
14 commitment papers. If the person is sentenced by fine or impris-
15 onment or placed on probation or other disposition of his or her
16 case is made by the court, a copy or amended copy of the presen-
17 tence investigation report, including a psychiatric examination
18 report made in the case, shall be filed with the department of
19 corrections.

20 (8) A prisoner under the jurisdiction of the department of
21 corrections shall be provided with a copy of any presentence
22 investigation report in the department's possession about that
23 prisoner, except for information exempted from disclosure pursu-
24 ant to subsection (3), not less than 30 days before a parole
25 hearing is held pursuant to section 35 of Act No. 232 of the
26 Public Acts of 1953, being section 791.235 of the Michigan
27 Compiled Laws.