

# SENATE BILL No. 357

April 20, 1989, Introduced by Senators DINGELL, WELBORN, ARTHURHULTZ, O'BRIEN and N. SMITH and referred to the Committee on Criminal Justice and Urban Affairs.

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 1e.

## 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 1e to read as  
4       follows:

## CHAPTER IX

5  
6       SEC. 1E. (1) IF A DEFENDANT IS CONVICTED OF A CRIME PUNISH-  
7       ABLE AS A HEINOUS CRIME, THE COURT SHALL, UPON MOTION OF THE  
8       PROSECUTING ATTORNEY, CONDUCT A SEPARATE SENTENCING PROCEEDING TO  
9       DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO

1 IMPRISONMENT FOR LIFE WITHOUT PAROLE OR SENTENCED AS OTHERWISE  
2 PROVIDED BY LAW.

3       (2) THE SENTENCING PROCEEDINGS SHALL BE CONDUCTED BY THE  
4 TRIAL JUDGE BEFORE THE TRIAL JURY AS SOON AS PRACTICABLE FOLLOW-  
5 ING A DETERMINATION OF THE GUILT OF THE DEFENDANT. IF THE TRIAL  
6 JURY IS UNABLE TO RECONVENE FOR THE SENTENCING PROCEEDINGS, THE  
7 TRIAL JUDGE MAY IMPANEL A SPECIAL JURY TO RECOMMEND THE PENALTY.  
8 IF THE TRIAL JURY HAS BEEN WAIVED, OR IF THE DEFENDANT PLEADED  
9 GUILTY, THE SENTENCING PROCEEDING SHALL BE CONDUCTED BEFORE A  
10 JURY IMPANELED FOR THE PURPOSE OF RECOMMENDING A PENALTY UNLESS  
11 THE RECOMMENDING JURY IS WAIVED BY THE DEFENDANT. IN THE SEN-  
12 TENCING PROCEEDINGS, EVIDENCE MAY BE PRESENTED AS TO ANY MATTER  
13 THAT IS RELEVANT TO THE NATURE OF THE CRIME COMMITTED, OR TO THE  
14 CHARACTER OF THE DEFENDANT. RELEVANT EVIDENCE INCLUDES EVIDENCE  
15 RELATING TO ANY OF THE AGGRAVATING OR MITIGATING CIRCUMSTANCES  
16 ENUMERATED IN SUBSECTIONS (5) AND (6). THIS SUBSECTION DOES NOT  
17 AUTHORIZE THE INTRODUCTION OF EVIDENCE OBTAINED IN VIOLATION OF  
18 THE CONSTITUTION OF THE UNITED STATES, OR OF THE STATE CONSTITU-  
19 TION OF 1963. THE PROSECUTING ATTORNEY AND THE DEFENDANT AND HIS  
20 OR HER ATTORNEY MAY PRESENT ARGUMENTS FOR OR AGAINST THE SENTENCE  
21 OF IMPRISONMENT FOR LIFE WITHOUT PAROLE.

22       (3) AFTER HEARING ALL THE EVIDENCE, THE JURY SHALL DELIBER-  
23 ATE AND RENDER AN ADVISORY OPINION TO THE COURT. THE ADVISORY  
24 OPINION SHALL CONTAIN ALL OF THE FOLLOWING:

25       (A) A STATEMENT AS TO WHETHER SUFFICIENT AGGRAVATING CIRCUM-  
26 STANCES EXIST UNDER SUBSECTION (5) TO JUSTIFY A SENTENCE OF  
27 IMPRISONMENT FOR LIFE WITHOUT PAROLE.

1 (B) A STATEMENT AS TO WHETHER SUFFICIENT MITIGATING  
2 CIRCUMSTANCES EXIST UNDER SUBSECTION (5) TO OUTWEIGH THE AGGRA-  
3 VATING CIRCUMSTANCES UNDER SUBSECTION (6).

4 (C) A STATEMENT AS TO WHETHER THE DEFENDANT SHOULD BE SEN-  
5 TENCED TO IMPRISONMENT FOR LIFE WITHOUT PAROLE.

6 (4) WHETHER OR NOT A MAJORITY OF THE JURY RECOMMENDS A SEN-  
7 TENCE OF IMPRISONMENT FOR LIFE WITHOUT PAROLE, THE COURT, AFTER  
8 WEIGHING THE AGGRAVATING AND MITIGATING CIRCUMSTANCES, SHALL SEN-  
9 TENCE THE DEFENDANT. IF THE COURT IMPOSES A SENTENCE OF IMPRIS-  
10 ONMENT FOR LIFE WITHOUT PAROLE, THE COURT SHALL SET FORTH IN  
11 WRITING THE FINDINGS UPON WHICH THE SENTENCE IS BASED. THE COURT  
12 SHALL SUPPORT A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT PAROLE  
13 BY SPECIFIC WRITTEN FINDINGS OF FACT BASED UPON THE CIRCUMSTANCES  
14 ENUMERATED IN SUBSECTIONS (5) AND (6), THE RECORDS OF THE TRIAL  
15 AND THE SENTENCING PROCEEDINGS, AND A FINDING THAT SUFFICIENT  
16 AGGRAVATING CIRCUMSTANCES EXIST UNDER SUBSECTION (5) TO SUPPORT A  
17 SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT PAROLE AND THAT MITI-  
18 GATING CIRCUMSTANCES UNDER SUBSECTION (6) DO NOT OUTWEIGH THE  
19 AGGRAVATING CIRCUMSTANCES.

20 (5) AGGRAVATING CIRCUMSTANCES INCLUDE 1 OR MORE OF THE  
21 FOLLOWING:

22 (A) THE HEINOUS CRIME WAS COMMITTED BY THE PERSON WHILE HE  
23 OR SHE WAS CONFINED IN A STATE CORRECTIONAL INSTITUTION OR A  
24 JAIL.

25 (B) THE DEFENDANT WAS PREVIOUSLY CONVICTED OF A FELONY  
26 INVOLVING THE USE OF VIOLENCE OR THE THREAT OF VIOLENCE TO A  
27 PERSON.

1 (C) THE DEFENDANT KNOWINGLY CREATED A GREAT RISK OF DEATH TO  
2 OTHER PERSONS.

3 (D) THE HEINOUS CRIME WAS COMMITTED TO AVOID OR PREVENT A  
4 LAWFUL ARREST, OR TO EFFECT AN ESCAPE FROM CUSTODY.

5 (E) THE HEINOUS CRIME WAS COMMITTED FOR PECUNIARY GAIN.

6 (F) THE HEINOUS CRIME WAS COMMITTED TO DISRUPT OR HINDER THE  
7 LAWFUL EXERCISE OF A GOVERNMENTAL FUNCTION, OR TO DISRUPT OR  
8 HINDER THE ENFORCEMENT OF A LAW.

9 (G) THE HEINOUS CRIME WAS UNUSUALLY HEINOUS, ATROCIOUS, OR  
10 CRUEL.

11 (6) MITIGATING CIRCUMSTANCES INCLUDE 1 OR MORE OF THE  
12 FOLLOWING:

13 (A) THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMI-  
14 NAL ACTIVITY.

15 (B) THE HEINOUS CRIME WAS COMMITTED BY THE DEFENDANT WHILE  
16 HE OR SHE WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL  
17 DISTURBANCE.

18 (C) THE VICTIM PARTICIPATED IN THE DEFENDANT'S CONDUCT, OR  
19 CONSENTED TO THE HEINOUS CRIME.

20 (D) THE DEFENDANT WAS AN ACCOMPLICE IN THE HEINOUS CRIME,  
21 AND HIS OR HER PARTICIPATION WAS RELATIVELY MINOR.

22 (E) THE DEFENDANT ACTED UNDER EXTREME DURESS, OR UNDER THE  
23 SUBSTANTIAL DOMINATION OF ANOTHER PERSON.

24 (F) THE AGE OF THE DEFENDANT AT THE TIME OF THE MURDER.