

SENATE BILL No. 678

November 1, 1989, Introduced by Senators CARL, WELBORN, DINGELL and POLLACK and referred to the Committee on Criminal Justice and Urban Affairs.

A bill to amend section 1 of chapter IX and section 14a 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 and section 14a of chapter XI as added by Act No. 78 of the Public Acts of 1988, being sections 769.1 and 771.14a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1 of chapter IX and section 14a of chap-
2 ter XI of Act No. 175 of the Public Acts of 1927, section 1 of
3 chapter IX as amended by Act No. 113 of the Public Acts of 1989
4 and section 14a of chapter XI as added by Act No. 78 of the
5 Public Acts of 1988, being sections 769.1 and 771.14a of the
6 Michigan Compiled Laws, are amended to read as follows:

CHAPTER IX

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

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

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

24 (a) The prior record and character of the juvenile, his or
25 her physical and mental maturity, and his or her pattern of
26 living.

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

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

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

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

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

13 (e) Whether the juvenile is more likely to be rehabilitated
14 by the services and facilities available in adult programs and
15 procedures than in juvenile programs and procedures.

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

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

25 (5) The court shall state on the record the court's findings
26 of fact and conclusions of law for the probation and commitment
27 decision or sentencing decision made under subsection (3). If a

1 juvenile is committed under subsection (3) to a state institution
2 or agency described in Act No. 150 of the Public Acts of 1974, a
3 transcript of the court's findings shall be sent to the depart-
4 ment of ~~social~~ CHILDREN, YOUTH, AND FAMILY services.

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

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

24 (7) If the court appoints an attorney to represent a juve-
25 nile, an order entered under this section may require the juve-
26 nile or person responsible for the juvenile's support, or both,
27 to reimburse the court for attorney fees.

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

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

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

22 CHAPTER XI

23 Sec. 14a. (1) Before sentencing a juvenile under
24 section 1(3) or (4) of chapter IX, the department of ~~social~~
25 CHILDREN AND YOUTH services shall inquire into the antecedents,
26 character, and circumstances of the juvenile, and shall report in

1 writing to the court as provided in section 4 of the juvenile
2 facilities act.

3 (2) The court may exempt from disclosure in a report under
4 this section information or a diagnostic opinion which might
5 seriously disrupt a program of rehabilitation or sources of
6 information obtained on a promise of confidentiality. If a part
7 of the report is not disclosed, the court shall state on the
8 record the reasons for its action and inform the juvenile and his
9 or her attorney that information has not been disclosed. The
10 action of the court in exempting information from disclosure
11 shall be subject to appellate review. Information or a diagnos-
12 tic opinion exempted from disclosure pursuant to this subsection
13 shall be specifically noted in the report.

14 (3) The court shall permit the prosecutor, the juvenile's
15 attorney, and the juvenile to review the report prior to
16 sentencing.

17 (4) At the time of sentencing, either party may challenge,
18 on the record, the accuracy or relevancy of any information con-
19 tained in the report. The court may order an adjournment to
20 permit the parties to prepare a challenge or a response to a
21 challenge. If the court finds that the challenged information is
22 inaccurate or irrelevant, that finding shall be made a part of
23 the record and the report shall be amended and the inaccurate or
24 irrelevant information shall be stricken accordingly.

25 (5) The juvenile and on appeal the juvenile's attorney shall
26 be provided with a copy of the report and any attachments to the

1 report with the exception of any information exempted from
2 disclosure, on the record, by the court under subsection (2).

3 (6) If the juvenile is committed to a state penal institu-
4 tion or is placed on probation and committed to a state institu-
5 tion or agency described in the youth rehabilitation services
6 act, Act No. 150 of the Public Acts of 1974, being sections
7 803.301 to 803.309 of the Michigan Compiled Laws, a copy of the
8 report and any attachments to it shall accompany the commitment
9 papers. If the juvenile is sentenced by fine or imprisonment or
10 placed on probation but not committed to a state institution or
11 agency described in Act No. 150 of the Public Acts of 1974, a
12 copy of the report and any attachments to it shall be filed with
13 the department of corrections.

14 (7) A report under this section is in addition to, and not
15 in lieu of, a presentence investigation report required by
16 section 14 of this chapter.

17 Section 2. This amendatory act shall not take effect unless
18 Senate Bill No. 109 of the 85th Legislature is enacted into law.

19 Section 3. This amendatory act shall take effect October 1,
20 1990.