

HOUSE BILL NO. 4487

March 10, 2021, Introduced by Reps. Rogers, LaGrand, Thanedar, Hertel, Sabo, Brixie, Kuppa, Aiyash, Haadsma, Hammoud, Brenda Carter, Scott, Anthony, Peterson, Brabec, Hood, Steckloff, Hope, O'Neal, Camilleri, Weiss, Breen, Ellison, Tyrone Carter, Jones and Yancey and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 12 and 31 of chapter IX and section 17f of chapter XVII (MCL 769.12, 769.31, and 777.17f), section 12 of chapter IX as amended by 2012 PA 319, section 31 of chapter IX as amended by 2020 PA 395, and section 17f of chapter XVII as amended by 2012 PA 611.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER IX

1 Sec. 12. (1) If a person has been convicted of any combination
2 of 3 or more felonies or attempts to commit felonies, whether the
3 convictions occurred in this state or would have been for felonies
4 or attempts to commit felonies in this state if obtained in this
5 state, and that person commits a subsequent felony within this
6 state, the person ~~shall~~**must** be punished upon conviction of the
7 subsequent felony and ~~sentencing~~**sentenced** under section 13 of this
8 chapter as follows:

9 (a) If the subsequent felony is a serious crime or a
10 conspiracy to commit a serious crime, and 1 or more of the prior
11 felony convictions are listed prior felonies, the court shall
12 sentence the person to imprisonment for not less than 25 years. Not
13 more than 1 conviction arising out of the same transaction ~~shall be~~
14 **is** considered a prior felony conviction for the purposes of this
15 subsection only.

16 (b) If the subsequent felony is punishable upon a first
17 conviction by imprisonment for a maximum term of 5 years or more or
18 for life, the court, except as otherwise provided in this section
19 or section 1 of chapter XI, may sentence the person to imprisonment
20 for life or for a lesser term.

21 (c) If the subsequent felony is punishable upon a first
22 conviction by imprisonment for a maximum term that is less than 5
23 years, the court, except as otherwise provided in this section or
24 section 1 of chapter XI, may sentence the person to imprisonment
25 for a maximum term of not more than 15 years.

26 (d) If the subsequent felony is a major controlled substance
27 offense, the person ~~shall~~**must** be punished as provided by part 74
28 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

29 (2) If the court imposes a sentence of imprisonment for any

1 term of years under this section, the court shall fix the length of
2 both the minimum and maximum sentence within any specified limits
3 in terms of years or a fraction of a year, and the sentence so
4 imposed ~~shall~~**must** be considered an indeterminate sentence. The
5 court shall not fix a maximum sentence that is less than the
6 maximum term for a first conviction.

7 (3) A conviction ~~shall~~**must** not be used to enhance a sentence
8 under this section if that conviction is used to enhance a sentence
9 under a statute that prohibits use of the conviction for further
10 enhancement under this section.

11 (4) An offender sentenced under this section or section 10 or
12 11 of this chapter for an offense other than a major controlled
13 substance offense is not eligible for parole until expiration of
14 ~~the following:~~

15 ~~(a) For a prisoner other than a prisoner subject to~~
16 ~~disciplinary time,~~ the minimum term fixed by the sentencing judge
17 at the time of sentence unless the sentencing judge or a successor
18 gives written approval for parole at an earlier date authorized by
19 law.

20 ~~(b) For a prisoner subject to disciplinary time, the minimum~~
21 ~~term fixed by the sentencing judge.~~

22 (5) This section and sections 10 and 11 of this chapter are
23 not in derogation of other provisions of law that permit or direct
24 the imposition of a consecutive sentence for a subsequent felony.

25 (6) As used in this section:

26 (a) "Listed prior felony" means a violation or attempted
27 violation of any of the following:

28 (i) Section 602a(4) or (5) or 625(4) of the Michigan vehicle
29 code, 1949 PA 300, MCL 257.602a and 257.625.

1 (ii) Article 7 of the public health code, 1978 PA 368, MCL
2 333.7101 to 333.7545, that is punishable by imprisonment for more
3 than 4 years.

4 (iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or
5 (3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a,
6 234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i,
7 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the
8 Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83,
9 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a,
10 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a,
11 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a,
12 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c,
13 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

14 (iv) A second or subsequent violation or attempted violation of
15 section 227b of the Michigan penal code, 1931 PA 328, MCL 750.227b.

16 (v) Section 2a of 1968 PA 302, MCL 752.542a.

17 ~~(b) "Prisoner subject to disciplinary time" means that term as~~
18 ~~defined in section 34 of 1893 PA 118, MCL 800.34.~~

19 (b) ~~(c)~~ "Serious crime" means an offense against a person in
20 violation of section 83, 84, 86, 88, 89, 317, 321, 349, 349a, 350,
21 397, 520b, 520c, 520d, 520g(1), 529, or 529a of the Michigan penal
22 code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89,
23 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
24 750.520c, 750.520d, 750.520g, 750.529, and 750.529a.

25 Sec. 31. As used in this section and section 34 of this
26 chapter:

27 (a) "Departure" means a sentence imposed that is not within
28 the appropriate minimum sentence range established under the
29 sentencing guidelines set forth in chapter XVII.

1 (b) "Intermediate sanction" means probation or any sanction,
2 other than imprisonment in a county jail, state prison, or state
3 reformatory, that may lawfully be imposed. Intermediate sanction
4 includes, but is not limited to, 1 or more of the following:

5 (i) Inpatient or outpatient drug treatment or participation in
6 a drug treatment court under chapter 10A of the revised judicature
7 act of 1961, 1961 PA 236, MCL 600.1060 to ~~600.1082~~.**600.1088**.

8 (ii) Probation with any probation conditions required or
9 authorized by law.

10 (iii) Residential probation.

11 (iv) Probation with special alternative incarceration.

12 (v) Mental health treatment.

13 (vi) Mental health or substance abuse counseling.

14 (vii) Participation in a community corrections program.

15 (viii) Community service.

16 (ix) Payment of a fine.

17 (x) House arrest.

18 (xi) Electronic monitoring.

19 (c) "Offender characteristics" means only the prior criminal
20 record of an offender.

21 (d) "Offense characteristics" means the elements of the crime
22 and the aggravating and mitigating factors relating to the offense
23 that the legislature determines are appropriate. For purposes of
24 this subdivision, an offense described in **former** section 33b of the
25 corrections code of 1953, 1953 PA 232, ~~MCL 791.233b~~, that resulted
26 in a conviction and that arose out of the same transaction as the
27 offense for which the sentencing guidelines are being scored ~~shall~~
28 ~~be considered as~~ **is** an aggravating factor.

29 (e) "Prior criminal record" means all of the following:

1 (i) Misdemeanor and felony convictions.

2 (ii) Probation and parole violations involving criminal
3 activity.

4 (iii) Dispositions entered under section 18 of chapter XIIA of
5 **the probate code of 1939**, 1939 PA 288, MCL 712A.18, for acts that
6 would have been crimes if committed by an adult.

7 (iv) Assignment to youthful trainee status under sections 11 to
8 15 of chapter II.

9 (v) A conviction set aside under 1965 PA 213, MCL 780.621 to
10 780.624.

11 (vi) Dispositions described in subparagraph (iii) that have been
12 set aside under section 18e of chapter XIIA of **the probate code of**
13 **1939**, 1939 PA 288, MCL 712A.18e, or expunged.

14 CHAPTER XVII

15 Sec. 17f. This chapter applies to the following felonies
16 enumerated in chapters 760 to 799 of the Michigan Compiled Laws:

17 M.C.L.	Category	Class	Description	Stat Max
18 764.1e	Pub trst	C	Peace officer – making 19 false statement in a 20 complaint	15
21 767.4a	Pub trst	F	Disclosing or 22 possessing grand jury 23 information	4
24 767A.9(1) (a)	Pub trst	C	Perjury committed in 25 prosecutor's 26 investigative hearing	15

1	767A.9(1)(b)	Pub trst	B	Perjury committed in	Life
2				prosecutor's	
3				investigative hearing	
4				regarding a crime	
5				punishable by	
6				imprisonment for life	
7				or by imprisonment for	
8				life or any term of	
9				years	
10	771.3f	Pub ord	G	Tampering with or	2
11				removing electronic	
12				monitoring device	
13	791.236(17)	Pub ord	F	Failure to provide	4
14	791.236(16)			correct notice of	
15				proposed domicile by	
16				sex offender	

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

19 Enacting section 2. This amendatory act does not take effect
20 unless Senate Bill No.____ or House Bill No. 4488 (request no.
21 0889'21) of the 101st Legislature is enacted into law.