

HOUSE BILL No. 4640

May 6, 1999, Introduced by Reps. Faunce, Julian, Howell, Shulman, Toy, Van Woerkom and Bishop and referred to the Committee on Criminal Law and Corrections.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 34 of chapter IX and sections 31, 43, 46, and 48 of chapter XVII (MCL 769.34, 777.31, 777.43, 777.46, and 777.48), section 34 of chapter IX as amended and sections 31, 43, 46, and 48 of chapter XVII as added by 1998 PA 317.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

1

2 Sec. 34. (1) The sentencing guidelines promulgated by order
3 of the Michigan supreme court shall not apply to felonies enumer-
4 ated in part 2 of chapter XVII committed on or after January 1,
5 1999.

6 (2) Except as otherwise provided in this subsection or for a
7 departure from the appropriate minimum sentence range provided
8 for under subsection (3), the minimum sentence imposed by a court

1 of this state for a felony enumerated in part 2 of chapter XVII
2 committed on or after January 1, 1999 shall be within the appro-
3 priate sentence range under the version of those sentencing
4 guidelines in effect on the date the crime was committed. Both
5 of the following apply to minimum sentences under this
6 subsection:

7 (a) If a statute mandates a minimum sentence OR MANDATES A
8 SENTENCE THAT EXCEEDS THE RECOMMENDED SENTENCE RANGE BUT IS LESS
9 THAN THE MANDATORY MINIMUM SENTENCE, the court shall impose sen-
10 tence in accordance with that statute. Imposing a mandatory min-
11 imum sentence is not a departure under this section.

12 (b) The court shall not impose a minimum sentence, including
13 a departure, that exceeds 2/3 of the statutory maximum sentence.

14 (3) A court may depart from the appropriate sentence range
15 established under the sentencing guidelines set forth in chapter
16 XVII if the court has a substantial and compelling reason for
17 that departure and states on the record the reasons for
18 departure. All of the following apply to a departure:

19 (a) The court shall not use an individual's gender, race,
20 ethnicity, alienage, national origin, legal occupation, lack of
21 employment, representation by appointed legal counsel, represen-
22 tation by retained legal counsel, appearance in propria persona,
23 or religion to depart from the appropriate sentence range.

24 (b) The court shall not base a departure on an offense char-
25 acteristic or offender characteristic already taken into account
26 in determining the appropriate sentence range unless the court
27 finds from the facts contained in the court record, including the

1 presentence investigation report, that the characteristic has
2 been given inadequate or disproportionate weight.

3 (4) Intermediate sanctions shall be imposed under this chap-
4 ter as follows:

5 (a) If the upper limit of the recommended minimum sentence
6 range for a defendant determined under the sentencing guidelines
7 set forth in chapter XVII is 18 months or less, the court shall
8 impose an intermediate sanction unless the court states on the
9 record a substantial and compelling reason to sentence the indi-
10 vidual to the jurisdiction of the department of corrections. An
11 intermediate sanction may include a jail term that does not
12 exceed the upper limit of the recommended minimum sentence range
13 or 12 months, whichever is less.

14 (b) If the offense is a violation of section 7401(2)(a)(iv)
15 or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL
16 333.7401 and 333.7403, and the upper limit of the recommended
17 minimum sentence range is 18 months or less, the court shall
18 impose a sentence of life probation absent a departure.

19 (c) If an attempt to commit a felony designated in offense
20 class H in part 2 of this chapter is punishable by imprisonment
21 for more than 1 year, the court shall impose an intermediate
22 sanction upon conviction of that offense absent a departure.

23 (d) If the upper limit of the recommended minimum sentence
24 exceeds 18 months and the lower limit of the recommended minimum
25 sentence is 12 months or less, the court shall sentence the
26 offender as follows absent a departure:

1 (i) To imprisonment with a minimum term within that range.

2 (ii) To an intermediate sanction that may include a term of
3 imprisonment of not less than the minimum range or more than 12
4 months.

5 (5) If a crime has a mandatory determinant penalty or a man-
6 datory penalty of life imprisonment, the court shall impose that
7 penalty. This section does not apply to sentencing for that
8 crime.

9 (6) As part of the sentence, the court may also order the
10 defendant to pay any combination of a fine, costs, or applicable
11 assessments. The court shall order payment of restitution as
12 provided by law.

13 (7) If the trial court imposes on a defendant a minimum sen-
14 tence that is longer or more severe than the appropriate sentence
15 range, as part of the court's advice of the defendant's rights
16 concerning appeal, the court shall advise the defendant orally
17 and in writing that he or she may appeal the sentence as provided
18 by law on grounds that it is longer or more severe than the
19 appropriate sentence range.

20 (8) All of the following shall be part of the record filed
21 for an appeal of a sentence under this section:

22 (a) An entire record of the sentencing proceedings.

23 (b) The presentence investigation report. Any portion of
24 the presentence investigation report exempt from disclosure by
25 law shall not be a public record.

26 (c) Any other reports or documents the sentencing court used
27 in imposing sentence.

1 (9) An appeal of a sentence under this section does not stay
2 execution of the sentence.

3 (10) If a minimum sentence is within the appropriate guide-
4 lines sentence range, the court of appeals shall affirm that sen-
5 tence and shall not remand for resentencing absent an error in
6 scoring the sentencing guidelines or inaccurate information
7 relied upon in determining the defendant's sentence. A party
8 shall not raise on appeal an issue challenging the scoring of the
9 sentencing guidelines or challenging the accuracy of information
10 relied upon in determining a sentence that is within the appro-
11 priate guidelines sentence range unless the party has raised the
12 issue at sentencing, in a proper motion for resentencing, or in a
13 proper motion to remand filed in the court of appeals.

14 (11) If, upon a review of the record, the court of appeals
15 finds the trial court did not have a substantial and compelling
16 reason for departing from the appropriate sentence range, the
17 court shall remand the matter to the sentencing judge or another
18 trial court judge for resentencing under this chapter.

19 (12) Time served on the sentence appealed under this section
20 is considered time served on any sentence imposed after remand.

21 CHAPTER XVII

22 Sec. 31. (1) Offense variable 1 is aggravated use of a
23 weapon. Score offense variable 1 by determining which of the
24 following apply and by assigning the number of points attribut-
25 able to the one that has the highest number of points:

- 1 (a) A firearm was discharged at or toward a human
 2 being or a victim was cut or stabbed with a knife or
 3 other cutting or stabbing weapon..... 25 points
- 4 (b) A firearm was pointed at or toward a victim
 5 or the victim had a reasonable apprehension of an
 6 immediate battery when threatened with a knife or
 7 other cutting or stabbing weapon..... 15 points
- 8 (c) The victim was touched by any other type of
 9 weapon..... 10 points
- 10 (d) A weapon was displayed or implied..... 5 points
- 11 (e) No aggravated use of a weapon occurred..... 0 points
- 12 (2) All of the following apply to scoring offense variable
 13 1:
- 14 (a) Count each person who was placed in danger ~~or~~ OF
 15 injury or loss of life as a victim.
- 16 (b) In multiple offender cases, if 1 offender is assessed
 17 points for the presence or use of a weapon, all offenders shall
 18 be assessed the same number of points.
- 19 (c) Score 5 points if an offender used an object to suggest
 20 the presence of a weapon.
- 21 (d) Do not score 5 points if the conviction offense is a
 22 violation of section 82 or 529 of the Michigan penal code, 1931
 23 PA 328, MCL 750.82 and 750.529.

1 Sec. 43. (1) Offense variable 13 is continuing pattern of
 2 criminal behavior. Score offense variable 13 by determining
 3 which of the following apply and by assigning the number of
 4 points attributable to the one that has the highest number of
 5 points:

6 (a) The offense was part of a pattern of feloni-
 7 ous criminal activity involving 3 or more crimes
 8 against a person..... 25 points

9 (b) The offense was part of a pattern of feloni-
 10 ous criminal activity involving a combination of 3 or
 11 more crimes against a person or property..... 10 points

12 (c) The offense was part of a pattern of feloni-
 13 ous criminal activity directly related to membership
 14 in an organized criminal group..... 10 points

15 (d) The offense was part of a pattern of feloni-
 16 ous criminal activity involving 3 or more crimes
 17 against property..... ~~25~~ 5
 18 points

19 (e) No pattern of felonious criminal activity
 20 existed..... 0 points

21 (2) All of the following apply to scoring offense variable
 22 13:

1 (a) For determining the appropriate points under this
 2 variable, all crimes within a 5-year period, including the sen-
 3 tencing offense, shall be counted regardless of whether the
 4 offense resulted in a conviction.

5 (b) The presence or absence of multiple offenders, the age
 6 of the offenders, or the degree of sophistication of the orga-
 7 nized criminal group is not as important as the fact of the
 8 group's existence, which may be reasonably inferred from the
 9 facts surrounding the sentencing offense.

10 (c) Except for offenses related to membership in an orga-
 11 nized criminal group, do not score conduct scored in offense
 12 variable 11 or 12.

13 Sec. 46. (1) Offense variable 16 is property obtained, dam-
 14 aged, lost, or destroyed. Score offense variable 16 by determin-
 15 ing which of the following apply and by assigning the number of
 16 points attributable to the one that has the highest number of
 17 points:

18 (a) Wanton or malicious damage occurred beyond
 19 that necessary to commit the crime for which the
 20 offender is not charged and will not be charged..... 10 points

21 (b) The property had a value of more than
 22 \$20,000.00 or had significant historical, social, or
 23 sentimental value..... 10 points

1 (c) The property ~~destroyed~~ had a value of
2 \$1,000.00 or more but not more than \$20,000.00..... 5 points

3 (d) The property ~~destroyed~~ had a value of
4 \$200.00 or more but not more than \$1,000.00..... 1 point

5 (e) No property was obtained, damaged, lost, or
6 destroyed or the property had a value of less than
7 \$200.00..... 0 points

8 (2) All of the following apply to scoring offense variable
9 16:

10 (a) In multiple offender or victim cases, the appropriate
11 points may be determined by adding together the aggregate value
12 of the property involved, including property involved in
13 uncharged offenses or charges dismissed under a plea agreement.

14 (b) In cases in which the property was obtained unlawfully,
15 lost to the lawful owner, or destroyed, use the value of the
16 property in scoring this variable. If the property was damaged,
17 use the monetary amount appropriate to restore the property to
18 pre-offense condition in scoring this variable.

19 (c) The amount of money or property involved in admitted but
20 uncharged offenses or in charges that have been dismissed under a
21 plea agreement may be considered.

22 Sec. 48. (1) Offense variable 18 is operator ability
23 affected by alcohol or drugs. Score offense variable 18 by
24 determining which of the following apply and by assigning the

1 number of points attributable to the one that has the highest

2 number of points:

3 (a) The offender operated a vehicle when his or
4 her bodily alcohol content was 0.20 grams or more per
5 100 milliliters of blood, per 210 liters of breath, or
6 per 67 milliliters of urine..... 20 points

7 (b) The offender operated a vehicle when his or
8 her bodily alcohol content was 0.15 grams or more but
9 less than 0.20 grams per 100 milliliters of blood, per
10 210 liters of breath, or per 67 milliliters of urine.. 15 points

11 (c) The offender operated a vehicle when his or
12 her bodily alcohol content was 0.10 grams or more but
13 less than 0.15 grams per 100 milliliters of blood, per
14 210 liters of breath, or per 67 milliliters of urine,
15 or while he or she was under the influence of intoxi-
16 cating liquor or a controlled substance or a combina-
17 tion of intoxicating liquor and a controlled substance 10 points

18 (d) The offender operated a vehicle when his or
19 her bodily alcohol content was 0.07 grams or more but
20 less than 0.10 grams per 100 milliliters of blood, per
21 210 liters of breath, or per 67 milliliters of urine,
22 or while he or she was visibly impaired by the use of
23 intoxicating liquor ~~and~~ OR a controlled substance or

1 a combination of intoxicating liquor ~~or~~ AND a
2 controlled substance, or was less than 21 years of age
3 and had any bodily alcohol content..... 5 points

4 (e) The offender's ability to operate a vehicle
5 was not affected by an intoxicating liquor or a con-
6 trolled substance or a combination of intoxicating
7 liquor and a controlled substance..... 0 points

8 (2) As used in this section, "any bodily alcohol content"
9 means either of the following:

10 (a) An alcohol content of not less than 0.02 grams or more
11 than 0.07 grams per 100 milliliters of blood, per 210 liters of
12 breath, or per 67 milliliters of urine.

13 (b) Any presence of alcohol within an individual's body
14 resulting from the consumption of intoxicating liquor other than
15 the consumption of intoxicating liquor as part of a generally
16 recognized religious service or ceremony.