

HOUSE BILL No. 6678

November 19, 2008, Introduced by Rep. Alma Smith and referred to the Committee on Judiciary.

A bill to repeal 1927 PA 175, entitled "The code of criminal procedure," by amending sections 8, 9, 10, 11, and 12 of chapter IX (MCL 769.8, 769.9, 769.10, 769.11, and 769.12), section 8 as amended by 1998 PA 317 and sections 10, 11, and 12 as amended by 2006 PA 655; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

Sec. 8. (1) When a person is convicted for the first time for committing a felony and the punishment prescribed by law for that offense may be imprisonment in a state prison, the court imposing sentence shall ~~not~~ fix a definite term of imprisonment. ~~, but shall fix a minimum term, except as otherwise provided in this chapter.~~
The maximum penalty provided by law shall be the maximum sentence

1 ~~in all cases except as provided in this chapter and shall be stated~~
2 ~~by the judge in imposing the sentence.~~

3 (2) Before or at the time of imposing sentence, the judge
4 shall ascertain by examining the defendant under oath, or
5 otherwise, and by other evidence as can be obtained tending to
6 indicate briefly the causes of the defendant's criminal character
7 or conduct, which facts and other facts that appear to be pertinent
8 in the case the judge shall cause to be entered upon the minutes of
9 the court.

10 Sec. 9. ~~(1) The provisions of this chapter relative to~~
11 ~~indeterminate sentences shall not apply to a person convicted for~~
12 ~~the commission of an offense for which the only punishment~~
13 ~~prescribed by law is imprisonment for life.~~

14 (1) ~~(2)~~—In all cases where the maximum sentence in the
15 discretion of the court may be imprisonment for life or any number
16 or term of years, the court may impose a sentence for life or may
17 impose a sentence for any term of years. If the sentence imposed by
18 the court is for any term of years, the court shall fix ~~both the~~
19 ~~minimum and the maximum of that sentence in terms of years or~~
20 ~~fraction thereof. , and sentences so imposed shall be considered~~
21 ~~indeterminate sentences.~~ The court shall not impose a sentence in
22 which the maximum penalty is life imprisonment with a minimum for a
23 term of years included in the same sentence.

24 (2) ~~(3)~~—In cases involving a major controlled substance
25 offense for which the court is directed by law to impose a sentence
26 ~~which~~ **THAT** cannot be less than a specified term of years nor more
27 than a specified term of years, the court in imposing the sentence

1 shall fix the length of both the minimum and maximum sentence
2 within those specified limits, in terms of years or fraction
3 thereof. ~~and the sentence so imposed shall be considered an~~
4 ~~indeterminate sentence.~~

5 Sec. 10. (1) If a person has been convicted of a felony or an
6 attempt to commit a felony, whether the conviction occurred in this
7 state or would have been for a felony or attempt to commit a felony
8 in this state if obtained in this state, and that person commits a
9 subsequent felony within this state, the person shall be punished
10 upon conviction of the subsequent felony and sentencing under
11 section 13 of this chapter as follows:

12 (a) If the subsequent felony is punishable upon a first
13 conviction by imprisonment for a term less than life, the court,
14 except as otherwise provided in this section or section 1 of
15 chapter XI, may place the person on probation or sentence the
16 person to imprisonment for a maximum term that is not more than 1-
17 1/2 times the longest term prescribed for a first conviction of
18 that offense or for a lesser term.

19 (b) If the subsequent felony is punishable upon a first
20 conviction by imprisonment for life, the court, except as otherwise
21 provided in this section or section 1 of chapter XI, may place the
22 person on probation or sentence the person to imprisonment for life
23 or for a lesser term.

24 (c) If the subsequent felony is a major controlled substance
25 offense, the person shall be punished as provided by part 74 of the
26 public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

27 (2) If the court pursuant to this section imposes a sentence

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

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

11 Sec. 11. (1) If a person has been convicted of any combination
12 of 2 or more felonies or attempts to commit felonies, whether the
13 convictions occurred in this state or would have been for felonies
14 or attempts to commit felonies in this state if obtained in this
15 state, and that person commits a subsequent felony within this
16 state, the person shall be punished upon conviction of the
17 subsequent felony and sentencing under section 13 of this chapter
18 as follows:

19 (a) If the subsequent felony is punishable upon a first
20 conviction by imprisonment for a term less than life, the court,
21 except as otherwise provided in this section or section 1 of
22 chapter XI, may sentence the person to imprisonment for a maximum
23 term that is not more than twice the longest term prescribed by law
24 for a first conviction of that offense or for a lesser term.

25 (b) If the subsequent felony is punishable upon a first
26 conviction by imprisonment for life, the court, except as otherwise
27 provided in this section or section 1 of chapter XI, may sentence

1 the person to imprisonment for life or for a lesser term.

2 (c) If the subsequent felony is a major controlled substance
3 offense, the person shall be punished as provided by part 74 of the
4 public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

5 (2) If the court pursuant to this section imposes a sentence
6 of imprisonment for any term of years, the court shall fix the
7 length of ~~both the minimum and maximum~~ **THAT** sentence ~~within any~~
8 ~~specified limits~~ in terms of years or a fraction of a year. ~~and~~
9 ~~the sentence so imposed shall be considered an indeterminate~~
10 ~~sentence.~~ The court shall not fix a maximum sentence that is less
11 than the maximum term for a first conviction.

12 (3) A conviction shall not be used to enhance a sentence under
13 this section if that conviction is used to enhance a sentence under
14 a statute that prohibits use of the conviction for further
15 enhancement under this section.

16 Sec. 12. (1) If a person has been convicted of any combination
17 of 3 or more felonies or attempts to commit felonies, whether the
18 convictions occurred in this state or would have been for felonies
19 or attempts to commit felonies in this state if obtained in this
20 state, and that person commits a subsequent felony within this
21 state, the person shall be punished upon conviction of the
22 subsequent felony and sentencing under section 13 of this chapter
23 as follows:

24 (a) If the subsequent felony is punishable upon a first
25 conviction by imprisonment for a maximum term of 5 years or more or
26 for life, the court, except as otherwise provided in this section
27 or section 1 of chapter XI, may sentence the person to imprisonment

1 for life or for a lesser term.

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

7 (c) If the subsequent felony is a major controlled substance
8 offense, the person shall be punished as provided by part 74 of the
9 public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

10 (2) If the court pursuant to this section imposes a sentence
11 of imprisonment for any term of years, the court shall fix the
12 length of ~~both the minimum and maximum~~ **THAT** sentence within any
13 ~~specified limits~~ in terms of years or a fraction of a year. ~~and~~
14 ~~the sentence so imposed shall be considered an indeterminate~~
15 ~~sentence.~~ The court shall not fix a maximum sentence that is less
16 than the maximum term for a first conviction.

17 (3) A conviction shall not be used to enhance a sentence under
18 this section if that conviction is used to enhance a sentence under
19 a statute that prohibits use of the conviction for further
20 enhancement under this section.

21 ~~—— (4) An offender sentenced under this section or section 10 or~~
22 ~~11 of this chapter for an offense other than a major controlled~~
23 ~~substance offense is not eligible for parole until expiration of~~
24 ~~the following:~~

25 ~~—— (a) For a prisoner other than a prisoner subject to~~
26 ~~disciplinary time, the minimum term fixed by the sentencing judge~~
27 ~~at the time of sentence unless the sentencing judge or a successor~~

1 ~~gives written approval for parole at an earlier date authorized by~~
2 ~~law.~~

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

5 (4) ~~(5)~~—This section and sections 10 and 11 of this chapter
6 are not in derogation of other provisions of law that permit or
7 direct the imposition of a consecutive sentence for a subsequent
8 felony.

9 (5) ~~(6)~~—As used in this section, "prisoner subject to
10 disciplinary time" means that term as defined in section 34 of 1893
11 PA 118, MCL 800.34.

12 Enacting section 1. Sections 1 to 69 of chapter XVII of the
13 code of criminal procedure, 1927 PA 175, MCL 777.1 to 777.69, are
14 repealed.

15 Enacting section 2. This amendatory act takes effect January
16 1, 2010.

17 Enacting section 3. This amendatory act does not take effect
18 unless Senate Bill No. ____ or House Bill No. 6676 (request no.
19 07944'08) of the 94th Legislature is enacted into law.