

# HOUSE BILL No. 6711

November 19, 2008, Introduced by Reps. Gillard, Warren, Condino, Alma Smith and Meadows and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 1 of chapter IX (MCL 769.1), as amended by 1999 PA 87.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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CHAPTER IX

Sec. 1. (1) A judge of a court having jurisdiction may pronounce judgment against and pass sentence upon a person convicted of an offense in that court. The sentence shall not exceed the sentence prescribed by law. The court shall sentence a juvenile convicted of any of the following crimes in the same manner as an adult:

(a) Arson of a dwelling in violation of section 72 of the Michigan penal code, 1931 PA 328, MCL 750.72.

(b) Assault with intent to commit murder in violation of

1 section 83 of the Michigan penal code, 1931 PA 328, MCL 750.83.

2 (c) Assault with intent to maim in violation of section 86 of  
3 the Michigan penal code, 1931 PA 328, MCL 750.86.

4 (d) Attempted murder in violation of section 91 of the  
5 Michigan penal code, 1931 PA 328, MCL 750.91.

6 (e) Conspiracy to commit murder in violation of section 157a  
7 of the Michigan penal code, 1931 PA 328, MCL 750.157a.

8 (f) Solicitation to commit murder in violation of section 157b  
9 of the Michigan penal code, 1931 PA 328, MCL 750.157b.

10 (g) First degree murder in violation of section 316 of the  
11 Michigan penal code, 1931 PA 328, MCL 750.316.

12 (h) Second degree murder in violation of section 317 of the  
13 Michigan penal code, 1931 PA 328, MCL 750.317.

14 (i) Kidnapping in violation of section 349 of the Michigan  
15 penal code, 1931 PA 328, MCL 750.349.

16 (j) First degree criminal sexual conduct in violation of  
17 section 520b of the Michigan penal code, 1931 PA 328, MCL 750.520b.

18 (k) Armed robbery in violation of section 529 of the Michigan  
19 penal code, 1931 PA 328, MCL 750.529.

20 (l) Carjacking in violation of section 529a of the Michigan  
21 penal code, 1931 PA 328, MCL 750.529a.

22 (2) A person convicted of a felony or of a misdemeanor  
23 punishable by imprisonment for more than 92 days shall not be  
24 sentenced until the court has examined the court file and has  
25 determined that the person's fingerprints have been taken.

26 (3) Unless a juvenile is required to be sentenced in the same  
27 manner as an adult under subsection (1), a judge of a court having

1 jurisdiction over a juvenile shall conduct a hearing at the  
2 juvenile's sentencing to determine if the best interests of the  
3 public would be served by placing the juvenile on probation and  
4 committing the juvenile to an institution or agency described in  
5 the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to  
6 803.309, or by imposing any other sentence provided by law for an  
7 adult offender. Except as provided in subsection (5), the court  
8 shall sentence the juvenile in the same manner as an adult unless  
9 the court determines by a preponderance of the evidence that the  
10 interests of the public would be best served by placing the  
11 juvenile on probation and committing the juvenile to an institution  
12 or agency described in the youth rehabilitation services act, 1974  
13 PA 150, MCL 803.301 to 803.309. The rules of evidence do not apply  
14 to a hearing under this subsection. In making the determination  
15 required under this subsection, the judge shall consider all of the  
16 following, giving greater weight to the seriousness of the alleged  
17 offense and the juvenile's prior record of delinquency:

18 (a) The seriousness of the alleged offense in terms of  
19 community protection, including, but not limited to, the existence  
20 of any aggravating factors recognized by the sentencing guidelines,  
21 the use of a firearm or other dangerous weapon, and the impact on  
22 any victim.

23 (b) The juvenile's culpability in committing the alleged  
24 offense, including, but not limited to, the level of the juvenile's  
25 participation in planning and carrying out the offense and the  
26 existence of any aggravating or mitigating factors recognized by  
27 the sentencing guidelines.

1 (c) The juvenile's prior record of delinquency including, but  
2 not limited to, any record of detention, any police record, any  
3 school record, or any other evidence indicating prior delinquent  
4 behavior.

5 (d) The juvenile's programming history, including, but not  
6 limited to, the juvenile's past willingness to participate  
7 meaningfully in available programming.

8 (e) The adequacy of the punishment or programming available in  
9 the juvenile justice system.

10 (f) The dispositional options available for the juvenile.

11 (4) With the consent of the prosecutor and the defendant, the  
12 court may waive the hearing required under subsection (3). If the  
13 court waives the hearing required under subsection (3), the court  
14 may place the juvenile on probation and commit the juvenile to an  
15 institution or agency described in the youth rehabilitation  
16 services act, 1974 PA 150, MCL 803.301 to 803.309, but shall not  
17 impose any other sentence provided by law for an adult offender.

18 (5) If a juvenile is convicted of a violation or conspiracy to  
19 commit a violation of section 7403(2)(a)(i) of the public health  
20 code, 1978 PA 368, MCL 333.7403, the court shall determine whether  
21 the best interests of the public would be served by imposing the  
22 sentence provided by law for an adult offender, by placing the  
23 individual on probation and committing the individual to an  
24 institution or agency under subsection (3), or by imposing a  
25 sentence of imprisonment for any term of years but not less than 25  
26 years. If the court determines by clear and convincing evidence  
27 that the best interests of the public would be served by imposing a

1 sentence of imprisonment for any term of years but not less than 25  
2 years, the court may impose that sentence. In making its  
3 determination, the court shall use the criteria specified in  
4 subsection (3).

5 (6) The court shall state on the record the court's findings  
6 of fact and conclusions of law for the probation and commitment  
7 decision or sentencing decision made under subsection (3). If a  
8 juvenile is committed under subsection (3) to an institution or  
9 agency described in the youth rehabilitation services act, 1974 PA  
10 150, MCL 803.301 to 803.309, a transcript of the court's findings  
11 shall be sent to the ~~family independence agency~~ **DEPARTMENT OF HUMAN**  
12 **SERVICES** or county juvenile agency, as applicable.

13 (7) If a juvenile is committed under subsection (3) or (4) to  
14 an institution or agency described in the youth rehabilitation  
15 services act, 1974 PA 150, MCL 803.301 to 803.309, the written  
16 order of commitment shall contain a provision for the reimbursement  
17 to the court by the juvenile or those responsible for the  
18 juvenile's support, or both, for the cost of care or service. The  
19 amount of reimbursement ordered shall be reasonable, taking into  
20 account both the income and resources of the juvenile and those  
21 responsible for the juvenile's support. The amount may be based  
22 upon the guidelines and model schedule prepared under section 18(6)  
23 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL  
24 712A.18. The reimbursement provision applies during the entire  
25 period the juvenile remains in care outside the juvenile's own home  
26 and under court supervision. The court shall provide for the  
27 collection of all amounts ordered to be reimbursed, and the money

1 collected shall be accounted for and reported to the county board  
2 of commissioners. Collections to cover delinquent accounts or to  
3 pay the balance due on reimbursement orders may be made after a  
4 juvenile is released or discharged from care outside the juvenile's  
5 own home and under court supervision. Twenty-five percent of all  
6 amounts collected pursuant to an order entered under this  
7 subsection shall be credited to the appropriate fund of the county  
8 to offset the administrative cost of collections. The balance of  
9 all amounts collected pursuant to an order entered under this  
10 subsection shall be divided in the same ratio in which the county,  
11 state, and federal government participate in the cost of care  
12 outside the juvenile's own home and under county, state, or court  
13 supervision. The court may also collect benefits paid by the  
14 government of the United States for the cost of care of the  
15 juvenile. Money collected for juveniles placed with or committed to  
16 the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** or a  
17 county juvenile agency shall be accounted for and reported on an  
18 individual basis. In cases of delinquent accounts, the court may  
19 also enter an order to intercept state tax refunds or the federal  
20 income tax refund of a child, parent, guardian, or custodian and  
21 initiate the necessary offset proceedings in order to recover the  
22 cost of care or service. The court shall send to the person who is  
23 the subject of the intercept order advance written notice of the  
24 proposed offset. The notice shall include notice of the opportunity  
25 to contest the offset on the grounds that the intercept is not  
26 proper because of a mistake of fact concerning the amount of the  
27 delinquency or the identity of the person subject to the order. The

1 court shall provide for the prompt reimbursement of an amount  
2 withheld in error or an amount found to exceed the delinquent  
3 amount.

4 (8) If the court appoints an attorney to represent a juvenile,  
5 an order entered under this section may require the juvenile or  
6 person responsible for the juvenile's support, or both, to  
7 reimburse the court for attorney fees.

8 (9) An order directed to a person responsible for the  
9 juvenile's support under this section is not binding on the person  
10 unless an opportunity for a hearing has been given and until a copy  
11 of the order is served on the person, personally or by first-class  
12 mail to the person's last known address.

13 (10) If a juvenile is placed on probation and committed under  
14 subsection (3) or (4) to an institution or agency described in the  
15 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to  
16 803.309, the court shall retain jurisdiction over the juvenile  
17 while the juvenile is on probation and committed to that  
18 institution or agency.

19 (11) If the court has retained jurisdiction over a juvenile  
20 under subsection (10), the court shall conduct an annual review of  
21 the services being provided to the juvenile, the juvenile's  
22 placement, and the juvenile's progress in that placement. In  
23 conducting this review, the court shall examine the juvenile's  
24 annual report prepared under section 3 of the juvenile facilities  
25 act, 1988 PA 73, MCL 803.223. The court may order changes in the  
26 juvenile's placement or treatment plan including, but not limited  
27 to, committing the juvenile to the jurisdiction of the department

1 of corrections, based on the review.

2 (12) If an individual who is under the court's jurisdiction  
3 under section 4 of chapter XIIA of the probate code of 1939, 1939  
4 PA 288, MCL 712A.4, is convicted of a violation or conspiracy to  
5 commit a violation of section 7403(2)(a)(i) of the public health  
6 code, 1978 PA 368, MCL 333.7403, the court shall determine whether  
7 the best interests of the public would be served by imposing the  
8 sentence provided by law for an adult offender or by imposing a  
9 sentence of imprisonment for any term of years but not less than 25  
10 years. If the court determines by clear and convincing evidence  
11 that the best interests of the public would be served by imposing a  
12 sentence of imprisonment for any term of years but not less than 25  
13 years, the court may impose that sentence. In making its  
14 determination, the court shall use the criteria specified in  
15 subsection (3) to the extent they apply.

16 (13) If the defendant is sentenced for an offense other than a  
17 listed offense as defined in section ~~2(d)(i)~~ **2(E)(i)** to ~~(ix)~~ **(x)** and  
18 ~~(xi)~~ **(xii)** to **(xiii)** of the sex offenders registration act, 1994 PA  
19 295, MCL 28.722, the court shall determine if the offense is a  
20 violation of a law of this state or a local ordinance of a  
21 municipality of this state that by its nature constitutes a sexual  
22 offense against an individual who is less than 18 years of age. If  
23 so, the conviction is for a listed offense as defined in section  
24 ~~2(d)(x)~~ **2(E)(xi)** of the sex offenders registration act, 1994 PA 295,  
25 MCL 28.722, and the court shall include the basis for that  
26 determination on the record and include the determination in the  
27 judgment of sentence.



1           (14) When sentencing a person convicted of a misdemeanor  
2 involving the illegal delivery, possession, or use of alcohol or a  
3 controlled substance or a felony, the court shall examine the  
4 presentence investigation report and determine if the person being  
5 sentenced is licensed or registered under article 15 of the public  
6 health code, 1978 PA 368, MCL 333.16101 to 333.18838. The court  
7 shall also examine the court file and determine if a report of the  
8 conviction upon which the person is being sentenced has been  
9 forwarded to the department of consumer and industry services as  
10 provided in section 16a. If the report has not been forwarded to  
11 the department of consumer and industry services, the court shall  
12 order the clerk of the court to immediately prepare and forward the  
13 report as provided in section 16a.