

# SENATE BILL No. 1383

November 27, 2012, Introduced by Senators JONES, KAHN and ROBERTSON and referred to the Committee on Insurance.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
(MCL 760.1 to 777.69) by adding sections 32 and 33 to chapter IX.

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

CHAPTER IX

1  
2           SEC. 32. (1) BEGINNING JANUARY 1, 2014, IF A DEFENDANT IS  
3 CONVICTED OF VIOLATING SECTION 316 OF THE MICHIGAN PENAL CODE, 1931  
4 PA 328, MCL 750.316, AND THE DEFENDANT WAS UNDER 18 YEARS OF AGE AT  
5 THE TIME HE OR SHE COMMITTED THE VIOLATION, THE PROSECUTING  
6 ATTORNEY MAY FILE A MOTION WITH THE COURT REQUESTING THAT THE  
7 DEFENDANT BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT THE  
8 POSSIBILITY OF PAROLE. THE PROSECUTING ATTORNEY SHALL FILE THE  
9 MOTION WITHIN 14 DAYS AFTER THE DEFENDANT IS CONVICTED OF THE  
10 VIOLATION. THE MOTION SHALL SPECIFY THE GROUNDS ON WHICH THE  
11 PROSECUTING ATTORNEY IS REQUESTING THE COURT TO IMPOSE A SENTENCE  
12 OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE. IF THE

1 PROSECUTING ATTORNEY FAILS TO FILE THE MOTION WITHIN THE 14-DAY  
2 PERIOD, THE COURT SHALL SENTENCE THE DEFENDANT TO IMPRISONMENT FOR  
3 LIFE WITH PAROLE ELIGIBILITY AFTER THE DEFENDANT HAS SERVED 45  
4 YEARS OF THAT TERM OF IMPRISONMENT.

5 (2) IF THE PROSECUTING ATTORNEY FILES A MOTION UNDER  
6 SUBSECTION (1) REQUESTING THAT THE DEFENDANT BE SENTENCED TO  
7 IMPRISONMENT FOR LIFE WITHOUT PAROLE ELIGIBILITY, THE DEFENDANT  
8 SHALL FILE A RESPONSE TO THE PROSECUTION'S MOTION WITHIN 14 DAYS  
9 AFTER RECEIVING NOTICE OF THE MOTION. THE RESPONSE SHALL SPECIFY  
10 THE BASIS ON WHICH THE DEFENDANT BELIEVES THE PROPER SENTENCE  
11 SHOULD BE IMPRISONMENT FOR LIFE WITH PAROLE ELIGIBILITY AFTER THE  
12 DEFENDANT HAS SERVED 45 YEARS OF THAT TERM OF IMPRISONMENT.

13 (3) IF THE PROSECUTING ATTORNEY FILES A MOTION UNDER  
14 SUBSECTION (1), THE COURT SHALL CONDUCT A HEARING ON THE MOTION. AT  
15 THE HEARING, THE TRIAL COURT SHALL CONSIDER THE AGGRAVATING AND  
16 MITIGATING FACTORS SET FORTH IN THIS SECTION.

17 (4) AGGRAVATING FACTORS FOR CONSIDERATION BY THE COURT UNDER  
18 SUBSECTION (3) INCLUDE, BUT ARE NOT LIMITED TO, ALL OF THE  
19 FOLLOWING:

20 (A) THE DEFENDANT COMMITTED THE MURDER BY INTENTIONALLY  
21 KILLING THE VICTIM WHILE COMMITTING OR ATTEMPTING TO COMMIT ANY OF  
22 THE CRIMES LISTED IN SECTION 316 OF THE MICHIGAN PENAL CODE, 1931  
23 PA 328, MCL 750.316.

24 (B) THE DEFENDANT COMMITTED THE MURDER BY THE UNLAWFUL  
25 DETONATION OF AN EXPLOSIVE WITH THE INTENT TO INJURE ANY PERSON OR  
26 TO DAMAGE PROPERTY.

27 (C) THE DEFENDANT COMMITTED THE MURDER BY LYING IN WAIT.

1 (D) THE DEFENDANT WAS HIRED TO KILL ANY INDIVIDUAL.

2 (E) THE DEFENDANT HIRED ANOTHER PERSON TO KILL ANY INDIVIDUAL.

3 (F) THE VICTIM OF THE VIOLATION WAS A CORRECTIONS EMPLOYEE,  
4 PROBATION OFFICER, PAROLE OFFICER, COMMUNITY CORRECTIONS WORKER,  
5 HOME DETENTION OFFICER, JUVENILE COURT OFFICIAL, FIRE FIGHTER,  
6 JUDGE, PROSECUTOR, OR LAW ENFORCEMENT OFFICER, AND EITHER OF THE  
7 FOLLOWING APPLIES:

8 (i) THE VICTIM WAS ACTING IN THE COURSE OF HIS OR HER DUTY.

9 (ii) THE VIOLATION WAS MOTIVATED BY AN ACT THE VICTIM PERFORMED  
10 WHILE ACTING IN THE COURSE OF HIS OR HER DUTY.

11 (G) THE DEFENDANT WAS PREVIOUSLY CONVICTED OF ANOTHER MURDER.

12 (H) THE DEFENDANT, AT ANY OTHER TIME, COMMITTED ANOTHER MURDER  
13 REGARDLESS OF WHETHER THE DEFENDANT HAS BEEN CONVICTED OF THAT  
14 MURDER.

15 (I) ANY OF THE FOLLOWING APPLIED AT THE TIME THE VIOLATION WAS  
16 COMMITTED:

17 (i) THE DEFENDANT WAS IN THE CUSTODY OF THE DEPARTMENT OF  
18 CORRECTIONS OR A COUNTY SHERIFF.

19 (ii) THE DEFENDANT WAS ON PROBATION OR PAROLE.

20 (iii) THE DEFENDANT WAS UNDER THE JURISDICTION OF THE COURT  
21 UNDER CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL  
22 712A.1 TO 712A.32.

23 (J) THE DEFENDANT DISMEMBERED THE VICTIM.

24 (K) THE DEFENDANT TORTURED THE VICTIM OR BURNED OR MUTILATED  
25 THE VICTIM WHILE HE OR SHE WAS ALIVE.

26 (L) THE VICTIM WAS UNDER 13 YEARS OF AGE WHEN THE VIOLATION WAS  
27 COMMITTED.

1 (M) THE DEFENDANT COMMITTED ANY OF THE FOLLOWING VIOLATIONS  
2 AGAINST THE VICTIM DURING THE COURSE OF THE VIOLATION:

3 (i) A FELONY VIOLATION OF CHAPTER XI OF THE MICHIGAN PENAL  
4 CODE, 1931 PA 328, MCL 750.81 TO 750.90H.

5 (ii) A VIOLATION OF CHAPTER L OF THE MICHIGAN PENAL CODE, 1931  
6 PA 328, MCL 750.349 TO 750.350A.

7 (iii) CRIMINAL SEXUAL CONDUCT OR ASSAULT WITH INTENT TO COMMIT  
8 CRIMINAL SEXUAL CONDUCT IN VIOLATION OF SECTION 520B, 520C, 520D,  
9 520E, OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL  
10 750.520B, 750.520C, 750.520D, 750.520E, AND 750.520G.

11 (N) THE VICTIM WAS LISTED BY THE STATE OR KNOWN BY THE  
12 DEFENDANT TO BE A WITNESS AGAINST THE DEFENDANT AND THE MURDER WAS  
13 COMMITTED TO PREVENT THE VICTIM FROM TESTIFYING.

14 (O) THE DEFENDANT COMMITTED THE MURDER BY INTENTIONALLY  
15 DISCHARGING A FIREARM INTO AN INHABITED DWELLING OR FROM A VEHICLE.

16 (P) THE VICTIM OF THE MURDER WAS PREGNANT OR THE DEFENDANT  
17 BELIEVED OR SUSPECTED THAT THE VICTIM OF THE MURDER WAS PREGNANT.

18 (Q) ANY OTHER CIRCUMSTANCES THE COURT DETERMINES ARE  
19 APPROPRIATE FOR ITS CONSIDERATION.

20 (5) MITIGATING FACTORS FOR CONSIDERATION BY THE COURT UNDER  
21 SUBSECTION (3) INCLUDE, BUT ARE NOT LIMITED TO, ALL OF THE  
22 FOLLOWING:

23 (A) THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL  
24 CONDUCT.

25 (B) THE DEFENDANT WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR  
26 EMOTIONAL DISTURBANCE WHEN THE MURDER WAS COMMITTED.

27 (C) THE VICTIM WAS A PARTICIPANT IN OR CONSENTED TO THE

1 DEFENDANT'S CONDUCT.

2 (D) THE DEFENDANT WAS AN ACCOMPLICE IN A MURDER COMMITTED BY  
3 ANOTHER PERSON AND THE DEFENDANT'S PARTICIPATION WAS RELATIVELY  
4 MINOR.

5 (E) THE DEFENDANT ACTED UNDER THE SUBSTANTIAL DOMINATION OF  
6 ANOTHER PERSON.

7 (F) THE DEFENDANT'S CAPACITY TO APPRECIATE THE CRIMINALITY OF  
8 HIS OR HER CONDUCT OR TO CONFORM THAT CONDUCT TO THE REQUIREMENTS  
9 OF LAW WAS SUBSTANTIALLY IMPAIRED AS A RESULT OF MENTAL ILLNESS OR  
10 MENTAL RETARDATION.

11 (G) THE DEFENDANT'S AGE, FAMILY CIRCUMSTANCES, OR MENTAL  
12 DEVELOPMENT SUBSTANTIALLY AFFECTED THE DEFENDANT'S ABILITY TO  
13 APPRECIATE THE CONSEQUENCES OF HIS OR HER ACTIONS.

14 (H) ANY OTHER CIRCUMSTANCES THE COURT DETERMINES ARE  
15 APPROPRIATE FOR ITS CONSIDERATION.

16 (6) THE HEARING UNDER SUBSECTION (3) SHALL BE CONSIDERED A  
17 SENTENCING HEARING TO WHICH MRE 1101 APPLIES. AT THE HEARING THE  
18 COURT SHALL SPECIFY ON THE RECORD THE AGGRAVATING AND MITIGATING  
19 CIRCUMSTANCES CONSIDERED BY THE COURT AND THE COURT'S REASONS  
20 SUPPORTING THE SENTENCE IMPOSED. THE COURT MAY CONSIDER EVIDENCE  
21 PRESENTED AT TRIAL TOGETHER WITH ANY NEW EVIDENCE PRESENTED AT THE  
22 SENTENCING HEARING.

23 (7) A DEFENDANT SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT  
24 PAROLE ELIGIBILITY IS NOT SUBJECT TO SECTION 34 OF THE CORRECTIONS  
25 CODE OF 1953, 1953 PA 232, MCL 791.234, BUT IS SUBJECT TO SECTION  
26 44 OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.244.

27 SEC. 33. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE

1 PROCEDURES SET FORTH IN SECTION 32 OF THIS CHAPTER DO NOT APPLY TO  
2 ANY CASE THAT IS FINAL FOR PURPOSES OF APPEAL ON OR BEFORE JUNE 24,  
3 2012. A CASE IS FINAL FOR PURPOSES OF APPEAL UNDER THIS SECTION IF  
4 ANY OF THE FOLLOWING APPLY:

5 (A) THE TIME FOR FILING AN APPEAL IN THE STATE COURT OF  
6 APPEALS HAS EXPIRED.

7 (B) THE APPEAL IS FILED IN THE STATE COURT OF APPEALS AFTER  
8 THE TIME FOR FILING AN APPLICATION FOR LEAVE TO APPEAL IN THE STATE  
9 SUPREME COURT HAS EXPIRED.

10 (C) THE APPLICATION FOR LEAVE TO APPEAL IS FILED IN THE STATE  
11 SUPREME COURT AFTER THE APPLICATION FOR LEAVE TO APPEAL IS DENIED  
12 OR AFTER A TIMELY FILED MOTION FOR REHEARING IS DENIED.

13 (D) IF THE STATE SUPREME COURT HAS GRANTED LEAVE TO APPEAL,  
14 AFTER THE COURT RENDERS ITS DECISION OR AFTER A TIMELY FILED MOTION  
15 FOR REHEARING IS DENIED.

16 (2) IF THE STATE SUPREME COURT OR THE UNITED STATES SUPREME  
17 COURT FINDS THAT THE DECISION OF THE UNITED STATES SUPREME COURT IN  
18 MILLER V ALABAMA, UNITED STATES SUPREME COURT NO. 10-9649, DECIDED  
19 JUNE 25, 2012, APPLIES RETROACTIVELY TO DEFENDANTS WHO WERE UNDER  
20 THE AGE OF 18 AT THE TIME OF THEIR CRIMES AND THAT THE DECISION IS  
21 FINAL FOR APPELLATE PURPOSES, THE DETERMINATION OF WHETHER A  
22 SENTENCE OF IMPRISONMENT FOR LIFE FOR A VIOLATION OF SECTION 316 OF  
23 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.316, SHALL BE WITH OR  
24 WITHOUT PAROLE ELIGIBILITY SHALL BE MADE BY THE SENTENCING JUDGE OR  
25 HIS OR HER SUCCESSOR AS PROVIDED IN SECTION 32 OF THIS CHAPTER.

26 (3) IF THE UNITED STATES SUPREME COURT'S DECISION IN MILLER V  
27 ALABAMA IS HELD BY THE STATE SUPREME COURT OR BY THE UNITED STATES

1 SUPREME COURT TO APPLY RETROACTIVELY, THE PROSECUTING ATTORNEY FOR  
2 A COUNTY MAY FILE A MOTION TO RESENTENCE ANY DEFENDANT WHO WAS  
3 CONVICTED IN THAT COUNTY FOR A VIOLATION OF SECTION 316 OF THE  
4 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.316, WHOSE SENTENCE WOULD  
5 BE SUBJECT TO THAT DECISION.

6 (4) ANY MOTION UNDER SUBSECTION (3) SHALL BE FILED WITHIN 180  
7 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
8 SECTION OR WITHIN 60 DAYS AFTER A FINAL DETERMINATION BY THE STATE  
9 SUPREME COURT OR BY THE UNITED STATES SUPREME COURT THAT THE  
10 DECISION IN MILLER V ALABAMA IS TO BE APPLIED RETROACTIVELY,  
11 WHICHEVER IS LATER. IF THE PROSECUTING ATTORNEY FOR A COUNTY FILES  
12 A MOTION UNDER SUBSECTION (3), THE COURT SHALL HOLD A HEARING ON  
13 THE MOTION TO DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED  
14 OR RESENTENCED TO IMPRISONMENT FOR LIFE WITHOUT PAROLE ELIGIBILITY  
15 OR WITH PAROLE ELIGIBILITY AFTER THE DEFENDANT HAS SERVED 45 YEARS  
16 OF THAT TERM OF IMPRISONMENT. IF THE PROSECUTING ATTORNEY DOES NOT  
17 FILE A MOTION UNDER SUBSECTION (3) WITHIN THE TIME SET FORTH IN  
18 THIS SUBSECTION, THE DEFENDANT IS ELIGIBLE FOR PAROLE UNDER SECTION  
19 34 OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.234, AFTER  
20 HE OR SHE HAS SERVED 45 YEARS OF HIS OR HER TERM OF IMPRISONMENT.

21 (5) THE REQUIREMENTS FOR SENTENCING A JUVENILE UNDER SECTION  
22 32 OF THIS CHAPTER APPLY TO RESENTENCING A JUVENILE UNDER THIS  
23 SECTION.

24 Enacting section 1. This amendatory act does not take effect  
25 unless Senate Bill No. 1382

26 of the 96th Legislature is enacted into law.