

# SENATE BILL No. 989

June 11, 2014, Introduced by Senators PAPPAGEORGE, NOFS, JONES, BRANDENBURG, COLBECK, ROBERTSON, CASWELL, HUNE and MARLEAU 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:**

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.

1 (b) Assault with intent to commit murder in violation of  
2 section 83 of the Michigan penal code, 1931 PA 328, MCL 750.83.

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

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

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

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

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

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

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

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

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

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

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

27 (3) Unless a juvenile is required to be sentenced in the same

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

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

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

1 the sentencing guidelines.

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

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

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

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

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

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

1 that the best interests of the public would be served by imposing a  
2 sentence of imprisonment for any term of years but not less than 25  
3 years, the court may impose that sentence. In making its  
4 determination, the court shall use the criteria specified in  
5 subsection (3).

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

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

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

1 offset. The notice shall include notice of the opportunity to  
2 contest the offset on the grounds that the intercept is not proper  
3 because of a mistake of fact concerning the amount of the  
4 delinquency or the identity of the person subject to the order. The  
5 court shall provide for the prompt reimbursement of an amount  
6 withheld in error or an amount found to exceed the delinquent  
7 amount.

8 (8) ~~If~~**EXCEPT AS PROVIDED IN SUBSECTION (15), IF** the court  
9 appoints an attorney to represent a juvenile, an order entered  
10 under this section may require the juvenile or person responsible  
11 for the juvenile's support, or both, to reimburse the court for  
12 attorney fees.

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

18 (10) If a juvenile is placed on probation and committed under  
19 subsection (3) or (4) to an institution or agency described in the  
20 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to  
21 803.309, the court shall retain jurisdiction over the juvenile  
22 while the juvenile is on probation and committed to that  
23 institution or agency.

24 (11) If the court has retained jurisdiction over a juvenile  
25 under subsection (10), the court shall conduct an annual review of  
26 the services being provided to the juvenile, the juvenile's  
27 placement, and the juvenile's progress in that placement. In

1 conducting this review, the court shall examine the juvenile's  
2 annual report prepared under section 3 of the juvenile facilities  
3 act, 1988 PA 73, MCL 803.223. The court may order changes in the  
4 juvenile's placement or treatment plan including, but not limited  
5 to, committing the juvenile to the jurisdiction of the department  
6 of corrections, based on the review.

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

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



1 is for a listed offense as defined in section ~~2(d)(x)~~ **2(S)(vi)** of  
2 the sex offenders registration act, 1994 PA 295, MCL 28.722, and  
3 the court shall include the basis for that determination on the  
4 record and include the determination in the judgment of sentence.

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

19 (15) **THE COURT SHALL NOT ORDER THE JUVENILE'S PARENT, OR, IF**  
20 **THE PARENT IS MARRIED, THE PARENT'S SPOUSE WITH WHOM THE PARENT**  
21 **RESIDES, TO PAY REIMBURSEMENT UNDER THIS SECTION IF THE PARENT IS**  
22 **THE VICTIM OF THE OFFENSE FOR WHICH THE REIMBURSEMENT IS ORDERED.**

23 Enacting section 1. This amendatory act is retroactive and  
24 applies to orders to pay reimbursement entered before the effective  
25 date of this amendatory act.