

HOUSE BILL NO. 5941

March 22, 2022, Introduced by Reps. Yancey, Neeley, Brenda Carter, Cavanagh, Anthony, Aiyash, Sowerby, Hood, Tyrone Carter, Morse, Rogers, Kuppa, O'Neal, Whitsett and Jones and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 1 and 1b of chapter IX (MCL 769.1 and 769.1b),
section 1 as amended by 1999 PA 87 and section 1b as amended by
1998 PA 520; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX

2 Sec. 1. (1) A judge of a court having jurisdiction may
3 pronounce judgment against and pass sentence upon a person

1 convicted of an offense in that court. The sentence ~~shall~~**must** not
2 exceed the sentence prescribed by law. ~~The~~**Except as provided in**
3 **subsection (15), the** court shall sentence a juvenile convicted of
4 any of the following crimes in the same manner as an adult:

5 (a) ~~Arson of a dwelling~~**First degree arson** in violation of
6 section 72 of the Michigan penal code, 1931 PA 328, MCL 750.72.

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

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

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

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

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

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

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

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

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

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

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

29 (2) A person convicted of a felony or of a misdemeanor

1 punishable by imprisonment for more than 92 days ~~shall~~**must** not be
2 sentenced until the court has examined the court file and has
3 determined that the person's fingerprints have been taken.

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

24 (a) The seriousness of the alleged offense in terms of
25 community protection, including, but not limited to, the existence
26 of any aggravating factors recognized by the sentencing guidelines,
27 the use of a firearm or other dangerous weapon, and the impact on
28 any victim.

29 (b) The juvenile's culpability in committing the alleged

1 offense, including, but not limited to, the level of the juvenile's
2 participation in planning and carrying out the offense and the
3 existence of any aggravating or mitigating factors recognized by
4 the sentencing guidelines.

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

9 (d) The juvenile's programming history, including, but not
10 limited to, the juvenile's past willingness to participate
11 meaningfully in available programming.

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

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

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

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

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

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

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

1 collected ~~shall~~**must** be accounted for and reported to the county
2 board of commissioners. Collections to cover delinquent accounts or
3 to 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~~**must** be credited to the appropriate fund of the
8 county to offset the administrative cost of collections. The
9 balance of all amounts collected pursuant to an order entered under
10 this subsection ~~shall~~**must** be divided in the same ratio in which
11 the county, state, and federal government participate in the cost
12 of care outside the juvenile's own home and under county, state, or
13 court 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 health and human**
17 **services** or a county juvenile agency ~~shall~~**must** be accounted for
18 and reported on an individual basis. In cases of delinquent
19 accounts, the court may also enter an order to intercept state tax
20 refunds or the federal income tax refund of a child, parent,
21 guardian, or custodian and initiate the necessary offset
22 proceedings in order to recover the cost of care or service. The
23 court shall send to the person who is the subject of the intercept
24 order advance written notice of the proposed offset. The notice
25 ~~shall~~**must** include notice of the opportunity to contest the offset
26 on the grounds that the intercept is not proper because of a
27 mistake of fact concerning the amount of the delinquency or the
28 identity of the person subject to the order. The court shall
29 provide for the prompt reimbursement of an amount withheld in error

1 or an amount found to exceed the delinquent amount.

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

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

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

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

27 (12) If an individual who is under the court's jurisdiction
28 under section 4 of chapter XIIIA of the probate code of 1939, 1939
29 PA 288, MCL 712A.4, is convicted of a violation or conspiracy to

1 commit a violation of section 7403(2)(a)(i) of the public health
2 code, 1978 PA 368, MCL 333.7403, the court shall determine whether
3 the best interests of the public would be served by imposing the
4 sentence provided by law for an adult offender or by imposing a
5 sentence of imprisonment for any term of years but not less than 25
6 years. If the court determines by clear and convincing evidence
7 that the best interests of the public would be served by imposing a
8 sentence of imprisonment for any term of years but not less than 25
9 years, the court may impose that sentence. In making its
10 determination, the court shall use the criteria specified in
11 subsection (3) to the extent they apply.

12 (13) If the defendant is sentenced for an offense other than a
13 listed offense as defined in section ~~2(d)(i) to (ix) and (xi) to (xiii)~~
14 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722,
15 the court shall determine if the offense is a violation of a law of
16 this state or a local ordinance of a municipality of this state
17 that by its nature constitutes a sexual offense against an
18 individual who is less than 18 years of age. If so, the conviction
19 is for a listed offense as defined in section ~~2(d)(x)~~ 2 of the sex
20 offenders registration act, 1994 PA 295, MCL 28.722, and the court
21 shall include the basis for that determination on the record and
22 include the determination in the judgment of sentence.

23 (14) When sentencing a person convicted of a misdemeanor
24 involving the illegal delivery, possession, or use of alcohol or a
25 controlled substance or a felony, the court shall examine the
26 presentence investigation report and determine if the person being
27 sentenced is licensed or registered under article 15 of the public
28 health code, 1978 PA 368, MCL 333.16101 to 333.18838. The court
29 shall also examine the court file and determine if a report of the

1 conviction upon which the person is being sentenced has been
2 forwarded to the department of ~~consumer and industry services~~
3 **licensing and regulatory affairs** as provided in section 16a of this
4 **chapter**. If the report has not been forwarded to the department of
5 ~~consumer and industry services~~, **licensing and regulatory affairs**,
6 the court shall order the clerk of the court to immediately prepare
7 and forward the report as provided in section 16a of this chapter.

8 (15) The court shall not sentence an individual who was less
9 than 18 years of age when the crime was committed to imprisonment
10 for life without parole eligibility.

11 Sec. 1b. (1) If a juvenile is placed on probation and
12 committed under section 1(3) or (4) of this chapter to an
13 institution or agency described in the youth rehabilitation
14 services act, 1974 PA 150, MCL 803.301 to 803.309, the court shall
15 conduct a review hearing to determine whether the juvenile has been
16 rehabilitated and whether the juvenile presents a serious risk to
17 public safety. If the court determines that the juvenile has not
18 been rehabilitated or that the juvenile presents a serious risk to
19 public safety, jurisdiction over the juvenile ~~shall~~ **may** be
20 continued or the court may commit the juvenile to the department of
21 corrections as provided in this section. In making this
22 determination, the court shall consider the following:

23 (a) The extent and nature of the juvenile's participation in
24 education, counseling, or work programs.

25 (b) The juvenile's willingness to accept responsibility for
26 prior behavior.

27 (c) The juvenile's behavior in his or her current placement.

28 (d) The juvenile's prior record and character and his or her
29 physical and mental maturity.

1 (e) The juvenile's potential for violent conduct as
2 demonstrated by prior behavior.

3 (f) The recommendations of the institution or agency charged
4 with the juvenile's care for the juvenile's release or continued
5 custody.

6 (g) Other information the prosecuting attorney or juvenile may
7 submit.

8 (2) A review hearing ~~shall~~**must** be scheduled and held unless
9 adjourned for good cause as near as possible to, but before, the
10 juvenile's nineteenth birthday. If the institution or agency to
11 which the juvenile was committed believes that the juvenile has
12 been rehabilitated and that the juvenile does not present a serious
13 risk to public safety, that institution or agency may petition the
14 court to conduct a review hearing at any time before the juvenile
15 becomes 19 years of age or, if the court has continued jurisdiction
16 under subsection (1), at any time before the juvenile becomes 21
17 years of age.

18 (3) Not less than 14 days before a review hearing is to be
19 conducted, the prosecuting attorney, juvenile, and, if addresses
20 are known, the juvenile's parent or guardian ~~shall~~**must** be
21 notified. The notice ~~shall~~**must** state that the court may extend
22 jurisdiction over the juvenile and ~~shall~~**must** advise the juvenile
23 and the juvenile's parent or guardian of the right to legal
24 counsel. If legal counsel has not been retained or appointed to
25 represent the juvenile, the court shall appoint legal counsel and
26 may assess the cost of providing counsel as costs against the
27 juvenile or those responsible for the juvenile's support, or both,
28 if the persons to be assessed are financially able to comply.

29 (4) The institution or agency charged with the care of the

1 juvenile shall prepare commitment reports as provided in section 5
2 of the juvenile facilities act, 1988 PA 73, MCL 803.225, for use by
3 the court at a review hearing held under this section.

4 (5) The court shall conduct a final review of the juvenile's
5 probation and commitment under section 1(3) or (4) of this chapter
6 not less than 3 months before the end of the period that the
7 juvenile is on probation and committed to the institution or
8 agency. If the court determines at this review that the best
9 interests of the public would be served by imposing any other
10 sentence provided by law for an adult offender, the court may,
11 **except as provided in subsection (8)**, impose the sentence. In
12 making its determination, the court shall consider the criteria
13 specified in subsection (1) and all of the following criteria:

14 (a) The effect of treatment on the juvenile's rehabilitation.

15 (b) Whether the juvenile is likely to be dangerous to the
16 public if released.

17 (c) The best interests of the public welfare and the
18 protection of public security.

19 (6) Not less than 14 days before a final review hearing under
20 subsection (5) is to be conducted, the prosecuting attorney,
21 juvenile, and, if addresses are known, the juvenile's parent or
22 guardian ~~shall~~**must** be notified. The notice ~~shall~~**must** state that
23 the court may impose a sentence upon the juvenile under subsection
24 (5) and ~~shall~~**must** advise the juvenile and the juvenile's parent or
25 guardian of the right to legal counsel. If legal counsel has not
26 been retained or appointed to represent the juvenile, the court
27 shall appoint legal counsel and may assess the cost of providing
28 counsel as costs against the juvenile or those responsible for the
29 juvenile's support, or both, if the persons to be assessed are

1 financially able to comply.

2 (7) After a sentence is imposed under subsection (1) or (5),
3 the juvenile ~~shall~~**must** receive credit for the period of time
4 served on probation and committed to an agency or institution under
5 section 1(3) or (4) of this chapter.

6 **(8) The court shall not sentence an individual who was less**
7 **than 18 years of age when the crime was committed to imprisonment**
8 **for life without parole eligibility.**

9 Enacting section 1. Sections 25 and 25a of chapter IX of the
10 code of criminal procedure, 1927 PA 175, MCL 769.25 and 769.25a,
11 are repealed.

12 Enacting section 2. This amendatory act takes effect 90 days
13 after the date it is enacted into law.

14 Enacting section 3. This amendatory act does not take effect
15 unless all of the following bills of the 101st Legislature are
16 enacted into law:

17 (a) Senate Bill No.____ or House Bill No. 5943 (request no.
18 01563'21 a).

19 (b) Senate Bill No.____ or House Bill No. 5944 (request no.
20 01563'21 b).

21 (c) Senate Bill No.____ or House Bill No. 5942 (request no.
22 01563'21 c).