

HOUSE BILL NO. 4999

June 15, 2021, Introduced by Reps. Jones, Whitsett, O'Neal, Neeley, Brenda Carter, Coleman, Rabhi, Bolden, Tyrone Carter, Aiyash and Rogers and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 10, 11, and 12 of chapter IX (MCL 769.10, 769.11, and 769.12), sections 10 and 11 as amended by 2006 PA 655 and section 12 as amended by 2012 PA 319.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX
2 Sec. 10. (1) ~~If~~ **Subject to subsections (3) and (4),** if a
3 person has been convicted of a felony or an attempt to commit a

1 felony, whether the conviction occurred in this state or would have
2 been for a felony or attempt to commit a felony in this state if
3 obtained in this state, and that person commits a subsequent felony
4 within this state, the person ~~shall~~**must** be punished upon
5 conviction of the subsequent felony and ~~sentencing~~**sentenced** under
6 section 13 of this chapter as follows:

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

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

19 (c) If the subsequent felony is a major controlled substance
20 offense, the person ~~shall~~**must** be punished as provided by part 74
21 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

22 (2) If the court pursuant to this section imposes a sentence
23 of imprisonment for any term of years, the court shall fix the
24 length of both the minimum and maximum sentence within any
25 specified limits in terms of years or a fraction of a year and the
26 sentence so imposed ~~shall~~**must** be considered an indeterminate
27 sentence. The court shall not fix a maximum sentence that is less
28 than the maximum term for a first conviction.

29 (3) A conviction ~~shall~~**must** not be used to enhance a sentence

1 under this section if that conviction is used to enhance a sentence
 2 under a statute that prohibits use of the conviction for further
 3 enhancement under this section.

4 **(4) A conviction must not be used to enhance a sentence under**
 5 **this section if that conviction was committed by a person who was**
 6 **less than 18 years of age and convicted in the same manner as an**
 7 **adult under section 2d of chapter XIIIA of the probate code of 1939,**
 8 **1939 PA 288, MCL 712A.2d. This subsection applies retroactively to**
 9 **cases that were final before the effective date of the amendatory**
 10 **act that added this subsection and to cases pending on and that**
 11 **become final after the effective date of the amendatory act that**
 12 **added this subsection.**

13 Sec. 11. (1) ~~If~~**Subject to subsections (3) and (4), if** a
 14 person has been convicted of any combination of 2 or more felonies
 15 or attempts to commit felonies, whether the convictions occurred in
 16 this state or would have been for felonies or attempts to commit
 17 felonies in this state if obtained in this state, and that person
 18 commits a subsequent felony within this state, the person ~~shall~~
 19 **must** be punished upon conviction of the subsequent felony and
 20 ~~sentencing~~**sentenced** under section 13 of this chapter as follows:

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

27 (b) If the subsequent felony is punishable upon a first
 28 conviction by imprisonment for life, the court, except as otherwise
 29 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~~**must** be punished as provided by part 74
4 of the 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 sentence within any
8 specified limits in terms of years or a fraction of a year, and the
9 sentence so imposed ~~shall~~**must** 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~~**must** not be used to enhance a sentence
13 under this section if that conviction is used to enhance a sentence
14 under a statute that prohibits use of the conviction for further
15 enhancement under this section.

16 **(4) A conviction must not be used to enhance a sentence under**
17 **this section if that conviction was committed by a person who was**
18 **less than 18 years of age and convicted in the same manner as an**
19 **adult under section 2d of chapter XIIIA of the probate code of 1939,**
20 **1939 PA 288, MCL 712A.2d. This subsection applies retroactively to**
21 **cases that were final before the effective date of the amendatory**
22 **act that added this subsection and to cases pending on and that**
23 **become final after the effective date of the amendatory act that**
24 **added this subsection.**

25 Sec. 12. (1) ~~If~~**Subject to subsections (3) and (4),** if a
26 person has been convicted of any combination of 3 or more felonies
27 or attempts to commit felonies, whether the convictions occurred in
28 this state or would have been for felonies or attempts to commit
29 felonies in this state if obtained in this state, and that person

1 commits a subsequent felony within this state, the person ~~shall~~
 2 **must** be punished upon conviction of the subsequent felony and
 3 ~~sentencing~~**sentenced** under section 13 of this chapter as follows:

4 (a) If the subsequent felony is a serious crime or a
 5 conspiracy to commit a serious crime, and 1 or more of the prior
 6 felony convictions are listed prior felonies, the court shall
 7 sentence the person to imprisonment for not less than 25 years. Not
 8 more than 1 conviction arising out of the same transaction ~~shall~~
 9 **must** be considered a prior felony conviction for the purposes of
 10 this subsection only.

11 (b) If the subsequent felony is punishable upon a first
 12 conviction by imprisonment for a maximum term of 5 years or more or
 13 for life, the court, except as otherwise provided in this section
 14 or section 1 of chapter XI, may sentence the person to imprisonment
 15 for life or for a lesser term.

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

21 (d) If the subsequent felony is a major controlled substance
 22 offense, the person ~~shall~~**must** be punished as provided by part 74
 23 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

24 (2) If the court imposes a sentence of imprisonment for any
 25 term of years under this section, the court shall fix the length of
 26 both the minimum and maximum sentence within any specified limits
 27 in terms of years or a fraction of a year, and the sentence so
 28 imposed ~~shall~~**must** be considered an indeterminate sentence. The
 29 court shall not fix a maximum sentence that is less than the

1 maximum term for a first conviction.

2 (3) A conviction ~~shall~~**must** not be used to enhance a sentence
3 under this section if that conviction is used to enhance a sentence
4 under a statute that prohibits use of the conviction for further
5 enhancement under this section.

6 (4) **A conviction must not be used to enhance a sentence under
7 this section if that conviction was committed by a person who was
8 less than 18 years of age and convicted in the same manner as an
9 adult under section 2d of chapter XIIA of the probate code of 1939,
10 1939 PA 288, MCL 712A.2d. This subsection applies retroactively to
11 cases that were final before the effective date of the amendatory
12 act that added this subsection and to cases pending on and that
13 become final after the effective date of the amendatory act that
14 added this subsection.**

15 (5) ~~(4)~~—An offender sentenced under this section or section 10
16 or 11 of this chapter for an offense other than a major controlled
17 substance offense is not eligible for parole until expiration of
18 the following:

19 (a) For a prisoner other than a prisoner subject to
20 disciplinary time, the minimum term fixed by the sentencing judge
21 at the time of sentence unless the sentencing judge or a successor
22 gives written approval for parole at an earlier date authorized by
23 law.

24 (b) For a prisoner subject to disciplinary time, the minimum
25 term fixed by the sentencing judge.

26 (6) ~~(5)~~—This section and sections 10 and 11 of this chapter
27 are not in derogation of other provisions of law that permit or
28 direct the imposition of a consecutive sentence for a subsequent
29 felony.

1 (7) ~~(6)~~—As used in this section:

2 (a) "Listed prior felony" means a violation or attempted
3 violation of any of the following:

4 (i) Section 602a(4) or (5) or 625(4) of the Michigan vehicle
5 code, 1949 PA 300, MCL 257.602a and 257.625.

6 (ii) Article 7 of the public health code, 1978 PA 368, MCL
7 333.7101 to 333.7545, that is punishable by imprisonment for more
8 than 4 years.

9 (iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or
10 (3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a,
11 234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i,
12 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the
13 Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83,
14 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a,
15 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a,
16 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a,
17 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c,
18 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

19 (iv) A second or subsequent violation or attempted violation of
20 section 227b of the Michigan penal code, 1931 PA 328, MCL 750.227b.

21 (v) Section 2a of 1968 PA 302, MCL 752.542a.

22 (b) "Prisoner subject to disciplinary time" means that term as
23 defined in section 34 of 1893 PA 118, MCL 800.34.

24 (c) "Serious crime" means an offense against a person in
25 violation of section 83, 84, 86, 88, 89, 317, 321, 349, 349a, 350,
26 397, 520b, 520c, 520d, 520g(1), 529, or 529a of the Michigan penal
27 code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89,
28 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
29 750.520c, 750.520d, 750.520g, 750.529, and 750.529a.