



SENATE BILL No. 281

February 14, 1995, Introduced by Senator VAN REGENMORTER
and referred to the Committee on Judiciary.

A bill to amend section 1 of chapter IX of Act No. 175 of
the Public Acts of 1927, entitled as amended
"The code of criminal procedure,"
as amended by Act No. 85 of the Public Acts of 1993, being sec-
tion 769.1 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1 of chapter IX of Act No. 175 of the
2 Public Acts of 1927, as amended by Act No. 85 of the Public Acts
3 of 1993, being section 769.1 of the Michigan Compiled Laws, is
4 amended to read as follows:

CHAPTER IX

6 Sec. 1. (1) A judge of a court having jurisdiction ~~is~~
7 ~~authorized and empowered to~~ MAY pronounce judgment against and
8 pass sentence upon a person convicted of an offense in that

1 court. The sentence shall not be in excess of the sentence
2 prescribed by law.

3 (2) The sentencing of a person convicted of a felony or a
4 misdemeanor punishable by imprisonment for more than 92 days
5 shall not occur until the court has examined the court file and
6 has determined that the fingerprints of the person have been
7 taken.

8 (3) A judge of a court having jurisdiction over a juvenile
9 CONVICTED OF AN OFFENSE OTHER THAN FIRST DEGREE MURDER OR A VIO-
10 LATION OR CONSPIRACY TO COMMIT A VIOLATION OF SECTION
11 7401(2)(A)(i) OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE
12 PUBLIC ACTS OF 1978, BEING SECTION 333.7401 OF THE MICHIGAN
13 COMPILED LAWS, shall conduct a hearing at the juvenile's sentenc-
14 ing to determine if the best interests of the juvenile and the
15 public would be served by placing the juvenile on probation and
16 committing the juvenile to a state institution or agency
17 described in the youth rehabilitation services act, Act No. 150
18 of the Public Acts of 1974, being sections 803.301 to 803.309 of
19 the Michigan Compiled Laws, or by imposing any other sentence
20 provided by law for an adult offender. IF THE JUVENILE WAS CON-
21 VICTED OF FIRST DEGREE MURDER OR A VIOLATION OR CONSPIRACY TO
22 COMMIT A VIOLATION OF SECTION 7401(2)(A)(i) OF ACT NO. 368 OF THE
23 PUBLIC ACTS OF 1978, THE JUDGE SHALL DETERMINE AT THE HEARING IF
24 THE BEST INTERESTS OF THE JUVENILE AND THE PUBLIC WOULD BE SERVED
25 BY PLACING THE JUVENILE ON PROBATION AND COMMITTING THE JUVENILE
26 TO A STATE INSTITUTION OR AGENCY DESCRIBED IN ACT NO. 150 OF THE
27 PUBLIC ACTS OF 1974, BY IMPOSING THE SENTENCE PROVIDED BY LAW FOR

1 AN ADULT OFFENDER, OR BY IMPOSING A SENTENCE OF ANY TERM OF YEARS
2 WITH A MANDATORY MINIMUM TERM OF NOT LESS THAN 25 YEARS. The
3 rules of evidence do not apply to a hearing under this
4 subsection. In making this determination, the judge shall con-
5 sider the following criteria giving each weight as appropriate to
6 the circumstances:

7 (a) The prior record and character of the juvenile, his or
8 her physical and mental maturity, and his or her pattern of
9 living.

10 (b) The seriousness and the circumstances of the offense.

11 (c) Whether the offense is part of a repetitive pattern of
12 offenses ~~which~~ THAT would lead to 1 of the following
13 determinations:

14 (i) The juvenile is not amenable to treatment.

15 (ii) ~~That despite~~ DESPITE the juvenile's potential for
16 treatment, the nature of the juvenile's delinquent behavior is
17 likely to disrupt the rehabilitation of other juveniles in the
18 treatment program.

19 (d) Whether, despite the juvenile's potential for treatment,
20 the nature of the juvenile's delinquent behavior is likely to
21 render the juvenile dangerous to the public if released at the
22 age of 21.

23 (e) Whether the juvenile is more likely to be rehabilitated
24 by the services and facilities available in adult programs and
25 procedures than in juvenile programs and procedures.

26 (f) What is in the best interests of the public welfare and
27 the protection of the public security.

1 (4) With the consent of the prosecutor and the defendant,
2 the court may waive the hearing required under subsection (3).
3 If the court waives the hearing required under subsection (3),
4 the court may place the juvenile on probation and commit the
5 juvenile to a state institution or agency described in Act
6 No. 150 of the Public Acts of 1974, but shall not impose any
7 other sentence provided by law for an adult offender OR BY
8 SUBSECTION (3) FOR A JUVENILE CONVICTED OF FIRST DEGREE MURDER OR
9 A VIOLATION OR CONSPIRACY TO COMMIT A VIOLATION OF SECTION
10 7401(2)(A)(i) OF ACT NO. 368 OF THE PUBLIC ACTS OF 1978.

11 (5) The court shall state on the record the court's findings
12 of fact and conclusions of law for the probation and commitment
13 decision or sentencing decision made under subsection (3). If a
14 juvenile is committed under subsection (3) to a state institution
15 or agency described in Act No. 150 of the Public Acts of 1974, a
16 transcript of the court's findings shall be sent to the depart-
17 ment of social services.

18 (6) If a juvenile is committed under subsection (3) or (4)
19 to a state institution or agency described in Act No. 150 of the
20 Public Acts of 1974, the written order of commitment shall con-
21 tain a provision for the reimbursement to the court by the juve-
22 nile or those responsible for the juvenile's support, or both,
23 for the cost of care or service. The amount of reimbursement
24 ordered shall be reasonable, taking into account both the income
25 and resources of the juvenile and those responsible for the
26 juvenile's support. The amount may be based upon the guidelines
27 and model schedule prepared under section 18(6) of chapter XIIIA

1 of Act No. 288 of the Public Acts of 1939, being section 712A.18
2 of the Michigan Compiled Laws. The reimbursement provision shall
3 apply during the entire period the juvenile remains in care out-
4 side the juvenile's own home and under court supervision. The
5 court shall provide for the collection of all amounts ordered to
6 be reimbursed, and the money collected shall be accounted for and
7 reported to the county board of commissioners. Collections to
8 cover delinquent accounts or to pay the balance due on reimburse-
9 ment orders may be made after a juvenile is released or dis-
10 charged from care outside the juvenile's own home and under court
11 supervision. Twenty-five percent of all amounts collected pursu-
12 ant to an order entered under this subsection shall be credited
13 to the appropriate fund of the county to offset the administra-
14 tive cost of collections. The balance of all amounts collected
15 pursuant to an order entered under this subsection shall be
16 divided in the same ratio in which the county, state, and federal
17 government participate in the cost of care outside the juvenile's
18 own home and under state or court supervision. The court may
19 also collect benefits paid by the government of the United States
20 for the cost of care of the juvenile. Money collected for juve-
21 niles placed with or committed to the state department of social
22 services shall be accounted for and reported on an individual
23 basis. In cases of delinquent accounts, the court may also enter
24 an order to intercept state tax refunds or the federal income tax
25 refund of a child, parent, guardian, or custodian and initiate
26 the necessary offset proceedings ~~in order~~ to recover the cost
27 of care or service. The court shall send to the person who is

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

9 (7) If the court appoints an attorney to represent a juve-
10 nile, an order entered under this section may require the juve-
11 nile or person responsible for the juvenile's support, or both,
12 to reimburse the court for attorney fees.

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

19 (9) If a juvenile is placed on probation and committed under
20 subsection (3) or (4) to a state institution or agency described
21 in Act No. 150 of the Public Acts of 1974, the court shall retain
22 jurisdiction over the juvenile while the juvenile is on probation
23 and committed to that state institution or agency.

24 (10) If the court has retained jurisdiction over a juvenile
25 under subsection (9), 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 pursuant to section 3 of the juvenile
3 facilities act, Act No. 73 of the Public Acts of 1988, being
4 section 803.223 of the Michigan Compiled Laws. The court may
5 order changes in the juvenile's placement or treatment plan based
6 on the review.

7 (11) At the time of sentencing a person convicted of a mis-
8 demeanor involving the illegal delivery, possession, or use of
9 alcohol or a controlled substance or a felony, the court shall
10 examine the presentence investigation report and determine if the
11 person being sentenced is licensed or registered under article 15
12 of the public health code, Act No. 368 of the Public Acts of
13 1978, being sections 333.16101 to 333.18838 of the Michigan
14 Compiled Laws. The court shall also examine the court file and
15 determine if a report of the conviction upon which the person is
16 being sentenced has been forwarded to the department of commerce
17 as provided in section 16a. If the report has not been forwarded
18 to the department of commerce, the court shall order the clerk of
19 the court to immediately prepare and forward the report as pro-
20 vided in section 16a.