

HOUSE BILL No. 4921

May 12, 2009, Introduced by Reps. Kowall, Johnson, Rick Jones, Scripps, Durhal, Nathan, Miller, Constan, Liss, Jackson, Tlaib, Geiss, Young, Stanley and Leland 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), as amended by 2006 PA 655.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IX

Sec. 10. (1) If a person has been convicted of a felony or an attempt to commit a felony, whether the conviction occurred in this state or would have been for a felony or attempt to commit a felony in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished upon conviction of the subsequent felony and sentencing under section 13 of this chapter as follows:

(a) If the subsequent felony is punishable upon a first conviction by imprisonment for a term less than life, the court,

1 except as otherwise provided in this section or section 1 of
2 chapter XI, may place the person on probation or sentence the
3 person to imprisonment for a maximum term that is not more than 1-
4 1/2 times the longest term prescribed for a first conviction of
5 that offense or for a lesser term.

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

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

14 (2) If the court ~~pursuant to this section~~ imposes a sentence
15 of imprisonment for any term of years **UNDER THIS SECTION**, the court
16 shall fix the length of both the minimum and maximum sentence
17 within any specified limits in terms of years or a fraction of a
18 year and the sentence so imposed shall be considered an
19 indeterminate sentence. The court shall not fix a maximum sentence
20 that is less than the maximum term for a first conviction.

21 (3) A conviction shall not be used to enhance a sentence under
22 this section if that conviction is used to enhance a sentence under
23 a statute that prohibits use of the conviction for further
24 enhancement under this section.

25 Sec. 11. (1) If a person has been convicted of any combination
26 of 2 or more felonies or attempts to commit felonies, whether the
27 convictions occurred in this state or would have been for felonies

1 or attempts to commit felonies in this state if obtained in this
2 state, and that person commits a subsequent felony within this
3 state, the person shall be punished upon conviction of the
4 subsequent felony and sentencing under section 13 of this chapter
5 as follows:

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

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

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

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

26 (3) A conviction shall not be used to enhance a sentence under
27 this section if that conviction is used to enhance a sentence under

1 a statute that prohibits use of the conviction for further
2 enhancement under this section.

3 Sec. 12. (1) If a person has been convicted of any combination
4 of 3 or more felonies or attempts to commit felonies, whether the
5 convictions occurred in this state or would have been for felonies
6 or attempts to commit felonies in this state if obtained in this
7 state, and that person commits a subsequent felony within this
8 state, the person shall be punished upon conviction of the
9 subsequent felony and sentencing under section 13 of this chapter
10 as follows:

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

24 (2) If the court ~~pursuant to this section~~ imposes a sentence
25 of imprisonment for any term of years **UNDER THIS SECTION**, the court
26 shall fix the length of both the minimum and maximum sentence
27 within any specified limits in terms of years or a fraction of a

1 year, and the sentence so imposed shall be considered an
2 indeterminate sentence. The court shall not fix a maximum sentence
3 that is less than the maximum term for a first conviction.

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

8 (4) ~~An~~ **EXCEPT AS OTHERWISE PROVIDED UNDER SECTION 34(7)(B),**
9 **(C), AND (D), (12), (13), (14), (15), (16), AND (17) OF THE**
10 **CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.234, AN** offender
11 sentenced under this section or section 10 or 11 of this chapter
12 ~~for an offense other than a major controlled substance offense is~~
13 not eligible for parole until expiration of the following:

14 (a) For a prisoner other than a prisoner subject to
15 disciplinary time, the minimum term fixed by the sentencing judge
16 at the time of sentence unless the sentencing judge or a successor
17 gives written approval for parole at an earlier date authorized by
18 law.

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

21 (5) This section and sections 10 and 11 of this chapter are
22 not in derogation of other provisions of law that permit or direct
23 the imposition of a consecutive sentence for a subsequent felony.

24 (6) As used in this section, "prisoner subject to disciplinary
25 time" means that term as defined in section 34 of 1893 PA 118, MCL
26 800.34.

27 Enacting section 1. This amendatory act does not take effect

1 unless all of the following bills of the 95th Legislature are
2 enacted into law:

3 (a) Senate Bill No.____ or House Bill No. 4920(request no.
4 01348'09).

5 (b) Senate Bill No.____ or House Bill No. 4919(request no.
6 01348'09 a).

7 (c) Senate Bill No.____ or House Bill No. 4918(request no.
8 01348'09 b).