

# SENATE BILL No. 173

January 29, 2009, Introduced by Senators BRATER, SWITALSKI, SCOTT, CLARK-COLEMAN, JACOBS, HUNTER, CLARKE and THOMAS 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.

**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~~ **EXCEPT AS PROVIDED IN SUBSECTION (15), THE** court shall sentence a juvenile convicted of any of the following crimes in the same manner as an adult:

1 (a) Arson of a dwelling in violation of section 72 of the  
2 Michigan penal code, 1931 PA 328, MCL 750.72.

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

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

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

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

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

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

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

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

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

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

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

25 (2) A person convicted of a felony or of a misdemeanor  
26 punishable by imprisonment for more than 92 days shall not be  
27 sentenced until the court has examined the court file and has

1 determined that the person's fingerprints have been taken.

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

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

27 (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

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

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

17 (7) If a juvenile is committed under subsection (3) or (4) to  
18 an institution or agency described in the youth rehabilitation  
19 services act, 1974 PA 150, MCL 803.301 to 803.309, the written  
20 order of commitment shall contain a provision for the reimbursement  
21 to the court by the juvenile or those responsible for the  
22 juvenile's support, or both, for the cost of care or service. The  
23 amount of reimbursement ordered shall be reasonable, taking into  
24 account both the income and resources of the juvenile and those  
25 responsible for the juvenile's support. The amount may be based  
26 upon the guidelines and model schedule prepared under section 18(6)  
27 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL

1 712A.18. The reimbursement provision applies during the entire  
2 period the juvenile remains in care outside the juvenile's own home  
3 and under court supervision. The court shall provide for the  
4 collection of all amounts ordered to be reimbursed, and the money  
5 collected shall be accounted for and reported to the county board  
6 of commissioners. Collections to cover delinquent accounts or to  
7 pay the balance due on reimbursement orders may be made after a  
8 juvenile is released or discharged from care outside the juvenile's  
9 own home and under court supervision. Twenty-five percent of all  
10 amounts collected pursuant to an order entered under this  
11 subsection shall be credited to the appropriate fund of the county  
12 to offset the administrative cost of collections. The balance of  
13 all amounts collected pursuant to an order entered under this  
14 subsection shall be divided in the same ratio in which the county,  
15 state, and federal government participate in the cost of care  
16 outside the juvenile's own home and under county, state, or court  
17 supervision. The court may also collect benefits paid by the  
18 government of the United States for the cost of care of the  
19 juvenile. Money collected for juveniles placed with or committed to  
20 the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** or a  
21 county juvenile agency shall be accounted for and reported on an  
22 individual basis. In cases of delinquent accounts, the court may  
23 also enter an order to intercept state tax refunds or the federal  
24 income tax refund of a child, parent, guardian, or custodian and  
25 initiate the necessary offset proceedings in order to recover the  
26 cost of care or service. The court shall send to the person who is  
27 the subject of the intercept order advance written notice of the

1 proposed offset. The notice shall include notice of the opportunity  
2 to contest the offset on the grounds that the intercept is not  
3 proper 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 the court appoints an attorney to represent a juvenile,  
9 an order entered under this section may require the juvenile or  
10 person responsible for the juvenile's support, or both, to  
11 reimburse the court for attorney fees.

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

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

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

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

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

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



1 ~~2(d)(x)~~ **2(E)(xi)** of the sex offenders registration act, 1994 PA 295,  
2 MCL 28.722, and the court shall include the basis for that  
3 determination on the record and include the determination in the  
4 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 as  
14 provided in section 16a. If the report has not been forwarded to  
15 the department of ~~consumer and industry services~~ **ENERGY, LABOR, AND**  
16 **ECONOMIC GROWTH**, the court shall order the clerk of the court to  
17 immediately prepare and forward the report as provided in section  
18 16a.

19 **(15) THE COURT SHALL NOT SENTENCE AN INDIVIDUAL WHO WAS LESS**  
20 **THAN 18 YEARS OF AGE WHEN THE CRIME WAS COMMITTED TO IMPRISONMENT**  
21 **FOR LIFE WITHOUT PAROLE ELIGIBILITY.**

22 Sec. 1b. (1) If a juvenile is placed on probation and  
23 committed under section 1(3) or (4) of this chapter to an  
24 institution or agency described in the youth rehabilitation  
25 services act, 1974 PA 150, MCL 803.301 to 803.309, the court shall  
26 conduct a review hearing to determine whether the juvenile has been  
27 rehabilitated and whether the juvenile presents a serious risk to

1 public safety. If the court determines that the juvenile has not  
2 been rehabilitated or that the juvenile presents a serious risk to  
3 public safety, jurisdiction over the juvenile shall be continued or  
4 the court may commit the juvenile to the department of corrections  
5 as provided in this section. In making this determination, the  
6 court shall consider the following:

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

9 (b) The juvenile's willingness to accept responsibility for  
10 prior behavior.

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

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

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

16 (f) The recommendations of the institution or agency charged  
17 with the juvenile's care for the juvenile's release or continued  
18 custody.

19 (g) Other information the prosecuting attorney or juvenile may  
20 submit.

21 (2) A review hearing shall be scheduled and held unless  
22 adjourned for good cause as near as possible to, but before, the  
23 juvenile's nineteenth birthday. If the institution or agency to  
24 which the juvenile was committed believes that the juvenile has  
25 been rehabilitated and that the juvenile does not present a serious  
26 risk to public safety, that institution or agency may petition the  
27 court to conduct a review hearing at any time before the juvenile

1 becomes 19 years of age or, if the court has continued jurisdiction  
2 under subsection (1), at any time before the juvenile becomes 21  
3 years of age.

4 (3) Not less than 14 days before a review hearing is to be  
5 conducted, the prosecuting attorney, juvenile, and, if addresses  
6 are known, the juvenile's parent or guardian shall be notified. The  
7 notice shall state that the court may extend jurisdiction over the  
8 juvenile and shall advise the juvenile and the juvenile's parent or  
9 guardian of the right to legal counsel. If legal counsel has not  
10 been retained or appointed to represent the juvenile, the court  
11 shall appoint legal counsel and may assess the cost of providing  
12 counsel as costs against the juvenile or those responsible for the  
13 juvenile's support, or both, if the persons to be assessed are  
14 financially able to comply.

15 (4) The institution or agency charged with the care of the  
16 juvenile shall prepare commitment reports as provided in section 5  
17 of the juvenile facilities act, 1988 PA 73, MCL 803.225, for use by  
18 the court at a review hearing held under this section.

19 (5) The court shall conduct a final review of the juvenile's  
20 probation and commitment under section 1(3) or (4) of this chapter  
21 not less than 3 months before the end of the period that the  
22 juvenile is on probation and committed to the institution or  
23 agency. If the court determines at this review that the best  
24 interests of the public would be served by imposing any other  
25 sentence provided by law for an adult offender, the court may,  
26 **EXCEPT AS PROVIDED IN SUBSECTION (8)**, impose the sentence. In  
27 making its determination, the court shall consider the criteria

1 specified in subsection (1) and all of the following criteria:

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

3 (b) Whether the juvenile is likely to be dangerous to the  
4 public if released.

5 (c) The best interests of the public welfare and the  
6 protection of public security.

7 (6) Not less than 14 days before a final review hearing under  
8 subsection (5) is to be conducted, the prosecuting attorney,  
9 juvenile, and, if addresses are known, the juvenile's parent or  
10 guardian shall be notified. The notice shall state that the court  
11 may impose a sentence upon the juvenile under subsection (5) and  
12 shall advise the juvenile and the juvenile's parent or guardian of  
13 the right to legal counsel. If legal counsel has not been retained  
14 or appointed to represent the juvenile, the court shall appoint  
15 legal counsel and may assess the cost of providing counsel as costs  
16 against the juvenile or those responsible for the juvenile's  
17 support, or both, if the persons to be assessed are financially  
18 able to comply.

19 (7) After a sentence is imposed under subsection (1) or (5),  
20 the juvenile shall receive credit for the period of time served on  
21 probation and committed to an agency or institution under section  
22 1(3) or (4) of this chapter.

23 **(8) THE COURT SHALL NOT SENTENCE AN INDIVIDUAL WHO WAS LESS**  
24 **THAN 18 YEARS OF AGE WHEN THE CRIME WAS COMMITTED TO IMPRISONMENT**  
25 **FOR LIFE WITHOUT PAROLE ELIGIBILITY.**