

# HOUSE BILL No. 6018

November 8, 2012, Introduced by Rep. Haveman and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
by amending section 1 of chapter IX (MCL 769.1), as amended by 1999  
PA 87, and by adding section 1m to chapter IX.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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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**  
**SECTIONS 34 AND 34D OF THE CORRECTIONS CODE OF 1953, 1953 PA 232,**  
**MCL 791.234 AND 791.234D, 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 (5), the court  
11 shall sentence the juvenile in the same manner as an adult unless  
12 the court determines by a preponderance of the evidence that the  
13 interests of the public would be best served by placing the  
14 juvenile on probation and committing the juvenile to an institution  
15 or agency described in the youth rehabilitation services act, 1974  
16 PA 150, MCL 803.301 to 803.309. The rules of evidence do not apply  
17 to a hearing under this subsection. In making the determination  
18 required under this subsection, the judge shall consider all of the  
19 following, giving greater weight to the seriousness of the alleged  
20 offense and the juvenile's prior record of delinquency:

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

26 (b) The juvenile's culpability in committing the alleged  
27 offense, including, but not limited to, the level of the juvenile's

1 participation in planning and carrying out the offense and the  
2 existence of any aggravating or mitigating factors recognized by  
3 the sentencing guidelines.

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

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

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

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

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

21 (5) If a juvenile is convicted of a violation or conspiracy to  
22 commit a violation of section 7403(2)(a)(i) of the public health  
23 code, 1978 PA 368, MCL 333.7403, the court shall determine whether  
24 the best interests of the public would be served by imposing the  
25 sentence provided by law for an adult offender, by placing the  
26 individual on probation and committing the individual to an  
27 institution or agency under subsection (3), or by imposing a

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

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

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

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

1 the grounds that the intercept is not proper because of a mistake  
2 of fact concerning the amount of the delinquency or the identity of  
3 the person subject to the order. The court shall provide for the  
4 prompt reimbursement of an amount withheld in error or an amount  
5 found to exceed the delinquent amount.

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

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

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

21 (11) If the court has retained jurisdiction over a juvenile  
22 under subsection (10), the court shall conduct an annual review of  
23 the services being provided to the juvenile, the juvenile's  
24 placement, and the juvenile's progress in that placement. In  
25 conducting this review, the court shall examine the juvenile's  
26 annual report prepared under section 3 of the juvenile facilities  
27 act, 1988 PA 73, MCL 803.223. The court may order changes in the

1 juvenile's placement or treatment plan including, but not limited  
2 to, committing the juvenile to the jurisdiction of the department  
3 of corrections, based on the review.

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

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



1 determination on the record and include the determination in the  
2 judgment of sentence.

3 (14) When sentencing a person convicted of a misdemeanor  
4 involving the illegal delivery, possession, or use of alcohol or a  
5 controlled substance or a felony, the court shall examine the  
6 presentence investigation report and determine if the person being  
7 sentenced is licensed or registered under article 15 of the public  
8 health code, 1978 PA 368, MCL 333.16101 to 333.18838. The court  
9 shall also examine the court file and determine if a report of the  
10 conviction upon which the person is being sentenced has been  
11 forwarded to the department of consumer and industry services as  
12 provided in section 16a. If the report has not been forwarded to  
13 the department of consumer and industry services, the court shall  
14 order the clerk of the court to immediately prepare and forward the  
15 report as provided in section 16a.

16 **SEC. 1M. (1) THIS SECTION APPLIES IF EITHER OF THE FOLLOWING**  
17 **OCCURS:**

18 **(A) ON OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**  
19 **ADDED THIS SECTION, A DEFENDANT IS CONVICTED OF AN OFFENSE FOR**  
20 **WHICH THE PENALTY IS LIFE WITHOUT POSSIBILITY OF PAROLE AND THE**  
21 **DEFENDANT WAS UNDER THE AGE OF 18 AT THE TIME HE OR SHE COMMITTED**  
22 **THE OFFENSE.**

23 **(B) BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED**  
24 **THIS SECTION, A DEFENDANT WAS CONVICTED OF AN OFFENSE FOR WHICH THE**  
25 **PENALTY IS LIFE WITHOUT POSSIBILITY OF PAROLE, THE DEFENDANT WAS**  
26 **UNDER THE AGE OF 18 AT THE TIME HE OR SHE COMMITTED THE OFFENSE,**  
27 **AND THE CASE IS STILL PENDING IN THE TRIAL COURT OR APPLICABLE TIME**

1 PERIODS FOR APPELLATE REVIEW BY STATE OR FEDERAL COURTS HAVE NOT  
2 EXPIRED.

3 (2) IF SUBSECTION (1) (A) APPLIES, NOT MORE THAN 14 DAYS AFTER  
4 A CONVICTION, THE PROSECUTING ATTORNEY MAY FILE A MOTION TO REQUEST  
5 A HEARING ON WHETHER THE MANDATORY SENTENCE OF LIFE WITHOUT  
6 POSSIBILITY OF PAROLE, OR LIFE WITH ELIGIBILITY FOR PAROLE AS  
7 PROVIDED IN SECTIONS 34 AND 34D OF THE CORRECTIONS CODE OF 1953,  
8 1953 PA 232, MCL 791.234 AND 791.234D, SHOULD BE IMPOSED.

9 (3) IF SUBSECTION (1) (B) APPLIES, NOT MORE THAN 28 DAYS AFTER  
10 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION OR  
11 MORE THAN 28 DAYS AFTER THE CASE IS RETURNED TO THE TRIAL COURT FOR  
12 SENTENCING UNDER THIS SECTION, WHICHEVER OCCURS LATER, THE  
13 PROSECUTING ATTORNEY MAY FILE A MOTION TO REQUEST A HEARING ON  
14 WHETHER THE MANDATORY SENTENCE OF LIFE WITHOUT POSSIBILITY OF  
15 PAROLE, OR LIFE WITH ELIGIBILITY FOR PAROLE AS PROVIDED IN SECTIONS  
16 34 AND 34D OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL  
17 791.234 AND 791.234D, SHOULD BE IMPOSED.

18 (4) THE PROSECUTING ATTORNEY SHALL SPECIFY THE BASIS FOR  
19 SEEKING A SENTENCE OF LIFE WITHOUT POSSIBILITY OF PAROLE. IF THE  
20 PROSECUTING ATTORNEY DOES NOT FILE A MOTION DESCRIBED UNDER  
21 SUBSECTION (2) OR (3), THE COURT SHALL IMPOSE A SENTENCE OF LIFE  
22 WITH ELIGIBILITY FOR PAROLE AS PROVIDED IN SECTIONS 34 AND 34D OF  
23 THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.234 AND  
24 791.234D.

25 (5) THE DEFENSE MAY FILE A RESPONSE TO THE PROSECUTING  
26 ATTORNEY'S MOTION WITHIN 21 DAYS AFTER RECEIPT OF A MOTION  
27 DESCRIBED IN SUBSECTION (2) OR (3) SPECIFYING THE BASIS FOR SEEKING

1 A SENTENCE OF LIFE WITH ELIGIBILITY FOR PAROLE AS PROVIDED IN  
2 SECTIONS 34 AND 34D OF THE CORRECTIONS CODE OF 1953, 1953 PA 232,  
3 MCL 791.234 AND 791.234D, INSTEAD OF LIFE WITHOUT POSSIBILITY OF  
4 PAROLE.

5 (6) AT A HEARING REQUESTED BY THE PROSECUTING ATTORNEY UNDER  
6 SUBSECTION (2) OR (3), THE COURT SHALL CONSIDER AGGRAVATING AND  
7 MITIGATING FACTORS, INCLUDING ALL OF THE FOLLOWING:

8 (A) WHETHER THE DEFENDANT WAS THE PRINCIPAL ACTOR OR INITIATED  
9 THE EVENTS THAT LED TO THE OFFENSE OR HAD A MORE LIMITED ROLE, SUCH  
10 AS AIDING OR ABETTING THE OFFENSE.

11 (B) WHETHER THE OFFENSE OCCURRED DURING AN ACT OF TERRORISM OR  
12 WAS PART OF A CONTINUING SERIES OF CRIMINAL ACTS.

13 (C) WHETHER THE DEFENDANT ACTED IN CONCERT WITH 2 OR MORE  
14 PERSONS IN COMMITTING THE OFFENSE.

15 (D) WHETHER THE DEFENDANT WAS CONVICTED OF MULTIPLE MURDERS OR  
16 THERE WERE MULTIPLE VICTIMS.

17 (E) WHETHER THE VICTIM WAS A MINOR, A VULNERABLE ADULT, OR AN  
18 OFFICER OR EMPLOYEE OF A LAW ENFORCEMENT OR CORRECTIONAL AGENCY, OR  
19 THE DEFENDANT EXPLOITED A VICTIM'S PHYSICAL DISABILITY, MENTAL  
20 DISABILITY, OR A DOMESTIC RELATIONSHIP.

21 (F) WHETHER THE VICTIM WAS TREATED WITH SADISM, TORTURE, OR  
22 EXCESSIVE BRUTALITY OR CONDUCT DESIGNED TO SUBSTANTIALLY INCREASE  
23 THE FEAR AND ANXIETY OF THE VICTIM.

24 (G) WHETHER THE VICTIM OF THE OFFENSE WAS A WITNESS TO A CRIME  
25 AND THE OFFENSE WAS COMMITTED TO PREVENT THE VICTIM FROM  
26 TESTIFYING.

27 (H) WHETHER THE DEFENDANT HAD NO SIGNIFICANT PRIOR CRIMINAL

1 CONDUCT BEFORE COMMITTING THE OFFENSE FOR WHICH HE OR SHE WAS  
2 SENTENCED TO LIFE WITHOUT POSSIBILITY OF PAROLE.

3 (I) WHETHER THE DEFENDANT WAS UNDER THE INFLUENCE OF EXTREME  
4 MENTAL OR EMOTIONAL DISTURBANCE WHEN THE OFFENSE WAS COMMITTED.

5 (J) WHETHER THE DEFENDANT WAS UNDER THE SUBSTANTIAL DOMINATION  
6 OF ANOTHER PERSON DURING THE COMMISSION OF THE OFFENSE.

7 (K) WHETHER THE DEFENDANT'S CAPACITY TO APPRECIATE THE  
8 CRIMINALITY OF HIS OR HER CONDUCT OR TO CONFORM THAT CONDUCT TO THE  
9 REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED AS A RESULT OF  
10 MENTAL ILLNESS OR MENTAL DISABILITY.

11 (L) WHETHER THE DEFENDANT'S AGE, FAMILY CIRCUMSTANCES, OR  
12 MENTAL DEVELOPMENT SUBSTANTIALLY AFFECTED HIS OR HER ABILITY TO  
13 APPRECIATE THE CONSEQUENCES OF HIS OR HER ACTIONS.

14 (M) ANY OTHER CIRCUMSTANCES THE COURT DETERMINES ARE  
15 APPROPRIATE FOR ITS CONSIDERATION.

16 (7) A HEARING UNDER THIS SECTION SHALL BE CONSIDERED A  
17 SENTENCING HEARING UNDER MICHIGAN RULE OF EVIDENCE 1101. THE COURT  
18 MAY CONSIDER EVIDENCE PRESENTED AT TRIAL AND ADDITIONAL EVIDENCE  
19 PRESENTED BY THE PROSECUTION OR DEFENSE AT THE SENTENCING HEARING.  
20 THE COURT SHALL SPECIFY ON THE RECORD THE AGGRAVATING AND  
21 MITIGATING CIRCUMSTANCES CONSIDERED BY THE COURT AND THE COURT'S  
22 REASONS SUPPORTING THE SENTENCE IMPOSED AS PROVIDED UNDER THIS  
23 SECTION.

24 (8) A DEFENDANT SENTENCED TO LIFE WITHOUT POSSIBILITY OF  
25 PAROLE IS NOT SUBJECT TO THE PROVISIONS OF SECTION 34 OF THE  
26 CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.234.