

SENATE BILL NO. 651

September 22, 2021, Introduced by Senators IRWIN, POLEHANKI, WOJNO, CHANG, SANTANA and GEISS and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 12 and 31 of chapter IX (MCL 769.12 and 769.31), section 12 as amended by 2012 PA 319 and section 31 as amended by 2020 PA 395.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX
2 Sec. 12. (1) If a person has been convicted of any combination
3 of 3 or more felonies or attempts to commit felonies, whether the

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

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

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

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

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

27 (2) If the court imposes a sentence of imprisonment for any
28 term of years under this section, the court shall fix the length of
29 both the minimum and maximum sentence within any specified limits

1 in terms of years or a fraction of a year, and the sentence so
2 imposed ~~shall~~**must** be considered an indeterminate sentence. The
3 court shall not fix a maximum sentence that is less than the
4 maximum term for a first conviction.

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

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

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

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

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

23 (6) As used in this section:

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

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

28 (ii) Article 7 of the public health code, 1978 PA 368, MCL
29 333.7101 to 333.7545, that is punishable by imprisonment for more

1 than 4 years.

2 (iii) Section 72, 82, 83, 84, 85, 86, 87, 88, 89, 91, 110a(2) or
 3 (3), 136b(2) or (3), 145n(1) or (2), 157b, 197c, 226, 227, 234a,
 4 234b, 234c, 317, 321, 329, 349, 349a, 350, 397, 411h(2)(b), 411i,
 5 479a(4) or (5), 520b, 520c, 520d, 520g, 529, 529a, or 530 of the
 6 Michigan penal code, 1931 PA 328, MCL 750.72, 750.82, 750.83,
 7 750.84, 750.85, 750.86, 750.87, 750.88, 750.89, 750.91, 750.110a,
 8 750.136b, 750.145n, 750.157b, 750.197c, 750.226, 750.227, 750.234a,
 9 750.234b, 750.234c, 750.317, 750.321, 750.329, 750.349, 750.349a,
 10 750.350, 750.397, 750.411h, 750.411i, 750.479a, 750.520b, 750.520c,
 11 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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

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

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

17 (b) ~~(e)~~—"Serious crime" means an offense against a person in
 18 violation of section 83, 84, 86, 88, 89, 317, 321, 349, 349a, 350,
 19 397, 520b, 520c, 520d, 520g(1), 529, or 529a of the Michigan penal
 20 code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.88, 750.89,
 21 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
 22 750.520c, 750.520d, 750.520g, 750.529, and 750.529a.

23 Sec. 31. As used in this section and section 34 of this
 24 chapter:

25 (a) "Departure" means a sentence imposed that is not within
 26 the appropriate minimum sentence range established under the
 27 sentencing guidelines set forth in chapter XVII.

28 (b) "Intermediate sanction" means probation or any sanction,
 29 other than imprisonment in a county jail, state prison, or state

1 reformatory, that may lawfully be imposed. Intermediate sanction
2 includes, but is not limited to, 1 or more of the following:

3 (i) Inpatient or outpatient drug treatment or participation in
4 a drug treatment court under chapter 10A of the revised judicature
5 act of 1961, 1961 PA 236, MCL 600.1060 to ~~600.1082~~-**600.1088**.

6 (ii) Probation with any probation conditions required or
7 authorized by law.

8 (iii) Residential probation.

9 (iv) Probation with special alternative incarceration.

10 (v) Mental health treatment.

11 (vi) Mental health or substance abuse counseling.

12 (vii) Participation in a community corrections program.

13 (viii) Community service.

14 (ix) Payment of a fine.

15 (x) House arrest.

16 (xi) Electronic monitoring.

17 (c) "Offender characteristics" means only the prior criminal
18 record of an offender.

19 (d) "Offense characteristics" means the elements of the crime
20 and the aggravating and mitigating factors relating to the offense
21 that the legislature determines are appropriate. For purposes of
22 this subdivision, an offense described in **former** section 33b of the
23 corrections code of 1953, 1953 PA 232, ~~MCL 791.233b~~, that resulted
24 in a conviction and that arose out of the same transaction as the
25 offense for which the sentencing guidelines are being scored ~~shall~~
26 ~~be considered as~~**is** an aggravating factor.

27 (e) "Prior criminal record" means all of the following:

28 (i) Misdemeanor and felony convictions.

1 (ii) Probation and parole violations involving criminal
2 activity.

3 (iii) Dispositions entered under section 18 of chapter XIIA of
4 1939 PA 288, MCL 712A.18, for acts that would have been crimes if
5 committed by an adult.

6 (iv) Assignment to youthful trainee status under sections 11 to
7 15 of chapter II.

8 (v) A conviction set aside under 1965 PA 213, MCL 780.621 to
9 780.624.

10 (vi) Dispositions described in subparagraph (iii) that have been
11 set aside under section 18e of chapter XIIA of 1939 PA 288, MCL
12 712A.18e, or expunged.

13 Enacting section 1. This amendatory act takes effect 90 days
14 after the date it is enacted into law.

15 Enacting section 2. This amendatory act does not take effect
16 unless Senate Bill No. 649 of the 101st Legislature is enacted into
17 law.