

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

769.1 Authority and power of court; crimes for which juvenile to be sentenced as adult; fingerprints as condition to sentencing; hearing at juvenile's sentencing; determination; criteria; waiver; violation of MCL 333.7403; statement on record; transcript; notice; order directed to person responsible for juvenile's support; hearing; copy of order; retention of jurisdiction over juvenile; annual review; examination of juvenile's annual report; forwarding report.

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 must not exceed the sentence prescribed by law. The court shall sentence a juvenile convicted of any of the following crimes in the same manner as an adult:

- (a) First degree arson in violation of section 72 of the Michigan penal code, 1931 PA 328, MCL 750.72.
 - (b) Assault with intent to commit murder in violation of section 83 of the Michigan penal code, 1931 PA 328, MCL 750.83.
 - (c) Assault with intent to maim in violation of section 86 of the Michigan penal code, 1931 PA 328, MCL 750.86.
 - (d) Attempted murder in violation of section 91 of the Michigan penal code, 1931 PA 328, MCL 750.91.
 - (e) Conspiracy to commit murder in violation of section 157a of the Michigan penal code, 1931 PA 328, MCL 750.157a.
 - (f) Solicitation to commit murder in violation of section 157b of the Michigan penal code, 1931 PA 328, MCL 750.157b.
 - (g) First degree murder in violation of section 316 of the Michigan penal code, 1931 PA 328, MCL 750.316.
 - (h) Second degree murder in violation of section 317 of the Michigan penal code, 1931 PA 328, MCL 750.317.
 - (i) Kidnapping in violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349.
 - (j) First degree criminal sexual conduct in violation of section 520b of the Michigan penal code, 1931 PA 328, MCL 750.520b.
 - (k) Armed robbery in violation of section 529 of the Michigan penal code, 1931 PA 328, MCL 750.529.
 - (l) Carjacking in violation of section 529a of the Michigan penal code, 1931 PA 328, MCL 750.529a.
- (2) A person convicted of a felony or of a misdemeanor punishable by imprisonment for more than 92 days must not be sentenced until the court has examined the court file and has determined that the person's fingerprints have been taken.

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

- (a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
- (b) The juvenile's culpability in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
- (c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
- (d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.
- (e) The adequacy of the punishment or programming available in the juvenile justice system.
- (f) The dispositional options available for the juvenile.

(4) With the consent of the prosecutor and the defendant, the court may waive the hearing required under subsection (3). If the court waives the hearing required under subsection (3), the court may place the juvenile on probation and commit the juvenile to an institution or agency described in the youth rehabilitation services act,

1974 PA 150, MCL 803.301 to 803.309, but shall not impose any other sentence provided by law for an adult offender.

(5) If a juvenile is convicted of a violation or conspiracy to commit a violation of section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7403, the court shall determine whether the best interests of the public would be served by imposing the sentence provided by law for an adult offender, by placing the individual on probation and committing the individual to an institution or agency under subsection (3), or by imposing a sentence of imprisonment for any term of years but not less than 25 years. If the court determines by clear and convincing evidence that the best interests of the public would be served by imposing a sentence of imprisonment for any term of years but not less than 25 years, the court may impose that sentence. In making its determination, the court shall use the criteria specified in subsection (3).

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

(7) Money collected for juveniles placed with or committed to the department of health and human services or a county juvenile agency must be accounted for and reported on an individual basis.

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

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

(10) If the court has retained jurisdiction over a juvenile under subsection (9), the court shall conduct an annual review of the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in that placement. In conducting this review, the court shall examine the juvenile's annual report prepared under section 3 of the juvenile facilities act, 1988 PA 73, MCL 803.223. The court may order changes in the juvenile's placement or treatment plan including, but not limited to, committing the juvenile to the jurisdiction of the department of corrections, based on the review.

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

(12) If the defendant is sentenced for an offense other than a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall determine if the offense is a violation of a law of this state or a local ordinance of a municipality of this state that by its nature constitutes a sexual offense against an individual who is less than 18 years of age. If so, the conviction is for a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, and the court shall include the basis for that determination on the record and include the determination in the judgment of sentence.

(13) When sentencing a person convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the court shall examine the presentence investigation report and determine if the person being sentenced is licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838. The court shall also examine the court file and determine if a report of the conviction upon which the person is being sentenced has been forwarded to the department of licensing and regulatory affairs as provided in section 16a of this chapter. If the report has not been forwarded to the department of licensing and regulatory affairs, the court shall order the clerk of the court to immediately prepare and forward the report as provided in section 16a of this chapter.

History: 1927, Act 175, Eff. Sept. 5, 1927 ;-- CL 1929, 17329 ;-- CL 1948, 769.1 ;-- Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981 ;-- Am. 1986, Act 232, Eff. June 1, 1987 ;-- Am. 1988, Act 78, Eff. Oct. 1, 1988 ;-- Am. 1989, Act 113, Imd. Eff. June 23, 1989 ;-- Am. 1993, Act 85, Eff. Apr. 1, 1994 ;-- Am. 1996, Act 247, Eff. Jan. 1, 1997 ;-- Am. 1996, Act 248, Eff. Jan. 1, 1997 ;-- Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999 ;-- Am. 1999, Act 87, Eff. Sept. 1, 1999 ;-- Am. 2023, Act 293, Eff. Oct. 1, 2024

Compiler's Notes: Section 3 of Act 78 of 1988 provides: "This amendatory act shall take effect June 1, 1988." This section was amended by Act 181 of 1988 to read as follows: "This amendatory act shall take effect October 1, 1988."

Former Law: See section 3 of Act 162 of 1850, being CL 1857, § 6113; CL 1871, § 7997; How., § 9613; CL 1897, § 11983; CL 1915, § 15856; and Act 166 of 1851.

