

**I. Eliminate Habitual 2nd**

**769.10 Punishment for subsequent felony; sentence imposed for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited.**

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

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

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

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

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

**II. One Bad Night**

**769.11 Punishment for subsequent felony following conviction of 2 or more felonies; sentence for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited.**

Sec. 11.

(1) If a person has been convicted of any combination of 2 or more felonies or attempts to commit felonies, whether the convictions occurred in this state or would have been for felonies or attempts to commit felonies in this state if obtained in this state, **AND THE SECOND**

**Commented [KB1]:** Eliminate habitual second enhancements. We do not believe habitual second is used frequently and I think PAAM agreed in theory to this change in 2014.

**Commented [KB2]:** Makes sure that habitual offenses are only counted if they are separate incidents so that "one bad night" does not create multiple habitual enhancements and there is an opportunity for reform. This was a suggestion from the Council of State Governments in their 2014 analysis of Michigan sentencing. This change is also consistent with the statement of the Ingham County Prosecutor's Office on habitual charging decisions.

Under *People v Gardner*, 482 Mich 41 (2008), multiple prior felony convictions that arise out of a single incident may be counted as multiple felonies for purposes of habitual notices. This change corrects the language that permits this rule.

**PREVIOUS FELONY CONVICTION IS FOR AN OFFENSE THAT OCCURRED SUBSEQUENT TO THE FIRST PREVIOUS CONVICTION HAVING BECOME FINAL,** 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, except as otherwise provided in this section or section 1 of chapter XI, may sentence the person to imprisonment for a maximum term that is not more than twice the longest term prescribed by law for a first conviction of that offense or for a lesser term.

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

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

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

### **III. Eliminate Double Counting**

(3) A conviction shall not be used to enhance a sentence under this section if that conviction is used to **SCORE PRIOR RECORD VARIABLES UNDER PART V OF CHAPTER XVII** OR enhance a sentence under a statute that prohibits use of the conviction for further enhancement under this section.

### **IV. Apply 10 Year Gap to Habituals**

**(4) ALL CONVICTIONS MUST SATISFY THE 10-YEAR GAP REQUIREMENTS OF MCL 777.50.**

### **V. Eliminate Mandatory Minimum for Habitual 4th**

**769.12 Punishment for subsequent felony following conviction of 3 or more felonies; sentence for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited; eligibility for parole; provisions not in derogation of consecutive sentence; definitions.**

Sec. 12.

(1) If a person has been convicted of any combination of 3 or more felonies or attempts to commit felonies, whether the convictions occurred in this state or would have been for felonies

**Commented [KB3]:** This change is a suggestion of the Council of State Governments from their review of Michigan Sentencing Guidelines in 2014. The idea is an offense should not be double counted to enhance a sentence under both prior record scoring and habitual offender scoring. This change is also consistent with the statement of the Ingham County Prosecutor's Office on habitual charging decisions.

**Commented [KB4]:** This "10 year gap" requirement mirrors that needed to score Prior Record Variables. It recognizes the potential for an offender's rehabilitation by not enhancing a sentence if there has been ten years since a conviction. This change is also consistent with the statement of the Ingham County Prosecutor's Office on habitual charging decisions.

**Commented [KB5]:** The mandatory minimum should be eliminated if possible. [Need to research how often this is used].  
If elimination of the mandatory minimum is not a reasonable possibility, some ideas limiting the application of this mandatory minimum are below.

or attempts to commit felonies in this state if obtained in this state, and that person commits a subsequent felony within this state, **AND EACH FELONY CONVICTION IS FOR AN OFFENSE THAT OCCURRED SUBSEQUENT TO THE PREVIOUS CONVICTION HAVING BECOME FINAL**, 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 a serious crime or a conspiracy to commit a serious crime, and 1 or more of the prior felony convictions are listed prior felonies, the court shall sentence the person to imprisonment for not less than 25 years. Not more than 1 conviction arising out of the same transaction shall be considered a prior felony conviction for the purposes of this subsection only.~~

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

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

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

(2) If the court imposes a sentence of imprisonment for any term of years under this section, the court shall fix the length of both the minimum and maximum sentence within any specified limits in terms of years or a fraction of a year, and the sentence so imposed shall be considered an indeterminate sentence. The court shall not fix a maximum sentence that is less than the maximum term for a first conviction.

(3) A conviction shall not be used to enhance a sentence under this section if that conviction is used to **SCORE PRIOR RECORD VARIABLES UNDER PART V OF CHAPTER XVII** OR enhance a sentence under a statute that prohibits use of the conviction for further enhancement under this section.

**(4) ALL CONVICTIONS MUST SATISFY THE 10-YEAR GAP REQUIREMENTS OF MCL 777.50.**

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

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

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

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

(6) As used in this section:

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

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

(ii) Article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, that is punishable by imprisonment for more than 4 years.

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

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

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

**Commented [KB6]:** Keep Class A offenses only

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

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

**Commented [KB7]:** Keep Class A offenses only