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

CHAPTER VIII
TRIALS

768.1 Speedy trial; right of parties; duty of public officers.

Sec. 1. The people of this state and persons charged with crime are entitled to and shall have a speedy trial and determination of all prosecutions and it is hereby made the duty of all public officers having duties to perform in any criminal case, to bring such case to a final determination without delay except as may be necessary to secure to the accused a fair and impartial trial.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17294;—CL 1948, 768.1.

768.2 Criminal cases; precedence; adjournment; continuance.

Sec. 2. The trial of criminal cases shall take precedence over all other cases; but this provision shall not be interpreted to mean that trials of civil cases shall not be interspersed between trials of criminal cases triable before a jury at any term of court. No adjournments, continuances or delays of criminal causes shall be granted by any court except for good cause shown in the manner provided by law for adjournments, continuances and delays in the trial of civil causes in courts of record: Provided, That no court shall adjourn, continue or delay the trial of any criminal cause by the consent of the prosecution and accused unless in his discretion it shall clearly appear by a sufficient showing to said court to be entered upon the record, that the reasons for such consent are founded upon strict necessity and that the trial of said cause cannot be then had without a manifest injustice being done.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17295;—CL 1948, 768.2.

768.3 Person indicted; presence at trial.

Sec. 3. No person indicted for a felony shall be tried unless personally present during the trial; persons indicted or complained against for misdemeanors may, at their own request, through an attorney, duly authorized for that purpose, by leave of the court, be put on trial in their absence.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17296;—CL 1948, 768.3.

Former law: See section 9 of Ch. 165 of R.S. 1846, being CL 1857, § 6076; CL 1871, § 7955; How., § 9568; CL 1897, § 11951; and CL 1915, § 15824.

768.4 Proof of felony at trial for misdemeanor; effect.

Sec. 4. If, upon the trial of any person for a misdemeanor, the facts given in evidence amount in law to a felony, he shall not by reason thereof, be entitled to an acquittal of such misdemeanor, and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the court before which the trial shall be had, shall discharge the jury from giving any verdict upon such trial, and shall direct such person to be indicted for felony.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17297;—CL 1948, 768.4.

Former law: See section 4 of Act 77 of 1855, being CL 1857, § 6050; CL 1871, § 7919; How., § 9530; CL 1897, § 11915; and CL 1915, § 15742.

768.5 Defendants jointly indicted; separation of trials.

Sec. 5. When 2 or more defendants shall be jointly indicted for any criminal offense, they shall be tried separately or jointly, in the discretion of the court.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17298;—CL 1948, 768.5.

Former law: See section 14 of Ch. 165 of R.S. 1846, being CL 1857, § 6081; CL 1871, § 7960; How., § 9573; CL 1897, § 11956; and CL 1915, § 15829.

768.6 Commission of offense in certain state institutions; penalty.

Sec. 6. Any person now or hereafter confined in any penal or reformatory institution in this state, and who during the term of such confinement shall commit any crime or offense punishable under the laws of this state by imprisonment in such institution, shall be subject to the same punishment as if the crime had been committed at any other place or by a person not so confined.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17299;—CL 1948, 768.6.

Former law: See section 1 of Act 132 of 1887, being How., § 9414a; CL 1897, § 11772; CL 1915, § 11586; and section 64 of Act 118 of 1893, being CL 1897, § 2143; and CL 1915, § 1762.

768.7 Jurisdiction over cases arising under MCL 768.6; proceedings; examination; warrant; custody of person confined; applicability of section and MCL 768.6.

Sec. 7. The circuit court for the county in which the prison or institution named in the preceding section is, shall have jurisdiction over cases arising under the foregoing section, and the proceedings thereto pertaining shall in all ways conform to the law and rules in cases of like offenses occurring elsewhere, except that the examination may be held in 1 of the offices of the penal institutions where the crime is committed, at the option of the magistrate before whom the complaint may be made, and that the warrant shall be made in the ordinary form, shall be directed to the warden or keeper of such institution, and shall set forth that the accused is imprisoned in such institution under and by authority of the laws of the state of Michigan; and further, that the person so confined shall remain in the custody of such warden or keeper subject to the order of the circuit court for the county in which such institution is located. The provisions of this and the preceding section shall apply to persons who are temporarily outside the limits of the institutions named in such sections, except those prisoners who have received a parole by due process of law and are at liberty under the terms of such parole.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17300;—CL 1948, 768.7;—Am. 1987, Act 268, Imd. Eff. Dec. 29, 1987.

Former law: See sections 2 and 4 of Act 132 of 1887, being How., §§ 9414b and 9414d; CL 1897, §§ 11773 and 11775; CL 1915, §§ 15587 and 15589; section 65 of Act 118 of 1893, being CL 1897, § 2144; CL 1915, § 1763; and Act 35 of 1917 .

768.7a Commission of crime during incarceration in or escape from penal or reformatory institution; felony committed while on parole; term of imprisonment; supplementary powers conferred upon court.

Sec. 7a. (1) A person who is incarcerated in a penal or reformatory institution in this state, or who escapes from such an institution, and who commits a crime during that incarceration or escape which is punishable by imprisonment in a penal or reformatory institution in this state shall, upon conviction of that crime, be sentenced as provided by law. The term of imprisonment imposed for the crime shall begin to run at the expiration of the term or terms of imprisonment which the person is serving or has become liable to serve in a penal or reformatory institution in this state.

(2) If a person is convicted and sentenced to a term of imprisonment for a felony committed while the person was on parole from a sentence for a previous offense, the term of imprisonment imposed for the later offense shall begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense.

(3) The powers conferred upon the court by this section are supplementary to any other power conferred by law.

History: Add. 1954, Act 100, Imd. Eff. Apr. 14, 1954;—Am. 1976, Act 184, Imd. Eff. July 8, 1976;—Am. 1988, Act 48, Eff. June 1, 1988.

768.7b Commission of subsequent felony by person charged with felony; consecutive sentences; report.

Sec. 7b. (1) Beginning April 1, 1988, and through December 31, 1991, if a person who has been charged with a felony, pending the disposition of the charge, commits a subsequent offense that is a felony, upon conviction of the subsequent offense or acceptance of a plea of guilty, guilty but mentally ill, or nolo contendere to the subsequent offense, the sentences imposed for the prior charged offense and the subsequent offense shall run consecutively.

(2) Beginning January 1, 1992, if a person who has been charged with a felony, pending the disposition of the charge, commits a subsequent offense that is a felony, upon conviction of the subsequent offense or acceptance of a plea of guilty, guilty but mentally ill, or nolo contendere to the subsequent offense, the following shall apply:

(a) Unless the subsequent offense is a major controlled substance offense, the sentences imposed for the prior charged offense and the subsequent offense may run consecutively.

(b) If the subsequent offense is a major controlled substance offense, the sentences imposed for the prior charged offense and the subsequent offense shall run consecutively.

(3) The department of corrections shall report to the legislature no later than June 1, 1991, on the impact that the amendatory act that added this subsection has had on prison capacity and population.

History: Add. 1971, Act 180, Eff. Mar. 30, 1972;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1988, Act 31, Eff. Apr. 1, 1988.

768.8 Issues of fact to be tried by jury; waiver of trial by jury.

Sec. 8. Issues of fact shall be tried by a jury drawn, returned, examined on voir dire, and empaneled in the

manner provided by law for the trial of issues of fact in civil cases. The accused may waive any trial by jury in the manner set forth in section 3 of chapter III.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17301;—CL 1948, 768.8;—Am. 1988, Act 89, Eff. June 1, 1988.

Former law: See section 1 of Ch. 165 of R.S. 1846, being CL 1857, § 6068; CL 1871, § 7947; How., § 9559; CL 1897, § 11942; and CL 1915, § 15815.

768.9 Challenge to juror for cause; membership on grand jury.

Sec. 9. No member of the grand jury which has found an indictment shall be put upon the jury for the trial of such indictment, if challenged for that cause by the defendant.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17302;—CL 1948, 768.9.

Former law: See section 2 of Ch. 165 of R.S. 1846, being CL 1857, § 6069; CL 1871, § 7948; How., § 9560; CL 1897, § 11943; and CL 1915, § 15816.

768.10 Challenge to juror for cause; effect of opinion or impression not positive in character; declaration by juror.

Sec. 10. The previous formation or expression of opinion or impression, not positive in its character, in reference to the circumstances upon which any criminal prosecution is based, or in reference to the guilt or innocence of the prisoner, or a present opinion or impression in reference thereto, such opinion or impression not being positive in its character, or not being based on personal knowledge of the facts in the case, shall not be a sufficient ground of challenge for principal cause, to any person who is otherwise legally qualified to serve as a juror upon the trial of such action: Provided, That the person proposed as a juror, who may have formed or expressed, or has such opinion or impression as aforesaid, shall declare on oath, that he verily believes that he can render an impartial verdict according to the evidence submitted to the jury on such trial: Provided further, That the court shall be satisfied that the person so proposed as a juror does not entertain such a present opinion as would influence his verdict as a juror.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17303;—CL 1948, 768.10.

Former law: See Act 117 of 1893, being How., § 9564; CL 1897, § 11947; and CL 1915, § 15820.

768.11 Repealed. 1978, Act 11, Imd. Eff. Feb. 8, 1978.

Compiler's note: The repealed section pertained to opinion of juror as to death penalty.

768.12 Peremptory challenge; offense not punishable by death or life imprisonment; number.

Sec. 12. (1) A person who is put on trial for an offense that is not punishable by death or life imprisonment shall be allowed to challenge peremptorily 5 of the persons drawn to serve as jurors. In a case involving 2 or more defendants who are being jointly tried for an offense that is not punishable by death or life imprisonment, each of the defendants shall be allowed to challenge peremptorily 5 persons returned as jurors. The prosecuting officers on behalf of the people shall be allowed to challenge 5 jurors peremptorily if a defendant is being tried alone or, if defendants are tried jointly, shall be allowed the total number of peremptory challenges to which all the defendants are entitled.

(2) On motion and a showing of good cause, the court may grant 1 or more of the parties an increased number of peremptory challenges. The number of additional peremptory challenges the court grants may cause the various parties to have unequal numbers of peremptory challenges.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17305;—CL 1948, 768.12;—Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007.

Former law: See section 58 of Ch. 103 of R.S. 1846, being CL 1857, § 4400; CL 1871, § 6027; How., § 7607; CL 1897, § 10238; CL 1915, § 14594; Act 147 of 1883; Sections 3 and 4 of Ch. 165 of R.S. 1846, being CL 1857, §§ 6070 and 6071; CL 1871, §§ 7949 and 7950; How., §§ 9561 and 9562; CL 1897, §§ 11944 and 11945; and CL 1915, §§ 15817 and 15818.

768.13 Peremptory challenge; offense punishable by death or life imprisonment; number.

Sec. 13. (1) A person who is being tried alone for an offense punishable by death or imprisonment for life, shall be allowed to challenge peremptorily 12 of the persons drawn to serve as jurors. In a case punishable by death or imprisonment for life that involves 2 or more defendants, a defendant shall be allowed the following number of peremptory challenges:

(a) Two defendants – 10 each.

(b) Three defendants – 9 each.

(c) Four defendants – 8 each.

(d) Five or more defendants – 7 each.

(2) In a case punishable by death or imprisonment for life, the prosecuting officers on behalf of the people shall be allowed to challenge peremptorily 12 jurors if a defendant is being tried alone or, if defendants are tried jointly, shall be allowed the total number of peremptory challenges to which all the defendants are

entitled.

(3) On motion and a showing of good cause, the court may grant 1 or more of the parties an increased number of peremptory challenges. The number of additional peremptory challenges the court grants may cause the various parties to have unequal numbers of peremptory challenges.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17306;—CL 1948, 768.13;—Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007.

Former law: See section 5 of Ch. 165 of R.S. 1846, being CL 1857, § 6072; CL 1871, § 7951; How., § 9563; CL 1897, § 11946; CL 1915, § 15819; Act 72 of 1861; and Act 139 of 1883.

768.14 Jurors; form of oath.

Sec. 14. The following oath shall be administered to the jurors for the trial of all criminal cases: "You shall well and truly try, and true deliverance make, between the people of this state and the prisoner at bar, whom you shall have in charge, according to the evidence and the laws of this state; so help you God."

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17307;—CL 1948, 768.14.

Former law: See section 7 of Ch. 165 of R.S. 1846, being CL 1857, § 6074; CL 1871, § 7953; How., § 9565; CL 1897, § 11948; and CL 1915, § 15821.

768.15 Jurors; affirmation in lieu of oath.

Sec. 15. Any juror shall be allowed to make affirmation, substituting the words "This you do under the pains and penalties of perjury" instead of the words "so help you God."

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17308;—CL 1948, 768.15.

Former law: See section 8 of Ch. 165 of R.S. 1846, being CL 1857, § 6075; CL 1871, § 7954; How., § 9566; CL 1897, § 11949; and CL 1915, §15822.

768.16 Jurors; liberty; oath and duty of officer in charge.

Sec. 16. The jurors sworn to try a criminal action in any court of record in this state, may, at any time before the cause is submitted to the jury, in the discretion of the court, be permitted to separate or to be kept in charge of proper officers. When an order shall have been entered by the court in which such action is being tried, directing said jurors to be kept in charge of such officers, the following oath shall be administered by the clerk of the court to said officers: "You do solemnly swear that you will, to the utmost of your ability, keep the persons sworn as jurors on this trial from separating from each other; that you will not suffer any communication to be made to them, or any of them, orally or otherwise; that you will not communicate with them, or any of them, orally or otherwise, except by the order of this court, or to ask them if they have agreed on their verdict, until they shall be discharged; and that you will not, before they render their verdict, communicate to any person the state of their deliberations or the verdict they have agreed upon, so help you God." And thereafter it shall be the duty of the officer so sworn to keep the jury from separating, or from receiving any communication of any character, until they shall have rendered their verdict, except under a special instruction in writing from the trial judge. After the jurors retire to consider their verdict, the court may permit the jurors to separate temporarily, whenever in his judgment such a separation is deemed proper: Provided, That in cases where separation of the members of a jury is now forbidden by law, the authority hereby granted shall not extend to permitting separation of the members of the jury of the same sex.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17309;—CL 1948, 768.16.

Former law: See section 1 of Act 176 of 1893, being CL 1897, § 11960; CL 1915, § 15833; and Act 4 of 1909.

768.17 Jurors; medical attendance; use of newspapers and letters.

Sec. 17. The trial judge may order, in case of illness of any jurors mentioned in the preceding section, that such juror may receive medical attendance, and may be removed to his home or some other place agreeable to the judge during the continuance of his illness; and that any of the jurors may receive such newspapers and letters as make no mention of the trial then in progress, or of any facts connected therewith, which shall first be inspected by the said judge.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17310;—CL 1948, 768.17.

Former law: See section 2 of Act 176 of 1893, being CL 1897, § 11961; and CL 1915, § 15834.

768.18 Jury; impaneling; number of members; qualifications; excusing jurors; reducing jury to 12 members.

Sec. 18. (1) Any judge of a court of record in this state about to try a felony case which is likely to be protracted, may order a jury impaneled of not to exceed 14 members, who shall have the same qualifications and shall be impaneled in the same manner as is, or may be, provided by law for impaneling juries in such courts. All of those jurors shall sit and hear the cause. Should any condition arise during the trial of the cause

which in the opinion of the trial court justifies the excusal of any of the jurors so impaneled from further service, he may do so and the trial shall proceed, unless the number of jurors be reduced to less than 12. In the event that more than 12 jurors are left on the jury after the charge of the court, the clerk of the court in the presence of the trial judge shall place the names of all of the jurors on slips, folded so as to conceal the names thereon, in a suitable box provided for that purpose, and shall draw therefrom the names of a sufficient number to reduce the jury to 12 members who shall then proceed to determine the issue presented in the manner provided by law.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17311;—CL 1948, 768.18;—Am. 1974, Act 63, Eff. May 1, 1974.

Compiler's note: This section is a substantial reenactment of Act 56 of 1923.
Section 2 of Act 63 of 1974 provides:
"Effective date.
"Section 2. To give judges, prosecutors, and defense counsel a reasonable opportunity to become aware of and familiar with the time periods and sequence prescribed in this amendatory act and the effects of noncompliance, sections 20 and 21 of chapter 8 of Act No. 175 of the Public Acts of 1927, being sections 768.20 and 768.21 of the Michigan Compiled Laws, as amended by this amendatory act shall take effect May 1, 1974, and apply to cases in which the arraignment on an information occurs on or after that date. The other provisions of this amendatory act shall take effect May 1, 1974 and apply to offenses committed on or after that date."

768.19 Perjury; acts of officer under oath.

Sec. 19. Any officer having taken an oath required by any provision of this chapter who shall knowingly and wilfully violate the same or permit the same to be violated, shall, on conviction thereof, be adjudged guilty of the crime of perjury and subject to all the pains and penalties thereof.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17312;—CL 1948, 768.19.

Former law: See section 3 of Act 176 of 1893, being CL 1897, § 11962; and CL 1915, § 15835.

768.20 Alibi as defense in felony case; notice of intention to claim defense; notice of rebuttal; disclosure and calling of additional witnesses.

Sec. 20. (1) If a defendant in a felony case proposes to offer in his defense testimony to establish an alibi at the time of the alleged offense, the defendant shall at the time of arraignment on the information or within 15 days after that arraignment but not less than 10 days before the trial of the case, or at such other time as the court directs, file and serve upon the prosecuting attorney a notice in writing of his intention to claim that defense. The notice shall contain, as particularly as is known to the defendant or the defendant's attorney, the names of witnesses to be called in behalf of the defendant to establish that defense. The defendant's notice shall include specific information as to the place at which the accused claims to have been at the time of the alleged offense.

(2) Within 10 days after the receipt of the defendant's notice but not later than 5 days before the trial of the case, or at such other time as the court may direct, the prosecuting attorney shall file and serve upon the defendant a notice of rebuttal which shall contain, as particularly as is known to the prosecuting attorney, the names of the witnesses whom the prosecuting attorney proposes to call in rebuttal to controvert the defendant's defense at the trial of the case.

(3) Both the defendant and the prosecuting attorney shall be under a continuing duty to disclose promptly the names of additional witnesses which come to the attention of either party subsequent to filing their respective notices as provided in this section. Upon motion with notice to the other party and upon a showing by the moving party that the name of an additional witness was not available when the notice required by subsections (1) or (2) was filed and could not have been available by the exercise of due diligence, the additional witness may be called by the moving party to testify as a witness for the purpose of establishing or rebutting an alibi defense.

History: 1927, Act 175, Eff. Sept. 5, 1927;—Am. 1929, Act 24, Imd. Eff. Apr. 2, 1929;—CL 1929, 17313;—Am. 1939, Act 80, Eff. Sept. 29, 1939;—CL 1948, 768.20;—Am. 1974, Act 63, Eff. May 1, 1974;—Am. 1975, Act 180, Eff. Aug. 6, 1975.

Compiler's note: Section 2 of Act 63 of 1974 provides:
"Effective date.
"Section 2. To give judges, prosecutors, and defense counsel a reasonable opportunity to become aware of and familiar with the time periods and sequence prescribed in this amendatory act and the effects of noncompliance, sections 20 and 21 of chapter 8 of Act No. 175 of the Public Acts of 1927, being sections 768.20 and 768.21 of the Michigan Compiled Laws, as amended by this amendatory act shall take effect May 1, 1974, and apply to cases in which the arraignment on an information occurs on or after that date. The other provisions of this amendatory act shall take effect May 1, 1974 and apply to offenses committed on or after that date."

768.20a Insanity as defense in felony case; notice of intention to assert defense; examination; independent psychiatric evaluation; cooperation required; admissibility of statements; report; notice of rebuttal; admissibility of reports; "qualified personnel" defined.

Sec. 20a. (1) If a defendant in a felony case proposes to offer in his or her defense testimony to establish his or her insanity at the time of an alleged offense, the defendant shall file and serve upon the court and the prosecuting attorney a notice in writing of his or her intention to assert the defense of insanity not less than 30 days before the date set for the trial of the case, or at such other time as the court directs.

(2) Upon receipt of a notice of an intention to assert the defense of insanity, a court shall order the defendant to undergo an examination relating to his or her claim of insanity by personnel of the center for forensic psychiatry or by other qualified personnel, as applicable, for a period not to exceed 60 days from the date of the order. When the defendant is to be held in jail pending trial, the center or the other qualified personnel may perform the examination in the jail, or may notify the sheriff to transport the defendant to the center or facility used by the qualified personnel for the examination, and the sheriff shall return the defendant to the jail upon completion of the examination. When the defendant is at liberty pending trial, on bail or otherwise, the defendant shall make himself or herself available for the examination at the place and time established by the center or the other qualified personnel. If the defendant, after being notified of the place and time of the examination, fails to make himself or herself available for the examination, the court may, without a hearing, order his or her commitment to the center.

(3) The defendant may, at his or her own expense, secure an independent psychiatric evaluation by a clinician of his or her choice on the issue of his or her insanity at the time the alleged offense was committed. If the defendant is indigent, the court may, upon showing of good cause, order that the county pay for an independent psychiatric evaluation. The defendant shall notify the prosecuting attorney at least 5 days before the day scheduled for the independent evaluation that he or she intends to secure such an evaluation. The prosecuting attorney may similarly obtain independent psychiatric evaluation. A clinician secured by an indigent defendant is entitled to receive a reasonable fee as approved by the court.

(4) The defendant shall fully cooperate in his or her examination by personnel of the center for forensic psychiatry or by other qualified personnel, and by any other independent examiners for the defense and prosecution. If he or she fails to cooperate, and that failure is established to the satisfaction of the court at a hearing prior to trial, the defendant shall be barred from presenting testimony relating to his or her insanity at the trial of the case.

(5) Statements made by the defendant to personnel of the center for forensic psychiatry, to other qualified personnel, or to any independent examiner during an examination shall not be admissible or have probative value in court at the trial of the case on any issues other than his or her mental illness or insanity at the time of the alleged offense.

(6) Upon conclusion of the examination, the center for forensic psychiatry or the other qualified personnel, and any independent examiner, shall prepare a written report and shall submit the report to the prosecuting attorney and defense counsel. The report shall contain:

(a) The clinical findings of the center, the qualified personnel, or any independent examiner.

(b) The facts, in reasonable detail, upon which the findings were based.

(c) The opinion of the center or qualified personnel, and the independent examiner on the issue of the defendant's insanity at the time the alleged offense was committed and whether the defendant was mentally ill or intellectually disabled at the time the alleged offense was committed.

(7) Within 10 days after the receipt of the report from the center for forensic psychiatry or from the qualified personnel, or within 10 days after the receipt of the report of an independent examiner secured by the prosecution, whichever occurs later, but not later than 5 days before the trial of the case, or at another time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of rebuttal of the defense of insanity which shall contain the names of the witnesses whom the prosecuting attorney proposes to call in rebuttal.

(8) The report of the center for forensic psychiatry, the qualified personnel, or any independent examiner may be admissible in evidence upon the stipulation of the prosecution and defense.

(9) As used in this section, "qualified personnel" means personnel meeting standards determined by the department of community health under rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 1975, Act 180, Eff. Aug. 6, 1975;—Am. 1983, Act 42, Imd. Eff. May 12, 1983;—Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007;—Am. 2014, Act 76, Imd. Eff. Mar. 28, 2014.

Constitutionality: The requirement that a defendant who raises an insanity defense cooperate in a psychiatric examination relating to the claim of insanity or be barred from presenting evidence of insanity at trial does not infringe upon the defendant's right to present a defense; nor is the sanction unconstitutionally vague. People v Hayes, 421 Mich 271; 364 NW2d 635 (1984).

768.21 Failure to file and serve notices or to state names of witnesses with particularity; exclusion of evidence.

Sec. 21. (1) If the defendant fails to file and serve the written notice prescribed in section 20 or 20a, the court shall exclude evidence offered by the defendant for the purpose of establishing an alibi or the insanity of the defendant. If the notice given by the defendant does not state, as particularly as is known to the defendant or the defendant's attorney, the name of a witness to be called in behalf of the defendant to establish a defense specified in section 20 or 20a, the court shall exclude the testimony of a witness which is offered by the defendant for the purpose of establishing that defense.

(2) If the prosecuting attorney fails to file and serve a notice of rebuttal upon the defendant as provided in section 20 or 20a, the court shall exclude evidence offered by the prosecution in rebuttal to the defendant's evidence relevant to a defense specified in section 20 or 20a. If the notice given by the prosecuting attorney does not state, as particularly as is known to the prosecuting attorney, the name of a witness to be called in rebuttal of the defense of alibi or insanity, the court shall exclude the testimony of a witness which is offered by the prosecuting attorney for the purpose of rebutting that defense.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17314;—CL 1948, 768.21;—Am. 1974, Act 63, Eff. May 1, 1974;—Am. 1975, Act 180, Eff. Aug. 6, 1975;—Am. 1976, Act 51, Imd. Eff. Mar. 21, 1976.

Compiler's note: Section 2 of Act 63 of 1974 provides:

"Section 2. To give judges, prosecutors, and defense counsel a reasonable opportunity to become aware of and familiar with the time periods and sequence prescribed in this amendatory act and the effects of noncompliance, sections 20 and 21 of chapter 8 of Act No. 175 of the Public Acts of 1927, being sections 768.20 and 768.21 of the Michigan Compiled Laws, as amended by this amendatory act shall take effect May 1, 1974, and apply to cases in which the arraignment on an information occurs on or after that date. The other provisions of this amendatory act shall take effect May 1, 1974 and apply to offenses committed on or after that date."

768.21a Persons deemed legally insane; burden of proof.

Sec. 21a. (1) It is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the offense. An individual is legally insane if, as a result of mental illness as defined in section 400 of the mental health code, 1974 PA 258, MCL 330.1400, or as a result of having an intellectual disability as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b, that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental illness or having an intellectual disability does not otherwise constitute a defense of legal insanity.

(2) An individual who was under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of his or her alleged offense is not considered to have been legally insane solely because of being under the influence of the alcohol or controlled substances.

(3) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.

History: Add. 1975, Act 180, Eff. Aug. 6, 1975;—Am. 1994, Act 56, Eff. Oct. 1, 1994;—Am. 2014, Act 76, Imd. Eff. Mar. 28, 2014.

768.21b Breaking prison; defense of duress; notices; additional witnesses; consideration of conditions.

Sec. 21b. (1) If a defendant charged with breaking prison proposes to offer in his or her defense testimony to establish the defense of duress at the time of the alleged offense, the defendant at the time of arraignment on the information or within 15 days after that arraignment, but not less than 10 days before the trial of the case, or at such other time as the court directs, shall file and serve upon the prosecuting attorney a notice in writing of the intention to claim that defense. The notice shall contain, as particularly as is known to the defendant or the defendant's attorney, the names of witnesses to be called in behalf of the defendant to establish that defense. The defendant's notice shall include specific information relative to the defense.

(2) Within 10 days after the receipt of the defendant's notice but not later than 5 days before the trial of the case, or at such other time as the court may direct, the prosecuting attorney shall file and serve upon the defendant a notice of rebuttal which shall contain, as particularly as is known to the prosecuting attorney, the names of the witnesses whom the prosecuting attorney proposes to call in rebuttal to controvert the defendant's defense at the trial of the case.

(3) Both the defendant and the prosecuting attorney shall be under a continuing duty to promptly disclose the names of additional witnesses which come to the attention of either party after filing the respective notices as provided in this section. Upon motion with notice to the other party and upon a showing by the moving party that the name of an additional witness was not available when the notice required by subsection (1) or (2) was filed, and could not have been available by the exercise of due diligence, the additional witness may be called by the moving party to testify as a witness for the purpose of establishing or rebutting the defense of duress or necessity.

(4) In determining whether or not the defendant broke prison while under duress the jury or court may consider the following conditions if supported by competent evidence:

(a) Whether the defendant was faced with a specific threat of death, forcible sexual attack or substantial

bodily injury in the immediate future.

(b) Whether there was insufficient time for a complaint to the authorities.

(c) Whether there was a history of complaints by the defendant which failed to provide relief.

(d) Whether there was insufficient time or opportunity to resort to the courts.

(e) Whether force or violence was not used towards innocent persons in the prison break.

(f) Whether the defendant immediately reported to the proper authorities upon reaching a position of safety from the immediate threat.

History: Add. 1978, Act 600, Imd. Eff. Jan. 4, 1979.

768.21c Use of deadly force by individual in own dwelling; "dwelling" defined.

Sec. 21c. (1) In cases in which section 2 of the self-defense act does not apply, the common law of this state applies except that the duty to retreat before using deadly force is not required if an individual is in his or her own dwelling or within the curtilage of that dwelling.

(2) As used in this section, "dwelling" means a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter.

History: Add. 2006, Act 313, Eff. Oct. 1, 2006.

****** 768.21d.added THIS ADDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE ******

768.21d.added Admissibility of sex, gender identity, gender expression, or sexual orientation.

Sec. 21d. (1) Evidence of the discovery of, knowledge about, or potential disclosure of an individual's actual or perceived sex, gender identity, gender expression, or sexual orientation is not admissible for any of the following purposes:

(a) To demonstrate reasonable provocation.

(b) To show that an act was committed in a heat of passion.

(c) To support a defense of reduced mental capacity under section 20a of this chapter.

(2) Notwithstanding the provisions of any other law of this state, an individual is not justified in using force against another individual based on the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived sex, gender identity, gender expression, or sexual orientation.

History: Add. 2024, Act 87, Eff. (sine die).

768.22 Rules of evidence; applicability of criminal and quasi criminal proceedings; evidence of prior conviction.

Sec. 22. (1) The rules of evidence in civil actions, insofar as the same are applicable, shall govern in all criminal and quasi criminal proceedings except as otherwise provided by law.

(2) In prosecutions charging a second or subsequent offense under Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948, a certification by a judge or clerk of a court under the seal of the court of a prior conviction for the same offense is admissible and is prima facie evidence of the fact of conviction. The certification shall include the person's full name, address, date of birth, operator's or chauffeur's license number and vehicle registration number, if such information is available to the person so certifying, and the dates of the offense and the conviction thereof.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17315;—CL 1948, 768.22;—Am. 1967, Act 44, Eff. Nov. 2, 1967.

Former law: See Act 208 of 1917.

768.23 Exception; necessity of taking.

Sec. 23. It shall not be necessary in the trial of any criminal cause to except to any ruling or action of the court, if an objection thereto was fully made but an exception shall be deemed to follow as a matter of course.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17316;—CL 1948, 768.23.

Former law: See section 2 of Ch. 166 of R.S. 1846, being CL 1857, § 6083; CL 1871, § 7964; How., § 9577; CL 1897, § 11964; CL 1915, §15837; and Act 79 of 1885.

768.24 Evidence; leading question.

Sec. 24. Within the discretion of the court no question asked of a witness shall be deemed objectionable solely because it is leading.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17317;—CL 1948, 768.24.

768.25 Evidence; proof of signature.

Sec. 25. Whenever in the trial of any criminal case it shall be necessary or proper to prove the signature of any person, it shall be competent to introduce in evidence for the purpose of comparison, any specimen or specimens of the handwriting or signature of such person, admitted or proved to the satisfaction of the court to be genuine, whether or not the paper on which such handwriting or signature appears is one in evidence or connected with the case or not.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17318;—CL 1948, 768.25.

768.26 Evidence; use of former testimony; deposition for defendant.

Sec. 26. Testimony taken at an examination, preliminary hearing, or at a former trial of the case, or taken by deposition at the instance of the defendant, may be used by the prosecution whenever the witness giving such testimony can not, for any reason, be produced at the trial, or whenever the witness has, since giving such testimony become insane or otherwise mentally incapacitated to testify.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17319;—CL 1948, 768.26.

768.27 Evidence; proof of intent or motive by similar acts.

Sec. 27. In any criminal case where the defendant's motive, intent, the absence of, mistake or accident on his part, or the defendant's scheme, plan or system in doing an act, is material, any like acts or other acts of the defendant which may tend to show his motive, intent, the absence of, mistake or accident on his part, or the defendant's scheme, plan or system in doing the act, in question, may be proved, whether they are contemporaneous with or prior or subsequent thereto; notwithstanding that such proof may show or tend to show the commission of another or prior or subsequent crime by the defendant.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17320;—CL 1948, 768.27.

768.27a Evidence that defendant committed another listed offense against minor; admissibility; disclosure of evidence to defendant; definitions.

Sec. 27a. (1) Notwithstanding section 27, in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant. If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence to the defendant at least 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered.

(2) As used in this section:

(a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(b) "Minor" means an individual less than 18 years of age.

History: Add. 2005, Act 135, Eff. Jan. 1, 2006.

768.27b Domestic violence or sexual assault offense; commission of other domestic violence acts; admissibility; disclosure; definitions; applicability of section.

Sec. 27b. (1) Except as provided in subsection (4), in a criminal action in which the defendant is accused of an offense involving domestic violence or sexual assault, evidence of the defendant's commission of other acts of domestic violence or sexual assault is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403.

(2) If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.

(3) This section does not limit or preclude the admission or consideration of evidence under any other statute, including, but not limited to, under section 27a, rule of evidence, or case law.

(4) Evidence of an act occurring more than 10 years before the charged offense is inadmissible under this section unless the court determines that 1 or more of the following apply:

(a) The act was a sexual assault that was reported to law enforcement within 5 years of the date of the sexual assault.

(b) The act was a sexual assault and a sexual assault evidence kit was collected.

(c) The act was a sexual assault and the testing of evidence connected to the assault resulted in a DNA identification profile that is associated with the defendant.

(d) Admitting the evidence is in the interest of justice.

(5) The amendatory act that amended this subsection does not alter or in any manner affect the statutes of limitation for the offenses described in this section.

(6) As used in this section:

(a) "Domestic violence" or "offense involving domestic violence" means an occurrence of 1 or more of the following acts by a person that is not an act of self-defense:

(*i*) Causing or attempting to cause physical or mental harm to a family or household member.

(*ii*) Placing a family or household member in fear of physical or mental harm.

(*iii*) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

(*iv*) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(b) "Family or household member" means any of the following:

(*i*) A spouse or former spouse.

(*ii*) An individual with whom the person resides or has resided.

(*iii*) An individual with whom the person has or has had a child in common.

(*iv*) An individual with whom the person has or has had a dating relationship. As used in this subparagraph, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(c) "Sexual assault" means a listed offense as that term is defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(7) This section applies to trials and evidentiary hearings commenced or in progress on or after May 1, 2006.

History: Add. 2006, Act 78, Imd. Eff. Mar. 24, 2006;—Am. 2018, Act 372, Eff. Mar. 17, 2019.

768.27c Statement by declarant; admissibility; circumstances relevant to trustworthiness; disclosure; privilege; definitions; applicability of section.

Sec. 27c. (1) Evidence of a statement by a declarant is admissible if all of the following apply:

(a) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.

(b) The action in which the evidence is offered under this section is an offense involving domestic violence.

(c) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than 5 years before the filing of the current action or proceeding is inadmissible under this section.

(d) The statement was made under circumstances that would indicate the statement's trustworthiness.

(e) The statement was made to a law enforcement officer.

(2) For the purpose of subsection (1)(d), circumstances relevant to the issue of trustworthiness include, but are not limited to, all of the following:

(a) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

(b) Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.

(c) Whether the statement is corroborated by evidence other than statements that are admissible only under this section.

(3) If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.

(4) Nothing in this section shall be construed to abrogate any privilege conferred by law.

(5) As used in this section:

(a) "Declarant" means a person who makes a statement.

(b) "Domestic violence" or "offense involving domestic violence" means an occurrence of 1 or more of the following acts by a person that is not an act of self-defense:

(*i*) Causing or attempting to cause physical or mental harm to a family or household member.

(*ii*) Placing a family or household member in fear of physical or mental harm.

(*iii*) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

(*iv*) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(c) "Family or household member" means any of the following:

(*i*) A spouse or former spouse.

(*ii*) An individual with whom the person resides or has resided.

(*iii*) An individual with whom the person has or has had a child in common.

(*iv*) An individual with whom the person has or has had a dating relationship. As used in this subparagraph, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(6) This section applies to trials and evidentiary hearings commenced or in progress on or after May 1, 2006.

History: Add. 2006, Act 79, Imd. Eff. Mar. 24, 2006.

768.28 Evidence; view by jury.

Sec. 28. The court may order a view by any jury empaneled to try a criminal case, whenever such court shall deem such view necessary.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17321;—CL 1948, 768.28.

Former law: See section 10 of Ch. 165 of R.S. 1846, being CL 1857, § 6077; CL 1871, § 7956; How., § 9569; CL 1897, § 11952; and CL 1915, § 15825.

768.28a Evidence obtained pursuant to federal court order authorizing or approving interception of wire or oral communications; admissibility.

Sec. 28a. Evidence obtained pursuant to an order authorizing or approving the interception of wire or oral communications issued by a federal court in compliance with section 802 of title III of the omnibus crime control and safe streets act of 1968, Public Law 90-351, 18 U.S.C. 2510 to 2513 and 2515 to 2521, that is otherwise admissible under the rules of evidence of this state, may be admitted in evidence in a court of this state in a criminal prosecution for any of the following offenses:

(a) A violation of section 7401(2)(a)(*i*), 7401(2)(a)(*ii*), 7401(2)(a)(*iii*), 7401(2)(a)(*iv*), 7402(2)(a), 7403(2)(a)(*i*), 7403(2)(a)(*ii*), 7403(2)(a)(*iii*), or 7403(2)(a)(*iv*) of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7401, 333.7402, and 333.7403 of the Michigan Compiled Laws.

(b) A violation of section 83, 89, 91, 157b, 316, 317, 327, 328, 349, 350, 422, 436, 520b, 529, 531, or 544 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.83, 750.89, 750.91, 750.157b, 750.316, 750.317, 750.327, 750.328, 750.349, 750.350, 750.422, 750.436, 750.520b, 750.529, 750.531, and 750.544 of the Michigan Compiled Laws, that is punishable by imprisonment for life.

(c) A conspiracy to commit an offense listed in subdivision (a) or (b).

History: Add. 1988, Act 8, Imd. Eff. Feb. 8, 1988.

768.29 Judge's duty at trial; effect of failure to instruct.

Sec. 29. It shall be the duty of the judge to control all proceedings during the trial, and to limit the introduction of evidence and the argument of counsel to relevant and material matters, with a view to the expeditious and effective ascertainment of the truth regarding the matters involved. The court shall instruct the jury as to the law applicable to the case and in his charge make such comment on the evidence, the testimony and character of any witnesses, as in his opinion the interest of justice may require. The failure of the court to instruct on any point of law shall not be ground for setting aside the verdict of the jury unless such instruction is requested by the accused.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17322;—CL 1948, 768.29.

768.29a Defense of insanity in criminal action tried before jury; instructions.

Sec. 29a. (1) If the defendant asserts a defense of insanity in a criminal action which is tried before a jury, the judge shall, before testimony is presented on that issue, instruct the jury on the law as contained in sections 400a and 500(g) of Act No. 258 of the Public Acts of 1974 and in section 21a of chapter 8 of this act.

(2) At the conclusion of the trial, where warranted by the evidence, the charge to the jury shall contain instructions that it shall consider separately the issues of the presence or absence of mental illness and the presence or absence of legal insanity and shall also contain instructions as to the verdicts of guilty, guilty but mentally ill, not guilty by reason of insanity, and not guilty with regard to the offense or offenses charged and, as required by law, any lesser included offenses.

History: Add. 1975, Act 180, Eff. Aug. 6, 1975.

768.30 Exception to charge or refusal to charge; necessity.

Sec. 30. It shall not be necessary in any criminal suit, action or proceeding in any court of record, to except to the charge given to the jury, or to the refusal to give any charge requested by either of the parties to such suit, action or proceeding, but any party aggrieved by any such charge or refusal to charge, may assign error upon such charge or refusal to charge in his assignments of error, the same as if exception had been made to such charge or refusal to charge.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17323;—CL 1948, 768.30.

Former law: See Act 101 of 1885, being How., § 7621b; CL 1897, § 10247; CL 1915, § 14576; and Act 52 of 1901.

768.31 Joint defendants; discharge for insufficient evidence.

Sec. 31. Whenever 2 or more persons shall be included in the same indictment and it shall appear that there is not sufficient evidence to put any defendant on his defense, it shall be the duty of the court to order such defendant to be discharged from such indictment, before the evidence shall be deemed to be closed.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17324;—CL 1948, 768.31.

Former law: See section 13 of Ch. 165 of R.S. 1846, being CL 1857, § 6080; CL 1871, § 7959; How., § 9572; CL 1897, § 11955; and CL 1915, § 15828.

768.32 Indictment for offense consisting of different degrees or for offense specified in MCL 333.7401 and 333.7403; finding of jury or judge; instructions.

Sec. 32. (1) Except as provided in subsection (2), upon an indictment for an offense, consisting of different degrees, as prescribed in this chapter, the jury, or the judge in a trial without a jury, may find the accused not guilty of the offense in the degree charged in the indictment and may find the accused person guilty of a degree of that offense inferior to that charged in the indictment, or of an attempt to commit that offense.

(2) Upon an indictment for an offense specified in section 7401(2)(a)(*i*) or (*ii*) or section 7403(2)(a) (*i*) or (*ii*) of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7401 and 333.7403 of the Michigan Compiled Laws, or conspiracy to commit 1 or more of these offenses, the jury, or judge in a trial without a jury, may find the accused not guilty of the offense in the degree charged in the indictment but may find the accused guilty of a degree of that offense inferior to that charged in the indictment only if the lesser included offense is a major controlled substance offense. A jury shall not be instructed as to other lesser included offenses involving the same controlled substance nor as to an attempt to commit either a major controlled substance offense or a lesser included offense involving the same controlled substance. The jury shall be instructed to return a verdict of not guilty of an offense involving the controlled substance at issue if it finds that the evidence does not establish the defendant's guilt as to the commission of a major controlled substance offense involving that controlled substance. A judge in a trial without a jury shall find the defendant not guilty of an offense involving the controlled substance at issue if the judge finds that the evidence does not establish the defendant's guilt as to the commission of a major controlled substance offense involving that controlled substance.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17325;—CL 1948, 768.32;—Am. 1978, Act 77, Eff. Sept. 1, 1978;—Am. 1988, Act 90, Imd. Eff. Mar. 30, 1988.

Former law: See section 16 of Ch. 161 of R.S. 1846, being CL 1857, § 5952; CL 1871, § 7818; How., § 9428; CL 1897, § 11789; and CL 1915, § 15616.

768.33 Offense consisting of different degrees; subsequent trial prohibited.

Sec. 33. When a defendant shall be acquitted or convicted upon any indictment for an offense, consisting of different degrees, he shall not thereafter be tried or convicted for a different degree of the same offense; nor shall he be tried or convicted for any attempt to commit the offense charged in the indictment or to commit any degree of such offense.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17326;—CL 1948, 768.33.

Former law: See section 17 of Ch. 161 of R.S. 1846, being CL 1857, § 5953; CL 1871, § 7819; How., § 9429; CL 1897, § 11790; and CL 1915, § 15617.

768.34 Discharged or acquitted prisoner; liability for costs or fees.

Sec. 34. No prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees of office or for any charge for subsistence while he was in custody.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17327;—CL 1948, 768.34.

Former law: See section 12 of Ch. 165 of R.S. 1846, being CL 1857, § 6079; CL 1871, § 7958; How., § 9427; CL 1897, § 11954; and CL 1915, § 15827.

768.35 Plea of guilty; investigation by judge; sentence; refusal to accept.

Sec. 35. Whenever any person shall plead guilty to an information filed against him in any court, it shall be the duty of the judge of such court, before pronouncing judgment or sentence upon such plea, to become satisfied after such investigation as he may deem necessary for that purpose respecting the nature of the case, and the circumstances of such plea, that said plea was made freely, with full knowledge of the nature of the accusation, and without undue influence. And whenever said judge shall have reason to doubt the truth of such plea of guilty, it shall be his duty to vacate the same, direct a plea of not guilty to be entered and order a trial of the issue thus formed.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17328;—CL 1948, 768.35.

Former law: See Act 99 of 1875, being How., § 9558; CL 1897, § 11957; and CL 1915, § 15830.

768.36 Defense of insanity in compliance with MCL 768.20a; finding of "guilty but mentally ill"; waiver of right to trial; plea of guilty but mentally ill; examination of reports; hearing; sentence; evaluation and treatment; discharge; report to parole board; treatment as condition of parole or probation; period of probation; psychiatric reports.

Sec. 36. (1) If the defendant asserts a defense of insanity in compliance with section 20a of this chapter, the defendant may be found "guilty but mentally ill" if, after trial, the trier of fact finds all of the following:

(a) The defendant is guilty beyond a reasonable doubt of an offense.

(b) The defendant has proven by a preponderance of the evidence that he or she was mentally ill at the time of the commission of that offense.

(c) The defendant has not established by a preponderance of the evidence that he or she lacked the substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.

(2) If the defendant asserts a defense of insanity in compliance with section 20a of this chapter and the defendant waives his or her right to trial, by jury or by judge, the trial judge, with the approval of the prosecuting attorney, may accept a plea of guilty but mentally ill in lieu of a plea of guilty or a plea of nolo contendere. The judge shall not accept a plea of guilty but mentally ill until, with the defendant's consent, the judge has examined the report or reports prepared in compliance with section 20a of this chapter, the judge has held a hearing on the issue of the defendant's mental illness at which either party may present evidence, and the judge is satisfied that the defendant has proven by a preponderance of the evidence that the defendant was mentally ill at the time of the offense to which the plea is entered. The reports shall be made a part of the record of the case.

(3) If a defendant is found guilty but mentally ill or enters a plea to that effect which is accepted by the court, the court shall impose any sentence that could be imposed by law upon a defendant who is convicted of the same offense. If the defendant is committed to the custody of the department of corrections, the defendant shall undergo further evaluation and be given such treatment as is psychiatrically indicated for his or her mental illness or intellectual disability. Treatment may be provided by the department of corrections or by the department of community health as provided by law. Sections 1004 and 1006 of the mental health code, 1974 PA 258, MCL 330.2004 and 330.2006, apply to the discharge of the defendant from a facility of the department of community health to which the defendant has been admitted and to the return of the defendant to the department of corrections for the balance of the defendant's sentence. When a treating facility designated by either the department of corrections or the department of community health discharges the defendant before the expiration of the defendant's sentence, that treating facility shall transmit to the parole board a report on the condition of the defendant that contains the clinical facts, the diagnosis, the course of treatment, the prognosis for the remission of symptoms, the potential for recidivism, the danger of the defendant to himself or herself or to the public, and recommendations for future treatment. If the parole board considers the defendant for parole, the board shall consult with the treating facility at which the defendant is being treated or from which the defendant has been discharged and a comparable report on the condition of the defendant shall be filed with the board. If the defendant is placed on parole, the defendant's treatment shall, upon recommendation of the treating facility, be made a condition of parole. Failure to continue treatment except by agreement with the designated facility and parole board is grounds for revocation of parole.

(4) If a defendant who is found guilty but mentally ill is placed on probation under the jurisdiction of the sentencing court as provided by law, the trial judge, upon recommendation of the center for forensic psychiatry, shall make treatment a condition of probation. Reports as specified by the trial judge shall be filed with the probation officer and the sentencing court. Failure to continue treatment, except by agreement with the treating agency and the sentencing court, is grounds for revocation of probation. The period of probation

shall not be for less than 5 years and shall not be shortened without receipt and consideration of a forensic psychiatric report by the sentencing court. Treatment shall be provided by an agency of the department of community health or, with the approval of the sentencing court and at individual expense, by private agencies, private physicians, or other mental health personnel. A psychiatric report shall be filed with the probation officer and the sentencing court every 3 months during the period of probation. If a motion on a petition to discontinue probation is made by the defendant, the probation officer shall request a report as specified from the center for forensic psychiatry or any other facility certified by department of community health for the performance of forensic psychiatric evaluation.

History: Add. 1975, Act 180, Eff. Aug. 6, 1975;—Am. 2002, Act 245, Eff. May 1, 2002;—Am. 2014, Act 76, Imd. Eff. Mar. 28, 2014.

Constitutionality: The Michigan supreme court found that subsection (4) of this section, governing the grant of probation to guilty but mentally ill persons, does not violate the equal protection and due process clauses of the federal and state constitutions. People v McCleod, 407 Mich 632; 288 NW2d 909 (1980).

Compiler's note: For transfer of powers and duties of Michigan parole and commutation board to Michigan parole board within department of corrections, and abolishment of Michigan parole and commutation board, see E.R.O. No. 2011-3, compiled at MCL 791.305.

768.37 Under influence of or impairment by alcoholic liquor or drug as defense prohibited; exception; definitions.

Sec. 37. (1) Except as provided in subsection (2), it is not a defense to any crime that the defendant was, at that time, under the influence of or impaired by a voluntarily and knowingly consumed alcoholic liquor, drug, including a controlled substance, other substance or compound, or combination of alcoholic liquor, drug, or other substance or compound.

(2) It is an affirmative defense to a specific intent crime, for which the defendant has the burden of proof by a preponderance of the evidence, that he or she voluntarily consumed a legally obtained and properly used medication or other substance and did not know and reasonably should not have known that he or she would become intoxicated or impaired.

(3) As used in this section:

(a) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.

(b) "Consumed" means to have eaten, drunk, ingested, inhaled, injected, or topically applied, or to have performed any combination of those actions, or otherwise introduced into the body.

(c) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

History: Add. 2002, Act 366, Eff. Sept. 1, 2002.

Compiler's note: Enacting section 1 of Act 366 of 2002 provides:
"Enacting section 1. This amendatory act takes effect September 1, 2002, and applies to crimes committed on or after that date."