

Act No. 106
Public Acts of 2005
Approved by the Governor
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STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005

Introduced by Senator Patterson

ENROLLED SENATE BILL No. 170

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 1a of chapter IV, section 16a of chapter IX, section 22 of chapter XVI, and sections 15g, 16m, and 16s of chapter XVII (MCL 764.1a, 769.16a, 776.22, 777.15g, 777.16m, and 777.16s), section 1a of chapter IV as amended by 1994 PA 70, section 16a of chapter IX as amended by 2004 PA 220, section 22 of chapter XVI as amended by 2001 PA 194, section 15g of chapter XVII as added by 2002 PA 206, section 16m of chapter XVII as amended by 2001 PA 166, and section 16s of chapter XVII as amended by 2004 PA 519.

The People of the State of Michigan enact:

CHAPTER IV

Sec. 1a. (1) A magistrate shall issue a warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense. The complaint shall be sworn to before a magistrate or clerk.

(2) The finding of reasonable cause by the magistrate may be based upon 1 or more of the following:

(a) Factual allegations of the complainant contained in the complaint.

(b) The complainant's sworn testimony.

(c) The complainant's affidavit.

(d) Any supplemental sworn testimony or affidavits of other individuals presented by the complainant or required by the magistrate.

(3) The magistrate may require sworn testimony of the complainant or other individuals. Supplemental affidavits may be sworn to before an individual authorized by law to administer oaths. The factual allegations contained in the complaint, testimony, or affidavits may be based upon personal knowledge, information and belief, or both.

(4) The magistrate shall not refuse to accept a complaint alleging a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a violation of a local ordinance substantially corresponding to section 81 of the Michigan penal code, 1931 PA 328, MCL 750.81, by the spouse of the victim, a former spouse of the victim, an individual with whom the victim has had a child in common, an individual with whom the victim has or has had a dating relationship, or an individual residing or having resided in the same household as the victim on grounds that the complaint is signed upon information and belief by an individual other than the victim.

(5) A warrant may be issued under this section only upon compliance with the requirements of section 1 of this chapter.

(6) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

CHAPTER IX

Sec. 16a. (1) Except as otherwise provided in subsection (3), upon final disposition of an original charge against a person of a felony or a misdemeanor for which the maximum possible penalty exceeds 92 days' imprisonment or a local ordinance for which the maximum possible penalty is 93 days' imprisonment and that substantially corresponds to a violation of state law that is a misdemeanor for which the maximum possible penalty is 93 days' imprisonment, or a misdemeanor in a case in which the appropriate court was notified that fingerprints were forwarded to the department of state police, or upon final disposition of a charge of criminal contempt under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or final disposition of a charge of criminal contempt for violating a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i, the clerk of the court entering the disposition shall immediately report to the department of state police the final disposition of the charge on forms approved by the state court administrator and in a manner consistent with section 3 of 1925 PA 289, MCL 28.243. The report to the department of state police shall include the finding of the judge or jury, including a finding of guilty, guilty but mentally ill, not guilty, or not guilty by reason of insanity, or the person's plea of guilty, nolo contendere, or guilty but mentally ill; if the person was convicted, the offense of which the person was convicted; and a summary of any sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. The report shall include the sentence if imposed under any of the following:

- (a) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.
- (b) Section 1076(4) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.
- (c) Section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a.
- (d) Section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430.
- (e) Sections 11 to 15 of chapter II.
- (f) Section 4a of chapter IX.

(2) Upon sentencing a person convicted of a misdemeanor or of a violation of a local ordinance, other than a misdemeanor or local ordinance described in subsection (1), the clerk of the court imposing sentence immediately shall, if ordered by the court, advise the department of state police of the conviction on forms approved by the state court administrator.

(3) Except as otherwise provided in subsections (4) and (6), the clerk of a court shall not report a conviction of a misdemeanor offense under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a local ordinance substantially corresponding to a provision of that act unless 1 or more of the following apply:

- (a) The offense is punishable by imprisonment for more than 92 days.
- (b) The offense is an offense that would be punishable by more than 92 days as a second conviction.
- (c) A judge of the court orders the clerk to report the conviction.

(4) Unless ordered by the court, the clerk of a court is not required to report a conviction of a misdemeanor offense for a violation of section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local ordinance substantially corresponding to section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904.

(5) As part of the sentence for a conviction of an offense described in this section, if fingerprints have not already been taken, the court shall order that the fingerprints of the person convicted be taken and forwarded to the department of state police.

(6) As part of the sentence for a conviction of a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall order that the fingerprints of the person convicted be taken and forwarded as provided in the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, if fingerprints have not already been taken and forwarded as provided in that act.

(7) Within 21 days after the date a person licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, is convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the clerk of the court entering the conviction shall report the conviction to the department of consumer and industry services on a form prescribed and furnished by that department.

CHAPTER XVI

Sec. 22. (1) Each police agency in this state shall, by January 1, 1995, develop, adopt, and implement written policies for police officers responding to domestic violence calls. The policies shall reflect that domestic violence is criminal conduct.

(2) Each police agency shall consult with the prosecuting attorney and with an area shelter for victims of domestic violence in the development, implementation, including training, and evaluation of the policies and standards.

(3) The policies shall address, but not be limited to addressing, all of the following:

(a) Procedures for conducting a criminal investigation with specific standards for misdemeanor and felony arrests.

(b) Procedures for making a criminal arrest. The procedures shall emphasize all of the following:

(i) In most circumstances, an officer should arrest and take an individual into custody if the officer has probable cause to believe the individual is committing or has committed domestic violence and his or her actions constitute a crime.

(ii) When the officer has probable cause to believe spouses, former spouses, individuals who have had a child in common, individuals who have or have had a dating relationship, or other individuals who reside together or formerly resided together are committing or have committed crimes against each other, the officer, when determining whether to make an arrest of 1 or both individuals, should consider the intent of this section to protect victims of domestic violence, the degree of injury inflicted on the individuals involved, the extent to which the individuals have been put in fear of physical injury to themselves or other members of the household, and any history of domestic violence between the individuals, if that history can reasonably be ascertained by the officer. In addition, the officer should not arrest an individual if the officer has reasonable cause to believe the individual was acting in lawful self-defense or in lawful defense of another individual.

(iii) A police officer's decision as to whether to arrest an individual should not be based solely on the consent of the victim to any subsequent prosecution or on the relationship of the individuals involved in the incident.

(iv) A police officer's decision not to arrest an individual should not be based solely upon the absence of visible indications of injury or impairment.

(c) Procedures for denial of interim bond, as provided in 1961 PA 44, MCL 780.581 to 780.588.

(d) Procedures for verifying a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.

(e) Procedures for making an arrest for a violation of a personal protection order.

(f) Procedures for enforcing a valid foreign protection order.

(g) Procedures for providing or arranging for emergency assistance to victims including, but not limited to, medical care, transportation to a shelter, or remaining at the scene of an alleged incident of domestic violence for a reasonable time until, in the reasonable judgment of the police officer, the likelihood of further imminent violence has been eliminated.

(h) Procedures for informing the victim of community services and legal options that are available under section 15c of chapter IV.

(i) Procedures for preparing a written report, whether or not an arrest is made.

(j) Training of peace officers, dispatchers, and supervisors.

(k) Discipline for noncompliance with the policy.

(l) Annual evaluations of the policy.

(4) The local policies developed, adopted, and implemented under this section shall be in writing and shall be available to the public upon request.

(5) As used in this section:

(a) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(b) "Foreign protection order" means that term as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(c) "Valid foreign protection order" means a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

CHAPTER XVII

Sec. 15g. This chapter applies to the following felonies enumerated in chapters 721 to 730 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
722.633(5)(b)	Person	F	Intentional false report of child abuse constituting a felony	Variable
722.675	Pub ord	E	Distributing obscene matter to children	2
722.857	Person	E	Surrogate parenting contracts involving minors, mentally retarded, etc.	5
722.859(3)	Person	E	Surrogate parenting contracts for compensation	5

Sec. 16m. This chapter applies to the following felonies enumerated in chapter 750 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
750.223(2)	Pub saf	F	Sale of firearm to minor — subsequent offense	4
750.223(3)	Pub ord	D	Sale of firearm to person prohibited from possessing	10
750.224	Pub saf	E	Manufacture or sale of silencer, bomb, blackjack, automatic weapon, gas spray, etc.	5
750.224a	Pub saf	F	Possession or sale of electrical current weapons	4
750.224b	Pub saf	E	Possession of short barreled shotgun or rifle	5
750.224c	Pub saf	F	Armor piercing ammunition	4
750.224d(2)	Person	G	Using self-defense spray device	2
750.224e	Pub saf	F	Manufacture/sale/possession of devices to convert semiautomatic weapons	4
750.224f	Pub saf	E	Possession or sale of firearm by felon	5
750.226	Pub saf	E	Carrying firearm or dangerous weapon with unlawful intent	5
750.227	Pub saf	E	Carrying a concealed weapon	5
750.227a	Pub saf	F	Unlawful possession of pistol	4
750.227c	Pub saf	G	Possessing a loaded firearm in or upon a vehicle	2
750.227f	Pub saf	F	Wearing body armor during commission of certain crimes	4
750.227g(1)	Pub saf	F	Felon purchasing, owning, possessing, or using body armor	4
750.230	Pub saf	G	Altering ID mark on firearm	2
750.232a(3)	Pub saf	G	False statement in a pistol application	4
750.234a	Pub saf	F	Discharging firearm from vehicle	4
750.234b	Pub saf	F	Discharging firearm in or at a building	4
750.234c	Pub saf	F	Discharging firearm at emergency/police vehicle	4
750.236	Person	C	Setting spring gun — death resulting	15
750.237(3)	Person	E	Using firearm while under the influence or impaired causing serious impairment	5
750.237(4)	Person	C	Using firearm while under the influence or impaired causing death	15

Sec. 16s. This chapter applies to the following felonies enumerated in chapter 750 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
750.377a(1)(a)	Property	D	Malicious destruction of personal property involving \$20,000 or more or with prior convictions	10
750.377a(1)(b)	Property	E	Malicious destruction of personal property involving \$1,000 to \$20,000 or with prior convictions	5
750.377b	Property	F	Malicious destruction of fire/police property	4
750.377c	Property	E	School bus — intentional damage	5
750.378	Property	F	Malicious destruction of property — dams/canals/mills	4
750.379	Property	F	Malicious destruction of property — bridges/railroads/locks	4

750.380(2)	Property	D	Malicious destruction of building involving \$20,000 or more or with prior convictions	10
750.380(3)	Property	E	Malicious destruction of a building involving \$1,000 to \$20,000 or with prior convictions	5
750.382(1)(c)	Property	E	Malicious destruction of plants or turf involving \$1,000 to \$20,000 or with prior convictions	5
750.382(1)(d)	Property	D	Malicious destruction of plants or turf involving \$20,000 or more or with prior convictions	10
750.383a	Property	F	Malicious destruction of utility equipment	4
750.386	Property	E	Malicious destruction of mine property	20
750.387(5)	Property	E	Malicious destruction of a tomb or memorial involving \$1,000 to \$20,000 or with prior convictions	5
750.387(6)	Property	D	Malicious destruction of a tomb or memorial involving \$20,000 or more or with prior convictions	10
750.392	Property	E	Malicious destruction of property — vessels	10
750.394(2)(c)	Person	F	Throwing or dropping dangerous object at vehicle causing injury	4
750.394(2)(d)	Person	D	Throwing or dropping dangerous object at vehicle causing serious impairment	10
750.394(2)(e)	Person	C	Throwing or dropping dangerous object at vehicle causing death	15
750.395(2)(c)	Property	E	Damaging or destroying research property with a value between \$1,000 and \$20,000 or with prior convictions	5
750.395(2)(d)	Property	E	Damaging or destroying research property with a value of \$20,000 or more or 2 or more prior convictions	5
750.395(2)(e)	Person	E	Damaging or destroying research property resulting in physical injury	5
750.395(2)(f)	Person	D	Damaging or destroying research property resulting in serious impairment of body function	10
750.395(2)(g)	Person	C	Damaging or destroying research property resulting in death	15
750.397	Person	D	Mayhem	10
750.397a	Person	D	Placing harmful objects in food	10
750.405	Pub saf	E	Inciting soldiers to desert	5
750.406	Pub saf	E	Military stores — larceny, embezzlement or destruction	5

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

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Governor