

HOUSE BILL No. 5319

February 9, 2016, Introduced by Reps. Irwin, Robinson, Plawecki and Pagan and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 1 of chapter I, sections 1f and 27 of chapter IV, and section 14 of chapter VI (MCL 761.1, 764.1f, 764.27, and 766.14), section 1 of chapter I as amended by 2007 PA 20, section 1f of chapter IV and section 14 of chapter VI as amended by 1998 PA 520, and section 27 of chapter IV as amended by 1996 PA 418.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER I

Sec. 1. As used in this act:

(a) "Person", "accused", or a similar word means an individual or, unless a contrary intention appears, a public or private corporation, partnership, or unincorporated or voluntary

1 association.

2 (b) "Act" or "doing of an act" includes "omission to act".

3 (c) "Property" includes any matter or thing upon or in respect
4 to which an offense may be committed.

5 (d) "Indictment" means 1 or more of the following:

6 (i) An indictment.

7 (ii) An information.

8 (iii) A presentment.

9 (iv) A complaint.

10 (v) A warrant.

11 (vi) A formal written accusation.

12 (vii) Unless a contrary intention appears, a count contained
13 in any document described in subparagraphs (i) through (vi).

14 (e) "Writing", "written", or a similar term refers to words
15 printed, painted, engraved, lithographed, photographed, copied,
16 traced, or otherwise made visible to the eye.

17 (f) "Magistrate" means a judge of the district court or a
18 judge of a municipal court. Magistrate does not include a district
19 court magistrate, except that a district court magistrate may
20 exercise the powers, jurisdiction, and duties of a magistrate if
21 specifically provided in this act, the revised judicature act of
22 1961, 1961 PA 236, MCL 600.101 to 600.9947, or any other statute.
23 This definition does not limit the power of a justice of the
24 supreme court, a circuit judge, or a judge of a court of record
25 having jurisdiction of criminal cases under this act, or deprive
26 him or her of the power to exercise the authority of a magistrate.

27 (g) "Felony" means a violation of a penal law of this state

1 for which the offender, upon conviction, may be punished by death
2 or by imprisonment for more than 1 year or an offense expressly
3 designated by law to be a felony.

4 (h) "Misdemeanor" means a violation of a penal law of this
5 state that is not a felony or a violation of an order, rule, or
6 regulation of a state agency that is punishable by imprisonment or
7 a fine that is not a civil fine.

8 (j) "Ordinance violation" means either of the following:

9 (i) A violation of an ordinance or charter of a city, village,
10 township, or county that is punishable by imprisonment or a fine
11 that is not a civil fine.

12 (ii) A violation of an ordinance, rule, or regulation of any
13 other governmental entity authorized by law to enact ordinances,
14 rules, or regulations that is punishable by imprisonment or a fine
15 that is not a civil fine.

16 (k) "Minor offense" means a misdemeanor or ordinance violation
17 for which the maximum permissible imprisonment does not exceed 92
18 days and the maximum permissible fine does not exceed \$1,000.00.

19 (l) "Prosecuting attorney" means the prosecuting attorney for
20 a county, an assistant prosecuting attorney for a county, the
21 attorney general, the deputy attorney general, an assistant
22 attorney general, a special prosecuting attorney, or, in connection
23 with the prosecution of an ordinance violation, an attorney for the
24 political subdivision or governmental entity that enacted the
25 ordinance, charter, rule, or regulation upon which the ordinance
26 violation is based.

27 (m) "Judicial district" means the following:

1 (i) With regard to the circuit court, the county.

2 (ii) With regard to municipal courts, the city in which the
3 municipal court functions or the village served by a municipal
4 court under section 9928 of the revised judicature act of 1961,
5 1961 PA 236, MCL 600.9928.

6 (iii) With regard to the district court, the county, district,
7 or political subdivision in which venue is proper for criminal
8 actions.

9 (n) "Complaint" means a written accusation, under oath or upon
10 affirmation, that a felony, misdemeanor, or ordinance violation has
11 been committed and that the person named or described in the
12 accusation is guilty of the offense.

13 (o) "Clerk" means the clerk or a deputy clerk of the court.

14 (p) "Federal law enforcement officer" means an officer or
15 agent employed by a law enforcement agency of the United States
16 government whose primary responsibility is enforcing laws of the
17 United States.

18 (q) "Jail", "prison", or a similar word includes a juvenile
19 facility in which a juvenile has been placed pending trial under
20 section 27a of chapter IV.

21 (r) "Juvenile", **UNTIL THE EFFECTIVE DATE OF THE AMENDATORY ACT**
22 **THAT REPEALED SECTION 606 OF THE REVISED JUDICATURE ACT OF 1961,**
23 **1961 PA 236, MCL 600.606,** means a person within the jurisdiction of
24 the circuit court under section 606 of the revised judicature act
25 of 1961, 1961 PA 236, MCL 600.606.

26 (s) "Juvenile facility" means a county facility, institution
27 operated as an agency of the county or family division of circuit

1 court, or an institution or agency described in the youth
2 rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309,
3 to which a juvenile has been committed under section 27a of chapter
4 IV.

5 (t) "County juvenile agency" means that term as defined in
6 section 2 of the county juvenile agency act, 1998 PA 518, MCL
7 45.622.

8 (u) "Taken", "brought", or "before" a magistrate or judge for
9 purposes of criminal arraignment or the setting of bail means
10 either of the following:

11 (i) Physical presence before a judge or district court
12 magistrate.

13 (ii) Presence before a judge or district court magistrate by
14 use of 2-way interactive video technology.

15 CHAPTER IV

16 Sec. 1f. (1) ~~IF~~ **UNTIL THE EFFECTIVE DATE OF THE AMENDATORY ACT**
17 **THAT REPEALED SECTION 606 OF THE REVISED JUDICATURE ACT OF 1961,**
18 **1961 PA 236, MCL 600.606, IF** the prosecuting attorney has reason to
19 believe that a juvenile 14 years of age or older but less than 17
20 years of age has committed a specified juvenile violation, the
21 prosecuting attorney may authorize the filing of a complaint and
22 warrant on the charge with a magistrate concerning the juvenile.

23 (2) As used in this section, "specified juvenile violation"
24 means any of the following:

25 (a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,
26 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328,
27 MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317,

1 750.349, 750.520b, 750.529, 750.529a, and 750.531.

2 (b) A violation of section 84 or 110a(2) of the Michigan penal
3 code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is
4 armed with a dangerous weapon. As used in this subdivision,
5 "dangerous weapon" means 1 or more of the following:

6 (i) A loaded or unloaded firearm, whether operable or
7 inoperable.

8 (ii) A knife, stabbing instrument, brass knuckles, blackjack,
9 club, or other object specifically designed or customarily carried
10 or possessed for use as a weapon.

11 (iii) An object that is likely to cause death or bodily injury
12 when used as a weapon and that is used as a weapon or carried or
13 possessed for use as a weapon.

14 (iv) An object or device that is used or fashioned in a manner
15 to lead a person to believe the object or device is an object or
16 device described in subparagraphs (i) to (iii).

17 (c) A violation of section 186a of the Michigan penal code,
18 1931 PA 328, MCL 750.186a, regarding escape or attempted escape
19 from a juvenile facility, but only if the juvenile facility from
20 which the individual escaped or attempted to escape was 1 of the
21 following:

22 (i) A high-security or medium-security facility operated by
23 the ~~family independence agency~~ **DEPARTMENT OF HEALTH AND HUMAN**
24 **SERVICES** or a county juvenile agency.

25 (ii) A high-security facility operated by a private agency
26 under contract with the ~~family independence agency~~ **DEPARTMENT OF**
27 **HEALTH AND HUMAN SERVICES** or a county juvenile agency.

1 (d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of
2 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

3 (e) An attempt to commit a violation described in subdivisions
4 (a) to (d).

5 (f) Conspiracy to commit a violation described in subdivisions
6 (a) to (d).

7 (g) Solicitation to commit a violation described in
8 subdivisions (a) to (d).

9 (h) Any lesser included offense of a violation described in
10 subdivisions (a) to (g) if the individual is charged with a
11 violation described in subdivisions (a) to (g).

12 (i) Any other violation arising out of the same transaction as
13 a violation described in subdivisions (a) to (g) if the individual
14 is charged with a violation described in subdivisions (a) to (g).

15 Sec. 27. Except as otherwise provided in section 606 of the
16 revised judicature act of 1961, ~~Act No. 236 of the Public Acts of~~
17 ~~1961, being section 600.606 of the Michigan Compiled Laws, or~~
18 ~~section 10a(1)(c) of Act No. 369 of the Public Acts of 1919, being~~
19 ~~section 725.10a of the Michigan Compiled Laws, 1961 PA 236, MCL~~
20 **600.606, UNTIL THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
21 **REPEALED THAT SECTION,** if a child less than 17 years of age is
22 arrested, with or without a warrant, the child shall be taken
23 immediately before the family division of circuit court of the
24 county where the offense is alleged to have been committed, and the
25 officer making the arrest shall immediately make and file, or cause
26 to be made and filed, a petition against the child as provided in
27 chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~

1 ~~sections 712A.1 to 712A.31 of the Michigan Compiled Laws. THE~~
2 **PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.1 TO 712A.32.** Except as
3 otherwise provided in section 606 of Act No. ~~236 of the Public Acts~~
4 ~~of 1961 or section 10a(1)(e) of Act No. 369 of the Public Acts of~~
5 ~~1919, THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.606,~~
6 **UNTIL THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT REPEALED THAT**
7 **SECTION,** if during the pendency of a criminal case against a child
8 in a court in this state it is ascertained that the child is less
9 than 17 years of age, the court shall immediately transfer the
10 case, together with all papers connected with the case, to the
11 family division of circuit court of the county where the offense is
12 alleged to have been committed. If a child 14 years of age or older
13 is charged with a felony, the judge of probate, after investigation
14 and examination and upon motion of the prosecuting attorney, may
15 waive jurisdiction under section 4 of chapter XIIIA of Act No. ~~288~~
16 ~~of the Public Acts of 1939, being section 712A.4 of the Michigan~~
17 ~~Compiled Laws. THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.4.~~
18 If jurisdiction is waived, the child may be tried in the court
19 having general criminal jurisdiction of the offense. If during the
20 pendency of a criminal case against a child in a court of record
21 other than the family division of circuit court it is determined
22 that the child is 17 years of age, the court, if the court finds
23 that any of the conditions exist as outlined in section 2(d) of
24 chapter XIIIA of Act No. ~~288 of the Public Acts of 1939, as amended,~~
25 ~~being section 712A.2 of the Michigan Compiled Laws, THE PROBATE~~
26 **CODE OF 1939, 1939 PA 288, MCL 712A.2,** upon motion of the
27 prosecuting attorney, the child, or his or her representative, may

1 transfer the case together with all papers connected with the case
2 to the family division of circuit court of the county where the
3 offense is alleged to have been committed.

4 CHAPTER VI

5 Sec. 14. (1) If the court determines at the conclusion of the
6 preliminary examination of a person charged with a felony that the
7 offense charged is not a felony or that an included offense that is
8 not a felony has been committed, the accused shall not be dismissed
9 but the magistrate shall proceed in the same manner as if the
10 accused had initially been charged with an offense that is not a
11 felony.

12 (2) If at the conclusion of the preliminary examination of a
13 juvenile the magistrate finds that, **UNTIL THE EFFECTIVE DATE OF THE**
14 **AMENDATORY ACT THAT REPEALED SECTION 606 OF THE REVISED JUDICATURE**
15 **ACT OF 1961, 1961 PA 236, MCL 600.606,** a specified juvenile
16 violation did not occur, or that there is not probable cause to
17 believe that the juvenile committed the violation, but that there
18 is probable cause to believe that some other offense occurred and
19 that the juvenile committed that other offense, the magistrate
20 shall transfer the case to the family division of circuit court of
21 the county where the offense is alleged to have been committed.

22 (3) A transfer under subsection (2) does not prevent the
23 family division of circuit court from waiving jurisdiction over the
24 juvenile under section 4 of chapter XIIIA of **THE PROBATE CODE OF**
25 **1939, 1939 PA 288, MCL 712A.4.**

26 (4) As used in this section, "specified juvenile violation"
27 means any of the following:

1 (a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349,
2 520b, 529, 529a, or 531 of the Michigan penal code, 1931 PA 328,
3 MCL 750.72, 750.83, **750.86**, 750.89, 750.91, 750.316, 750.317,
4 750.349, 750.520b, 750.529, 750.529a, and 750.531.

5 (b) A violation of section 84 or 110a(2) of the Michigan penal
6 code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is
7 armed with a dangerous weapon. As used in this subdivision,
8 "dangerous weapon" means 1 or more of the following:

9 (i) A loaded or unloaded firearm, whether operable or
10 inoperable.

11 (ii) A knife, stabbing instrument, brass knuckles, blackjack,
12 club, or other object specifically designed or customarily carried
13 or possessed for use as a weapon.

14 (iii) An object that is likely to cause death or bodily injury
15 when used as a weapon and that is used as a weapon or carried or
16 possessed for use as a weapon.

17 (iv) An object or device that is used or fashioned in a manner
18 to lead a person to believe the object or device is an object or
19 device described in subparagraphs (i) to (iii).

20 (c) A violation of section 186a of the Michigan penal code,
21 1931 PA 328, MCL 750.186a, regarding escape or attempted escape
22 from a juvenile facility, but only if the juvenile facility from
23 which the individual escaped or attempted to escape was 1 of the
24 following:

25 (i) A high-security or medium-security facility operated by
26 the ~~family independence agency~~ **DEPARTMENT OF HEALTH AND HUMAN**
27 **SERVICES** or a county juvenile agency.

1 (ii) A high-security facility operated by a private agency
2 under contract with the ~~family independence agency~~ **DEPARTMENT OF**
3 **HEALTH AND HUMAN SERVICES** or a county juvenile agency.

4 (d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of
5 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

6 (e) An attempt to commit a violation described in subdivisions
7 (a) to (d).

8 (f) Conspiracy to commit a violation described in subdivisions
9 (a) to (d).

10 (g) Solicitation to commit a violation described in
11 subdivisions (a) to (d).

12 (h) Any lesser included offense of a violation described in
13 subdivisions (a) to (g) if the individual is charged with a
14 violation described in subdivisions (a) to (g).

15 (i) Any other violation arising out of the same transaction as
16 a violation described in subdivisions (a) to (g) if the individual
17 is charged with a violation described in subdivisions (a) to (g).

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

20 Enacting section 2. This amendatory act does not take effect
21 unless Senate Bill No. ____ or House Bill No. 5317 (request no.
22 02924'15) of the 98th Legislature is enacted into law.