

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021**

Introduced by Senator VanderWall

ENROLLED SENATE BILL No. 438

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 9c of chapter IV (MCL 764.9c), as amended by 2020 PA 393.

The People of the State of Michigan enact:

CHAPTER IV

Sec. 9c. (1) Except as provided in subsection (3), if a police officer has arrested a person without a warrant for a misdemeanor or ordinance violation, instead of taking the person before a magistrate and promptly filing a complaint as provided in section 13 of this chapter, the officer may issue to and serve upon the person an appearance ticket as defined in section 9f of this chapter and release the person from custody. The appearance ticket issued under this section, or other documentation as requested, must be forwarded to the court, appropriate prosecuting authority, or both, for review without delay.

(2) A public servant other than a police officer, who is specially authorized by law or ordinance to issue and serve appearance tickets with respect to a particular class of offenses of less than felony grade, may issue and serve upon a person an appearance ticket if the public servant has reasonable cause to believe that the person has committed an offense.

(3) An appearance ticket must not be issued to any of the following:

(a) A person arrested for a domestic violence violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to a domestic violence violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or an offense involving domestic violence as that term is defined in section 1 of 1978 PA 389, MCL 400.1501.

(b) A person subject to detention for violating a personal protection order.

(c) A person subject to a mandatory period of confinement, condition of bond, or other condition of release until he or she has served that period of confinement or meets that requirement of bond or other condition of release.

(d) A person arrested for a serious misdemeanor.

(e) A person arrested for any other assaultive crime.

(4) Except as provided in subsection (5), a police officer shall issue to and serve upon a person an appearance ticket as defined in section 9f of this chapter and release the person from custody if the person has been arrested for a misdemeanor or ordinance violation that has a maximum permissible penalty that does not exceed 1 year in jail or a fine, or both, and is not a serious misdemeanor, assaultive crime, domestic violence violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, a local ordinance substantially corresponding to a domestic violence violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, an offense involving domestic violence as that term is defined in section 1 of 1978 PA 389, MCL 400.1501, or an operating while intoxicated offense.

(5) The police officer may take the arrested person before a magistrate and promptly file a complaint as provided in section 13 of this chapter instead of issuing an appearance ticket as required under subsection (4) if 1 of the following circumstances is present:

(a) The arrested person refuses to follow the police officer's reasonable instructions.

(b) The arrested person will not offer satisfactory evidence of identification.

(c) There is a reasonable likelihood that the offense would continue or resume, or that another person or property would be endangered if the arrested person is released from custody.

(d) The arrested person presents an immediate danger to himself or herself or requires immediate medical examination or medical care.

(e) The arrested person requests to be taken immediately before a magistrate.

(f) Any other reason that the police officer may deem reasonable to arrest the person which must be articulated in the arrest report.

(6) If a police officer determines that 1 of the circumstances under subsection (5) applies and he or she takes an arrested person before a magistrate and promptly files a complaint as provided in section 13 of this chapter instead of issuing an appearance ticket, the police officer must specify the reason for not issuing a citation in the arrest report or other documentation, as applicable, and must forward the arrest report or other documentation, as requested, to the appropriate prosecuting authority for review without delay.

(7) An arrested person who is taken into custody under subsection (6) instead of being issued an appearance ticket must be charged by the appropriate prosecuting authority or released from custody not later than 3 p.m. the immediately following day during which arraignments may be performed.

(8) This section does not create a right to the issuance of an appearance ticket in lieu of an arrest. An arrested person may appeal the legality of his or her arrest as provided by law. However, an arrested person does not have a claim for damages against a police officer or law enforcement agency because he or she was arrested rather than issued an appearance ticket.

(9) As used in this section:

(a) "Assaultive crime" means that term as defined in section 9a of chapter X.

(b) "Operating while intoxicated offense" means a violation of any of the following:

(i) Section 625 or 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625 and 257.625m.

(ii) A local ordinance substantially corresponding to a violation listed in subparagraph (i).

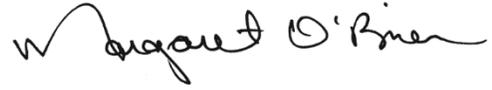
(iii) A law of an Indian tribe substantially corresponding to a violation listed in subparagraph (i).

(iv) A law of another state substantially corresponding to a violation listed in subparagraph (i).

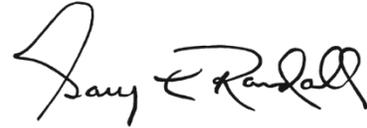
(v) A law of the United States substantially corresponding to a violation listed in subparagraph (i).

(c) "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor