

[No. 407]

(HB 5271)

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 sections 2 and 3 of chapter X and sections 34, 43, and 44 of chapter XIV (MCL 770.2, 770.3, 774.34, 774.43, and 774.44), section 2 of chapter X as amended by 1981 PA 205, section 3 of chapter X as amended by 1994 PA 374, and sections 34, 43, and 44 of chapter XIV as amended by 1980 PA 506.

*The People of the State of Michigan enact:*

## CHAPTER X

### 770.2 Motion for new trial. [M.S.A. 28.1099]

Sec. 2. (1) In a case appealable as of right to the court of appeals, a motion for a new trial shall be made within 60 days after entry of the judgment or within any further time allowed by the trial court during the 60-day period.

(2) In a misdemeanor or ordinance violation case appealable as of right from a municipal court in a city that adopts a resolution of approval under section 23a of the Michigan municipal court act, 1956 PA 5, MCL 730.523, or from a court of record to the circuit court or to the recorder's court of the city of Detroit, a motion for a new trial shall be made within 20 days after entry of the judgment.

(3) In a misdemeanor or ordinance violation case appealable de novo to the circuit court, a motion for a new trial shall be made within 20 days after entry of the judgment.

(4) If the applicable period of time prescribed in subsection (1) or (2) has expired, a court of record may grant a motion for a new trial for good cause shown. If the applicable time period prescribed in subsection (3) has expired and the defendant has not appealed, a municipal court may grant a motion for new trial for good cause shown.

770.3 Appeal by aggrieved party. [M.S.A. 28.1100]

Sec. 3. (1) Subject to the limitations imposed by section 12 of this chapter, an aggrieved party shall have a right of appeal from a final judgment or trial order as follows:

(a) Except as otherwise provided in subdivision (e), in a felony or misdemeanor case tried in the circuit court or recorder's court of the city of Detroit, there shall be a right of appeal to the court of appeals.

(b) Except as otherwise provided in subdivision (e), in a misdemeanor or ordinance violation case tried in a municipal court in a city that adopts a resolution of approval under section 23a of the Michigan municipal court act, 1956 PA 5, MCL 730.523, or tried in the district court in districts other than the thirty-sixth district, there shall be a right of appeal to the circuit court in the county in which the misdemeanor or ordinance violation was committed.

(c) Except as otherwise provided in subdivision (e), in a misdemeanor or ordinance violation case tried in the district court in the thirty-sixth district, or in a felony case over which the district court in the thirty-sixth district has jurisdiction before trial, there shall be a right of appeal to the recorder's court of the city of Detroit.

(d) In a misdemeanor or ordinance violation case tried in a municipal court in a city that does not adopt a resolution of approval under section 23a of the Michigan municipal court act, 1956 PA 5, MCL 730.523, there shall be a right of appeal as provided in chapter XIV.

(e) All appeals from final orders and judgments based upon pleas of guilty or nolo contendere shall be by application for leave to appeal.

(2) An appeal from an interlocutory judgment or order in a felony, misdemeanor, or ordinance violation may be taken, in the manner provided by court rules, by application for leave to appeal to the same court of which a final judgment in that case would be appealable as a matter of right under subsection (1).

(3) After expiration of the period prescribed for timely appeal, the appellate court may grant leave to appeal from any order or judgment from which timely appeal would have been available as of right, or by leave, upon conditions prescribed by court rules.

(4) Further appellate review of matters appealed to the circuit court under subsection (1)(b), (1)(d), or (2) may be had only upon application for leave to appeal granted by the court of appeals.

(5) Further appellate review of matters appealed to the recorder's court under subsection (1)(c) may be had only upon application for leave to appeal granted by the court of appeals.

(6) Further review of any matter appealed to the court of appeals under this section may be had only upon application for leave to appeal granted by the supreme court.

(7) An appeal as of right and an appeal by application for leave to appeal provided for in this section shall be taken pursuant to and within the time prescribed by court rules.

CHAPTER XIV

774.34 Appeal to circuit court; practice and procedure.  
[M.S.A. 28.1226]

Sec. 34. (1) A defendant who is convicted of a misdemeanor or ordinance violation in a municipal court in a city that does not adopt a resolution of approval under section 23a of the Michigan municipal court act, 1956 PA 5, MCL 730.523, may appeal to the circuit court for a trial de novo even if the sentence has been suspended or the fine or costs, or both, have been paid.

(2) To appeal by right, the defendant shall file a claim of appeal with the circuit court clerk within 20 days after the entry of judgment. A copy of the claim of appeal shall be filed with the municipal court. All applicable fees required by sections 2529 and 6536 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.2529 and 600.6536, shall be paid when filing the claim of appeal. The defendant shall also enter into a recognizance to the people of the state in a sum not less than \$50.00 nor more than \$500.00 within 20 days after the entry of the judgment, conditioned upon the defendant prosecuting the appeal to effect and abiding by the orders and judgment of the court. If the defendant enters into a recognizance, the municipal judge from whose judgment the appeal is taken shall discharge the defendant or order the defendant's discharge, shall make a special return of the proceedings held before the judge, and shall file the complaint, warrant, and the return together with the recognizance with the circuit court.

(3) The practice and procedure for appeals from a municipal court shall be as provided by supreme court rule.

774.43 Circuit court; discharge of defendant if found not guilty; entering judgment, sentence, and imposing costs if defendant convicted on appeal; remanding defendant back to county jail; credit for fine paid. [M.S.A. 28.1235]

Sec. 43. If the defendant who appeals a conviction in municipal court in a city that does not adopt a resolution of approval under section 23a of the Michigan municipal court act, 1956 PA 5, MCL 730.523, is found not guilty on appeal in circuit court, the circuit court shall discharge the defendant. If the defendant is convicted on appeal to circuit court, the circuit court has the authority to enter judgment, sentence, and impose costs as provided in section 22 of this chapter. If the defendant was released on recognizance as provided in section 34 or 42 of this chapter and is sentenced to jail by the circuit court, the defendant shall be remanded back to the county jail for the length of time determined by the circuit court, less any time served under the sentence imposed by the municipal court and less any time spent in jail awaiting trial. The defendant shall also be given credit for any fine paid under the sentence of the municipal court against any fine imposed by the circuit court on appeal.

774.44 Withdrawal or dismissal of appeal; order revoking recognizance and directing sentence be carried out. [M.S.A. 28.1236]

Sec. 44. If a defendant takes an appeal from a municipal court in a city that does not adopt a resolution of approval under section 23a of the Michigan municipal court act, 1956 PA 5, MCL 730.523, and withdraws the appeal, or if the circuit court dismisses the appeal leaving the municipal court conviction in effect, the circuit court may enter an order revoking a recognizance and may also direct that the sentence of the municipal court be carried out.

Applicability to appellate procedures for municipal court in city adopting resolution of approval.

Enacting section 1. The changes made by this amendatory act to appellate procedures for a municipal court in a city that adopts a resolution of approval under section 23a of the municipal court act, 1956 PA 5, MCL 730.523, apply only to cases commenced on or after the date on which that resolution is submitted to the state court administrative office.

Effective date.

Enacting section 2. This amendatory act takes effect January 1, 1999.

1998 PUBLIC AND LOCAL ACTS

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Conditional effective date.

Enacting section 3. This amendatory act does not take effect unless Senate Bill No. 752 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 18, 1998.

Filed with Secretary of State December 21, 1998.

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**Compiler's note:** Senate Bill No. 752, referred to in enacting section 3, was filed with the Secretary of State December 21, 1998, and became P.A. 1998, No. 415, Eff. Jan. 1, 1999.

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