

SUBSTITUTE FOR
SENATE BILL NO. 863

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 6b of chapter V (MCL 765.6b), as amended by
2013 PA 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER V

2

Sec. 6b. (1) A judge or district court magistrate may release

3

~~under this section~~ a defendant **UNDER THIS SUBSECTION** subject to

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conditions reasonably necessary for the protection of 1 or more

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named persons. If a judge or district court magistrate releases

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~~under this section~~ a defendant **UNDER THIS SUBSECTION** subject to

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protective conditions, the judge or district court magistrate shall

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make a finding of the need for protective conditions and inform the

1 defendant on the record, either orally or by a writing that is
2 personally delivered to the defendant, of the specific conditions
3 imposed and that if the defendant violates a condition of release,
4 he or she will be subject to arrest without a warrant and may have
5 his or her bail forfeited or revoked and new conditions of release
6 imposed, in addition to the penalty provided under section 3f of
7 chapter XI and any other penalties that may be imposed if the
8 defendant is found in contempt of court.

9 (2) An order or amended order issued under subsection (1)
10 shall contain all of the following:

11 (a) A statement of the defendant's full name.

12 (b) A statement of the defendant's height, weight, race, sex,
13 date of birth, hair color, eye color, and any other identifying
14 information the judge or district court magistrate considers
15 appropriate.

16 (c) A statement of the date the conditions become effective.

17 (d) A statement of the date on which the order will expire.

18 (e) A statement of the conditions imposed.

19 (3) An order or amended order issued under this subsection and
20 subsection (1) may impose a condition that the defendant not
21 purchase or possess a firearm. However, if the court orders the
22 defendant to carry or wear an electronic monitoring device as a
23 condition of release as described in subsection (6), the court
24 shall also impose a condition that the defendant not purchase or
25 possess a firearm.

26 (4) The judge or district court magistrate shall immediately
27 direct **THE ISSUING COURT OR** a law enforcement agency within the

1 jurisdiction of the court, in writing, to enter an order or amended
2 order issued under subsection (1) or subsections (1) and (3) into
3 ~~the law enforcement information network as provided by the C.J.I.S.~~
4 ~~policy council act, 1974 PA 163, MCL 28.211 to 28.215.~~ **LEIN.**

5 If the order or amended order is rescinded, the judge or district
6 court magistrate shall immediately order the **ISSUING COURT OR** law
7 enforcement agency to remove the order or amended order from ~~the~~
8 ~~law enforcement information network.~~ **LEIN.**

9 (5) ~~A~~ **THE ISSUING COURT OR A** law enforcement agency within the
10 jurisdiction of the court shall immediately enter an order or
11 amended order into ~~the law enforcement information network as~~
12 ~~provided by the C.J.I.S. policy council act, 1974 PA 163, MCL~~
13 ~~28.211 to 28.215,~~ **LEIN** or shall remove the order or amended order
14 from the law enforcement information network upon expiration of the
15 order or as directed by the court under subsection (4).

16 (6) If a defendant who is charged with a crime involving
17 domestic violence, or any other assaultive crime, is released under
18 this ~~section,~~ **SUBSECTION AND SUBSECTION (1),** the judge or district
19 court magistrate may order the defendant to wear an electronic
20 monitoring device as a condition of release. With the informed
21 consent of the victim, the court may also order the defendant to
22 provide the victim of the charged crime with an electronic receptor
23 device capable of receiving the global positioning system
24 information from the electronic monitoring device worn by the
25 defendant that notifies the victim if the defendant is located
26 within a proximity to the victim as determined by the judge or
27 district court magistrate in consultation with the victim. The

1 victim shall also be furnished with a telephone contact with the
2 local law enforcement agency to request immediate assistance if the
3 defendant is located within that proximity to the victim. In
4 addition, the victim may provide the court with a list of areas
5 from which he or she would like the defendant excluded. The court
6 shall consider the victim's request and shall determine which areas
7 the defendant shall be prohibited from accessing. The court shall
8 instruct the entity monitoring the defendant's position to notify
9 the proper authorities if the defendant violates the order. In
10 determining whether to order a defendant to wear an electronic
11 monitoring device, the court shall consider the likelihood that the
12 defendant's participation in electronic monitoring will deter the
13 defendant from seeking to kill, physically injure, stalk, or
14 otherwise threaten the victim prior to trial. The victim may
15 request the court to terminate the victim's participation in the
16 monitoring of the defendant at any time. The court shall not impose
17 sanctions on the victim for refusing to participate in monitoring
18 under this subsection. A defendant described in this subsection
19 shall only be released ~~under this section~~ if he or she agrees to
20 pay the cost of the device and any monitoring as a condition of
21 release or to perform community service work in lieu of paying that
22 cost. An electronic monitoring device ordered to be worn under this
23 ~~section~~ **SUBSECTION** shall provide reliable notification of removal
24 or tampering. As used in this subsection:

25 (a) "Assaultive crime" means that term as defined in section
26 9a of chapter X.

27 (b) "Domestic violence" means that term as defined in section

1 1 of 1978 PA 389, MCL 400.1501.

2 (c) "Electronic monitoring device" includes any electronic
3 device or instrument that is used to track the location of an
4 individual **OR TO MONITOR AN INDIVIDUAL'S BLOOD ALCOHOL CONTENT**, but
5 does not include any technology that is implanted or violates the
6 corporeal body of the individual.

7 (d) "Informed consent" means that the victim was given
8 information concerning all of the following before consenting to
9 participate in electronic monitoring:

10 (i) The victim's right to refuse to participate in that
11 monitoring and the process for requesting the court to terminate
12 the victim's participation after it has been ordered.

13 (ii) The manner in which the monitoring technology functions
14 and the risks and limitations of that technology, and the extent to
15 which the system will track and record the victim's location and
16 movements.

17 (iii) The boundaries imposed on the defendant during the
18 monitoring program.

19 (iv) Sanctions that the court may impose on the defendant for
20 violating an order issued under this subsection.

21 (v) The procedure that the victim is to follow if the
22 defendant violates an order issued under this subsection or if
23 monitoring equipment fails to operate properly.

24 (vi) Identification of support services available to assist the
25 victim to develop a safety plan to use if the court's order issued
26 under this subsection is violated or if the monitoring equipment
27 fails to operate properly.

1 (vii) Identification of community services available to assist
2 the victim in obtaining shelter, counseling, education, child care,
3 legal representation, and other help in addressing the consequences
4 and effects of domestic violence.

5 (viii) The nonconfidential nature of the victim's communications
6 with the court concerning electronic monitoring and the
7 restrictions to be imposed upon the defendant's movements.

8 (7) A JUDGE OR DISTRICT COURT MAGISTRATE MAY RELEASE UNDER
9 THIS SUBSECTION A DEFENDANT SUBJECT TO CONDITIONS REASONABLY
10 NECESSARY FOR THE PROTECTION OF THE PUBLIC IF THE DEFENDANT HAS
11 SUBMITTED TO A PRELIMINARY ROADSIDE ANALYSIS THAT DETECTS THE
12 PRESENCE OF ALCOHOLIC LIQUOR, A CONTROLLED SUBSTANCE, OR OTHER
13 INTOXICATING SUBSTANCE, OR ANY COMBINATION OF THEM, AND THAT A
14 SUBSEQUENT CHEMICAL TEST IS PENDING. THE JUDGE OR DISTRICT COURT
15 MAGISTRATE SHALL INFORM THE DEFENDANT ON THE RECORD, EITHER ORALLY
16 OR BY A WRITING THAT IS PERSONALLY DELIVERED TO THE DEFENDANT, OF
17 ALL OF THE FOLLOWING:

18 (A) THAT IF THE DEFENDANT IS RELEASED UNDER THIS SUBSECTION,
19 HE OR SHE SHALL NOT OPERATE A MOTOR VEHICLE UNDER THE INFLUENCE OF
20 ALCOHOLIC LIQUOR, A CONTROLLED SUBSTANCE, OR ANOTHER INTOXICATING
21 SUBSTANCE, OR ANY COMBINATION OF THEM, AS A CONDITION OF RELEASE.

22 (B) THAT IF THE DEFENDANT VIOLATES THE CONDITION OF RELEASE
23 UNDER SUBDIVISION (A), HE OR SHE WILL BE SUBJECT TO ARREST WITHOUT
24 A WARRANT, SHALL HAVE HIS OR HER BAIL FORFEITED OR REVOKED, AND
25 SHALL NOT BE RELEASED FROM CUSTODY PRIOR TO ARRAIGNMENT.

26 (8) THE JUDGE OR DISTRICT COURT MAGISTRATE SHALL IMMEDIATELY
27 DIRECT THE ISSUING COURT OR A LAW ENFORCEMENT AGENCY WITHIN THE

JURISDICTION OF THE COURT, IN WRITING, TO ENTER AN ORDER OR AMENDED ORDER ISSUED UNDER SUBSECTION (7) INTO LEIN. IF THE ORDER OR AMENDED ORDER IS RESCINDED, THE JUDGE OR DISTRICT COURT MAGISTRATE SHALL IMMEDIATELY ORDER THE ISSUING COURT OR LAW ENFORCEMENT AGENCY TO REMOVE THE ORDER OR AMENDED ORDER FROM LEIN.

(9) THE ISSUING COURT OR A LAW ENFORCEMENT AGENCY WITHIN THE JURISDICTION OF THE COURT SHALL IMMEDIATELY ENTER AN ORDER OR AMENDED ORDER INTO LEIN. IF THE ORDER OR AMENDED ORDER IS RESCINDED, THE COURT OR LAW ENFORCEMENT AGENCY SHALL IMMEDIATELY REMOVE THE ORDER OR AMENDED ORDER FROM LEIN UPON EXPIRATION OF THE ORDER UNDER SUBSECTION (8).

(10) ~~(7)~~—This section does not limit the authority of judges or district court magistrates to impose protective or other release conditions under other applicable statutes or court rules, including ordering a defendant to wear an electronic monitoring device.

(11) AS USED IN THIS SECTION, "LEIN" MEANS THE LAW ENFORCEMENT INFORMATION NETWORK REGULATED UNDER THE C.J.I.S. POLICY COUNCIL ACT, 1974 PA 163, MCL 28.211 TO 28.215, OR BY THE DEPARTMENT OF STATE POLICE.

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

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5385 of the 97th Legislature is enacted into law.