

Act No. 418
Public Acts of 1996
Approved by the Governor
October 30, 1996
Filed with the Secretary of State
October 31, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senator Schuette

ENROLLED SENATE BILL No. 1047

AN ACT to amend section 1 of chapter I, sections 15f, 25b, and 27 of chapter IV, and section 14 of chapter VI of Act No. 175 of the Public Acts of 1927, entitled as amended "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," section 1 of chapter I as amended by Act No. 229 of the Public Acts of 1994, section 15f of chapter IV as added by Act No. 113 of the Public Acts of 1993, section 25b of chapter IV as amended by Act No. 92 of the Public Acts of 1983, section 27 of chapter IV as amended by Act No. 255 of the Public Acts of 1996, and section 14 of chapter VI as amended by Act No. 255 of the Public Acts of 1996, being sections 761.1, 764.15f, 764.25b, 764.27, and 766.14 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 1 of chapter I, sections 15f, 25b, and 27 of chapter IV, and section 14 of chapter VI of Act No. 175 of the Public Acts of 1927, section 1 of chapter I as amended by Act No. 229 of the Public Acts of 1994, section 15f of chapter IV as added by Act No. 113 of the Public Acts of 1993, section 25b of chapter IV as amended by Act No. 92 of the Public Acts of 1983, section 27 of chapter IV as amended by Act No. 255 of the Public Acts of 1996, and section 14 of chapter VI as amended by Act No. 255 of the Public Acts of 1996, being sections 761.1, 764.15f, 764.25b, 764.27, and 766.14 of the Michigan Compiled Laws, are amended to read as follows:

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 association.

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

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

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

(i) An indictment.

(ii) An information.

(iii) A presentment.

(iv) A complaint.

(v) A warrant.

(vi) A formal written accusation.

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

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

(f) "Magistrate" means a judge of the district court or a judge of a municipal court. Magistrate does not include a district court magistrate, except that a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided in this act, the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws, or any other statute. This definition does not limit the power of a justice of the supreme court, a circuit judge, or a judge of a court of record having jurisdiction of criminal cases under this act, or deprive him or her of the power to exercise the authority of a magistrate.

(g) "Felony" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

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

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

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

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

(k) "Minor offense" means a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$500.00 and includes a violation described in section 9f(2) of chapter IV for which the maximum permissible penalty does not exceed 92 days in jail and a fine.

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

(m) "Judicial district" means the following:

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

(ii) With regard to the recorder's court of the city of Detroit, the city of Detroit.

(iii) With regard to municipal courts, the city in which the municipal court functions or the village served by a municipal court under section 9928 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.9928 of the Michigan Compiled Laws.

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

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

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

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

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

(r) "Juvenile" means a person within the jurisdiction of the circuit court under section 606 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.606 of the Michigan Compiled Laws, or within the jurisdiction of the recorder's court of the city of Detroit under section 10a(1)(c) of Act No. 369 of the Public Acts of 1919, being section 725.10a of the Michigan Compiled Laws.

(s) "Juvenile facility" means a county facility, institution operated as an agency of the county or family division of circuit court, or a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, being sections 803.301 to 803.309 of the Michigan Compiled Laws, to which a juvenile has been committed under section 27a of chapter IV.

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

- (i) Physical presence before a judge or district court magistrate.
- (ii) Presence before a judge or district court magistrate by use of 2-way closed circuit television.

CHAPTER IV

Sec. 15f. (1) A peace officer, without a warrant, may arrest and take into custody a person if the peace officer has reasonable cause to believe all of the following exist:

(a) The probate court before January 1, 1998 or the family division of circuit court on or after January 1, 1998 has issued an order under section 13a(4) of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.13a of the Michigan Compiled Laws, stating on its face the period of time for which the order is valid.

(b) A true copy of the order and proof of service has been filed with the law enforcement agency having jurisdiction of the area in which the person having custody of the child pursuant to section 13a(4) of chapter XIIA of Act No. 288 of the Public Acts of 1939 resides.

(c) The person named in the order has received notice of the order.

(d) The person named in the order is acting in violation of the order.

(e) The order states on its face that a violation of its terms subjects the person to criminal contempt of court and, if found guilty, the person shall be imprisoned for not more than 90 days and may be fined not more than \$500.00.

(2) If a peace officer arrests a person under this section, the peace officer shall do all of the following:

(a) Prepare a complaint of violation of the order substantially in the following format:

COMPLAINT OF VIOLATION OF CHILD PROTECTIVE ORDER

I _____ am a peace officer. I have determined by:
(name)

____ L.E.I.N. and verification with the police agency holding the order

____ Certified or true copy of order

____ Other (Describe) _____

That _____ family division of circuit court ordered _____
(county) (name)

NOT TO ENTER THE FOLLOWING PREMISES:

I have reasonable cause to believe that on _____ at _____
(date) (time)

the person subject to the order violated the order as follows:

(state violations)

(Signature of officer)

(Date)

(b) Provide 1 copy of the complaint to the person subject to the order and the original and 1 copy to the court that imposed the conditions. The law enforcement agency shall retain 1 copy of the complaint.

(3) A person arrested pursuant to this section shall be brought before the family division of circuit court having jurisdiction in the cause within 24 hours after arrest to answer to a charge of contempt for violation of the order, at which time the court shall do each of the following:

(a) Set a time certain for a hearing on the alleged violation of the order. The hearing shall be conducted within 72 hours after arrest, unless extended by the court on the motion of the arrested person.

(b) Set a reasonable bond pending a hearing of the alleged violation of the order.

(c) Notify the person having custody of the child under section 13a(4) of chapter XIIA of Act No. 288 of the Public Acts of 1939 and direct that person to appear at the hearing and give evidence on the charge of contempt.

(4) For purposes of this section, a judge of the family division of circuit court may arraign, take a plea, or sentence the person for criminal contempt in the same manner that the circuit court may arraign, take a plea, or sentence a person in other criminal cases.

(5) If a judge of the family division of circuit court is not present or available within 24 hours after arrest, a person arrested under this section shall be taken before the district court within 24 hours after arrest, at which time the district court shall order the defendant to appear before the family division of circuit court that entered or has jurisdiction over the order for a hearing on the charge. The district court shall set bond for the person.

(6) Upon receipt of a true copy of an order and proof of service under this section, the law enforcement agency shall enter the order into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, Act No. 163 of the Public Acts of 1974, being sections 28.211 to 28.216 of the Michigan Compiled Laws.

(7) If an order entered under section 13a(4) of chapter XIIA of Act No. 288 of the Public Acts of 1939 is rescinded, the court shall immediately order the law enforcement agency to remove the order from the law enforcement information network.

Sec. 25b. (1) As used in this section:

(a) "Body cavity" means the interior of the human body not visible by normal observation, being the stomach or rectal cavity of a person and the vagina of a female person.

(b) "Body cavity search" means a physical intrusion into a body cavity for the purpose of discovering any object concealed in a body cavity.

(2) Except as otherwise provided in this section, a search of a body cavity shall not be conducted without a valid search warrant.

(3) Subsection (2) does not apply to a body cavity search of a person who is any of the following:

(a) A person serving a sentence for a criminal offense in a detention facility or a state correctional facility under the jurisdiction of the department of corrections.

(b) A person who, as a result of an order by a court, is lodged in an inpatient facility operated by or under contract with the department of community health or a county community mental health board, if the person is self-abusive and the search is necessary for his or her protection.

(c) A person who, as the result of a dispositional order entered after adjudication by the juvenile division of probate court before January 1, 1998 or by the family division of the circuit court on or after January 1, 1998, is residing in a juvenile detention facility.

(4) If any of the circumstances described in subsection (3)(a), (b), or (c) applies, a search of a body cavity shall not be conducted unless the person conducting the search has obtained prior written authorization from the chief administrative officer of the facility or from that officer's designee.

(5) A body cavity search shall be conducted by a licensed physician or a physician's assistant, licensed practical nurse, or registered professional nurse acting with the approval of a licensed physician. If the body cavity search is conducted by a person of the opposite sex as the person being searched, the search shall be conducted in the presence of a person of the same sex as the person being searched.

(6) If a body cavity search is conducted under a valid search warrant, the law enforcement officer who executes the warrant required under subsection (2) shall prepare a report containing all of the following:

(a) A copy of the search warrant required under subsection (2).

(b) The name and sex of the person searched, if not contained in the warrant.

(c) The name of the person who conducted the search.

(d) The time, date, and place of the search.

(e) A list of all items recovered from the person who was searched.

(f) The name and sex of all law enforcement officers or employees of the law enforcement agency present at the search.

(7) If a body cavity search is conducted under subsections (3) and (4), the personnel authorized to conduct the body cavity search shall prepare a report containing all of the following:

- (a) A copy of the written authorization required under subsection (4).
- (b) The name and sex of the person searched, if not contained in the written authorization.
- (c) The name of the person who conducted the search.
- (d) The time, date, and place of the search.
- (e) A list of all items recovered from the person who was searched.
- (f) The name and sex of all personnel present at the search.

(8) A copy of the report required by subsection (6) or (7) shall be given without cost to the person who has been searched, subject to deletions permitted by section 13 of the freedom of information act, Act No. 442 of the Public Acts of 1976.

(9) A law enforcement officer, an employee of the law enforcement agency, or the chief administrative officer or personnel of a facility described in subsection (3) who conducts or authorizes a body cavity search in violation of this section is guilty of a misdemeanor.

Sec. 27. Except as otherwise provided in section 606 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.606 of the Michigan Compiled Laws, or section 10a(1)(c) of Act No. 369 of the Public Acts of 1919, being section 725.10a of the Michigan Compiled Laws, if a child less than 17 years of age is arrested, with or without a warrant, the child shall be taken immediately before the family division of circuit court of the county where the offense is alleged to have been committed, and the officer making the arrest shall immediately make and file, or cause to be made and filed, a petition against the child as provided in chapter XIIIA of Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.31 of the Michigan Compiled Laws. Except as otherwise provided in section 606 of Act No. 236 of the Public Acts of 1961 or section 10a(1)(c) of Act No. 369 of the Public Acts of 1919, if during the pendency of a criminal case against a child in a court in this state it is ascertained that the child is less than 17 years of age, the court shall immediately transfer the case, together with all papers connected with the case, to the family division of circuit court of the county where the offense is alleged to have been committed. If a child 14 years of age or older is charged with a felony, the judge of probate, after investigation and examination and upon motion of the prosecuting attorney, may waive jurisdiction under section 4 of chapter XIIIA of Act No. 288 of the Public Acts of 1939, being section 712A.4 of the Michigan Compiled Laws. If jurisdiction is waived, the child may be tried in the court having general criminal jurisdiction of the offense. If during the pendency of a criminal case against a child in a court of record other than the family division of circuit court it is determined that the child is 17 years of age, the court, if the court finds that any of the conditions exist as outlined in section 2(d) of chapter XIIIA of Act No. 288 of the Public Acts of 1939, as amended, being section 712A.2 of the Michigan Compiled Laws, upon motion of the prosecuting attorney, the child, or his or her representative, may transfer the case together with all papers connected with the case to the family division of circuit court of the county where the offense is alleged to have been committed.

CHAPTER VI

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

(2) If at the conclusion of the preliminary examination of a juvenile the magistrate finds that a specified juvenile violation did not occur or that there is not probable cause to believe that the juvenile committed the violation, but that there is probable cause to believe that some other offense occurred and that the juvenile committed that other offense, the magistrate shall transfer the case to the family division of circuit court of the county where the offense is alleged to have been committed.

(3) A transfer under subsection (2) does not prevent the family division of circuit court from waiving jurisdiction over the juvenile under section 4 of chapter XIIIA of Act No. 288 of the Public Acts of 1939, being section 712A.4 of the Michigan Compiled Laws.

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

(a) A violation of section 72, 83, 86, 89, 91, 316, 317, 349, 520b, 529, 529a, or 531 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531 of the Michigan Compiled Laws.

(b) A violation of section 84 or 110a(2) of Act No. 328 of the Public Acts of 1931, being sections 750.84 and 750.110a of the Michigan Compiled Laws, if the juvenile is armed with a dangerous weapon. As used in this subdivision, "dangerous weapon" means 1 or more of the following:

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

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

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

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

(c) A violation of section 186a of Act No. 328 of the Public Acts of 1931, being section 750.186a of the Michigan Compiled Laws, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the individual escaped or attempted to escape was 1 of the following:

(i) A high-security or medium-security facility operated by the family independence agency.

(ii) A high-security facility operated by a private agency under contract with the family independence agency.

(d) A violation of section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7401 and 333.7403 of the Michigan Compiled Laws.

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

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

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

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

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

Section 2. This amendatory act shall take effect January 1, 1998.

Section 3. This amendatory act shall not take effect unless Senate Bill No. 1052 of the 88th Legislature is enacted into law.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.

