

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 5

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 1 of chapter I (MCL 761.1), as amended by 2007
PA 20, and by adding section 21a to chapter XVI.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER I

2 Sec. 1. As used in this act:

3 ~~—— (a) "Person", "accused", or a similar word means an individual~~
4 ~~or, unless a contrary intention appears, a public or private~~
5 ~~corporation, partnership, or unincorporated or voluntary~~
6 ~~association.~~

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

~~1 (c) "Property" includes any matter or thing upon or in respect
2 to which an offense may be committed.~~

~~3 (d) "Indictment" means 1 or more of the following:~~

~~4 (i) An indictment.~~

~~5 (ii) An information.~~

~~6 (iii) A presentment.~~

~~7 (iv) A complaint.~~

~~8 (v) A warrant.~~

~~9 (vi) A formal written accusation.~~

~~10 (vii) Unless a contrary intention appears, a count contained
11 in any document described in subparagraphs (i) through (vi).~~

~~12 (e) "Writing", "written", or a similar term refers to words
13 printed, painted, engraved, lithographed, photographed, copied,
14 traced, or otherwise made visible to the eye.~~

~~15 (f) "Magistrate" means a judge of the district court or a
16 judge of a municipal court. Magistrate does not include a district
17 court magistrate, except that a district court magistrate may
18 exercise the powers, jurisdiction, and duties of a magistrate if
19 specifically provided in this act, the revised judicature act of
20 1961, 1961 PA 236, MCL 600.101 to 600.9947, or any other statute.~~

~~21 This definition does not limit the power of a justice of the
22 supreme court, a circuit judge, or a judge of a court of record
23 having jurisdiction of criminal cases under this act, or deprive
24 him or her of the power to exercise the authority of a magistrate.~~

~~25 (g) "Felony" means a violation of a penal law of this state
26 for which the offender, upon conviction, may be punished by death
27 or by imprisonment for more than 1 year or an offense expressly~~

1 ~~designated by law to be a felony.~~

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

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

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

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

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

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

25 ~~—— (m) "Judicial district" means the following:~~

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

27 ~~—— (ii) 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, 1961 PA 236, MCL 600.9928.~~

~~—— (iii) 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 enforcing 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, 1961 PA 236, MCL 600.606.~~

~~—— (s) "Juvenile facility" means a county facility, institution operated as an agency of the county or family division of circuit court, or an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, to which a juvenile has been committed under section 27a of chapter IV.~~

~~1 (t) "County juvenile agency" means that term as defined in~~
~~2 section 2 of the county juvenile agency act, 1998 PA 518, MCL~~
~~3 45.622.~~

~~4 (u) "Taken", "brought", or "before" a magistrate or judge for~~
~~5 purposes of criminal arraignment or the setting of bail means~~
~~6 either of the following:~~

~~7 (i) Physical presence before a judge or district court~~
~~8 magistrate.~~

~~9 (ii) Presence before a judge or district court magistrate by~~
~~10 use of 2-way interactive video technology.~~

(A) "ACT" OR "DOING OF AN ACT" INCLUDES AN OMISSION TO ACT.

(B) "CLERK" MEANS THE CLERK OR A DEPUTY CLERK OF THE COURT.

(C) "COMPLAINT" MEANS A WRITTEN ACCUSATION, UNDER OATH OR UPON
14 AFFIRMATION, THAT A FELONY, MISDEMEANOR, OR ORDINANCE VIOLATION HAS
15 BEEN COMMITTED AND THAT THE PERSON NAMED OR DESCRIBED IN THE
16 ACCUSATION IS GUILTY OF THE OFFENSE.

(D) "COUNTY JUVENILE AGENCY" MEANS THAT TERM AS DEFINED IN
18 SECTION 2 OF THE COUNTY JUVENILE AGENCY ACT, 1998 PA 518, MCL
19 45.622.

(E) "FEDERAL LAW ENFORCEMENT OFFICER" MEANS AN OFFICER OR
21 AGENT EMPLOYED BY A LAW ENFORCEMENT AGENCY OF THE UNITED STATES
22 GOVERNMENT WHOSE PRIMARY RESPONSIBILITY IS ENFORCING LAWS OF THE
23 UNITED STATES.

(F) "FELONY" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE
25 FOR WHICH THE OFFENDER, UPON CONVICTION, MAY BE PUNISHED BY
26 IMPRISONMENT FOR MORE THAN 1 YEAR OR AN OFFENSE EXPRESSLY
27 DESIGNATED BY LAW TO BE A FELONY.

(G) "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).

(H) "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.

(I) "JUDICIAL DISTRICT" MEANS THE FOLLOWING:

(i) WITH REGARD TO THE CIRCUIT COURT, THE COUNTY.

(ii) 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,
1961 PA 236, MCL 600.9928.

(iii) WITH REGARD TO THE DISTRICT COURT, THE COUNTY, DISTRICT,
OR POLITICAL SUBDIVISION IN WHICH VENUE IS PROPER FOR CRIMINAL
ACTIONS.

(J) "JUVENILE" MEANS A PERSON WITHIN THE JURISDICTION OF THE
CIRCUIT COURT UNDER SECTION 606 OF THE REVISED JUDICATURE ACT OF
1961, 1961 PA 236, MCL 600.606.

(K) "JUVENILE FACILITY" MEANS A COUNTY FACILITY, AN
INSTITUTION OPERATED AS AN AGENCY OF THE COUNTY OR FAMILY DIVISION
OF THE CIRCUIT COURT, OR AN INSTITUTION OR AGENCY DESCRIBED IN THE

1 YOUTH REHABILITATION SERVICES ACT, 1974 PA 150, MCL 803.301 TO
2 803.309, TO WHICH A JUVENILE HAS BEEN COMMITTED UNDER SECTION 27A
3 OF CHAPTER IV.

4 (I) "MAGISTRATE" MEANS A JUDGE OF THE DISTRICT COURT OR A
5 JUDGE OF A MUNICIPAL COURT. MAGISTRATE DOES NOT INCLUDE A DISTRICT
6 COURT MAGISTRATE, EXCEPT THAT A DISTRICT COURT MAGISTRATE MAY
7 EXERCISE THE POWERS, JURISDICTION, AND DUTIES OF A MAGISTRATE IF
8 SPECIFICALLY PROVIDED IN THIS ACT, THE REVISED JUDICATURE ACT OF
9 1961, 1961 PA 236, MCL 600.101 TO 600.9947, OR ANY OTHER STATUTE.
10 THIS DEFINITION DOES NOT LIMIT THE POWER OF A JUSTICE OF THE
11 SUPREME COURT, A CIRCUIT JUDGE, OR A JUDGE OF A COURT OF RECORD
12 HAVING JURISDICTION OF CRIMINAL CASES UNDER THIS ACT, OR DEPRIVE
13 HIM OR HER OF THE POWER TO EXERCISE THE AUTHORITY OF A MAGISTRATE.

14 (M) "MINOR OFFENSE" MEANS A MISDEMEANOR OR ORDINANCE VIOLATION
15 FOR WHICH THE MAXIMUM PERMISSIBLE IMPRISONMENT DOES NOT EXCEED 92
16 DAYS AND THE MAXIMUM PERMISSIBLE FINE DOES NOT EXCEED \$1,000.00.

17 (N) "MISDEMEANOR" MEANS A VIOLATION OF A PENAL LAW OF THIS
18 STATE THAT IS NOT A FELONY OR A VIOLATION OF AN ORDER, RULE, OR
19 REGULATION OF A STATE AGENCY THAT IS PUNISHABLE BY IMPRISONMENT OR
20 A FINE THAT IS NOT A CIVIL FINE.

21 (O) "ORDINANCE VIOLATION" MEANS EITHER OF THE FOLLOWING:

22 (i) A VIOLATION OF AN ORDINANCE OR CHARTER OF A CITY, VILLAGE,
23 TOWNSHIP, OR COUNTY THAT IS PUNISHABLE BY IMPRISONMENT OR A FINE
24 THAT IS NOT A CIVIL FINE.

25 (ii) A VIOLATION OF AN ORDINANCE, RULE, OR REGULATION OF ANY
26 OTHER GOVERNMENTAL ENTITY AUTHORIZED BY LAW TO ENACT ORDINANCES,
27 RULES, OR REGULATIONS THAT IS PUNISHABLE BY IMPRISONMENT OR A FINE

1 THAT IS NOT A CIVIL FINE.

2 (P) "PERSON", "ACCUSED", OR A SIMILAR WORD MEANS AN INDIVIDUAL
3 OR, UNLESS A CONTRARY INTENTION APPEARS, A PUBLIC OR PRIVATE
4 CORPORATION, PARTNERSHIP, OR UNINCORPORATED OR VOLUNTARY
5 ASSOCIATION.

6 (Q) "PROPERTY" INCLUDES ANY MATTER OR THING UPON OR IN RESPECT
7 TO WHICH AN OFFENSE MAY BE COMMITTED.

8 (R) "PROSECUTING ATTORNEY" MEANS THE PROSECUTING ATTORNEY FOR
9 A COUNTY, AN ASSISTANT PROSECUTING ATTORNEY FOR A COUNTY, THE
10 ATTORNEY GENERAL, THE DEPUTY ATTORNEY GENERAL, AN ASSISTANT
11 ATTORNEY GENERAL, A SPECIAL PROSECUTING ATTORNEY, OR, IN CONNECTION
12 WITH THE PROSECUTION OF AN ORDINANCE VIOLATION, AN ATTORNEY FOR THE
13 POLITICAL SUBDIVISION OR GOVERNMENTAL ENTITY THAT ENACTED THE
14 ORDINANCE, CHARTER, RULE, OR REGULATION UPON WHICH THE ORDINANCE
15 VIOLATION IS BASED.

16 (S) "RECIDIVISM" MEANS ANY REARREST, RECONVICTION, OR
17 REINCARCERATION IN PRISON OR JAIL FOR A FELONY OR MISDEMEANOR
18 OFFENSE OR A PROBATION OR PAROLE VIOLATION OF AN INDIVIDUAL AS
19 MEASURED FIRST AFTER 3 YEARS AND AGAIN AFTER 5 YEARS FROM THE DATE
20 OF HIS OR HER RELEASE FROM INCARCERATION, PLACEMENT ON PROBATION,
21 OR CONVICTION, WHICHEVER IS LATER.

22 (T) "TAKEN", "BROUGHT", OR "BEFORE" A MAGISTRATE OR JUDGE FOR
23 PURPOSES OF CRIMINAL ARRAIGNMENT OR THE SETTING OF BAIL MEANS
24 EITHER OF THE FOLLOWING:

25 (i) PHYSICAL PRESENCE BEFORE A JUDGE OR DISTRICT COURT
26 MAGISTRATE.

27 (ii) PRESENCE BEFORE A JUDGE OR DISTRICT COURT MAGISTRATE BY

1 USE OF 2-WAY INTERACTIVE VIDEO TECHNOLOGY.

2 (U) "TECHNICAL PAROLE VIOLATION" MEANS A VIOLATION OF THE
3 TERMS OF A PAROLEE'S PAROLE ORDER THAT IS NOT A VIOLATION OF A LAW
4 OF THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE, ANOTHER
5 STATE, OR THE UNITED STATES OR OF TRIBAL LAW.

6 (V) "TECHNICAL PROBATION VIOLATION" MEANS A VIOLATION OF THE
7 TERMS OF A PROBATIONER'S PROBATION ORDER THAT IS NOT A VIOLATION OF
8 A LAW OF THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE, ANOTHER
9 STATE, OR THE UNITED STATES OR OF TRIBAL LAW.

10 (W) "WRITING", "WRITTEN", OR A SIMILAR TERM REFERS TO WORDS
11 PRINTED, PAINTED, ENGRAVED, LITHOGRAPHED, PHOTOGRAPHED, COPIED,
12 TRACED, OR OTHERWISE MADE VISIBLE TO THE EYE.

13 CHAPTER XVI

14 SEC. 21A. ANY DATA COLLECTED AND MAINTAINED UNDER THIS ACT
15 REGARDING RECIDIVISM RATES MUST BE COLLECTED AND MAINTAINED IN A
16 MANNER THAT SEPARATES THE DATA REGARDING TECHNICAL PROBATION
17 VIOLATIONS AND TECHNICAL PAROLE VIOLATIONS FROM DATA ON NEW FELONY
18 AND MISDEMEANOR CONVICTIONS.

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