



HOUSE BILL No. 5098

September 21, 1995, Introduced by Reps. Scott, Vaughn, Murphy, Hanley, DeHart, Stallworth, Tesanovich, LaForge, Clack, Gagliardi, Cherry, Pitoniak, DeMars, Walberg, Kilpatrick, Brewer, Leland, Goschka and Prusi and referred to the Committee on Judiciary and Civil Rights.

A bill to enjoin certain criminal offenders from entering certain premises; to provide for penalties for violations of injunctions; to provide for certain standards of proof; and to provide victims with certain rights.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "tenant and neighbor crime protection act".

3 Sec. 2. As used in this act:

4 (a) "Controlled substance" means that term as defined in
5 section 7104 of the public health code, Act No. 368 of the Public
6 Acts of 1978, being section 333.7104 of the Michigan Compiled
7 Laws.

8 (b) "Deliver" means that term as defined in section 7105 of
9 Act No. 368 of the Public Acts of 1978, being section 333.7105 of
10 the Michigan Compiled Laws.

1 (c) "Distribute" means that term as defined in section 7105
2 of Act No. 368 of the Public Acts of 1978.

3 (d) "Manufacture" means that term as defined in section 7106
4 of Act No. 368 of the Public Acts of 1978, being section 333.7106
5 of the Michigan Compiled Laws.

6 Sec. 4. (1) In addition to any other disposition authorized
7 by law, if a defendant is convicted of an offense involving manu-
8 facturing, delivering, or possessing with intent to manufacture
9 or deliver a controlled substance, and the offense took place
10 upon residential premises, the court shall, except as provided in
11 subsection (8), issue an order prohibiting the defendant from
12 entering on the premises involved.

13 (2) Except as provided in subsection (8), if a juvenile has
14 been adjudicated delinquent for 1 of the criminal acts designated
15 in subsection (1), the court may, in addition to any other dispo-
16 sition authorized by law, issue an order prohibiting the juvenile
17 from entering on the premises involved. This subsection does not
18 limit the authority of the court to order the juvenile, the
19 juvenile's parents or guardian, or any family member over whom
20 the court has jurisdiction to take action or to impose restraints
21 that are necessary to facilitate the rehabilitation of the juve-
22 nile, to protect public safety, or to safeguard or enforce the
23 rights of other tenants and residents of the premises involved.
24 The court may commit the juvenile to the state department of
25 social services for alternative residential placement, if practi-
26 cable, or may retain jurisdiction and place the juvenile as a
27 ward of the court.

1 (3) An order issued under this section shall remain in
2 effect for a period of time determined by the court that shall
3 not be less than 2 years or more than the maximum term of impris-
4 onment or detention allowable by law for the underlying offense.

5 (4) If the court issues a removal or restraining order under
6 this section and the defendant is also sentenced to probation,
7 continuing compliance with the removal or restraining order shall
8 be an express condition of probation. If the defendant is sen-
9 tenced to a term of incarceration, continuing compliance with the
10 terms and conditions of the removal or restraining order shall be
11 made an express condition of the defendant's release from con-
12 finement on parole.

13 (5) An order issued under this section shall describe the
14 premises from which the individual is barred, including all
15 buildings and all appurtenant land, with sufficient specificity
16 to enable the individual to guide his or her conduct accordingly,
17 and to enable a law enforcement officer to enforce the order.
18 The individual shall be given a copy of the order issued under
19 this section and shall acknowledge, in writing, the receipt of
20 the order.

21 (6) The court shall immediately provide notice of an order
22 issued under this section to the owner, landlord, or agent of the
23 premises involved. In addition, the court shall provide notice
24 of the order to the police department having jurisdiction of the
25 premises and appurtenant land from which the individual has been
26 barred.

1 (7) The police department shall post a copy of an order
2 issued under this section in a conspicuous place or upon 1 or
3 more of the principal entrances of the premises. The posting is
4 for the purpose of informing the public, and the failure to post
5 a copy of the order does not excuse a violation of the order.

6 (8) The court may forgo issuing a removal or restraining
7 order under either of the following circumstances:

8 (a) If the defendant establishes at the time of sentencing
9 that he or she has not previously been convicted of or adjudi-
10 cated delinquent for an offense involving the unlawful manufac-
11 ture, delivery, or possession with intent to manufacture or
12 deliver of a controlled substance, or the unlawful use or posses-
13 sion of a firearm under the laws of this or any other state or
14 the United States and if the defendant establishes by a prepon-
15 derance of the evidence at the sentencing hearing that the under-
16 lying offense was not committed for profit.

17 (b) If the defendant establishes by clear and convincing
18 evidence that the issuance of a restraining or removal order
19 would cause undue hardship to innocent persons and would consti-
20 tute a serious injustice that overrides the need to protect the
21 rights, safety, and health of the other tenants and residents of
22 the residential premises involved.

23 (9) If the court does not issue an order under subsection
24 (8), the sentence imposed by the court order shall not become
25 final for 10 days in order to permit an appeal of the court's
26 findings.

1 (10) This section does not limit the authority of the court
2 to take other action or to issue other orders that it finds
3 necessary to protect the public safety or to safeguard or enforce
4 the rights of other tenants and residents of the premises
5 involved.

6 (11) The court may permit the individual who has been
7 removed or barred under this act to return to the residential
8 premises to pick up personal belongings and effects and may, by
9 order, restrict the time and duration and provide for police
10 supervision of the visit.

11 Sec. 6. A person who violates a removal or restraining
12 order is subject to criminal contempt, revocation of bail, proba-
13 tion, parole, or a combination of these sanctions. A law
14 enforcement officer may arrest an individual if an officer has
15 probable cause to believe that the individual has violated the
16 terms of a removal or restraining order issued under this act.

17 Sec. 8. If a defendant is convicted of an offense involving
18 manufacturing, delivering, or possessing with intent to manufac-
19 ture or deliver a controlled substance, or if a juvenile is adju-
20 dicated delinquent for an act which if committed by an adult
21 would constitute any of these offenses, the prosecutor shall
22 determine whether the offense or act took place upon leased
23 premises. If the prosecutor determines the offense or act did
24 occur on leased premises, the prosecutor shall immediately notify
25 the landlord owner or agent and the tenant association represent-
26 ing the tenants or residents of the premises of the conviction,
27 plea, or adjudication.

1 Sec. 10. (1) If a juvenile or adult is charged with an
2 offense that involves manufacturing, delivering, possessing with
3 intent to manufacture or deliver a controlled substance, or the
4 unlawful possession or use of a firearm, and he or she is
5 released from custody before trial on bail or personal recogni-
6 zance, or is released to the custody of his or her parents,
7 guardian, custodian, or public or private agency, the court
8 authorizing the release shall, as a condition of release, issue
9 an order prohibiting the individual from entering in or upon the
10 premises or location on or near which the offense was allegedly
11 committed. If the court finds that the individual lawfully
12 resides at the premises, has any lawful or legitimate business on
13 or near the premises or location, or otherwise legitimately needs
14 to enter the premises or location, the court shall not issue an
15 order under this section unless the court is clearly convinced
16 that the need to bar the individual outweighs the individual's
17 interest in returning to the premises or location.

18 (2) A pretrial restraining order under this section may be
19 issued at any time and shall describe the premises or location
20 from which the individual has been barred, including all build-
21 ings and all appurtenant land, with sufficient specificity to
22 enable the individual to guide his or her conduct accordingly and
23 to enable a law enforcement officer to enforce the order. If
24 appropriate, the court may append a map depicting the streets,
25 blocks, buildings, or land included within the order. The person
26 shall be given a copy of the restraining order and any appended
27 map, and shall acknowledge in writing receipt of the order.

1 (3) The court shall provide notice of the restraining order
2 to the law enforcement agency that made the arrest and to the
3 prosecutor. If the order prohibits a defendant or juvenile from
4 entering in or upon a building, business premises, school, or
5 other public, private, or commercial premises, the court shall
6 provide notice of the restraining order to the owner of the prop-
7 erty or to his or her appropriate agent, or in the case of a
8 school or government owned property, to the appropriate adminis-
9 trator and to the tenant association representing the residents
10 of any leased premises.

11 (4) The court shall immediately notify the appropriate law
12 enforcement agency in writing whenever an order issued under this
13 section is stayed, modified, or vacated.

14 (5) This section does not limit the authority of the court
15 to impose additional restraints or conditions of pretrial
16 release.

17 Sec. 12. (1) If an individual is convicted or adjudicated
18 delinquent for an offense involving the unlawful manufacture,
19 delivery, or possession with intent to manufacture or deliver of
20 a controlled substance, all of the following persons shall be
21 considered to be victims of the offense:

22 (a) A landlord or owner of the premises upon which the
23 offense occurred.

24 (b) A tenant or other person who resides within 1,000 feet
25 of the site of the offense.

26 (c) A tenant association representing tenants residing
27 within 1,000 feet of the site of the offense.

1 (d) A person who is employed full- or part-time at a
2 business premises within 1,000 feet of the site of the offense.

3 (e) A person who owns or operates a business premises that
4 is located on or within 1,000 feet of the site of the offense.

5 (2) All victims, as defined in subsection (1), shall be per-
6 mitted to provide a statement for inclusion in the presentence
7 investigation report, and shall also be permitted to make an oral
8 statement directly to the sentencing court concerning the impact
9 of the crime.

10 Sec. 14. This act shall not take effect unless all of the
11 following bills of the 88th Legislature are enacted into law.

12 (a) Senate Bill No. _____ or House Bill No. 5097
13 (request no. 00032'95).

14 (b) Senate Bill No. _____ or House Bill No. _____
15 (request no. 00032'95 a).

16 (c) Senate Bill No. _____ or House Bill No. 5099
17 (request no. 00033'95).