

HOUSE BILL No. 4268

February 11, 1997, Introduced by Reps. Scott, Hale, McBryde, Hanley, Brewer, Schauer, DeHart, Goschka, Bogardus, Gire, Dalman, Vaughn, Kelly, Byl, Leland, McManus, Thomas, Schermesser, Hood, Parks, Price, Rison, Murphy, Prusi, Curtis, Owen, Dobronski, Green, Geiger, Rocca, Kukuk, Kaza, Voorhees, Gagliardi, Mathieu, Emerson, Richner, Quarles and Perricone and referred to the Committee on Judiciary.

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, 1978 PA 368, MCL
6 333.7104.

7 (b) "Deliver" means that term as defined in section 7105 of
8 the public health code, 1978 PA 368, MCL 333.7105.

9 (c) "Distribute" means that term as defined in section 7105
10 of the public health code, 1978 PA 368, MCL 333.7105.

1 (d) "Manufacture" means that term as defined in section 7106
2 of the public health code, 1978 PA 368, MCL 333.7106.

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

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

25 (3) An order issued under this section shall remain in
26 effect for a period of time determined by the court that shall
27 not be less than 2 years or more than the maximum term of

1 imprisonment or detention allowable by law for the underlying
2 offense.

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

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

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

25 (7) The police department shall post a copy of an order
26 issued under this section in a conspicuous place or upon 1 or
27 more of the principal entrances of the premises. The posting is

1 for the purpose of informing the public, and the failure to post
2 a copy of the order does not excuse a violation of the order.

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

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

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

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

24 (10) This section does not limit the authority of the court
25 to take other action or to issue other orders that it finds nec-
26 essary to protect the public safety or to safeguard or enforce

1 the rights of other tenants and residents of the premises
2 involved.

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

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

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

25 Sec. 10. (1) If a juvenile or adult is charged with an
26 offense that involves manufacturing, delivering, possessing with
27 intent to manufacture or deliver a controlled substance, or the

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

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

25 (3) The court shall provide notice of the restraining order
26 to the law enforcement agency that made the arrest and to the
27 prosecutor. If the order prohibits a defendant or juvenile from

1 entering in or upon a building, business premises, school, or
2 other public, private, or commercial premises, the court shall
3 provide notice of the restraining order to the owner of the prop-
4 erty or to his or her appropriate agent, or in the case of a
5 school or government owned property, to the appropriate adminis-
6 trator and to the tenant association representing the residents
7 of any leased premises.

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

11 (5) This section does not limit the authority of the court
12 to impose additional restraints or conditions of pretrial
13 release.

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

19 (a) A landlord or owner of the premises upon which the
20 offense occurred.

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

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

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

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

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

8 Sec. 14. This act does not take effect unless all of the
9 following bills of the 89th Legislature are enacted into law:

10 (a) Senate Bill No. _____ or House Bill No. _____
11 (request no. 00940'97).

12 (b) Senate Bill No. _____ or House Bill No. _____
13 (request no. 00940'97 a).

14 (c) Senate Bill No. _____ or House Bill No. _____
15 (request no. 00942'97).