



# HOUSE BILL No. 5347

February 10, 2000, Introduced by Reps. Scott, DeWeese, DeHart, Hale, Richner, Garza, Daniels, Price, Jacobs, Prusi, Thomas and Lemmons and referred to the Committee on Family and Civil Law.

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. 3. (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 on  
7 residential premises, the court shall, except as provided in sub-  
8 section (8), issue an order prohibiting the defendant from enter-  
9 ing 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), and the offense took place on residential  
13 premises, the court may, in addition to any other disposition  
14 authorized by law, issue an order prohibiting the juvenile from  
15 entering on the premises involved. This subsection does not  
16 limit the authority of the court to order the juvenile, the  
17 juvenile's parents or guardian, or a family member of the juve-  
18 nile over whom the court has jurisdiction to take action or to  
19 impose restraints that are necessary to facilitate the rehabili-  
20 tation of the juvenile, to protect public safety, or to safeguard  
21 or enforce the rights of other tenants and residents of the  
22 premises involved. The court may commit the juvenile to the  
23 family independence agency for alternative residential placement,  
24 if practicable, or may retain jurisdiction and place the juvenile  
25 as a ward of the court.

26 (3) An order issued under this section shall remain in  
27 effect for a period of time determined by the court that shall be

1 not less than 2 years or more than the maximum term of  
2 imprisonment or detention allowable by law for the underlying  
3 offense.

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

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

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

26       (7) The police department shall post a copy of an order  
27 issued under this section in a conspicuous place or upon 1 or

1 more of the principal entrances of the premises. The posting is  
2 for the purpose of informing the public, and the failure to post  
3 a copy of the order does not excuse a violation of the order.

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

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

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

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

25 (10) This section does not limit the authority of the court  
26 to take other action or to issue other orders that it finds  
27 necessary 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 and provide for police  
7 supervision of the visit.

8 Sec. 4. 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. 5. 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 that if committed by an adult would  
18 constitute any of these offenses, the prosecutor shall determine  
19 whether the offense or act took place upon leased premises. If  
20 the prosecutor determines the offense or act did occur on leased  
21 premises, the prosecutor shall immediately notify the landlord  
22 owner or agent and the tenant association representing the  
23 tenants or residents of the premises of the conviction, plea, or  
24 adjudication.

25 Sec. 6. (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. 7. (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 Enacting section 1. This act does not take effect unless  
9 all of the following bills of the 90th Legislature are enacted  
10 into law:

11 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5345  
12 (request no. 00577'99 \*).

13 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5348  
14 (request no. 00579'99 \*).

15 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 5346  
16 (request no. 00580'99 \*).