

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 5291

(As amended December 10, 2002)

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A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 1a of chapter IV, section 16a of chapter IX, section 22 of chapter XVI, and sections 1, 15a, 16m, 16z, 22, and 35 of chapter XVII (MCL 764.1a, 769.16a, 776.22, 777.1, 777.15a, 777.16m, 777.16z, 777.22, and 777.35), section 1a of chapter IV as amended by 1994 PA 70, section 16a of chapter IX as amended by 2001 PA 204, section 22 of chapter XVI as amended by 2001 PA 194, section 1 of chapter XVII as amended by 2002 PA 34, section 15a of chapter XVII as added by 2002 PA 206, section 16m of chapter XVII as amended by 2001 PA 166, section 16z of chapter XVII as amended by 2002 PA 271, section 22 of chapter XVII as amended by 2002 PA 143, and section 35 of chapter XVII as amended by 2000 PA 279.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IV

Sec. 1a. (1) A magistrate shall issue a warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense. The complaint shall be sworn to before a magistrate or clerk.

(2) The finding of reasonable cause by the magistrate may be based upon 1 or more of the following:

(a) Factual allegations of the complainant contained in the complaint.

(b) The complainant's sworn testimony.

(c) The complainant's affidavit.

(d) Any supplemental sworn testimony or affidavits of other individuals presented by the complainant or required by the magistrate.

(3) The magistrate may require sworn testimony of the complainant or other individuals. Supplemental affidavits may be sworn to before an individual authorized by law to administer oaths. The factual allegations contained in the complaint, testimony, or affidavits may be based upon personal knowledge, information and belief, or both.

(4) The magistrate shall not refuse to accept a complaint alleging a violation of section 81 or 81a of the Michigan penal code, ~~Act No. 328 of the Public Acts of 1931, being sections 750.81 and 750.81a of the Michigan Compiled Laws~~ 1931 PA 328, MCL 750.81 AND 750.81A, or a violation of a local ordinance substantially corresponding to section 81 of ~~Act No. 328 of the Public Acts of 1931~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81, by the spouse of the victim, a former spouse of the victim, an individual with whom the victim has had a child in common, AN INDIVIDUAL WITH WHOM THE VICTIM HAS OR HAS HAD A DATING RELATIONSHIP, or an individual residing or having resided in the same household as the victim on grounds that the complaint is signed upon information and belief by an

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individual other than the victim.

(5) A warrant may be issued under this section only upon compliance with the requirements of section 1 of this chapter.

(6) AS USED IN THIS SECTION. "DATING RELATIONSHIP" MEANS FREQUENT, INTIMATE ASSOCIATIONS PRIMARILY CHARACTERIZED BY THE EXPECTATION OF AFFECTIONAL INVOLVEMENT. DATING RELATIONSHIP DOES NOT INCLUDE A CASUAL RELATIONSHIP OR AN ORDINARY FRATERNIZATION BETWEEN 2 INDIVIDUALS IN A BUSINESS OR SOCIAL CONTEXT.

#### CHAPTER IX

Sec. 16a. (1) Except as otherwise provided in subsection (3), upon final disposition of an original charge against a person of a felony or a misdemeanor for which the maximum possible penalty exceeds 92 days' imprisonment or a local ordinance for which the maximum possible penalty is 93 days' imprisonment and that substantially corresponds to a violation of state law that is a misdemeanor for which the maximum possible penalty is 93 days' imprisonment, or a misdemeanor in a case in which the appropriate court was notified that fingerprints were forwarded to the department of state police, or upon final disposition of a charge of criminal contempt under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or final disposition of a charge of criminal contempt for violating a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i, the clerk of the court entering the disposition shall immediately report to the department of state police the final disposition of the charge on forms approved by the state court administrator and in a manner consistent with section 3 of 1925 PA 289, MCL 28.243. The report to the department of state police shall include the finding of the judge or jury, including a finding of guilty, guilty but mentally ill, not guilty, or not guilty by reason of insanity, or the person's plea of guilty, nolo contendere, or guilty but mentally ill; if the person was convicted, the offense of which the person was convicted; and a summary of any sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. The report shall include the sentence if imposed under any of the following:

(a) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.

(b) Sections 11 to 15 of chapter II.

(c) Section 4a of chapter IX.

(2) Upon sentencing a person convicted of a misdemeanor or of a violation of a local ordinance, other than a misdemeanor or local ordinance described in subsection (1), the clerk of the court imposing sentence immediately shall, if ordered by the court, advise the department of state police of the conviction on forms approved by the state court administrator.

(3) Except as otherwise provided in subsections (4) and (6), the clerk of a court shall not report a conviction of a misdemeanor offense under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a local ordinance substantially corresponding to a provision of that act unless 1 or more of the following apply:

(a) The offense is punishable by imprisonment for more than 92 days.

(b) The offense is an offense that would be punishable by more than 92 days as a second conviction.

(c) A judge of the court orders the clerk to report the conviction.

(4) Unless ordered by the court, the clerk of a court is not required to report a conviction of a misdemeanor offense for a violation of section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local ordinance substantially corresponding to section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904.

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(5) As part of the sentence for a conviction of an offense described in ~~subsection (2)~~ THIS SECTION, if fingerprints have not already been taken, the court shall order that the fingerprints of the person convicted be taken and forwarded to the department of state police.

(6) As part of the sentence for a conviction of a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall order that the fingerprints of the person convicted be taken and forwarded as provided in the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, if fingerprints have not already been taken and forwarded as provided in that act.

(7) Within 21 days after the date a person licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, is convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance or a felony, the clerk of the court entering the conviction shall report the conviction to the department of consumer and industry services on a form prescribed and furnished by that department.

#### CHAPTER XVI

Sec. 22. (1) Each police agency in this state shall, by January 1, 1995, develop, adopt, and implement written policies for police officers responding to domestic violence calls. The policies shall reflect that domestic violence is criminal conduct.

(2) Each police agency shall consult with the prosecuting attorney and with an area shelter for victims of domestic violence in the development, implementation, including training, and evaluation of the policies and standards.

(3) The policies shall address, but not be limited to addressing, all of the following:

(a) Procedures for conducting a criminal investigation with specific standards for misdemeanor and felony arrests.

(b) Procedures for making a criminal arrest. The procedures shall emphasize all of the following:

(i) In most circumstances, an officer should arrest and take an individual into custody if the officer has probable cause to believe the individual is committing or has committed domestic violence and his or her actions constitute a crime.

(ii) When the officer has probable cause to believe spouses, former spouses, individuals who have had a child in common, INDIVIDUALS WHO HAVE OR HAVE HAD A DATING RELATIONSHIP, or other individuals who reside together or formerly resided together are committing or have committed crimes against each other, the officer, when determining whether to make an arrest of 1 or both individuals, should consider the intent of this section to protect victims of domestic violence, the degree of injury inflicted on the individuals involved, the extent to which the individuals have been put in fear of physical injury to themselves or other members of the household, and any history of domestic violence between the individuals, if that history can reasonably be ascertained by the officer. In addition, the officer should not arrest an individual if the officer has reasonable cause to believe the individual was acting in lawful self-defense or in lawful defense of another individual.

(iii) A police officer's decision as to whether to arrest an individual should not be based solely on the consent of the victim to any subsequent prosecution or on the relationship of the individuals involved in the incident.

(iv) A police officer's decision not to arrest an individual should not be based solely upon the absence of visible indications of injury or impairment.

(c) Procedures for denial of interim bond, as provided in 1961 PA 44, MCL 780.581 to 780.588.

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(d) Procedures for verifying a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236. MCL 600.2950 and 600.2950a.

(e) Procedures for making an arrest for a violation of a personal protection order.

(f) Procedures for enforcing a valid foreign protection order.

(g) Procedures for providing or arranging for emergency assistance to victims including, but not limited to, medical care, transportation to a shelter, or remaining at the scene of an alleged incident of domestic violence for a reasonable time until, in the reasonable judgment of the police officer, the likelihood of further imminent violence has been eliminated.

(h) Procedures for informing the victim of community services and legal options that are available pursuant to section 15c of chapter IV of this act.

(i) Procedures for preparing a written report, whether or not an arrest is made.

(j) Training of peace officers, dispatchers, and supervisors.

(k) Discipline for noncompliance with the policy.

(l) Annual evaluations of the policy.

(4) The local policies developed, adopted, and implemented pursuant to this section shall be in writing and shall be available to the public upon request.

(5) As used in this section:

(A) "DATING RELATIONSHIP" MEANS FREQUENT, INTIMATE ASSOCIATIONS PRIMARILY CHARACTERIZED BY THE EXPECTATION OF AFFECTIONAL INVOLVEMENT. DATING RELATIONSHIP DOES NOT INCLUDE A CASUAL RELATIONSHIP OR AN ORDINARY FRATERNIZATION BETWEEN 2 INDIVIDUALS IN A BUSINESS OR SOCIAL CONTEXT.

(B) ~~(a)~~ "Foreign protection order" means that term as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(C) ~~(b)~~ "Valid foreign protection order" means a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

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## CHAPTER XVII

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Sec. 1. As used in this chapter:

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(a) "Aircraft" means that term as defined in section 2 of

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the aeronautics code of the state of Michigan, 1945 PA 327,

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MCL 259.2.

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(b) "Departure" means that term as defined in section 31 of

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chapter IX.

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1 (c) "Homicide" means any crime in which the death of a human  
2 being is an element. ~~of that crime.~~

3 (d) "Intermediate sanction" means that term as defined in  
4 section 31 of chapter IX.

5 (e) "ORV" means that term as defined in section 81101 of the  
6 natural resources and environmental protection act, 1994 PA 451,  
7 MCL 324.81101.

8 (f) "Snowmobile" means that term as defined in section 82101  
9 of the natural resources and environmental protection act, 1994  
10 PA 451, MCL 324.82101.

11 (g) "Vehicle" means that term as defined in section 79 of  
12 the Michigan vehicle code, 1949 PA 300, MCL 257.79.

13 (h) "Vessel" means that term as defined in section 80104 of  
14 the natural resources and environmental protection act, 1994  
15 PA 451, MCL 324.80104.

16 (I) "VIOLENT CRIME" MEANS A HOMICIDE OR A CRIME AGAINST A  
17 PERSON IN WHICH PHYSICAL FORCE OR VIOLENCE WAS USED OR THREAT-  
18 ENED, INCLUDING AN ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT  
19 SUCH A CRIME.

20 Sec. 15g. This chapter applies to the following felonies  
21 enumerated in chapters 721 to 730 of the Michigan Compiled Laws:

22	M.C.L.	Category	Class	Description	Stat	Max
23	722.633(5)(b)	Person	F	Intentional false		
24				report of child abuse		
25				constituting a felony	<del>4</del>	
26					VARIABLE	
27	722.675	Pub ord	E	Distributing obscene		
28				matter to children		2

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1 722.857 Person E Surrogate parenting act  
 2 -- contracts involv-  
 3 ing minors, mentally  
 4 retarded, etc. 5

5 722.859(3) Person E Surrogate parenting act  
 6 -- contracts for  
 7 compensation 5

8 Sec. 16m. This chapter applies to the following felonies  
 9 enumerated in chapter 750 of the Michigan Compiled Laws:

10	M.C.L.	Category	Class	Description	Stat Max
11	750.223(2)	Pub saf	F	Sale of firearm to minor	
12				-- subsequent offense	4
13	750.223(3)	Pub ord	D	Sale of firearm to person	
14				prohibited from	
15				possessing	10
16	750.224	Pub saf	E	Manufacture or sale of	
17				silencer, bomb, black-	
18				jack, automatic weapon,	
19				gas spray, etc.	5
20	750.224a	Pub saf	F	Possession or sale of	
21				electrical current	
22				weapons	4
23	750.224b	Pub saf	E	Possession of short bar-	
24				reled shotgun or rifle	5
25	750.224c	Pub saf	F	Armor piercing ammunition	4
26	750.224d(2)	Person	G	Using self-defense spray	
27				device	2
28	750.224e	Pub saf	F	Manufacture/sale/possession	
29				of devices to convert	
30				semiautomatic weapons	4
31	750.224f	Pub saf	E	Possession or sale of	
32				firearm by felon	5
33	750.226	Pub saf	E	Carrying firearm or dan-	
34				gerous weapon with	
35				unlawful intent	5
36	750.227	Pub saf	E	Carrying a concealed	
37				weapon	5
38	750.227a	Pub saf	F	Unlawful possession of	
39				pistol	4

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1	750.227c	Pub saf	G	Possessing a loaded	
2				firearm in or upon a	
3				vehicle	2
4	750.227f	Pub saf	F	Wearing body armor during	
5				commission of <del>violent</del>	
6				<del>crime</del> CERTAIN CRIMES	4
7	750.227g(1)	Pub saf	F	Felon purchasing, owning,	
8				possessing, or using	
9				body armor	4
10	750.230	Pub saf	G	Altering ID mark on	
11				firearm	2
12	750.232a(3)	Pub saf	G	False statement in a	
13				pistol application	4
14	750.234a	Pub saf	F	Discharging firearm from	
15				vehicle	4
16	750.234b	Pub saf	F	Discharging firearm in or	
17				at a building	4
18	750.234c	Pub saf	F	Discharging firearm at	
19				emergency/police	
20				vehicle	4
21	750.236	Person	C	Setting spring gun --	
22				death resulting	15
23	750.237(3)	Person	E	Using firearm while under	
24				the influence or	
25				impaired causing seri-	
26				ous impairment	5
27	750.237(4)	Person	C	Using firearm while under	
28				the influence or	
29				impaired causing death	15

Sec. 16z. This chapter applies to the following felonies enumerated in chapter 750 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
750.535(2)	Property	D	Receiving or concealing stolen property having a value of \$20.000 or more or with prior conviction	10
750.535(3)	Property	E	Receiving or concealing stolen property having a value of \$1.000 to \$20.000 or with prior convictions	5
750.535(7)	PROPERTY	E	RECEIVING OR CONCEALING A MOTOR VEHICLE	5

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750.535a(2)	Pub ord	D	Operating a chop shop	10
750.535a(3)	Pub ord	D	Operating a chop shop. subsequent violation	10
750.535b	Pub saf	E	Stolen firearms or ammunition	10
750.539c	Pub ord	H	Eavesdropping	2
750.539d	Pub ord	H	Installing eavesdropping device	2
750.539e	Pub ord	H	Divulging or using infor- mation obtained by eavesdropping	2
750.539f	Pub ord	H	Manufacture or possession of eavesdropping device	2
750.540	Pub ord	H	Tapping or cutting telephone lines	2
750.540f(2)	Property	E	Knowingly publishing a communications access device with prior convictions	5
750.540g(1)(c)	Property	E	Diverting telecommunica- tion services having a value of \$1.000 to \$20.000 or with prior convictions	5
750.540g(1)(d)	Property	D	Diverting telecommunica- tions services having a value of \$20.000 or more or with prior convictions	10
750.543f	Person	A	Terrorism without causing death Life	
750.543h(3)(a)	Pub ord	B	Hindering prosecution of terrorism -- certain terrorist acts	20
750.543h(3)(b)	Pub ord	A	Hindering prosecution of terrorism -- act of terrorism Life	
750.543k	Pub saf	B	Soliciting or providing material support for terrorism or terrorist acts	20
750.543m	Pub ord	B	Threat or false report of terrorism	20



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750.543p	Pub saf	B	Use of internet or telecommunications to commit certain terrorist acts	20
750.543r	Pub saf	B	Possession of vulnerable target information with intent to commit certain terrorist acts	20
750.545	Pub ord	E	Misprision of treason	5
750.552b	Property	F	Trespassing on correctional facility property	4

30       Sec. 22. (1) For all crimes against a person, score offense  
31 variables 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 19, and 20.  
32 SCORE OFFENSE VARIABLE 5 FOR VIOLENT CRIMES. Score offense  
33 ~~variables 5 and~~ VARIABLE 6 for homicide, attempted homicide,  
34 conspiracy or solicitation to commit a homicide, or assault with  
35 intent to commit murder. Score offense variable 16 under this  
36 subsection for a violation or attempted violation of section 110a

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1 of the Michigan penal code, 1931 PA 328, MCL 750.110a. Score  
2 offense variables 17 and 18 if ~~an element of~~ the offense or  
3 attempted offense involves the operation of a vehicle, vessel,  
4 ORV, snowmobile, aircraft, or locomotive.

5 (2) For all crimes against property, score offense variables  
6 1, 2, 3, 4, 9, 10, 12, 13, 14, 16, 19, and 20.

7 (3) For all crimes involving a controlled substance, score  
8 offense variables 1, 2, 3, 12, 13, 14, 15, 19, and 20.

9 (4) For all crimes against public order and all crimes  
10 against public trust, score offense variables 1, 3, 4, 9, 10, 12,  
11 13, 14, 16, 19, and 20.

12 (5) For all crimes against public safety, score offense  
13 variables 1, 3, 4, 9, 10, 12, 13, 14, 16, 19, and 20. Score  
14 offense variable 18 if ~~an element of~~ the offense or attempted  
15 offense involves the operation of a vehicle, vessel, ORV, snowmo-  
16 bile, aircraft, or locomotive.

17 Sec. 35. (1) Offense variable 5 is psychological injury to  
18 a member of a VIOLENT CRIME victim's family OR A CHILD. Score  
19 offense variable 5 by determining which of the following apply  
20 and by assigning the number of points attributable to the one  
21 that has the highest number of points:

22 (a) Serious psychological injury, ~~requiring~~ WHICH  
23 REQUIRES OR WHICH MAY REQUIRE professional treatment,  
24 occurred to a VIOLENT CRIME victim's family OR TO A  
25 CHILD AS A RESULT OF THE CHILD WITNESSING A VIOLENT  
26 CRIME..... 15 points

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1     ~~-(b) No serious psychological injury requiring~~  
2     ~~professional treatment occurred to a victim's family.. 0 points~~  
3     (B) A CHILD WITNESSES A VIOLENT CRIME..... 10 POINTS  
4     (C) A CHILD OBSERVES THE PHYSICAL RESULTS OF A VIO-  
5     LENT CRIME AGAINST A FAMILY MEMBER..... 5 POINTS  
6     (D) SUBDIVISIONS (A), (B), AND (C) DO NOT APPLY..... 0 POINTS  
7     (2) ~~Score 15 points if the serious psychological injury to~~  
8     ~~the victim's family may require professional treatment.~~ In  
9     making ~~this~~ A determination OF WHETHER PROFESSIONAL TREATMENT  
10    MAY BE REQUIRED UNDER SUBSECTION (1)(A), the fact that treatment  
11    has not been sought is not conclusive.