

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.316 First degree murder; incarceration order upon conviction; penalty; definitions.

Sec. 316.

(1) Except as provided in sections 25 and 25a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.25 and 769.25a, a person who commits any of the following is guilty of first degree murder and shall be punished by imprisonment for life without eligibility for parole:

(a) Murder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.

(b) Murder committed in the perpetration of, or attempt to perpetrate, arson, criminal sexual conduct in the first, second, or third degree, child abuse in the first degree, a major controlled substance offense, robbery, carjacking, breaking and entering of a dwelling, home invasion in the first or second degree, larceny of any kind, extortion, kidnapping, vulnerable adult abuse in the first or second degree under section 145n, torture under section 85, aggravated stalking under section 411i, or unlawful imprisonment under section 349b.

(c) A murder of a peace officer or a corrections officer committed while the peace officer or corrections officer is lawfully engaged in the performance of any of his or her duties as a peace officer or corrections officer, knowing that the peace officer or corrections officer is a peace officer or corrections officer engaged in the performance of his or her duty as a peace officer or corrections officer.

(2) Immediately following a conviction under this section, a court shall enter an order committing the convicted person to the jurisdiction of the department of corrections for incarceration in a state correctional facility pending sentencing using a form created by the state court administrative office for this purpose. This order becomes effective if both of the following apply:

(a) The sheriff agrees to transport for final sentencing the person from the state correctional facility to the county and from the county back to the state correctional facility.

(b) The convicted person was not less than 18 years of age at the time he or she committed the offense for which he or she was convicted under this section.

(3) A court shall hold the sentencing hearing not more than 45 days after a person is committed to the department of corrections under subsection (2).

(4) As used in this section:

(a) "Arson" means a felony violation under chapter X.

(b) "Corrections officer" means any of the following:

(i) A prison or jail guard or other prison or jail personnel.

(ii) Any of the personnel of a boot camp, special alternative incarceration unit, or other minimum security correctional facility.

(iii) A parole or probation officer.

(c) "Major controlled substance offense" means any of the following:

(i) A violation of section 7401(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7401.

(ii) A violation of section 7403(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7403.

(iii) A conspiracy to commit an offense listed in subparagraph (i) or (ii).

(d) "Peace officer" means any of the following:

(i) A police or conservation officer of this state or a political subdivision of this state.

(ii) A police or conservation officer of the United States.

(iii) A police or conservation officer of another state or a political subdivision of another state.

History: 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.316 ;-- Am. 1969, Act 331, Eff. Mar. 20, 1970 ;-- Am. 1980, Act 28, Imd. Eff. Mar. 7, 1980 ;-- Am. 1994, Act 267, Eff. Oct. 1, 1994 ;-- Am. 1996, Act 20, Eff. Apr. 1, 1996 ;-- Am. 1996, Act 21, Eff. Apr. 1, 1996 ;-- Am. 1999, Act 189, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 58, Eff. June 11, 2004 ;-- Am. 2006, Act 415, Eff. Dec. 1, 2006 ;-- Am. 2013, Act 39, Imd. Eff. June 4, 2013 ;-- Am. 2014, Act 23, Imd. Eff. Mar. 4, 2014 ;-- Am. 2014, Act 158, Eff. July 1, 2014 ;-- Am. 2022, Act 149, Imd. Eff. July 19, 2022

Constitutionality: This section, which provides a mandatory life sentence for first degree murder, does not violate constitutional guarantees of due process and equal protection or the guarantee against cruel and unusual punishment. *People v Hall*, 396 Mich 650; 242 NW2d 377 (1976). The use of common-law definition of rape in this section, until it was amended by 1980 PA 28, does not violate the equal protection clause. *People v McDonald*, 409 Mich 110; 293 NW2d 588 (1980). In *People v Gay*, 407 Mich 681; 289 NW2d 651 (1980), the Michigan supreme court held that the prosecution of defendants under this section subsequent to their convictions in federal court for the same acts is limited by the double jeopardy clause of the Michigan constitution. In *People v Wilder*, 411 Mich 328; 308 NW2d 112 (1981), the Michigan supreme court held that conviction and sentence for both first-degree felony murder and the underlying felony of armed robbery violates the state constitutional prohibition against double jeopardy. A mandatory life sentence imposed for conspiracy to commit first-degree, even if nonparolable, is not so excessive as to constitute cruel and unusual punishment; nor does it violate the Equal Protection Clauses of the

Michigan and United States Constitutions. People v Fernandez, 427 Mich 321; 398 NW2d 311 (1986).

Former Law: See section 1 of Ch. 153 of R.S. 1846, being CL 1857, Å§ 5711; CL 1871, Å§ 7510; How., Å§ 9075; CL 1897, Å§ 11470; CL 1915, Å§ 15192; and CL 1929, Å§ 16708.