

# HOUSE BILL No. 4095

February 11, 1987, Introduced by Reps. Van Regenmorter, Hertel, Bennane, Fitzgerald, Strand, Palamara, Law, Stopczynski, Bennett, Martin, Varga, Clack and Nye and referred to the Committee on Judiciary.

A bill to amend section 6 of chapter V and sections 9a and 12 of chapter X of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

section 6 of chapter V as amended by Act No. 56 of the Public Acts of 1983, being sections 765.6, 770.9a, and 770.12 of the Michigan Compiled Laws; and to repeal certain acts and parts of acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Section 6 of chapter V and sections 9a and 12 of  
2 chapter X of Act No. 175 of the Public Acts of 1927, section 6 of  
3 chapter V as amended by Act No. 56 of the Public Acts of 1983,  
4 being sections 765.6, 770.9a, and 770.12 of the Michigan Compiled  
5 Laws, are amended to read as follows:

## CHAPTER V

1  
2       Sec. 6. (1) ~~In all other cases the~~ EXCEPT AS OTHERWISE  
3 PROVIDED BY LAW, A person accused OF HAVING COMMITTED A CRIME is  
4 entitled to bail. The amount of bail shall be uniform whether  
5 the bail bond is executed by the person for whom bail has been  
6 set or by a surety. The amount of the ~~recognizance~~ BAIL shall  
7 be fixed with consideration of the seriousness of the offense  
8 charged, the previous criminal record of the defendant, and the  
9 probability or improbability of the defendant appearing at the  
10 trial of the cause. IN DETERMINING THE AMOUNT OF BAIL FOR A  
11 PERSON CHARGED WITH HAVING COMMITTED A FELONY, THE FACTORS TO BE  
12 CONSIDERED BY THE COURT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE  
13 PROTECTION OF THE PUBLIC AND THE DANGEROUSNESS OF THE DEFENDANT.  
14 IF THERE IS REASONABLE CAUSE TO BELIEVE THAT A PERSON CHARGED  
15 WITH HAVING COMMITTED A FELONY HAS BEEN CONVICTED PREVIOUSLY OF 2  
16 OR MORE FELONIES OR ATTEMPTS TO COMMIT FELONIES, OR ANY COMBINA-  
17 TION THEREOF, THAT PERSON SHALL BE CONSIDERED BY THE COURT TO BE  
18 DANGEROUS.

19       (2) If a person is arrested for an ordinance violation or a  
20 misdemeanor and if the defendant's operator's or chauffeur's  
21 license is not expired, suspended, revoked, or ~~cancelled~~  
22 CANCELED, then the court may require the defendant, in place of  
23 other security for the defendant's appearance in court for trial  
24 or sentencing or, in addition, to release of the defendant on  
25 personal recognizance, to surrender to the court his or her  
26 operator's or chauffeur's license. The court shall issue to the  
27 defendant a receipt for the license as provided in section 311a

1 of the Michigan vehicle code, Act No. 300 of the Public Acts of  
2 1949, being section 257.311a of the Michigan Compiled Laws. If  
3 the trial date is set at the arraignment, the court shall specify  
4 on the receipt the date on which the defendant is required to  
5 appear for trial. If a trial date is not set at the arraignment,  
6 the court shall specify on the receipt a date on which the  
7 receipt expires. By written notice, which shall instruct a  
8 person who has surrendered a license as security under this sub-  
9 section to attach the notice to the receipt issued under this  
10 subsection, the court may extend the expiration date of the  
11 receipt, as needed, to secure the defendant's appearance for  
12 trial and sentencing. Upon its attachment to the receipt, the  
13 written notice shall be considered a part of the receipt for pur-  
14 poses of determining the expiration date. At the conclusion of  
15 the trial or imposition of sentence, as applicable, the court  
16 shall return the license to the defendant unless other disposi-  
17 tion of the license is authorized by law.

18 CHAPTER X

19 Sec. 9a. (1) ~~-A-~~ EXCEPT AS PROVIDED UNDER SUBSECTION (4), A  
20 defendant convicted of an assaultive crime and awaiting sentence  
21 shall be detained and shall not be admitted to bail, unless the  
22 trial court finds by clear and convincing evidence that the  
23 defendant is not likely to pose a danger to other persons.

24 (2) ~~-A-~~ EXCEPT AS PROVIDED UNDER SUBSECTION (4), A defendant  
25 convicted of an assaultive crime and sentenced to a term of  
26 imprisonment who has filed an appeal or an application for leave  
27 to appeal shall be detained and shall not be admitted to bail,

1 unless the trial court or the court to which the appeal is taken  
2 finds by clear and convincing evidence that both of the following  
3 exist:

4 (a) The defendant is not likely to pose a danger to other  
5 persons.

6 (b) The appeal or application raises a substantial question  
7 of law or fact.

8 (3) As used in this section, "assaultive crime" means an  
9 offense against a person described in any of the following  
10 sections: 82 to 89, 316, 317, 321, 349 to 350, 397, 520a to  
11 520g, 529, and 530 of Act No. 328 of the Public Acts of 1931, as  
12 amended, being sections 750.82 to 750.89, 750.316, 750.317,  
13 750.321, 750.349 to 750.350, 750.397, 750.520a to 750.520g,  
14 750.529, and 750.530 of the Michigan Compiled Laws.

15 (4) A DEFENDANT CONVICTED OF A FELONY WHO HAS BEEN PREVI-  
16 OUSLY CONVICTED OF 2 OR MORE FELONIES OR ATTEMPTS TO COMMIT FELO-  
17 NIES, OR ANY COMBINATION THEREOF, SHALL NOT BE ADMITTED TO BAIL  
18 FOR ANY PURPOSE.

19 (5) ~~(4)~~ The appeal or application for leave to appeal  
20 filed by a person denied bail under this section shall be expe-  
21 dited pursuant to rules adopted for that purpose by the supreme  
22 court.

23 Sec. 12. (1) ~~An~~ EXCEPT AS PROVIDED IN SUBSECTION (2), AN  
24 appeal may be taken by and on behalf of the people of this state  
25 from a court of record in all criminal cases TO THE SAME EXTENT  
26 THAT AN APPEAL MAY BE TAKEN BY AN AGGRIEVED PARTY IN ANY OTHER  
27 CASE. ~~, in any of the following instances:~~

1       ~~(a) From a decision or judgment quashing or setting aside an~~  
2 ~~indictment, information, or other charging instrument, or a count~~  
3 ~~thereof, where that decision or judgment is based upon the inva-~~  
4 ~~lidity or construction of the statute upon which the indictment,~~  
5 ~~information, or other charging instrument is founded.~~

6       ~~(b) From a decision arresting a judgment of conviction or~~  
7 ~~directing a judgment of acquittal for insufficiency of the~~  
8 ~~indictment, information, or other charging instrument, where the~~  
9 ~~decision is based upon the invalidity or construction of the~~  
10 ~~statute upon which the indictment, information, or other charging~~  
11 ~~instrument is founded.~~

12       ~~(c) From a decision or judgment sustaining a special plea in~~  
13 ~~bar, when the defendant has not been put in jeopardy, or from~~  
14 ~~another order of the court relative to admission of evidence or~~  
15 ~~proceedings had or made before the defendant is put in jeopardy.~~

16       (2) AN APPEAL SHALL NOT BE TAKEN BY AND ON BEHALF OF THE  
17 PEOPLE OF THIS STATE IF A SUCCESSFUL APPEAL WOULD RESULT IN A NEW  
18 TRIAL WHICH WOULD BE PROHIBITED BY THE DOUBLE JEOPARDY PROVISION  
19 OF SECTION 15 OF ARTICLE I OF THE STATE CONSTITUTION OF 1963 AND  
20 AMENDMENT V OF THE CONSTITUTION OF THE UNITED STATES.

21       (3) ~~-(2)-~~ The right of the defendant to bail upon appeal  
22 under this section shall be governed by section 9a of this  
23 chapter. ~~and section 7 of chapter 5.~~

24       Section 2. Section 7 of chapter V of Act No. 175 of the  
25 Public Acts of 1927, being section 765.7 of the Michigan Compiled  
26 Laws, is repealed.

1       Section 3. This amendatory act shall not take effect unless  
2 House Bill No. 4100 (request no. 00274'87) of the 84th  
3 Legislature is enacted into law.