

HOUSE BILL No. 6038

July 22, 1992, Introduced by Reps. Byrum, Scott, Yokich, Porreca, Bartnik, Baade, Dobronski, Gire, Varga, Brown, Pitoniak, Walberg, Perry Bullard, Middleton, Dolan, Bennane, Shugars, Goss, Bankes, Dobb, Hertel, Profit and DeMars and referred to the Committee on Judiciary.

A bill to amend section 15b of chapter IV and sections 1 and 2 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended

"The code of criminal procedure,"

section 15b of chapter IV as amended by Act No. 230 of the Public Acts of 1983, section 1 of chapter XI as amended by Act No. 90 of the Public Acts of 1988, and section 2 of chapter XI as amended by Act No. 78 of the Public Acts of 1988, being sections 764.15b, 771.1, and 771.2 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 15b of chapter IV and sections 1 and 2
2 of chapter XI of Act No. 175 of the Public Acts of 1927, section
3 15b of chapter IV as amended by Act No. 230 of the Public Acts of
4 1983, section 1 of chapter XI as amended by Act No. 90 of the
5 Public Acts of 1988, and section 2 of chapter XI as amended by

1 Act No. 78 of the Public Acts of 1988, being sections 764.15b,
2 771.1, and 771.2 of the Michigan Compiled Laws, are amended to
3 read as follows:

4 CHAPTER IV

5 Sec. 15b. (1) A peace officer, without a warrant, may
6 arrest and take into custody a person when the peace officer has
7 reasonable cause to believe that all of the following exist:

8 (a) One of the following injunctive orders:

9 (i) An injunctive order issued pursuant to section 14 of
10 chapter 84 of the Revised Statutes of 1846, as amended, being
11 section 552.14 of the Michigan Compiled Laws.

12 (ii) An injunctive order issued by the circuit court as
13 authorized by law and stating on its face the period of time for
14 which the order is valid and specifically restraining or enjoin-
15 ing a spouse, a former spouse, or a person residing or having
16 resided in the same household as the victim from entering onto
17 premises, from assaulting, beating, molesting, or wounding a
18 named person, or from removing minor children from the person
19 having legal custody of the children.

20 (iii) AN INJUNCTIVE ORDER ISSUED BY THE CIRCUIT COURT AS
21 AUTHORIZED BY LAW AND STATING ON ITS FACE THE PERIOD OF TIME FOR
22 WHICH THE ORDER IS VALID AND SPECIFICALLY RESTRAINING OR ENJOIN-
23 ING A PERSON FROM ENGAGING IN CONDUCT PROHIBITED UNDER
24 SECTION 411H OR 411I OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF
25 THE PUBLIC ACTS OF 1931, BEING SECTIONS 750.411H AND 750.411I OF
26 THE MICHIGAN COMPILED LAWS.

1 (b) A true copy and proof of service of the order has been
2 filed with the law enforcement agency having jurisdiction of the
3 area in which the moving party resides.

4 (c) The person named in the order has received notice of the
5 injunctive order.

6 (d) The person named in the order is acting in violation of
7 the order. A person is in violation of the order if that person
8 commits 1 or more of the following acts specifically enumerated
9 in the order to restrain or enjoin the person from:

10 (i) Assaulting, beating, molesting, or wounding a named
11 person.

12 (ii) Removing minor children from a person having legal cus-
13 tody of the children, in violation of custody and visitation
14 orders as issued by the court.

15 (iii) Entering onto premises.

16 (iv) ENGAGING IN CONDUCT PROHIBITED UNDER SECTION 411H OR
17 411I OF ACT NO. 328 OF THE PUBLIC ACTS OF 1931.

18 (e) The order states on its face that a violation of its
19 terms subjects the person to criminal contempt of court and, if
20 found guilty, the person shall be imprisoned for not more than 90
21 days and may be fined not more than \$500.00.

22 (2) A person arrested pursuant to this section shall be
23 brought before the circuit court having jurisdiction in the cause
24 within 24 hours after arrest to answer to a charge of contempt
25 for violation of the injunctive order, at which time the court
26 shall do each of the following:

1 (a) Set a time certain for a hearing on the alleged
2 violation of the injunctive order within 72 hours after arrest,
3 unless extended by the court on the motion of the arrested
4 person.

5 (b) Set a reasonable bond pending a hearing of the alleged
6 violation of the injunctive order.

7 (c) Notify the party who has procured the injunctive order
8 and direct the party to appear at the hearing and give evidence
9 on the charge of contempt.

10 (3) In circuits where the circuit court judge may not be
11 present or available within 24 hours after arrest, a person
12 arrested pursuant to this section shall be taken before the dis-
13 trict court within 24 hours after arrest, at which time the dis-
14 trict court shall order the defendant to appear before the cir-
15 cuit court of the county for a hearing on the charge. The dis-
16 trict court shall set bond for the person.

17 (4) The circuit court for each county of this state shall
18 have jurisdiction to conduct contempt proceedings based upon a
19 violation of an injunctive order as provided in this section,
20 which is issued by the circuit court in any county of this
21 state. The court of arraignment shall notify the circuit court
22 which issued the injunctive order that the issuing court may
23 request that the defendant be returned to that county for violat-
24 ing the injunctive order. If the circuit court which issued the
25 injunctive order requests that the defendant be returned to that
26 county to stand trial, then the requesting county shall bear the
27 cost of transporting the defendant to that county.

1 (5) Upon receipt of a true copy and proof of service of an
2 injunctive order issued pursuant to this section, the law
3 enforcement agency shall enter the order into the law enforcement
4 information network as provided by the L.E.I.N. policy council
5 act of 1974, Act No. 163 of the Public Acts of 1974, being sec-
6 tions 28.211 to 28.216 of the Michigan Compiled Laws.

7 CHAPTER XI

8 Sec. 1. (1) In ~~all prosecutions for felonies or~~
9 ~~misdemeanors~~ A PROSECUTION FOR A FELONY OR MISDEMEANOR, except
10 murder, treason, criminal sexual conduct in the first or third
11 degree, robbery while armed, ~~and~~ OR A major controlled sub-
12 stance ~~offenses~~ OFFENSE not described in subsection (3), if the
13 defendant has been found guilty upon verdict or plea ~~, and if it~~
14 ~~appears to the satisfaction of~~ AND IT APPEARS TO the court that
15 the defendant is not likely again to engage in an offensive or
16 criminal course of conduct and that the public good does not
17 require that the defendant ~~shall~~ suffer the penalty ~~imposed~~
18 PROVIDED by law, the court may place the defendant on probation
19 under the charge and supervision of a probation officer.

20 (2) Except as provided in subsection (3), in an action in
21 which the court may place the defendant on probation, the court
22 may delay ~~the imposing of sentence of~~ SENTENCING the defendant
23 for ~~a period of not to exceed~~ NOT MORE THAN 1 year ~~for the~~
24 ~~purpose of giving~~ TO GIVE the defendant an opportunity to prove
25 to the court his or her eligibility for probation or other
26 leniency compatible with the ends of justice and the
27 rehabilitation of the defendant. When the sentencing is delayed,

1 the court shall make an order stating the reason for the delay.
2 ~~which~~ THE order shall be entered upon the records of the
3 court. The delay in ~~passing sentence~~ SENTENCING shall not
4 deprive the court of jurisdiction to sentence the defendant at
5 any time during the extended period.

6 (3) The sentencing judge may place a defendant on life pro-
7 bation pursuant to subsection (1) if the defendant is convicted
8 ~~for a violation~~ of VIOLATING OR CONSPIRING TO VIOLATE section
9 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health code, Act
10 No. 368 of the Public Acts of 1978, being sections 333.7401 or
11 333.7403 of the Michigan Compiled Laws, or ~~conspiracy to commit~~
12 ~~either of those 2 offenses~~ IS CONVICTED OF VIOLATING
13 SECTION 411H OR 411I OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF
14 THE PUBLIC ACTS OF 1931, BEING SECTIONS 750.411H AND 750.411I OF
15 THE MICHIGAN COMPILED LAWS. Subsection (2) does not apply to
16 this subsection.

17 (4) Beginning June 1, 1988, this section does not apply to a
18 juvenile placed on probation and committed under section 1(3) or
19 (4) of chapter IX OF THIS ACT to a state institution or agency
20 described in the youth rehabilitation services act, Act No. 150
21 of the Public Acts of 1974, being sections 803.301 to 803.309 of
22 the Michigan Compiled Laws.

23 Sec. 2. (1) If the defendant is convicted for an offense
24 which is not a felony, the period of probation shall not exceed 2
25 years. If the defendant is convicted of a felony ~~which~~ THAT is
26 not a major controlled substance offense OR A VIOLATION OF
27 SECTION 411H OR 411I OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF

1 THE PUBLIC ACTS OF 1931, BEING SECTIONS 750.411H AND 750.411I OF
2 THE MICHIGAN COMPILED LAWS, the period of probation shall not
3 exceed 5 years.

4 (2) The court shall by order, to be filed or entered in the
5 cause as the court ~~may direct~~ DIRECTS by general rule or in
6 each case, fix and determine the period and conditions of
7 probation. The order, whether it is filed or entered, shall be
8 considered as part of the record in the cause and shall be at all
9 times alterable and amendable, both in form and in substance, in
10 the court's discretion.

11 (3) A defendant who is placed on probation pursuant to sec-
12 tion 1(3) shall be placed on probation for life. That sentence
13 may be made subject to conditions of probation specified in sec-
14 tion 3 and to revocation for violation of those conditions, but
15 the period of probation shall not be reduced other than by a
16 revocation ~~which~~ THAT results in imprisonment.

17 (4) Subsections (1) and (3) do not apply to a juvenile
18 placed on probation and committed under section 1(3) or (4) of
19 chapter IX OF THIS ACT to a state institution or agency described
20 in the youth rehabilitation services act, Act No. 150 of the
21 Public Acts of 1974, being sections 803.301 to 803.309 of the
22 Michigan Compiled Laws.

23 Section 2. This amendatory act shall not take effect unless
24 all of the following bills of the 86th Legislature are enacted
25 into law:

26 (a) Senate Bill No. 719.

1 (b) House Bill No. 5472.

2 (c) Senate Bill No. 1095.

3 Section 3. This amendatory act shall take effect April 1,
4 1993.