

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 946

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
by amending sections 31, 37, and 49 of chapter XVII (MCL 777.31,  
777.37, and 777.49), sections 31 and 49 as amended by 2001 PA 136  
and section 37 as added by 1998 PA 317, and by adding section  
49a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XVII

2 Sec. 31. (1) Offense variable 1 is aggravated use of a  
3 weapon. Score offense variable 1 by determining which of the  
4 following apply and by assigning the number of points attribut-  
5 able to the one that has the highest number of points:

6 (a) A firearm was discharged at or toward a human  
7 being or a victim was cut or stabbed with a knife or  
8 other cutting or stabbing weapon..... 25 points

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1 (B) THE VICTIM WAS SUBJECTED OR EXPOSED TO A HARMFUL  
2 BIOLOGICAL SUBSTANCE, HARMFUL BIOLOGICAL DEVICE, HARM-  
3 FUL CHEMICAL SUBSTANCE, HARMFUL CHEMICAL DEVICE, HARM-  
4 FUL RADIOACTIVE MATERIAL, HARMFUL RADIOACTIVE DEVICE,  
5 INCENDIARY DEVICE, OR EXPLOSIVE DEVICE..... 20 POINTS

6 (C) ~~(b)~~ A firearm was pointed at or toward a  
7 victim or the victim had a reasonable apprehension of  
8 an immediate battery when threatened with a knife or  
9 other cutting or stabbing weapon..... 15 points

10 (D) ~~(c)~~ The victim was touched by any other type  
11 of weapon..... 10 points

12 (E) ~~(d)~~ A weapon was displayed or implied..... 5 points

13 (F) ~~(e)~~ No aggravated use of a weapon occurred.... 0 points

14 (2) All of the following apply to scoring offense variable  
15 1:

16 (a) Count each person who was placed in danger of injury or  
17 loss of life as a victim.

18 (b) In multiple offender cases, if 1 offender is assessed  
19 points for the presence or use of a weapon, all offenders shall  
20 be assessed the same number of points.

21 (c) Score 5 points if an offender used an object to suggest  
22 the presence of a weapon.

23 (d) Score 5 points if ~~the~~ AN offender used a chemical  
24 irritant, chemical irritant device, smoke device, or imitation  
25 harmful substance or device.

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1 (e) Do not score 5 points if the conviction offense is a  
2 violation of section 82 or 529 of the Michigan penal code, 1931  
3 PA 328, MCL 750.82 and 750.529.

4 (3) As used in this section: ~~—, "chemical"~~

5 (A) "CHEMICAL irritant", "chemical irritant device",  
6 "HARMFUL BIOLOGICAL SUBSTANCE", "HARMFUL BIOLOGICAL DEVICE",  
7 "HARMFUL CHEMICAL SUBSTANCE", "HARMFUL CHEMICAL DEVICE", "HARMFUL  
8 RADIOACTIVE MATERIAL", "HARMFUL RADIOACTIVE DEVICE", and  
9 "imitation harmful substance or device" mean those terms as  
10 defined in section 200h of the Michigan penal code, 1931 PA 328,  
11 MCL 750.200h.

12 (B) "INCENDIARY DEVICE" INCLUDES GASOLINE OR ANY OTHER FLAM-  
13 MABLE SUBSTANCE, A BLOWTORCH, FIRE BOMB, MOLOTOV COCKTAIL, OR  
14 OTHER SIMILAR DEVICE.

15 Sec. 37. (1) Offense variable 7 is aggravated physical  
16 abuse. Score offense variable 7 by determining which of the fol-  
17 lowing apply and by assigning the number of points attributable  
18 to the one that has the highest number of points:

19 (a) A victim was treated with ~~—terrorism,~~  
20 sadism, torture, or excessive brutality OR CONDUCT  
21 DESIGNED TO SUBSTANTIALLY INCREASE THE FEAR AND ANXI-  
22 ETY A VICTIM SUFFERED DURING THE OFFENSE..... 50 points

23 (b) No victim was treated with ~~—terrorism,~~  
24 sadism, torture, or excessive brutality OR CONDUCT  
25 DESIGNED TO SUBSTANTIALLY INCREASE THE FEAR AND ANXI-  
26 ETY A VICTIM SUFFERED DURING THE OFFENSE..... 0 points

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1 (2) COUNT EACH PERSON WHO WAS PLACED IN DANGER OF INJURY OR  
2 LOSS OF LIFE AS A VICTIM.

3 (3) ~~-(2)-~~ As used in this section, ~~+~~

4 ~~-(a) "Terrorism" means conduct designed to substantially~~  
5 ~~increase the fear and anxiety a victim suffers during the~~  
6 ~~offense.~~

7 ~~-(b) "Sadism"~~ "SADISM" means conduct that subjects a victim  
8 to extreme or prolonged pain or humiliation and is inflicted to  
9 produce suffering or for the offender's gratification.

10 Sec. 49. Offense variable 19 is threat to the security of a  
11 penal institution or court or interference with the administra-  
12 tion of justice OR THE RENDERING OF EMERGENCY SERVICES. Score  
13 offense variable 19 by determining which of the following apply  
14 and by assigning the number of points attributable to the one  
15 that has the highest number of points:

16 (a) The offender by his or her conduct threatened  
17 the security of a penal institution or court..... 25 points

18 (b) The offender used force or the threat of force  
19 against another person or the property of another  
20 person to interfere with, attempt to interfere with,  
21 or that results in the interference with the adminis-  
22 tration of justice or the rendering of emergency  
23 services..... 15 points

24 (c) The offender otherwise interfered with or  
25 attempted to interfere with the administration of jus-  
26 tice [ ..... 10 points

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1 (d) The offender did not threaten the security of a  
2 penal institution or court or interfere with or  
3 attempt to interfere with the administration of jus-  
4 tice OR THE RENDERING OF EMERGENCY SERVICES [BY FORCE OR THREAT OF  
FORCE]..... 0 points

5 SEC. 49A. (1) OFFENSE VARIABLE 20 IS TERRORISM. SCORE  
6 OFFENSE VARIABLE 20 BY DETERMINING WHICH OF THE FOLLOWING APPLIES  
7 AND BY ASSIGNING THE NUMBER OF POINTS ATTRIBUTABLE TO THE ONE  
8 THAT HAS THE HIGHEST NUMBER OF POINTS:

9 (A) THE OFFENDER COMMITTED AN ACT OF TERRORISM BY  
10 USING OR THREATENING TO USE A HARMFUL BIOLOGICAL SUB-  
11 STANCE, HARMFUL BIOLOGICAL DEVICE, HARMFUL CHEMICAL  
12 SUBSTANCE, HARMFUL CHEMICAL DEVICE, HARMFUL RADIOAC-  
13 TIVE MATERIAL, HARMFUL RADIOACTIVE DEVICE, INCENDIARY  
14 DEVICE, OR EXPLOSIVE DEVICE..... 100 POINTS

15 (B) THE OFFENDER COMMITTED AN ACT OF TERRORISM WITH-  
16 OUT USING OR THREATENING TO USE A HARMFUL BIOLOGICAL  
17 SUBSTANCE, HARMFUL BIOLOGICAL DEVICE, HARMFUL CHEMICAL  
18 SUBSTANCE, HARMFUL CHEMICAL DEVICE, HARMFUL RADIOAC-  
19 TIVE MATERIAL, HARMFUL RADIOACTIVE DEVICE, INCENDIARY  
20 DEVICE, OR EXPLOSIVE DEVICE..... 50 POINTS

21 (C) THE OFFENDER SUPPORTED AN ACT OF TERRORISM, A  
22 TERRORIST, OR A TERRORIST ORGANIZATION..... 25 POINTS

23 (D) THE OFFENDER DID NOT COMMIT AN ACT OF TERRORISM  
24 OR SUPPORT AN ACT OF TERRORISM, A TERRORIST, OR A TER-  
25 RORIST ORGANIZATION..... 0 POINTS

26 (2) AS USED IN THIS SECTION:

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1 (A) "ACT OF TERRORISM" AND "TERRORIST" MEAN THOSE TERMS AS  
2 DEFINED IN SECTION 543B OF THE MICHIGAN PENAL CODE, 1931 PA 328,  
3 MCL 750.543B.

4 (B) "HARMFUL BIOLOGICAL SUBSTANCE", "HARMFUL BIOLOGICAL  
5 DEVICE", "HARMFUL CHEMICAL SUBSTANCE", "HARMFUL CHEMICAL DEVICE",  
6 "HARMFUL RADIOACTIVE MATERIAL", AND "HARMFUL RADIOACTIVE DEVICE"  
7 MEAN THOSE TERMS AS DEFINED IN SECTION 200H OF THE MICHIGAN PENAL  
8 CODE, 1931 PA 328, MCL 750.200H.

9 (C) "INCENDIARY DEVICE" INCLUDES GASOLINE OR ANY OTHER FLAM-  
10 MABLE SUBSTANCE, A BLOWTORCH, FIRE BOMB, MOLOTOV COCKTAIL, OR  
11 OTHER SIMILAR DEVICE.

12 (D) "TERRORIST ORGANIZATION" MEANS THAT TERM AS DEFINED IN  
13 SECTION 543C OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL  
14 750.543C.

15 Enacting section 1. This amendatory act takes effect [April 22],  
16 2002.

17 Enacting section 2. This amendatory act does not take  
18 effect unless Senate Bill No. 930 of the 91st Legislature is  
19 enacted into law.