

Act No. 137
Public Acts of 2002
Approved by the Governor
April 1, 2002
Filed with the Secretary of State
April 1, 2002
EFFECTIVE DATE: April 22, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

**Introduced by Senators Van Regenmorter, Johnson, Shugars, Bullard, McManus, Sikkema, Gougeon,
Hammerstrom, North, Garcia, Sanborn, Schuette, Goschka, Steil, Schwarz, Stille, Hoffman, Byrum,
Leland and McCotter**

ENROLLED SENATE BILL No. 946

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," 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:

CHAPTER XVII

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

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

(b) The victim was subjected or exposed to a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device 20 points

(c) A firearm was pointed at or toward a victim or the victim had a reasonable apprehension of an immediate battery when threatened with a knife or other cutting or stabbing weapon..... 15 points

- (d) The victim was touched by any other type of weapon..... 10 points
- (e) A weapon was displayed or implied..... 5 points
- (f) No aggravated use of a weapon occurred..... 0 points

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

- (a) Count each person who was placed in danger of injury or loss of life as a victim.
- (b) In multiple offender cases, if 1 offender is assessed points for the presence or use of a weapon, all offenders shall be assessed the same number of points.
- (c) Score 5 points if an offender used an object to suggest the presence of a weapon.
- (d) Score 5 points if an offender used a chemical irritant, chemical irritant device, smoke device, or imitation harmful substance or device.
- (e) Do not score 5 points if the conviction offense is a violation of section 82 or 529 of the Michigan penal code, 1931 PA 328, MCL 750.82 and 750.529.

(3) As used in this section:

(a) “Chemical irritant”, “chemical irritant device”, “harmful biological substance”, “harmful biological device”, “harmful chemical substance”, “harmful chemical device”, “harmful radioactive material”, “harmful radioactive device”, and “imitation harmful substance or device” mean those terms as defined in section 200h of the Michigan penal code, 1931 PA 328, MCL 750.200h.

(b) “Incendiary device” includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device.

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

(a) A victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense..... 50 points

(b) No victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense..... 0 points

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

(3) As used in this section, “sadism” means conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender’s gratification.

Sec. 49. Offense variable 19 is threat to the security of a penal institution or court or interference with the administration of justice or the rendering of emergency services. Score offense variable 19 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

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

(b) The offender used force or the threat of force against another person or the property of another person to interfere with, attempt to interfere with, or that results in the interference with the administration of justice or the rendering of emergency services..... 15 points

(c) The offender otherwise interfered with or attempted to interfere with the administration of justice.. 10 points

(d) The offender did not threaten the security of a penal institution or court or interfere with or attempt to interfere with the administration of justice or the rendering of emergency services by force or threat of force..... 0 points

Sec. 49a. (1) Offense variable 20 is terrorism. Score offense variable 20 by determining which of the following applies and by assigning the number of points attributable to the one that has the highest number of points:

(a) The offender committed an act of terrorism by using or threatening to use a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device..... 100 points

(b) The offender committed an act of terrorism without using or threatening to use a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device..... 50 points

(c) The offender supported an act of terrorism, a terrorist, or a terrorist organization 25 points

(d) The offender did not commit an act of terrorism or support an act of terrorism, a terrorist, or a terrorist organization 0 points

(2) As used in this section:

(a) "Act of terrorism" and "terrorist" mean those terms as defined in section 543b of the Michigan penal code, 1931 PA 328, MCL 750.543b.

(b) "Harmful biological substance", "harmful biological device", "harmful chemical substance", "harmful chemical device", "harmful radioactive material", and "harmful radioactive device" mean those terms as defined in section 200h of the Michigan penal code, 1931 PA 328, MCL 750.200h.

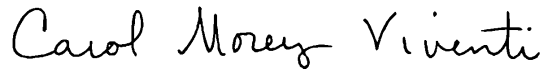
(c) "Incendiary device" includes gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device.

(d) "Terrorist organization" means that term as defined in section 543c of the Michigan penal code, 1931 PA 328, MCL 750.543c.

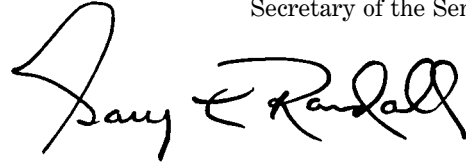
Enacting section 1. This amendatory act takes effect April 22, 2002.

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

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved

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Governor.