

# HOUSE BILL No. 5928

May 20, 2004, Introduced by Reps. Condino and Howell and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending sections 350a and 430 (MCL 750.350a and 750.430),  
section 350a as amended by 1996 PA 14 and section 430 as amended  
by 2003 PA 235.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 350a. (1) An adoptive or natural parent of a child  
2 shall not take that child, or retain that child for more than 24  
3 hours, with the intent to detain or conceal the child from any  
4 other parent or legal guardian of the child who has custody or  
5 parenting time rights pursuant to a lawful court order at the  
6 time of the taking or retention, or from the person or persons  
7 who have adopted the child, or from any other person having  
8 lawful charge of the child at the time of the taking or  
9 retention.

1       (2) A parent who violates subsection (1) is guilty of a  
2 felony, punishable by imprisonment for not more than 1 year and 1  
3 day, or a fine of not more than \$2,000.00, or both.

4       (3) A parent who violates this section, upon conviction, in  
5 addition to any other punishment, may be ordered to make  
6 restitution to the other parent, legal guardian, the person or  
7 persons who have adopted the child, or any other person having  
8 lawful charge of the child for any financial expense incurred as  
9 a result of attempting to locate and having the child returned.

10       (4) When a parent who has not been convicted previously of a  
11 violation of section 349, 350, or this section, or under any  
12 statute of the United States or of any state related to  
13 kidnapping, pleads guilty to, or is found guilty of, a violation  
14 of this section, the court, without entering a judgment of guilt  
15 and with the consent of the accused parent, may defer further  
16 proceedings and place the accused parent on probation with lawful  
17 terms and conditions. **The terms and conditions of probation may**  
18 **include participation in a drug treatment court under chapter 10A**  
19 **of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060**  
20 **to 600.1082.** Upon a violation of a term or condition of  
21 probation, the court may enter an adjudication of guilt and  
22 proceed as otherwise provided. Upon fulfillment of the terms and  
23 conditions of probation, the court shall discharge from probation  
24 and dismiss the proceedings against the parent. Discharge and  
25 dismissal under this subsection shall be without adjudication of  
26 guilt and is not a conviction for purposes of disqualifications  
27 or disabilities imposed by law upon conviction of a crime,

1 including any additional penalties imposed for second or  
2 subsequent convictions. The department of state police shall  
3 retain a nonpublic record of an arrest and discharge and  
4 dismissal under this section. This record shall be furnished to  
5 **either or both of the following:**

6       **(a) To a court or police agency upon request for the purpose**  
7 **of showing that a defendant in a criminal action has already**  
8 **availed himself or herself of this subsection.**

9       **(b) To a court, police agency, or prosecutor upon request for**  
10 **the purpose of determining whether the defendant in a criminal**  
11 **action is eligible for discharge and dismissal of proceedings by**  
12 **a drug treatment court under section 1076(4) of the revised**  
13 **judicature act of 1961, 1961 PA 236, MCL 600.1076.**

14       (5) It is a complete defense under this section if a parent  
15 proves that his or her actions were taken for the purpose of  
16 protecting the child from an immediate and actual threat of  
17 physical or mental harm, abuse, or neglect.

18       Sec. 430. (1) A licensed health care professional who does  
19 either of the following is guilty of a misdemeanor:

20       (a) Engages in the practice of his or her health profession  
21 with a bodily alcohol content of .05 or more grams per 100  
22 milliliters of blood, per 210 liters of breath, or per 67  
23 milliliters of urine.

24       (b) Engages in the practice of his or her health profession  
25 while he or she is under the influence of a controlled substance  
26 and, due to the illegal or improper use of the controlled  
27 substance, his or her ability to safely and skillfully engage in

1 the practice of his or her health profession is visibly  
2 impaired.

3 (2) A peace officer who has reasonable cause to believe an  
4 individual violated subsection (1) may require the individual to  
5 submit to a chemical analysis of his or her breath, blood, or  
6 urine. Before an individual is required to submit to a chemical  
7 analysis under this subsection, the peace officer shall inform  
8 the individual of all of the following:

9 (a) The individual may refuse to submit to the chemical  
10 analysis, but if he or she refuses, the officer may obtain a  
11 court order requiring the individual to submit to a chemical  
12 analysis.

13 (b) If the individual submits to the chemical analysis, he or  
14 she may obtain a chemical analysis from a person of his or her  
15 own choosing.

16 (3) The failure of a peace officer to comply with the  
17 requirements of subsection (2) renders the results of a chemical  
18 analysis inadmissible as evidence in a criminal prosecution for  
19 violating this section, in a civil action arising out of a  
20 violation of this section, or in any administrative proceeding  
21 arising out of a violation of this section.

22 (4) The collection and testing of breath, blood, or urine  
23 specimens under this section shall be conducted in the same  
24 manner that breath, blood, or urine specimens are collected and  
25 tested for alcohol-related and controlled substance-related  
26 driving violations under the Michigan vehicle code, 1949 PA 300,  
27 MCL 257.1 to 257.923.

1       (5) This section does not prohibit the individual from being  
2 charged with, convicted of, or sentenced for any other violation  
3 of law arising out of the same transaction as the violation of  
4 this section in lieu of being charged with, convicted of, or  
5 sentenced for the violation of this section.

6       (6) This section does not apply to a licensed health care  
7 professional who in good faith renders emergency care without  
8 compensation at the scene of an emergency unless the acts or  
9 omissions by the licensed health care professional amount to  
10 gross negligence or willful and wanton misconduct.

11       (7) If an individual is convicted under this section, the  
12 court shall order that individual to participate in the health  
13 professional recovery program established under section 16167 of  
14 the public health code, 1978 PA 368, MCL 333.16167.

15       (8) A violation of this section is punishable as follows:

16       (a) If the individual's conduct did not result in physical  
17 harm or injury to the patient and the individual has not been  
18 convicted previously for violating this section, the court,  
19 without entering a judgment of guilt and with the consent of the  
20 accused and of the prosecuting attorney, may defer further  
21 proceedings and place the accused on probation upon terms and  
22 conditions that shall include, but are not limited to,  
23 participation in the health professional recovery program  
24 established under section 16167 of the public health code, 1978  
25 PA 368, MCL 333.16167. **The terms and conditions of probation may**  
26 **include participation in a drug treatment court under chapter 10A**  
27 **of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060**

1 to 600.1082. Upon violation of a term or condition, the court may  
2 enter an adjudication of guilt and proceed as otherwise provided  
3 under subdivision (b). Upon fulfillment of the terms and  
4 conditions, the court shall discharge the individual and dismiss  
5 the proceedings. Discharge and dismissal under this section  
6 shall be without adjudication of guilt and are not a conviction  
7 for purposes of this section or for purposes of disqualifications  
8 or disabilities imposed by law upon conviction of a crime,  
9 including additional penalties imposed for second or subsequent  
10 convictions under this subsection. There may only be 1 discharge  
11 and dismissal under this section as to an individual. The  
12 records and identifications division of the department of state  
13 police shall retain a nonpublic record of an arrest and discharge  
14 or dismissal under this subsection. This record shall only be  
15 furnished to **either or both of the following:**

16 (i) To a court or police agency upon request for the purpose  
17 of showing whether the individual accused of violating this  
18 section has already once utilized this subdivision.

19 (ii) To a court, police agency, or prosecutor upon request  
20 for the purpose of determining whether the defendant in a  
21 criminal action is eligible for discharge and dismissal of  
22 proceedings by a drug treatment court under section 1076(4) of  
23 the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.

24 (b) For a first offense, by imprisonment for not more than  
25 180 days or a fine of not more than \$1,000.00, or both.

26 (c) For a second or subsequent offense, by imprisonment for  
27 not more than 1 year or a fine of not less than \$1,000.00, or

1 both.

2       (9) As used in this section, "licensed health care  
3 professional" means an individual licensed or registered under  
4 article 15 of the public health code, 1978 PA 368, MCL 333.16101  
5 to 333.18838.

6       Enacting section 1. This amendatory act does not take  
7 effect unless Senate Bill No. 998 of the 92nd Legislature is  
8 enacted into law.