

Act No. 223
Public Acts of 2004
Approved by the Governor
July 21, 2004
Filed with the Secretary of State
July 21, 2004
EFFECTIVE DATE: January 1, 2005

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. Condino and Howell

ENROLLED HOUSE BILL No. 5928

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," 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:

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

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

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

(4) When a parent who has not been convicted previously of a violation of section 349, 350, or this section, or under any statute of the United States or of any state related to kidnapping, pleads guilty to, or is found guilty of, a violation of this section, the court, without entering a judgment of guilt and with the consent of the accused parent, may defer further proceedings and place the accused parent on probation with lawful terms and conditions. The terms and conditions of probation may include participation in a drug treatment court under chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall discharge from probation and dismiss the proceedings against the parent. Discharge and dismissal under this subsection shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including any additional penalties imposed for second or subsequent convictions. The department of state police shall retain a nonpublic record of an arrest and discharge and dismissal under this section. This record shall be furnished to either or both of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) If the individual's conduct did not result in physical harm or injury to the patient and the individual has not been convicted previously for violating this section, the court, without entering a judgment of guilt and with the consent of the accused and of the prosecuting attorney, may defer further proceedings and place the accused on probation upon terms and conditions that shall include, but are not limited to, participation in the health professional recovery program established under section 16167 of the public health code, 1978 PA 368, MCL 333.16167. The terms and conditions of probation may include participation in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided under subdivision (b). Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and are not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including additional penalties imposed for second or subsequent convictions under this subsection. There may only be 1 discharge and dismissal under this section as to an individual. The records and identifications division of the department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this subsection. This record shall only be furnished to either or both of the following:

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

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

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

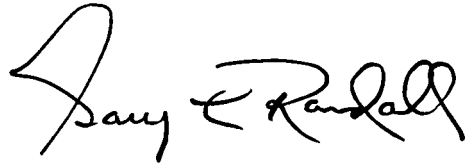
(c) For a second or subsequent offense, by imprisonment for not more than 1 year or a fine of not less than \$1,000.00, or both.

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

Enacting section 1. This amendatory act takes effect January 1, 2005.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 998 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor