

SENATE BILL No. 170

February 3, 2005, Introduced by Senator PATTERSON and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 1a of chapter IV, section 16a of chapter IX,
section 22 of chapter XVI, and sections 15g, 16m, and 16s of
chapter XVII (MCL 764.1a, 769.16a, 776.22, 777.15g, 777.16m, and
777.16s), section 1a of chapter IV as amended by 1994 PA 70,
section 16a of chapter IX as amended by 2004 PA 220, section 22
of chapter XVI as amended by 2001 PA 194, section 15g of chapter
XVII as added by 2002 PA 206, section 16m of chapter XVII as
amended by 2001 PA 166, and section 16s of chapter XVII as
amended by 2004 PA 519.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IV

1

1 Sec. 1a. (1) A magistrate shall issue a warrant upon
2 presentation of a proper complaint alleging the commission of an
3 offense and a finding of reasonable cause to believe that the
4 individual accused in the complaint committed that offense. The
5 complaint shall be sworn to before a magistrate or clerk.

6 (2) The finding of reasonable cause by the magistrate may be
7 based upon 1 or more of the following:

8 (a) Factual allegations of the complainant contained in the
9 complaint.

10 (b) The complainant's sworn testimony.

11 (c) The complainant's affidavit.

12 (d) Any supplemental sworn testimony or affidavits of other
13 individuals presented by the complainant or required by the
14 magistrate.

15 (3) The magistrate may require sworn testimony of the
16 complainant or other individuals. Supplemental affidavits may be
17 sworn to before an individual authorized by law to administer
18 oaths. The factual allegations contained in the complaint,
19 testimony, or affidavits may be based upon personal knowledge,
20 information and belief, or both.

21 (4) The magistrate shall not refuse to accept a complaint
22 alleging a violation of section 81 or 81a of the Michigan penal
23 code, ~~Act No. 328 of the Public Acts of 1931, being sections~~
24 ~~750.81 and 750.81a of the Michigan Compiled Laws~~ **1931 PA 328,**
25 **MCL 750.81 AND 750.81A,** or a violation of a local ordinance
26 substantially corresponding to section 81 of ~~Act No. 328 of the~~
27 ~~Public Acts of 1931~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL**

1 750.81, by the spouse of the victim, a former spouse of the
2 victim, an individual with whom the victim has had a child in
3 common, **AN INDIVIDUAL WITH WHOM THE VICTIM HAS OR HAS HAD A**
4 **DATING RELATIONSHIP**, or an individual residing or having resided
5 in the same household as the victim on grounds that the complaint
6 is signed upon information and belief by an individual other than
7 the victim.

8 (5) A warrant may be issued under this section only upon
9 compliance with the requirements of section 1 of this chapter.

10 (6) **AS USED IN THIS SECTION, "DATING RELATIONSHIP" MEANS**
11 **FREQUENT, INTIMATE ASSOCIATIONS PRIMARILY CHARACTERIZED BY THE**
12 **EXPECTATION OF AFFECTIONAL INVOLVEMENT. DATING RELATIONSHIP DOES**
13 **NOT INCLUDE A CASUAL RELATIONSHIP OR AN ORDINARY FRATERNIZATION**
14 **BETWEEN 2 INDIVIDUALS IN A BUSINESS OR SOCIAL CONTEXT.**

15 CHAPTER IX

16 Sec. 16a. (1) Except as otherwise provided in subsection
17 (3), upon final disposition of an original charge against a
18 person of a felony or a misdemeanor for which the maximum
19 possible penalty exceeds 92 days' imprisonment or a local
20 ordinance for which the maximum possible penalty is 93 days'
21 imprisonment and that substantially corresponds to a violation of
22 state law that is a misdemeanor for which the maximum possible
23 penalty is 93 days' imprisonment, or a misdemeanor in a case in
24 which the appropriate court was notified that fingerprints were
25 forwarded to the department of state police, or upon final
26 disposition of a charge of criminal contempt under section 2950
27 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL

1 600.2950 and 600.2950a, or final disposition of a charge of
2 criminal contempt for violating a foreign protection order that
3 satisfies the conditions for validity provided in section 2950i
4 of the revised judicature act of 1961, 1961 PA 236, MCL
5 600.2950i, the clerk of the court entering the disposition shall
6 immediately report to the department of state police the final
7 disposition of the charge on forms approved by the state court
8 administrator and in a manner consistent with section 3 of 1925
9 PA 289, MCL 28.243. The report to the department of state police
10 shall include the finding of the judge or jury, including a
11 finding of guilty, guilty but mentally ill, not guilty, or not
12 guilty by reason of insanity, or the person's plea of guilty,
13 nolo contendere, or guilty but mentally ill; if the person was
14 convicted, the offense of which the person was convicted; and a
15 summary of any sentence imposed. The summary of the sentence
16 shall include any probationary term; any minimum, maximum, or
17 alternative term of imprisonment; the total of all fines, costs,
18 and restitution ordered; and any modification of sentence. The
19 report shall include the sentence if imposed under any of the
20 following:

21 (a) Section 7411 of the public health code, 1978 PA 368, MCL
22 333.7411.

23 (b) Section 1076(4) of the revised judicature act of 1961,
24 1961 PA 236, MCL 600.1076.

25 (c) Section 350a of the Michigan penal code, 1931 PA 328,
26 MCL 750.350a.

27 (d) Section 430 of the Michigan penal code, 1931 PA 328, MCL

1 750.430.

2 (e) Sections 11 to 15 of chapter II.

3 (f) Section 4a of chapter IX.

4 (2) Upon sentencing a person convicted of a misdemeanor or
5 of a violation of a local ordinance, other than a misdemeanor or
6 local ordinance described in subsection (1), the clerk of the
7 court imposing sentence immediately shall, if ordered by the
8 court, advise the department of state police of the conviction on
9 forms approved by the state court administrator.

10 (3) Except as otherwise provided in subsections (4) and (6),
11 the clerk of a court shall not report a conviction of a
12 misdemeanor offense under the Michigan vehicle code, 1949 PA 300,
13 MCL 257.1 to 257.923, or a local ordinance substantially
14 corresponding to a provision of that act unless 1 or more of the
15 following apply:

16 (a) The offense is punishable by imprisonment for more than
17 92 days.

18 (b) The offense is an offense that would be punishable by
19 more than 92 days as a second conviction.

20 (c) A judge of the court orders the clerk to report the
21 conviction.

22 (4) Unless ordered by the court, the clerk of a court is not
23 required to report a conviction of a misdemeanor offense for a
24 violation of section 904(3)(a) of the Michigan vehicle code, 1949
25 PA 300, MCL 257.904, or a local ordinance substantially
26 corresponding to section 904(3)(a) of the Michigan vehicle code,
27 1949 PA 300, MCL 257.904.

1 attorney and with an area shelter for victims of domestic
2 violence in the development, implementation, including training,
3 and evaluation of the policies and standards.

4 (3) The policies shall address, but not be limited to
5 addressing, all of the following:

6 (a) Procedures for conducting a criminal investigation with
7 specific standards for misdemeanor and felony arrests.

8 (b) Procedures for making a criminal arrest. The procedures
9 shall emphasize all of the following:

10 (i) In most circumstances, an officer should arrest and take
11 an individual into custody if the officer has probable cause to
12 believe the individual is committing or has committed domestic
13 violence and his or her actions constitute a crime.

14 (ii) When the officer has probable cause to believe spouses,
15 former spouses, individuals who have had a child in common,
16 **INDIVIDUALS WHO HAVE OR HAVE HAD A DATING RELATIONSHIP**, or other
17 individuals who reside together or formerly resided together are
18 committing or have committed crimes against each other, the
19 officer, when determining whether to make an arrest of 1 or both
20 individuals, should consider the intent of this section to
21 protect victims of domestic violence, the degree of injury
22 inflicted on the individuals involved, the extent to which the
23 individuals have been put in fear of physical injury to
24 themselves or other members of the household, and any history of
25 domestic violence between the individuals, if that history can
26 reasonably be ascertained by the officer. In addition, the
27 officer should not arrest an individual if the officer has

1 reasonable cause to believe the individual was acting in lawful
2 self-defense or in lawful defense of another individual.

3 (iii) A police officer's decision as to whether to arrest an
4 individual should not be based solely on the consent of the
5 victim to any subsequent prosecution or on the relationship of
6 the individuals involved in the incident.

7 (iv) A police officer's decision not to arrest an individual
8 should not be based solely upon the absence of visible
9 indications of injury or impairment.

10 (c) Procedures for denial of interim bond, as provided in
11 1961 PA 44, MCL 780.581 to 780.588.

12 (d) Procedures for verifying a personal protection order
13 issued under section 2950 or 2950a of the revised judicature act
14 of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.

15 (e) Procedures for making an arrest for a violation of a
16 personal protection order.

17 (f) Procedures for enforcing a valid foreign protection
18 order.

19 (g) Procedures for providing or arranging for emergency
20 assistance to victims including, but not limited to, medical
21 care, transportation to a shelter, or remaining at the scene of
22 an alleged incident of domestic violence for a reasonable time
23 until, in the reasonable judgment of the police officer, the
24 likelihood of further imminent violence has been eliminated.

25 (h) Procedures for informing the victim of community
26 services and legal options that are available ~~pursuant to~~ **UNDER**
27 section 15c of chapter IV. ~~of this act.~~

1 (i) Procedures for preparing a written report, whether or
2 not an arrest is made.

3 (j) Training of peace officers, dispatchers, and
4 supervisors.

5 (k) Discipline for noncompliance with the policy.

6 (l) Annual evaluations of the policy.

7 (4) The local policies developed, adopted, and implemented
8 ~~pursuant to~~ **UNDER** this section shall be in writing and shall be
9 available to the public upon request.

10 (5) As used in this section:

11 **(A) "DATING RELATIONSHIP" MEANS FREQUENT, INTIMATE**
12 **ASSOCIATIONS PRIMARILY CHARACTERIZED BY THE EXPECTATION OF**
13 **AFFECTIONAL INVOLVEMENT. DATING RELATIONSHIP DOES NOT INCLUDE A**
14 **CASUAL RELATIONSHIP OR AN ORDINARY FRATERNIZATION BETWEEN 2**
15 **INDIVIDUALS IN A BUSINESS OR SOCIAL CONTEXT.**

16 **(B) ~~(a)~~ "Foreign protection order" means that term as**
17 **defined in section 2950h of the revised judicature act of 1961,**
18 **1961 PA 236, MCL 600.2950h.**

19 **(C) ~~(b)~~ "Valid foreign protection order" means a foreign**
20 **protection order that satisfies the conditions for validity**
21 **provided in section 2950i of the revised judicature act of 1961,**
22 **1961 PA 236, MCL 600.2950i.**

23 CHAPTER XVII

24 Sec. 15g. This chapter applies to the following felonies
25 enumerated in chapters 721 to 730 of the Michigan Compiled Laws:

| 26 M.C.L. | Category | Class Description | Stat Max |
|-----------|----------|-------------------|----------|
|-----------|----------|-------------------|----------|

| | | | | | |
|---|---------------|---------|---|--|-----------------------|
| 1 | 722.633(5)(b) | Person | F | Intentional false report of child abuse constituting a felony | -4 VARIABLE |
| 2 | 722.675 | Pub ord | E | Distributing obscene matter to children | 2 |
| 3 | 722.857 | Person | E | Surrogate parenting aet contracts involving minors, mentally retarded, etc. | 5 |
| 4 | 722.859(3) | Person | E | Surrogate parenting aet contracts for compensation | 5 |

5 Sec. 16m. This chapter applies to the following felonies
6 enumerated in chapter 750 of the Michigan Compiled Laws:

| 7 | M.C.L. | Category | Class | Description | Stat Max |
|----|-------------|----------|-------|---|----------|
| 8 | 750.223(2) | Pub saf | F | Sale of firearm to minor - subsequent offense | 4 |
| 9 | 750.223(3) | Pub ord | D | Sale of firearm to person prohibited from possessing | 10 |
| 10 | 750.224 | Pub saf | E | Manufacture or sale of silencer, bomb, blackjack, automatic weapon, gas spray, etc. | 5 |
| 11 | 750.224a | Pub saf | F | Possession or sale of electrical current weapons | 4 |
| 12 | 750.224b | Pub saf | E | Possession of short barreled shotgun or rifle | 5 |
| 13 | 750.224c | Pub saf | F | Armor piercing ammunition | 4 |
| 14 | 750.224d(2) | Person | G | Using self-defense spray device | 2 |
| 15 | 750.224e | Pub saf | F | Manufacture/sale/pos session of devices to convert semiautomatic weapons | 4 |

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|----|--|---------|---|---|----|
| 1 | 750.224f | Pub saf | E | Possession or sale of firearm by felon | 5 |
| 2 | 750.226 | Pub saf | E | Carrying firearm or dangerous weapon with unlawful intent | 5 |
| 3 | 750.227 | Pub saf | E | Carrying a concealed weapon | 5 |
| 4 | 750.227a | Pub saf | F | Unlawful possession of pistol | 4 |
| 5 | 750.227c | Pub saf | G | Possessing a loaded firearm in or upon a vehicle | 2 |
| 6 | 750.227f | Pub saf | F | Wearing body armor during commission of violent crime CERTAIN CRIMES | 4 |
| 7 | 750.227g(1) | Pub saf | F | Felon purchasing, owning, possessing, or using body armor | 4 |
| 8 | 750.230 | Pub saf | G | Altering ID mark on firearm | 2 |
| 9 | 750.232a(3) | Pub saf | G | False statement in a pistol application | 4 |
| 10 | 750.234a | Pub saf | F | Discharging firearm from vehicle | 4 |
| 11 | 750.234b | Pub saf | F | Discharging firearm in or at a building | 4 |
| 12 | 750.234c | Pub saf | F | Discharging firearm at emergency/police vehicle | 4 |
| 13 | 750.236 | Person | C | Setting spring gun – death resulting | 15 |
| 14 | 750.237(3) | Person | E | Using firearm while under the influence or impaired causing serious impairment | 5 |
| 15 | 750.237(4) | Person | C | Using firearm while under the influence or impaired causing death | 15 |
| 16 | Sec. 16s. This chapter applies to the following felonies | | | | |

1 enumerated in chapter 750 of the Michigan Compiled Laws:

| 2 | M.C.L. | Category | Class | Description | Stat Max |
|----|----------------|----------|-------|--|----------|
| 3 | 750.377a(1)(a) | Property | D | Malicious destruction of personal property involving \$20,000 or more or with prior convictions | 10 |
| 4 | 750.377a(1)(b) | Property | E | Malicious destruction of personal property involving \$1,000 to \$20,000 or with prior convictions | 5 |
| 5 | 750.377b | Property | F | Malicious destruction of fire/police property | 4 |
| 6 | 750.377c | Property | E | School bus – intentional damage | 5 |
| 7 | 750.378 | Property | F | Malicious destruction of property – dams/canals/mills | 4 |
| 8 | 750.379 | Property | F | Malicious destruction of property – bridges/railroads/locks | 4 |
| 9 | 750.380(2) | Property | D | Malicious destruction of building involving \$20,000 or more or with prior convictions | 10 |
| 10 | 750.380(3) | Property | E | Malicious destruction of a building involving \$1,000 to \$20,000 or with prior convictions | 5 |
| 11 | 750.382(1)(c) | Property | E | Malicious destruction of plants or turf involving \$1,000 to \$20,000 or with prior convictions | 5 |

| | | | | | |
|----|--------------------------|---------------------|--------------|---|---------------|
| 1 | 750.382(1)(d) | Property | D | Malicious destruction of plants or turf involving \$20,000 or more or with prior convictions | 10 |
| 2 | 750.383a | Property | F | Malicious destruction of utility equipment | 4 |
| 3 | 750.385(2)(c) | Property | E | Damaging or destroying research property with a value between \$1,000 and \$20,000 or with prior convictions | 5 |
| 4 | 750.385(2)(d) | Property | E | Damaging or destroying research property with a value of \$20,000 or more or 2 or more prior convictions | 5 |
| 5 | 750.385(2)(e) | Person | E | Damaging or destroying research property resulting in physical injury | 5 |
| 6 | 750.385(2)(f) | Person | D | Damaging or destroying research property resulting in serious impairment of body function | 10 |
| 7 | 750.385(2)(g) | Person | C | Damaging or destroying research property resulting in death | 15 |
| 8 | 750.386 | Property | E | Malicious destruction of mine property | 20 |
| 9 | 750.387(5) | Property | E | Malicious destruction of a tomb or memorial involving \$1,000 to \$20,000 or with prior convictions | 5 |
| 10 | 750.387(6) | Property | D | Malicious destruction of a tomb or memorial involving \$20,000 or more or with prior convictions | 10 |

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|----|---------------|----------|---|--|----|
| 1 | 750.392 | Property | E | Malicious destruction of property – vessels | 10 |
| 2 | 750.394(2)(c) | Person | F | Throwing or dropping dangerous object at vehicle causing injury | 4 |
| 3 | 750.394(2)(d) | Person | D | Throwing or dropping dangerous object at vehicle causing serious impairment | 10 |
| 4 | 750.394(2)(e) | Person | C | Throwing or dropping dangerous object at vehicle causing death | 15 |
| 5 | 750.395(2)(C) | PROPERTY | E | DAMAGING OR DESTROYING RESEARCH PROPERTY WITH A VALUE BETWEEN \$1,000 AND \$20,000 OR WITH PRIOR CONVICTIONS | 5 |
| 6 | 750.395(2)(D) | PROPERTY | E | DAMAGING OR DESTROYING RESEARCH PROPERTY WITH A VALUE OF \$20,000 OR MORE OR 2 OR MORE PRIOR CONVICTIONS | 5 |
| 7 | 750.395(2)(E) | PERSON | E | DAMAGING OR DESTROYING RESEARCH PROPERTY RESULTING IN PHYSICAL INJURY | 5 |
| 8 | 750.395(2)(F) | PERSON | D | DAMAGING OR DESTROYING RESEARCH PROPERTY RESULTING IN SERIOUS IMPAIRMENT OF BODY FUNCTION | 10 |
| 9 | 750.395(2)(G) | PERSON | C | DAMAGING OR DESTROYING RESEARCH PROPERTY RESULTING IN DEATH | 15 |
| 10 | 750.397 | Person | D | Mayhem | 10 |
| 11 | 750.397a | Person | D | Placing harmful objects in food | 10 |
| 12 | 750.405 | Pub saf | E | Inciting soldiers to desert | 5 |

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|---|---------|---------|---|---|---|
| 1 | 750.406 | Pub saf | E | Military stores - larceny, embezzlement or destruction | 5 |
|---|---------|---------|---|---|---|