

HOUSE BILL No. 5280

November 28, 2017, Introduced by Rep. Lucido and referred to the Committee on Law and Justice.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 1g of chapter IV, section 6b of chapter V, and section 3 of chapter XI (MCL 764.1g, 765.6b, and 771.3), section 1g of chapter IV as added by 2006 PA 668, section 6b of chapter V as amended by 2014 PA 316, and section 3 of chapter XI as amended by 2012 PA 612.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IV

Sec. 1g. (1) Before a warrant is issued for the arrest of a person who is not in custody, the law enforcement agency investigating the crime shall use ~~the law enforcement information network~~ **LEIN** to determine whether the person is a parolee under the

1 jurisdiction of the department of corrections. If the person is
2 determined to be a parolee under the jurisdiction of the department
3 of corrections, and the magistrate issues a warrant for the arrest
4 of that person, ~~the investigating law enforcement agency or, if~~
5 **UNLESS THE INVESTIGATING LAW ENFORCEMENT AGENCY AFFIRMATIVELY**
6 **UNDERTAKES THE DUTY TO ENTER THE ARREST WARRANT INTO LEIN,** the
7 ~~court is entering~~ **SHALL ENTER THE** arrest warrants ~~WARRANT~~ into the
8 ~~law enforcement information network and~~ **LEIN. IF** the investigating
9 law enforcement agency informs the court that the person is a
10 parolee, the court shall promptly give to the department of
11 corrections, by telephonic or electronic means, notice of all of
12 the following:

13 (a) The identity of the person named in the warrant.

14 (b) The fact that information in databases managed by the
15 department of corrections and accessible by ~~the law enforcement~~
16 ~~information network~~ **LEIN** provides reason to believe the person
17 named in the warrant is a parolee under the jurisdiction of the
18 department of corrections.

19 (c) The charge or charges stated in the warrant.

20 (2) ~~If~~ **UNLESS THE INVESTIGATING LAW ENFORCEMENT AGENCY**
21 **AFFIRMATIVELY UNDERTAKES THE DUTY TO ENTER THE WARRANT INTO LEIN,**
22 the court ~~has assumed the responsibility for entering arrest~~
23 ~~warrants~~ **SHALL ENTER THE WARRANT** into the ~~law enforcement~~
24 ~~information network and~~ **LEIN. IF THE COURT** delays **THE** issuance or
25 entry of a warrant pending a court appearance by the person named
26 in the warrant, the law enforcement agency submitting the sworn
27 complaint to the court shall promptly give to the department of

1 corrections, by telephonic or electronic means, notice of the
2 following:

3 (a) The identity of the person named in the sworn complaint.

4 (b) The fact that a prosecuting attorney has authorized
5 issuance of a warrant.

6 (c) The fact that information in databases managed by the
7 department of corrections and accessible by ~~the law enforcement~~
8 ~~information network~~ **LEIN** provides reason to believe the person
9 named in the sworn complaint is a parolee under the jurisdiction of
10 the department of corrections.

11 (d) The charge or charges stated in the sworn complaint.

12 (e) Whether, pending a court appearance by the person named in
13 the sworn complaint, the court has either issued the arrest warrant
14 but delayed entry of the warrant into ~~the law enforcement~~
15 ~~information network~~ **LEIN** or has delayed issuance of the warrant.

16 (3) The requirement to give notice to the department of
17 corrections under subsection (1) or (2) is ~~complied with~~ **SATISFIED**
18 if the notice is transmitted to any of the following:

19 (a) To the department by a central toll-free telephone number
20 that is designated by the department for that purpose and that is
21 in operation 24 hours a day and is posted in the department's
22 database of information concerning the status of parolees.

23 (b) To a parole agent serving the county where the warrant is
24 issued or is being sought.

25 (c) To the supervisor of the parole office serving the county
26 where the warrant is issued or is being sought.

27 **(4) AS USED IN THIS SECTION, "LEIN" MEANS THE LAW ENFORCEMENT**

1 INFORMATION NETWORK REGULATED UNDER THE C.J.I.S. POLICY COUNCIL
2 ACT, 1974 PA 163, MCL 28.211 TO 28.215, OR BY THE DEPARTMENT OF
3 STATE POLICE.

4 CHAPTER V

5 Sec. 6b. (1) A judge or district court magistrate may release
6 a defendant under this subsection subject to conditions reasonably
7 necessary for the protection of 1 or more named persons. If a judge
8 or district court magistrate releases a defendant under this
9 subsection subject to protective conditions, the judge or district
10 court magistrate shall make a finding of the need for protective
11 conditions and inform the defendant on the record, either orally or
12 by a writing that is personally delivered to the defendant, of the
13 specific conditions imposed and that if the defendant violates a
14 condition of release, he or she will be subject to arrest without a
15 warrant and may have his or her bail forfeited or revoked and new
16 conditions of release imposed, in addition to the penalty provided
17 under section 3f of chapter XI and any other penalties that may be
18 imposed if the defendant is found in contempt of court.

19 (2) An order or amended order issued under subsection (1)
20 ~~shall~~**MUST** contain all of the following:

21 (a) A statement of the defendant's full name.

22 (b) A statement of the defendant's height, weight, race, sex,
23 date of birth, hair color, eye color, and any other identifying
24 information the judge or district court magistrate considers
25 appropriate.

26 (c) A statement of the date the conditions become effective.

27 (d) A statement of the date on which the order will expire.

1 (e) A statement of the conditions imposed.

2 (3) An order or amended order issued under this subsection and
3 subsection (1) may impose a condition that the defendant not
4 purchase or possess a firearm. However, if the court orders the
5 defendant to carry or wear an electronic monitoring device as a
6 condition of release as described in subsection (6), the court
7 shall also impose a condition that the defendant not purchase or
8 possess a firearm.

9 (4) ~~The~~ **UNLESS A LAW ENFORCEMENT AGENCY WITHIN THE**
10 **JURISDICTION OF THE COURT AFFIRMATIVELY UNDERTAKES THE DUTY TO**
11 **ENTER THE ORDER OR AMENDED ORDER ISSUED UNDER SUBSECTION (1) OR**
12 **SUBSECTIONS (1) AND (3) INTO LEIN, THE** judge or district court
13 magistrate shall immediately direct the issuing court ~~or a law~~
14 ~~enforcement agency within the jurisdiction of the court,~~ in
15 writing, to enter an order or amended order issued under subsection
16 (1) or subsections (1) and (3) into LEIN. **IF A LAW ENFORCEMENT**
17 **AGENCY WITHIN THE JURISDICTION OF THE COURT AFFIRMATIVELY**
18 **UNDERTAKES THE DUTY TO ENTER THE ORDER OR AMENDED ORDER ISSUED**
19 **UNDER SUBSECTION (1) OR SUBSECTIONS (1) AND (3), THE JUDGE OR**
20 **DISTRICT COURT MAGISTRATE SHALL IMMEDIATELY DIRECT THE LAW**
21 **ENFORCEMENT AGENCY, IN WRITING, TO ENTER AN ORDER OR AMENDED ORDER**
22 **ISSUED UNDER SUBSECTION (1) OR SUBSECTIONS (1) AND (3) INTO LEIN.**
23 If the order or amended order is rescinded, the judge or district
24 court magistrate shall immediately order the issuing court or law
25 enforcement agency **THAT PREVIOUSLY ENTERED THE ORDER** to remove the
26 order or amended order from LEIN.

27 (5) The issuing court or a law enforcement agency within the

1 jurisdiction of the court **AS DESCRIBED IN SUBSECTION (4)** shall
2 immediately enter an order or amended order into LEIN or shall
3 remove the order or amended order from ~~the law enforcement~~
4 ~~information network~~ **LEIN** upon expiration of the order or as
5 directed by the court under subsection (4).

6 (6) If a defendant who is charged with a crime involving
7 domestic violence, or any other assaultive crime, is released under
8 this subsection and subsection (1), the judge or district court
9 magistrate may order the defendant to wear an electronic monitoring
10 device as a condition of release. With the informed consent of the
11 victim, the court may also order the defendant to provide the
12 victim of the charged crime with an electronic receptor device
13 capable of receiving the global positioning system information from
14 the electronic monitoring device worn by the defendant that
15 notifies the victim if the defendant is located within a proximity
16 to the victim as determined by the judge or district court
17 magistrate in consultation with the victim. The victim ~~shall~~ **MUST**
18 also be furnished with a telephone contact ~~with~~ **FOR** the local law
19 enforcement agency to request immediate assistance if the defendant
20 is located within that proximity to the victim. In addition, the
21 victim may provide the court with a list of areas from which he or
22 she would like the defendant excluded. The court shall consider the
23 victim's request and shall determine which areas the defendant
24 ~~shall~~ **MUST** be prohibited from accessing. The court shall instruct
25 the entity monitoring the defendant's position to notify the proper
26 authorities if the defendant violates the order. In determining
27 whether to order a defendant to wear an electronic monitoring

1 device, the court shall consider the likelihood that the
2 defendant's participation in electronic monitoring will deter the
3 defendant from seeking to kill, physically injure, stalk, or
4 otherwise threaten the victim prior to trial. The victim may
5 request the court to terminate the victim's participation in the
6 monitoring of the defendant at any time. The court shall not impose
7 sanctions on the victim for refusing to participate in monitoring
8 under this subsection. A defendant described in this subsection
9 ~~shall~~**MUST** only be released if he or she agrees to pay the cost of
10 the device and any monitoring as a condition of release or to
11 perform community service work in lieu of paying that cost. An
12 electronic monitoring device ordered to be worn under this
13 subsection ~~shall~~**MUST** provide reliable notification of removal or
14 tampering. As used in this subsection:

15 (a) "Assaultive crime" means that term as defined in section
16 9a of chapter X.

17 (b) "Domestic violence" means that term as defined in section
18 1 of 1978 PA 389, MCL 400.1501.

19 (c) "Electronic monitoring device" includes any electronic
20 device or instrument that is used to track the location of an
21 individual or to monitor an individual's blood alcohol content, but
22 does not include any technology that is implanted or violates the
23 corporeal body of the individual.

24 (d) "Informed consent" means that the victim was given
25 information concerning all of the following before consenting to
26 participate in electronic monitoring:

27 (i) The victim's right to refuse to participate in that

1 monitoring and the process for requesting the court to terminate
2 the victim's participation after it has been ordered.

3 (ii) The manner in which the monitoring technology functions
4 and the risks and limitations of that technology, and the extent to
5 which the system will track and record the victim's location and
6 movements.

7 (iii) The boundaries imposed on the defendant during the
8 monitoring program.

9 (iv) Sanctions that the court may impose on the defendant for
10 violating an order issued under this subsection.

11 (v) The procedure that the victim is to follow if the
12 defendant violates an order issued under this subsection or if
13 monitoring equipment fails to operate properly.

14 (vi) Identification of support services available to assist
15 the victim to develop a safety plan to use if the court's order
16 issued under this subsection is violated or if the monitoring
17 equipment fails to operate properly.

18 (vii) Identification of community services available to assist
19 the victim in obtaining shelter, counseling, education, child care,
20 legal representation, and other help in addressing the consequences
21 and effects of domestic violence.

22 (viii) The nonconfidential nature of the victim's
23 communications with the court concerning electronic monitoring and
24 the restrictions to be imposed upon the defendant's movements.

25 (7) A judge or district court magistrate may release under
26 this subsection a defendant subject to conditions reasonably
27 necessary for the protection of the public if the defendant has

1 submitted to a preliminary roadside analysis that detects the
2 presence of alcoholic liquor, a controlled substance, or other
3 intoxicating substance, or any combination of them, and that a
4 subsequent chemical test is pending. The judge or district court
5 magistrate shall inform the defendant on the record, either orally
6 or by a writing that is personally delivered to the defendant, of
7 all of the following:

8 (a) That if the defendant is released under this subsection,
9 he or she shall not operate a motor vehicle under the influence of
10 alcoholic liquor, a controlled substance, or another intoxicating
11 substance, or any combination of them, as a condition of release.

12 (b) That if the defendant violates the condition of release
13 under subdivision (a), he or she ~~will be~~ **IS** subject to arrest
14 without a warrant, ~~shall~~ **WILL** have his or her bail forfeited or
15 revoked, and ~~shall~~ **WILL** not be released from custody prior to
16 arraignment.

17 (8) ~~The~~ **UNLESS A LAW ENFORCEMENT AGENCY WITHIN THE**
18 **JURISDICTION OF THE COURT AFFIRMATIVELY UNDERTAKES THE DUTY TO**
19 **ENTER THE ORDER OR AMENDED ORDER ISSUED UNDER SUBSECTION (7) INTO**
20 **LEIN, THE** judge or district court magistrate shall immediately
21 direct the issuing court, ~~or a law enforcement agency within the~~
22 ~~jurisdiction of the court,~~ in writing, to enter an order or amended
23 order issued under subsection (7) into LEIN. **IF A LAW ENFORCEMENT**
24 **AGENCY WITHIN THE JURISDICTION OF THE COURT AFFIRMATIVELY**
25 **UNDERTAKES THE DUTY TO ENTER THE ORDER OR AMENDED ORDER ISSUED**
26 **UNDER SUBSECTION (7), THE JUDGE OR DISTRICT COURT MAGISTRATE SHALL**
27 **IMMEDIATELY DIRECT THE LAW ENFORCEMENT AGENCY, IN WRITING, TO ENTER**

1 **AN ORDER OR AMENDED ORDER ISSUED UNDER SUBSECTION (7) INTO LEIN.** If
2 the order or amended order is rescinded, the judge or district
3 court magistrate shall immediately order the issuing court or law
4 enforcement agency **THAT PREVIOUSLY ENTERED THE ORDER** to remove the
5 order or amended order from LEIN.

6 (9) The issuing court or a law enforcement agency within the
7 jurisdiction of the court **AS DESCRIBED IN SUBSECTION (8)** shall
8 immediately enter an order or amended order into LEIN. If the order
9 or amended order is rescinded, the court or law enforcement agency
10 **THAT PREVIOUSLY ENTERED THE ORDER** shall immediately remove the
11 order or amended order from LEIN upon expiration of the order under
12 subsection (8).

13 (10) This section does not limit the authority of judges or
14 district court magistrates to impose protective or other release
15 conditions under other applicable statutes or court rules,
16 including ordering a defendant to wear an electronic monitoring
17 device.

18 (11) As used in this section, "LEIN" means the law enforcement
19 information network regulated under the C.J.I.S. policy council
20 act, 1974 PA 163, MCL 28.211 to 28.215, or by the department of
21 state police.

22 CHAPTER XI

23 Sec. 3. (1) The sentence of probation ~~shall~~ **MUST** include all
24 of the following conditions:

25 (a) During the term of his or her probation, the probationer
26 shall not violate any criminal law of this state, the United
27 States, or another state or any ordinance of any municipality in

1 this state or another state.

2 (b) During the term of his or her probation, the probationer
3 shall not leave the state without the consent of the court granting
4 his or her application for probation.

5 (c) The probationer shall report to the probation officer,
6 either in person or in writing, monthly or as often as the
7 probation officer requires. This subdivision does not apply to a
8 juvenile placed on probation and committed under section 1(3) or
9 (4) of chapter IX to an institution or agency described in the
10 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
11 803.309.

12 (d) If sentenced in circuit court, the probationer shall pay a
13 probation supervision fee as prescribed in section 3c of this
14 chapter.

15 (e) The probationer shall pay restitution to the victim of the
16 defendant's course of conduct giving rise to the conviction or to
17 the victim's estate as provided in chapter IX. An order for payment
18 of restitution may be modified and ~~shall~~**MUST** be enforced as
19 provided in chapter IX.

20 (f) The probationer shall pay an assessment ordered under
21 section 5 of 1989 PA 196, MCL 780.905.

22 (g) The probationer shall pay the minimum state cost
23 prescribed by section 1j of chapter IX.

24 (h) If the probationer is required to be registered under the
25 sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736,
26 the probationer shall comply with that act.

27 (2) As a condition of probation, the court may require the

1 probationer to do 1 or more of the following:

2 (a) Be imprisoned in the county jail for not more than 12
3 months at the time or intervals that may be consecutive or
4 nonconsecutive, within the probation as the court determines.
5 However, the period of confinement ~~shall~~**MUST** not exceed the
6 maximum period of imprisonment provided for the offense charged if
7 the maximum period is less than 12 months. The court may permit day
8 parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The
9 court may, subject to sections 3d and 3e of this chapter, permit
10 the individual to be released from jail to work at his or her
11 existing job or to attend a school in which he or she is enrolled
12 as a student. This subdivision does not apply to a juvenile placed
13 on probation and committed under section 1(3) or (4) of chapter IX
14 to an institution or agency described in the youth rehabilitation
15 services act, 1974 PA 150, MCL 803.301 to 803.309.

16 (b) Pay immediately or within the period of his or her
17 probation a fine imposed when placed on probation.

18 (c) Pay costs pursuant to subsection (5).

19 (d) Pay any assessment ordered by the court other than an
20 assessment described in subsection (1)(f).

21 (e) Engage in community service.

22 (f) Agree to pay by wage assignment any restitution,
23 assessment, fine, or cost imposed by the court.

24 (g) Participate in inpatient or outpatient drug treatment or ~~7~~
25 ~~beginning January 1, 2005, participate in a drug treatment court~~
26 under chapter 10A of the revised judicature act of 1961, 1961 PA
27 236, MCL 600.1060 to ~~600.1084.~~**600.1086.**

1 (h) Participate in mental health treatment.

2 (i) Participate in mental health or substance abuse
3 counseling.

4 (j) Participate in a community corrections program.

5 (k) Be under house arrest.

6 (l) Be subject to electronic monitoring.

7 (m) Participate in a residential probation program.

8 (n) Satisfactorily complete a program of incarceration in a
9 special alternative incarceration unit as provided in section 3b of
10 this chapter.

11 (o) Be subject to conditions reasonably necessary for the
12 protection of 1 or more named persons.

13 (p) Reimburse the county for expenses incurred by the county
14 in connection with the conviction for which probation was ordered
15 as provided in the prisoner reimbursement to the county act, 1984
16 PA 118, MCL 801.81 to 801.93.

17 (q) Complete his or her high school education or obtain the
18 equivalency of a high school education in the form of a general
19 education development (GED) certificate.

20 (3) The court may impose other lawful conditions of probation
21 as the circumstances of the case require or warrant or as in its
22 judgment are proper.

23 (4) If an order or amended order of probation contains a
24 condition for the protection of 1 or more named persons as provided
25 in subsection (2) (o), **UNLESS A LAW ENFORCEMENT AGENCY WITHIN THE**
26 **JURISDICTION OF THE COURT AFFIRMATIVELY UNDERTAKES THE DUTY TO**
27 **ENTER THE ORDER OR AMENDED ORDER INTO LEIN**, the court ~~or a law~~

1 ~~enforcement agency within the court's jurisdiction shall enter the~~
2 ~~order or amended order into the law enforcement information~~
3 ~~network.~~ **LEIN. IF A LAW ENFORCEMENT AGENCY WITHIN THE JURISDICTION**
4 **OF THE COURT AFFIRMATIVELY UNDERTAKES THE DUTY TO ENTER THE ORDER**
5 **OR AMENDED ORDER INTO LEIN, THE LAW ENFORCEMENT AGENCY SHALL ENTER**
6 **THE ORDER OR AMENDED ORDER INTO LEIN.** If the court rescinds the
7 order or amended order or the condition, the court shall remove the
8 order or amended order or the condition from ~~the law enforcement~~
9 ~~information network~~ **LEIN** or notify ~~that~~ **THE** law enforcement agency
10 **THAT PREVIOUSLY ENTERED THE ORDER OR AMENDED ORDER** and ~~the~~ **THAT** law
11 enforcement agency shall remove the order or amended order or the
12 condition from ~~the law enforcement information network.~~ **LEIN.**

13 (5) If the court requires the probationer to pay costs under
14 subsection (2), the costs ~~shall~~ **MUST** be limited to expenses
15 specifically incurred in prosecuting the defendant or providing
16 legal assistance to the defendant and supervision of the
17 probationer.

18 (6) If the court imposes costs under subsection (2) as part of
19 a sentence of probation, all of the following apply:

20 (a) The court shall not require a probationer to pay costs
21 under subsection (2) unless the probationer is or will be able to
22 pay them during the term of probation. In determining the amount
23 and method of payment of costs under subsection (2), the court
24 shall take into account the probationer's financial resources and
25 the nature of the burden that payment of costs will impose, with
26 due regard to his or her other obligations.

27 (b) A probationer who is required to pay costs under

1 subsection (1)(g) or (2)(c) and who is not in willful default of
2 the payment of the costs may petition the sentencing judge or his
3 or her successor at any time for a remission of the payment of any
4 unpaid portion of those costs. If the court determines that payment
5 of the amount due will impose a manifest hardship on the
6 probationer or his or her immediate family, the court may remit all
7 or part of the amount due in costs or modify the method of payment.

8 (7) If a probationer is required to pay costs as part of a
9 sentence of probation, the court may require payment to be made
10 immediately or the court may provide for payment to be made within
11 a specified period of time or in specified installments.

12 (8) If a probationer is ordered to pay costs as part of a
13 sentence of probation, compliance with that order ~~shall~~**MUST** be a
14 condition of probation. The court may revoke probation if the
15 probationer fails to comply with the order and if the probationer
16 has not made a good faith effort to comply with the order. In
17 determining whether to revoke probation, the court shall consider
18 the probationer's employment status, earning ability, and financial
19 resources, the willfulness of the probationer's failure to pay, and
20 any other special circumstances that may have a bearing on the
21 probationer's ability to pay. The proceedings provided for in this
22 subsection are in addition to those provided in section 4 of this
23 chapter.

24 (9) If entry of judgment is deferred in the circuit court, the
25 court shall require the individual to pay a supervision fee in the
26 same manner as is prescribed for a delayed sentence under section
27 1(3) of this chapter, shall require the individual to pay the

1 minimum state costs prescribed by section 1j of chapter IX, and may
2 impose, as applicable, the conditions of probation described in
3 subsections (1), (2), and (3).

4 (10) If sentencing is delayed or entry of judgment is deferred
5 in the district court or in a municipal court, the court shall
6 require the individual to pay the minimum state costs prescribed by
7 section 1j of chapter IX and may impose, as applicable, the
8 conditions of probation described in subsections (1), (2), and (3).

9 (11) **AS USED IN THIS SECTION, "LEIN" MEANS THE LAW ENFORCEMENT**
10 **INFORMATION NETWORK REGULATED UNDER THE C.J.I.S. POLICY COUNCIL**
11 **ACT, 1974 PA 163, MCL 28.211 TO 28.215, OR BY THE DEPARTMENT OF**
12 **STATE POLICE.**

13 Enacting section 1. This amendatory act takes effect 90 days
14 after the date it is enacted into law.