

SENATE BILL No. 5

January 18, 2017, Introduced by Senators PROOS, O'BRIEN, JONES, COLBECK, KNOLLENBERG, HORN, BOOHER, SCHUITMAKER, BRANDENBURG, HANSEN, KOWALL, GREGORY, JOHNSON and WARREN and referred to the Committee on Michigan Competitiveness.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 1 of chapter I (MCL 761.1), as amended by 2007
PA 20, and by adding section 21a to chapter XVI.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER I

Sec. 1. As used in this act:

- ~~———— (a) "Person", "accused", or a similar word means an individual
or, unless a contrary intention appears, a public or private
corporation, partnership, or unincorporated or voluntary
association.~~
- ~~———— (b) "Act" or "doing of an act" includes "omission to act".~~
- ~~———— (c) "Property" includes any matter or thing upon or in respect
to which an offense may be committed.~~

~~1 (d) "Indictment" means 1 or more of the following:~~

~~2 (i) An indictment.~~

~~3 (ii) An information.~~

~~4 (iii) A presentment.~~

~~5 (iv) A complaint.~~

~~6 (v) A warrant.~~

~~7 (vi) A formal written accusation.~~

~~8 (vii) Unless a contrary intention appears, a count contained
9 in any document described in subparagraphs (i) through (vi).~~

~~10 (c) "Writing", "written", or a similar term refers to words
11 printed, painted, engraved, lithographed, photographed, copied,
12 traced, or otherwise made visible to the eye.~~

~~13 (f) "Magistrate" means a judge of the district court or a
14 judge of a municipal court. Magistrate does not include a district
15 court magistrate, except that a district court magistrate may
16 exercise the powers, jurisdiction, and duties of a magistrate if
17 specifically provided in this act, the revised judicature act of
18 1961, 1961 PA 236, MCL 600.101 to 600.9947, or any other statute.
19 This definition does not limit the power of a justice of the
20 supreme court, a circuit judge, or a judge of a court of record
21 having jurisdiction of criminal cases under this act, or deprive
22 him or her of the power to exercise the authority of a magistrate.~~

~~23 (g) "Felony" means a violation of a penal law of this state
24 for which the offender, upon conviction, may be punished by death
25 or by imprisonment for more than 1 year or an offense expressly
26 designated by law to be a felony.~~

~~27 (h) "Misdemeanor" means a violation of a penal law of this~~

~~state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.~~

~~—— (j) "Ordinance violation" means either of the following:~~

~~—— (i) A violation of an ordinance or charter of a city, village, township, or county that is punishable by imprisonment or a fine that is not a civil fine.~~

~~—— (ii) A violation of an ordinance, rule, or regulation of any other governmental entity authorized by law to enact ordinances, rules, or regulations that is punishable by imprisonment or a fine that is not a civil fine.~~

~~—— (k) "Minor offense" means a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$1,000.00.~~

~~—— (l) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, or, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based.~~

~~—— (m) "Judicial district" means the following:~~

~~—— (i) With regard to the circuit court, the county.~~

~~—— (ii) With regard to municipal courts, the city in which the municipal court functions or the village served by a municipal court under section 9928 of the revised judicature act of 1961,~~

~~1961 PA 236, MCL 600.9928.~~

~~(iii) With regard to the district court, the county, district, or political subdivision in which venue is proper for criminal actions.~~

~~(n) "Complaint" means a written accusation, under oath or upon affirmation, that a felony, misdemeanor, or ordinance violation has been committed and that the person named or described in the accusation is guilty of the offense.~~

~~(o) "Clerk" means the clerk or a deputy clerk of the court.~~

~~(p) "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is enforcing laws of the United States.~~

~~(q) "Jail", "prison", or a similar word includes a juvenile facility in which a juvenile has been placed pending trial under section 27a of chapter IV.~~

~~(r) "Juvenile" means a person within the jurisdiction of the circuit court under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606.~~

~~(s) "Juvenile facility" means a county facility, institution operated as an agency of the county or family division of circuit court, or an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, to which a juvenile has been committed under section 27a of chapter IV.~~

~~(t) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL~~

1 ~~45.622.~~

2 ~~—— (u) "Taken", "brought", or "before" a magistrate or judge for~~
3 ~~purposes of criminal arraignment or the setting of bail means~~
4 ~~either of the following:~~

5 ~~—— (i) Physical presence before a judge or district court~~
6 ~~magistrate.~~

7 ~~—— (ii) Presence before a judge or district court magistrate by~~
8 ~~use of 2-way interactive video technology.~~

9 (A) "ACT" OR "DOING OF AN ACT" INCLUDES AN OMISSION TO ACT.

10 (B) "CLERK" MEANS THE CLERK OR A DEPUTY CLERK OF THE COURT.

11 (C) "COMPLAINT" MEANS A WRITTEN ACCUSATION, UNDER OATH OR UPON
12 AFFIRMATION, THAT A FELONY, MISDEMEANOR, OR ORDINANCE VIOLATION HAS
13 BEEN COMMITTED AND THAT THE PERSON NAMED OR DESCRIBED IN THE
14 ACCUSATION IS GUILTY OF THE OFFENSE.

15 (D) "COUNTY JUVENILE AGENCY" MEANS THAT TERM AS DEFINED IN
16 SECTION 2 OF THE COUNTY JUVENILE AGENCY ACT, 1998 PA 518, MCL
17 45.622.

18 (E) "FEDERAL LAW ENFORCEMENT OFFICER" MEANS AN OFFICER OR
19 AGENT EMPLOYED BY A LAW ENFORCEMENT AGENCY OF THE UNITED STATES
20 GOVERNMENT WHOSE PRIMARY RESPONSIBILITY IS ENFORCING LAWS OF THE
21 UNITED STATES.

22 (F) "FELONY" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE
23 FOR WHICH THE OFFENDER, UPON CONVICTION, MAY BE PUNISHED BY
24 IMPRISONMENT FOR MORE THAN 1 YEAR OR AN OFFENSE EXPRESSLY
25 DESIGNATED BY LAW TO BE A FELONY.

26 (G) "INDICTMENT" MEANS 1 OR MORE OF THE FOLLOWING:

27 (i) AN INDICTMENT.

1 (ii) AN INFORMATION.

2 (iii) A PRESENTMENT.

3 (iv) A COMPLAINT.

4 (v) A WARRANT.

5 (vi) A FORMAL WRITTEN ACCUSATION.

6 (vii) UNLESS A CONTRARY INTENTION APPEARS, A COUNT CONTAINED
7 IN ANY DOCUMENT DESCRIBED IN SUBPARAGRAPHS (i) THROUGH (vi).

8 (H) "JAIL", "PRISON", OR A SIMILAR WORD INCLUDES A JUVENILE
9 FACILITY IN WHICH A JUVENILE HAS BEEN PLACED PENDING TRIAL UNDER
10 SECTION 27A OF CHAPTER IV.

11 (I) "JUDICIAL DISTRICT" MEANS THE FOLLOWING:

12 (i) WITH REGARD TO THE CIRCUIT COURT, THE COUNTY.

13 (ii) WITH REGARD TO MUNICIPAL COURTS, THE CITY IN WHICH THE
14 MUNICIPAL COURT FUNCTIONS OR THE VILLAGE SERVED BY A MUNICIPAL
15 COURT UNDER SECTION 9928 OF THE REVISED JUDICATURE ACT OF 1961,
16 1961 PA 236, MCL 600.9928.

17 (iii) WITH REGARD TO THE DISTRICT COURT, THE COUNTY, DISTRICT,
18 OR POLITICAL SUBDIVISION IN WHICH VENUE IS PROPER FOR CRIMINAL
19 ACTIONS.

20 (J) "JUVENILE" MEANS A PERSON WITHIN THE JURISDICTION OF THE
21 CIRCUIT COURT UNDER SECTION 606 OF THE REVISED JUDICATURE ACT OF
22 1961, 1961 PA 236, MCL 600.606.

23 (K) "JUVENILE FACILITY" MEANS A COUNTY FACILITY, AN
24 INSTITUTION OPERATED AS AN AGENCY OF THE COUNTY OR FAMILY DIVISION
25 OF THE CIRCUIT COURT, OR AN INSTITUTION OR AGENCY DESCRIBED IN THE
26 YOUTH REHABILITATION SERVICES ACT, 1974 PA 150, MCL 803.301 TO
27 803.309, TO WHICH A JUVENILE HAS BEEN COMMITTED UNDER SECTION 27A

1 OF CHAPTER IV.

2 (I) "MAGISTRATE" MEANS A JUDGE OF THE DISTRICT COURT OR A
3 JUDGE OF A MUNICIPAL COURT. MAGISTRATE DOES NOT INCLUDE A DISTRICT
4 COURT MAGISTRATE, EXCEPT THAT A DISTRICT COURT MAGISTRATE MAY
5 EXERCISE THE POWERS, JURISDICTION, AND DUTIES OF A MAGISTRATE IF
6 SPECIFICALLY PROVIDED IN THIS ACT, THE REVISED JUDICATURE ACT OF
7 1961, 1961 PA 236, MCL 600.101 TO 600.9947, OR ANY OTHER STATUTE.
8 THIS DEFINITION DOES NOT LIMIT THE POWER OF A JUSTICE OF THE
9 SUPREME COURT, A CIRCUIT JUDGE, OR A JUDGE OF A COURT OF RECORD
10 HAVING JURISDICTION OF CRIMINAL CASES UNDER THIS ACT, OR DEPRIVE
11 HIM OR HER OF THE POWER TO EXERCISE THE AUTHORITY OF A MAGISTRATE.

12 (M) "MINOR OFFENSE" MEANS A MISDEMEANOR OR ORDINANCE VIOLATION
13 FOR WHICH THE MAXIMUM PERMISSIBLE IMPRISONMENT DOES NOT EXCEED 92
14 DAYS AND THE MAXIMUM PERMISSIBLE FINE DOES NOT EXCEED \$1,000.00.

15 (N) "MISDEMEANOR" MEANS A VIOLATION OF A PENAL LAW OF THIS
16 STATE THAT IS NOT A FELONY OR A VIOLATION OF AN ORDER, RULE, OR
17 REGULATION OF A STATE AGENCY THAT IS PUNISHABLE BY IMPRISONMENT OR
18 A FINE THAT IS NOT A CIVIL FINE.

19 (O) "ORDINANCE VIOLATION" MEANS EITHER OF THE FOLLOWING:

20 (i) A VIOLATION OF AN ORDINANCE OR CHARTER OF A CITY, VILLAGE,
21 TOWNSHIP, OR COUNTY THAT IS PUNISHABLE BY IMPRISONMENT OR A FINE
22 THAT IS NOT A CIVIL FINE.

23 (ii) A VIOLATION OF AN ORDINANCE, RULE, OR REGULATION OF ANY
24 OTHER GOVERNMENTAL ENTITY AUTHORIZED BY LAW TO ENACT ORDINANCES,
25 RULES, OR REGULATIONS THAT IS PUNISHABLE BY IMPRISONMENT OR A FINE
26 THAT IS NOT A CIVIL FINE.

27 (P) "PERSON", "ACCUSED", OR A SIMILAR WORD MEANS AN INDIVIDUAL

1 OR, UNLESS A CONTRARY INTENTION APPEARS, A PUBLIC OR PRIVATE
2 CORPORATION, PARTNERSHIP, OR UNINCORPORATED OR VOLUNTARY
3 ASSOCIATION.

4 (Q) "PROPERTY" INCLUDES ANY MATTER OR THING UPON OR IN RESPECT
5 TO WHICH AN OFFENSE MAY BE COMMITTED.

6 (R) "PROSECUTING ATTORNEY" MEANS THE PROSECUTING ATTORNEY FOR
7 A COUNTY, AN ASSISTANT PROSECUTING ATTORNEY FOR A COUNTY, THE
8 ATTORNEY GENERAL, THE DEPUTY ATTORNEY GENERAL, AN ASSISTANT
9 ATTORNEY GENERAL, A SPECIAL PROSECUTING ATTORNEY, OR, IN CONNECTION
10 WITH THE PROSECUTION OF AN ORDINANCE VIOLATION, AN ATTORNEY FOR THE
11 POLITICAL SUBDIVISION OR GOVERNMENTAL ENTITY THAT ENACTED THE
12 ORDINANCE, CHARTER, RULE, OR REGULATION UPON WHICH THE ORDINANCE
13 VIOLATION IS BASED.

14 (S) "RECIDIVISM" MEANS THE REARREST, RECONVICTION, OR
15 REINCARCERATION IN PRISON OR JAIL FOR A FELONY OR MISDEMEANOR
16 OFFENSE OR A PROBATION OR PAROLE VIOLATION, OR ANY COMBINATION OF
17 THOSE EVENTS, OF AN INDIVIDUAL AS MEASURED FIRST AFTER 3 YEARS AND
18 AGAIN AFTER 5 YEARS FROM THE DATE OF HIS OR HER RELEASE FROM
19 INCARCERATION, PLACEMENT ON PROBATION, OR CONVICTION, WHICHEVER IS
20 LATER.

21 (T) "TAKEN", "BROUGHT", OR "BEFORE" A MAGISTRATE OR JUDGE FOR
22 PURPOSES OF CRIMINAL ARRAIGNMENT OR THE SETTING OF BAIL MEANS
23 EITHER OF THE FOLLOWING:

24 (i) PHYSICAL PRESENCE BEFORE A JUDGE OR DISTRICT COURT
25 MAGISTRATE.

26 (ii) PRESENCE BEFORE A JUDGE OR DISTRICT COURT MAGISTRATE BY
27 USE OF 2-WAY INTERACTIVE VIDEO TECHNOLOGY.

1 (U) "TECHNICAL PAROLE VIOLATION" MEANS A VIOLATION OF THE
2 TERMS OF A PAROLEE'S PAROLE ORDER THAT IS NOT IN AND OF ITSELF A
3 VIOLATION OF A LAW OF THIS STATE, A POLITICAL SUBDIVISION OF THIS
4 STATE, ANOTHER STATE, OR THE UNITED STATES OR OF TRIBAL LAW.

5 (V) "TECHNICAL PROBATION VIOLATION" MEANS A VIOLATION OF THE
6 TERMS OF A PROBATIONER'S PROBATION ORDER THAT IS NOT IN AND OF
7 ITSELF A VIOLATION OF A LAW OF THIS STATE, A POLITICAL SUBDIVISION
8 OF THIS STATE, ANOTHER STATE, OR THE UNITED STATES OR OF TRIBAL
9 LAW.

10 (W) "WRITING", "WRITTEN", OR A SIMILAR TERM REFERS TO WORDS
11 PRINTED, PAINTED, ENGRAVED, LITHOGRAPHED, PHOTOGRAPHED, COPIED,
12 TRACED, OR OTHERWISE MADE VISIBLE TO THE EYE.

13 CHAPTER XVI

14 SEC. 21A. ANY DATA COLLECTED AND MAINTAINED UNDER THIS ACT
15 REGARDING RECIDIVISM RATES MUST BE COLLECTED AND MAINTAINED IN A
16 MANNER THAT SEPARATES THE DATA REGARDING TECHNICAL PROBATION
17 VIOLATIONS AND TECHNICAL PAROLE VIOLATIONS FROM DATA ON NEW FELONY
18 AND MISDEMEANOR CONVICTIONS.

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