

SENATE BILL NO. 438

May 12, 2021, Introduced by Senator VANDERWALL and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 9c of chapter IV (MCL 764.9c), as amended by
2020 PA 393.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IV
2 Sec. 9c. (1) Except as provided in subsection (3), if a police
3 officer has arrested a person without a warrant for a misdemeanor
4 or ordinance violation, instead of taking the person before a

1 magistrate and promptly filing a complaint as provided in section
2 13 of this chapter, the officer may issue to and serve upon the
3 person an appearance ticket as defined in section 9f of this
4 chapter and release the person from custody. The appearance ticket
5 issued under this section, or other documentation as requested,
6 must be forwarded to the court, appropriate prosecuting authority,
7 or both, for review without delay.

8 (2) A public servant other than a police officer, who is
9 specially authorized by law or ordinance to issue and serve
10 appearance tickets with respect to a particular class of offenses
11 of less than felony grade, may issue and serve upon a person an
12 appearance ticket if the public servant has reasonable cause to
13 believe that the person has committed an offense.

14 (3) An appearance ticket must not be issued to any of the
15 following:

16 (a) A person arrested for a domestic violence violation of
17 section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL
18 750.81 and 750.81a, or a local ordinance substantially
19 corresponding to a domestic violence violation of section 81 or 81a
20 of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or
21 an offense involving domestic violence as that term is defined in
22 section 1 of 1978 PA 389, MCL 400.1501.

23 (b) A person subject to detainment for violating a personal
24 protection order.

25 (c) A person subject to a mandatory period of confinement,
26 condition of bond, or other condition of release until he or she
27 has served that period of confinement or meets that requirement of
28 bond or other condition of release.

29 (d) A person arrested for a serious misdemeanor.

1 (e) A person arrested for any other assaultive crime.

2 (4) Except as provided in subsection (5), a police officer
3 shall issue to and serve upon a person an appearance ticket as
4 defined in section 9f of this chapter and release the person from
5 custody if the person has been arrested for a misdemeanor or
6 ordinance violation that has a maximum permissible penalty that
7 does not exceed 1 year in jail or a fine, or both, and is not a
8 serious misdemeanor, assaultive crime, domestic violence violation
9 of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL
10 750.81 and 750.81a, a local ordinance substantially corresponding
11 to a domestic violence violation of section 81 or 81a of the
12 Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, ~~or~~ an
13 offense involving domestic violence as that term is defined in
14 section 1 of 1978 PA 389, MCL 400.1501, **or an operating while**
15 **intoxicated offense.**

16 (5) The police officer may take the arrested person before a
17 magistrate and promptly file a complaint as provided in section 13
18 of this chapter instead of issuing an appearance ticket as required
19 under subsection (4) if 1 of the following circumstances is
20 present:

21 (a) The arrested person refuses to follow the police officer's
22 reasonable instructions.

23 (b) The arrested person will not offer satisfactory evidence
24 of identification.

25 (c) There is a reasonable likelihood that the offense would
26 continue or resume, or that another person or property would be
27 endangered if the arrested person is released from custody.

28 (d) The arrested person presents an immediate danger to
29 himself or herself or requires immediate medical examination or

1 medical care.

2 (e) The arrested person requests to be taken immediately
3 before a magistrate.

4 (f) Any other reason that the police officer may deem
5 reasonable to arrest the person which must be articulated in the
6 arrest report.

7 (6) If a police officer determines that 1 of the circumstances
8 under subsection (5) applies and he or she takes an arrested person
9 before a magistrate and promptly files a complaint as provided in
10 section 13 of this chapter instead of issuing an appearance ticket,
11 the police officer must specify the reason for not issuing a
12 citation in the arrest report or other documentation, as
13 applicable, and must forward the arrest report or other
14 documentation, as requested, to the appropriate prosecuting
15 authority for review without delay.

16 (7) An arrested person who is taken into custody under
17 subsection (6) instead of being issued an appearance ticket must be
18 charged by the appropriate prosecuting authority or released from
19 custody not later than 3 p.m. the immediately following day during
20 which arraignments may be performed.

21 (8) This section does not create a right to the issuance of an
22 appearance ticket in lieu of an arrest. An arrested person may
23 appeal the legality of his or her arrest as provided by law.
24 However, an arrested person does not have a claim for damages
25 against a police officer or law enforcement agency because he or
26 she was arrested rather than issued an appearance ticket.

27 (9) As used in this section:

28 (a) "Assaultive crime" means that term as defined in section
29 9a of chapter X.

1 (b) "Serious misdemeanor" means that term as defined in
2 section 61 of the William Van Regenmorter crime victim's rights
3 act, 1985 PA 87, MCL 780.811.

4 (c) "Operating while intoxicated offense" means a violation of
5 any of the following:

6 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA
7 300, MCL 257.625 and 257.625m.

8 (ii) A local ordinance substantially corresponding to a
9 violation listed in subparagraph (i).

10 (iii) A law of an Indian tribe substantially corresponding to a
11 violation listed in subparagraph (i).

12 (iv) A law of another state substantially corresponding to a
13 violation listed in subparagraph (i).

14 (v) A law of the United States substantially corresponding to
15 a violation listed in subparagraph (i).