

# THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

## Act 175 of 1927

### CHAPTER III

#### RIGHTS OF PERSONS ACCUSED

##### **763.1 Rights of accused; hearing by counsel, defense, confronting witnesses.**

Sec. 1. On the trial of every indictment or other criminal accusation, the party accused shall be allowed to be heard by counsel and may defend himself, and he shall have a right to produce witnesses and proofs in his favor, and meet the witnesses who are produced against him face to face.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17129;—CL 1948, 763.1.

**Former law:** See section 1 of Ch. 150 of R.S. 1846, being CL 1857, § 5704; CL 1871, § 7503; How., § 9068; CL 1897, § 11796; CL 1915, § 15623.

##### **763.2 Conviction; bases.**

Sec. 2. No person charged with an offense shall be convicted thereof unless by confession of his guilt in open court or by admitting the truth of the charge against him or after trial by the court or by the verdict of a jury accepted and recorded by the court.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17130;—CL 1948, 763.2.

**Former law:** See sections 2 and 4 of Ch. 151 of R.S. 1846, being CL 1857, §§ 5705 and 5707; CL 1871, §§ 7504 and 7506; How., §§ 9069 and 9071; CL 1897, §§ 11797 and 11799; and CL 1915, §§ 15624 and 15626.

##### **763.3 Waiver of trial by jury in criminal cases.**

Sec. 3. (1) In all criminal cases arising in the courts of this state the defendant may, with the consent of the prosecutor and approval by the court, waive a determination of the facts by a jury and elect to be tried before the court without a jury. Except in cases of minor offenses, the waiver and election by a defendant shall be in writing signed by the defendant and filed in the case and made a part of the record. The waiver and election shall be entitled in the court and case, and in substance as follows: "I, ....., defendant in the above case, hereby voluntarily waive and relinquish my right to a trial by jury and elect to be tried by a judge of the court in which the case may be pending. I fully understand that under the laws of this state I have a constitutional right to a trial by jury."

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Signature of defendant.

(2) Except in cases of minor offenses, the waiver of trial by jury shall be made in open court after the defendant has been arraigned and has had opportunity to consult with legal counsel.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17131;—CL 1948, 763.3;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981;—Am. 1988, Act 89, Eff. June 1, 1988.

##### **763.4 Waiver of trial by jury; jurisdiction of judge, procedure.**

Sec. 4. In any case where a defendant waives his right to a trial by jury and elects to be tried by the judge of such court as provided in section 3 of this chapter any judge of the court in which said cause is pending shall have jurisdiction to proceed with the trial of said cause, and shall proceed to hear, try and determine such cause in accordance with the rules and in like manner as if such cause were being tried before a jury.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17132;—CL 1948, 763.4.

##### **763.5 Acquittal on facts and merits as bar to subsequent prosecution.**

Sec. 5. No person shall be held to answer on a second charge or indictment for any offense for which he has been acquitted upon the facts and merits of the former trial but such acquittal may be pleaded or given in evidence by him in bar of any subsequent prosecution for the same offense.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17133;—CL 1948, 763.5.

**Former law:** See section 3 of Ch. 151 of R.S. 1846, being CL 1857, § 5706; CL 1871, § 7505; How., § 9070; CL 1897, § 11798; and CL 1915, § 15625.

##### **763.6 Acquittal on variance, insufficiency or irregularity of indictment as bar to subsequent prosecution.**

Sec. 6. If any person who is indicted or informed against for any offense shall on his trial be acquitted upon the grounds of a variance between the indictment or information and the proof or upon any insufficiency or irregularity in the form or substance of the indictment, he may be arraigned again on a new indictment for the same offense, notwithstanding such former acquittal.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17134;—CL 1948, 763.6.

### **763.7 Definitions.**

Sec. 7. As used in this section and sections 8 to 10 of this chapter:

(a) "Custodial detention" means an individual's being in a place of detention because a law enforcement official has told the individual that he or she is under arrest or because the individual, under the totality of the circumstances, reasonably could believe that he or she is under a law enforcement official's control and is not free to leave.

(b) "Interrogation" means questioning in a criminal investigation that may elicit a self-incriminating response from an individual and includes a law enforcement official's words or actions that the law enforcement official should know are reasonably likely to elicit a self-incriminating response from the individual.

(c) "Law enforcement official" means any of the following:

(i) A police officer of this state or a political subdivision of this state as defined in section 2 of the commission on law enforcement standards act, 1965 PA 203, MCL 28.602.

(ii) A county sheriff or his or her deputy.

(iii) A prosecuting attorney.

(iv) A public safety officer of a college or university.

(v) A conservation officer of the department of natural resources and environment.

(vi) An individual acting under the direction of a law enforcement official described in subparagraphs (i) to (v).

(d) "Major felony" means a felony punishable by imprisonment for life, for life or any term of years, or for a statutory maximum of 20 years or more, or a violation of section 520d of the Michigan penal code, 1931 PA 328, MCL 750.520d.

(e) "Major felony recording" means the interrogation recording required under section 8 of this chapter or a duplicate of that recording.

(f) "Place of detention" means a police station, correctional facility, or prisoner holding facility or another governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual.

**History:** Add. 2012, Act 479, Eff. Mar. 28, 2013.

### **763.8 Audiovisual recording of interrogation.**

Sec. 8. (1) This section applies if the law enforcement agency has audiovisual recording equipment that is operational or accessible as provided in section 11(3) or (4) or upon the expiration of the relevant time periods set forth in section 11(3) or (4), whichever occurs first.

(2) A law enforcement official interrogating an individual in custodial detention regarding the individual's involvement in the commission of a major felony shall make a time-stamped, audiovisual recording of the entire interrogation. A major felony recording shall include the law enforcement official's notification to the individual of the individual's Miranda rights.

(3) An individual who believes the individual's interrogation is being recorded may object to having the interrogation recorded. The individual's objection shall be documented either by the individual's objection stated on the recording or the individual's signature on a document stating the objection. If the individual refuses to document the objection either by recording or signature, a law enforcement official shall document the objection by a recording or signed document. A major felony recording may be made without the consent or knowledge of, or despite the objection of, the individual being interrogated.

(4) A major felony recording shall be produced using equipment and procedures that are designed to prevent alteration of the recording's audio or visual record.

(5) Pursuant to any request of discovery, the prosecutor shall provide a copy of the recorded statement to the defense counsel of record or to the defendant if he or she is not represented by defense counsel. The court shall not require the police or the prosecutor to prepare or pay for a transcript of a recorded statement. A court or the defense may have a transcript prepared at its own expense.

(6) Prior to conviction or acquittal, a statement recorded under this section is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**History:** Add. 2012, Act 479, Eff. Mar. 28, 2013.

### **763.9 Failure to record or preserve recorded statement.**

Sec. 9. Any failure to record a statement as required under section 8 of this chapter or to preserve a recorded statement does not prevent any law enforcement official present during the taking of the statement

from testifying in court as to the circumstances and content of the individual's statement if the court determines that the statement is otherwise admissible. However, unless the individual objected to having the interrogation recorded and that objection was properly documented under section 8(3), the jury shall be instructed that it is the law of this state to record statements of an individual in custodial detention who is under interrogation for a major felony and that the jury may consider the absence of a recording in evaluating the evidence relating to the individual's statement.

**History:** Add. 2012, Act 479, Eff. Mar. 28, 2013.

#### **763.10 Requirement as directive and not right conferred on individual.**

Sec. 10. A failure to comply with sections 8 and 9 of this chapter does not create a civil cause of action against a department or individual. The requirement in section 8 of this chapter to produce a major felony recording is a directive to departments and law enforcement officials and not a right conferred on an individual who is interrogated.

**History:** Add. 2012, Act 479, Eff. Mar. 28, 2013.

#### **763.11 Duties of Michigan commission on law enforcement standards; appropriation of funds; implementation of MCL 763.7 to 763.10; compliance.**

Sec. 11. (1) The Michigan commission on law enforcement standards created under section 3 of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.603, shall set quality standards for the audiovisual recording of statements under section 8 of this chapter and standards for geographic accessibility of equipment in the state. The commission shall also conduct an assessment of the initial cost necessary for law enforcement agencies to purchase audiovisual recording equipment. The first assessment shall be conducted By July 26, 2012. The Michigan commission on law enforcement standards shall conduct subsequent assessments regarding the necessary costs of purchasing, upgrading, or replacing the equipment every 2 years.

(2) The Michigan commission on law enforcement standards shall recommend to the legislature each year an annual appropriation amount to be determined by the commission's assessment performed under this section. The legislature shall annually appropriate funds to the Michigan commission on law enforcement standards for distribution to law enforcement agencies throughout the state to allow the agencies to purchase audiovisual recording equipment for purposes of this chapter. Any funds appropriated for this purpose shall be in addition to the appropriations provided to the Michigan commission on law enforcement standards and the department of state police in the immediately preceding fiscal year and shall not be appropriated from the Michigan justice training fund created in 1982 PA 302, MCL 18.421 to 18.430, or the department of state police budget.

(3) Except as otherwise provided in subsection (4), law enforcement agencies shall implement sections 7 to 10 of this chapter and this section within 120 days after receiving funds under this section from the Michigan commission on law enforcement standards or acquiring access to audiovisual recording equipment as directed by the standards set forth by that commission.

(4) Notwithstanding subsection (3), a law enforcement agency shall comply with the provisions of the amendatory act that added this subsection within 60 days after the date the commission adopts the standards for audiovisual recording equipment required by this section if the law enforcement agency has audiovisual recording equipment that complies with those standards on that date, or within 60 days after the date the law enforcement agency subsequently obtains audiovisual recording equipment that complies with the adopted standards.

**History:** Add. 2012, Act 479, Eff. Mar. 28, 2013;—Am. 2016, Act 293, Eff. Jan. 2, 2017.