

# THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

## Act 175 of 1927

### CHAPTER X

#### NEW TRIALS, WRITS OF ERROR AND BILLS OF EXCEPTIONS

##### **770.1 Granting new trial to defendant.**

Sec. 1. The judge of a court in which the trial of an offense is held may grant a new trial to the defendant, for any cause for which by law a new trial may be granted, or when it appears to the court that justice has not been done, and on the terms or conditions as the court directs.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17355;—CL 1948, 770.1;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981.

**Former law:** See section 1 of Ch. 166 of R.S. 1846, being CL 1857, § 6082; CL 1871, § 7963; How., § 9576; CL 1897, § 11963; and CL 1915, § 15836.

##### **770.2 Motion for new trial.**

Sec. 2. (1) Except as provided in section 16, in a case appealable as of right to the court of appeals, a motion for a new trial shall be made within 60 days after entry of the judgment or within any further time allowed by the trial court during the 60-day period.

(2) In a misdemeanor or ordinance violation case appealable as of right from a municipal court in a city that adopts a resolution of approval under section 23a of the Michigan uniform municipal court act, 1956 PA 5, MCL 730.523a, or from a court of record to the circuit court, a motion for a new trial shall be made within 20 days after entry of the judgment.

(3) In a misdemeanor or ordinance violation case appealable de novo to the circuit court, a motion for a new trial shall be made within 20 days after entry of the judgment.

(4) If the applicable period of time prescribed in subsection (1) or (2) has expired, a court of record may grant a motion for a new trial for good cause shown. If the applicable time period prescribed in subsection (3) has expired and the defendant has not appealed, a municipal court may grant a motion for new trial for good cause shown.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17356;—CL 1948, 770.2;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981;—Am. 1981, Act 205, Eff. Jan. 1, 1982;—Am. 1998, Act 407, Eff. Jan. 1, 1999;—Am. 2000, Act 402, Imd. Eff. Jan. 8, 2001.

##### **770.3 Appeal by aggrieved party.**

Sec. 3. (1) Subject to the limitations imposed by section 12 of this chapter and except as provided in section 16, an aggrieved party shall have a right of appeal from a final judgment or trial order as follows:

(a) Except as otherwise provided in subdivision (d), in a felony or misdemeanor case tried in the circuit court, there shall be a right of appeal to the court of appeals.

(b) Except as otherwise provided in subdivision (d), in a misdemeanor or ordinance violation case tried in a municipal court in a city that adopts a resolution of approval under section 23a of the Michigan uniform municipal court act, 1956 PA 5, MCL 730.523a, or tried in the district court, there shall be a right of appeal to the circuit court in the county in which the misdemeanor or ordinance violation was committed.

(c) In a misdemeanor or ordinance violation case tried in a municipal court in a city that does not adopt a resolution of approval under section 23a of the Michigan uniform municipal court act, 1956 PA 5, MCL 730.523a, there shall be a right of appeal as provided in chapter XIV.

(d) All appeals from final orders and judgments based upon pleas of guilty or nolo contendere shall be by application for leave to appeal.

(2) An appeal from an interlocutory judgment or order in a felony, misdemeanor, or ordinance violation may be taken, in the manner provided by court rules, by application for leave to appeal to the same court of which a final judgment in that case would be appealable as a matter of right under subsection (1).

(3) After expiration of the period prescribed for timely appeal, the appellate court may grant leave to appeal from any order or judgment from which timely appeal would have been available as of right, or by leave, upon conditions prescribed by court rules.

(4) Further appellate review of matters appealed to the circuit court under subsection (1)(b), (1)(d), or (2) may be had only upon application for leave to appeal granted by the court of appeals.

(5) Further appellate review of matters appealed to the recorder's court under subsection (1)(c) may be had only upon application for leave to appeal granted by the court of appeals.

(6) Further review of any matter appealed to the court of appeals under this section may be had only upon application for leave to appeal granted by the supreme court.

(7) An appeal as of right and an appeal by application for leave to appeal provided for in this section shall

be taken pursuant to and within the time prescribed by court rules.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17357;—CL 1948, 770.3;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981;—Am. 1981, Act 205, Eff. Jan. 1, 1982;—Am. 1994, Act 374, Imd. Eff. Dec. 27, 1994;—Am. 1998, Act 407, Eff. Jan. 1, 1999;—Am. 2000, Act 402, Imd. Eff. Jan. 8, 2001.

**Former law:** See sections 1, 6, and 7 of Ch. 138 of R.S. 1846, being CL 1857, §§ 5332, 5337, and 5338; CL 1871, §§ 7119, 7124, and 7125; How., §§ 8678, 8683, and 8684; CL 1897, §§ 10484, 10489, and 10490; and CL 1915, §§ 14587, 14592, and 14593.

### **770.3a Repealed. 2006, Act 655, Imd. Eff. Jan. 9, 2007.**

**Compiler's note:** The repealed section pertained to defendant pleading guilty, guilty but mentally ill, or nolo contendere, and to appointment of appellate counsel.

### **770.4-770.7 Repealed. 1980, Act 506, Imd. Eff. Jan. 22, 1981.**

**Compiler's note:** The repealed sections pertained to writs of error.

### **770.8 Bail between trial court judgment and decision of appellate court.**

Sec. 8. During the time between the trial court judgment and the decision of the court to which an appeal is taken, the trial judge may admit the defendant to bail, if the offense charged is bailable and if the offense is not an assaultive crime as defined in section 9a of this chapter.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17362;—CL 1948, 770.8;—Am. 1977, Act 34, Eff. Mar. 30, 1978.

**Former law:** See section 3 of Act 159 of 1917.

### **770.9 Bail during pendency of appeal or application for leave to appeal.**

Sec. 9. During the pendency of an appeal or application for leave to appeal, a justice or judge of the court in which the appeal or application is filed may admit the defendant to bail, if the offense charged is bailable and if the offense is not an assaultive crime as defined in section 9a of this chapter or sexual assault of a minor as described in section 9b of this chapter.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17363;—CL 1948, 770.9;—Am. 1977, Act 34, Eff. Mar. 30, 1978;—Am. 2004, Act 32, Eff. June 30, 2004.

**Former law:** See section 8 of Ch. 138 of R.S. 1846, being CL 1857, § 5339; CL 1871, § 7126; How., § 8685; CL 1897, § 10491; CL 1915, § 14590; Secs. 5 to 7 of Ch. 166 of R.S. 1846, being CL 1857, §§ 6086 to 6088; CL 1871, §§ 7967 to 7969; How., §§ 9580 to 9582; CL 1897, §§ 11967 to 11969; CL 1915, §§ 15840 to 15842; and section 3 of Act 159 of 1917.

### **770.9a Detention and denial of bail where defendant convicted of assaultive crime; "assaultive crime" defined; expediting appeal or application for leave to appeal.**

Sec. 9a. (1) A defendant convicted of an assaultive crime and awaiting sentence shall be detained and shall not be admitted to bail unless the trial court finds by clear and convincing evidence that the defendant is not likely to pose a danger to other persons and that section 9b of this chapter does not apply.

(2) A defendant convicted of an assaultive crime and sentenced to a term of imprisonment who has filed an appeal or an application for leave to appeal shall be detained and shall not be admitted to bail unless the trial court or the court to which the appeal is taken finds by clear and convincing evidence that section 9b of this chapter does not apply and that both of the following exist:

(a) The defendant is not likely to pose a danger to other persons.

(b) The appeal or application raises a substantial question of law or fact.

(3) As used in this section, "assaultive crime" means an offense against a person described in section 81c(3), 82, 83, 84, 86, 87, 88, 89, 90a, 90b(a) or (b), 91, 200 to 212a, 316, 317, 321, 349, 349a, 350, 397, 411h(2)(b) or (3), 411i, 520b, 520c, 520d, 520e, 520g, 529, 529a, 530, or 543a to 543z of the Michigan penal code, 1931 PA 328, MCL 750.81c, 750.82, 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.90a, 750.90b, 750.91, 750.200 to 750.212a, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.411h, 750.411i, 750.520b, 750.520c, 750.520d, 750.520e, 750.520g, 750.529, 750.529a, 750.530, and 750.543a to 750.543z.

(4) The appeal or application for leave to appeal filed by a person denied bail under this section shall be expedited pursuant to rules adopted for that purpose by the supreme court.

**History:** Add. 1977, Act 34, Eff. Mar. 30, 1978;—Am. 1994, Act 195, Eff. Oct. 1, 1994;—Am. 2001, Act 208, Eff. Apr. 1, 2002;—Am. 2002, Act 483, Eff. Oct. 1, 2002;—Am. 2004, Act 32, Eff. June 30, 2004.

### **770.9b Detention and denial of bail where defendant convicted of sexual assault of minor; definitions.**

Sec. 9b. (1) A defendant convicted of sexual assault of a minor and awaiting sentence shall be detained and shall not be admitted to bail.

(2) A defendant convicted of sexual assault of a minor sentenced to a term of imprisonment who has filed an appeal or an application for leave to appeal shall be detained and shall not be admitted to bail.

(3) As used in this section:

(a) "Minor" means an individual less than 16 years of age.

(b) "Sexual assault of a minor" means a violation of any of the following:

(i) Section 520b, 520c, 520d(1)(b), (c), (d), or (e) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, in which the victim of the offense is a minor.

(ii) Section 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d, if the actor is 5 or more years older than the victim.

(iii) Section 520g of the Michigan penal code, 1931 PA 328, MCL 750.520g, for assaulting an individual with the intent to commit criminal sexual conduct described in subparagraphs (i) and (ii).

**History:** Add. 2004, Act 32, Eff. June 30, 2004.

**Compiler's note:** In subsection (3)(b)(i), the phrase "Section 520b, 520c, 520d(1)(b), (c), (d), or (e) of the Michigan penal code" evidently should read "Section 520b, 520c, or 520d(1)(b), (c), (d), or (e) of the Michigan penal code."

## **770.10, 770.11 Repealed. 1980, Act 506, Imd. Eff. Jan. 22, 1981.**

**Compiler's note:** The repealed sections pertained to bills of exception.

## **770.12 Appeal by people; right of defendant to bail upon appeal; provisions governing section.**

Sec. 12. (1) Except as provided in subsection (2), the people of this state may take an appeal of right in a criminal case, if the protection against double jeopardy under section 15 of article I of the state constitution of 1963 and amendment V of the constitution of the United States would not bar further proceedings against the defendant, from either of the following:

(a) A final judgment or final order of the circuit court or recorder's court, except a judgment or order of the circuit court or recorder's court on appeal from any other court.

(b) A final judgment or order of a court or tribunal from which appeal of right has been established by law.

(2) The people of this state may take an appeal by leave in a criminal case, if the protection against double jeopardy under section 15 of article I of the state constitution of 1963 and amendment V of the constitution of the United States would not bar further proceedings against the defendant, from any of the following:

(a) A judgment or order of the circuit court or recorder's court that is not a final judgment appealable of right.

(b) A final judgment entered by the circuit court or the recorder's court on appeal from any other court.

(c) Any other judgment or order appealable by law or rule.

(d) A judgment or order when an appeal of right could have been taken but was not timely filed.

(e) A final order or judgment based upon a defendant's plea of guilty or nolo contendere.

(3) The right of the defendant to bail upon appeal under this section shall be governed by section 9a of this chapter and section 7 of chapter V.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17366;—Am. 1941, Act 132, Eff. Jan. 10, 1942;—CL 1948, 770.12;—Am. 1977, Act 34, Eff. Mar. 30, 1978;—Am. 1988, Act 66, Eff. Mar. 30, 1988;—Am. 1994, Act 374, Imd. Eff. Dec. 27, 1994.

**Compiler's note:** For provisions of chapter 5, referred to in this section, see MCL 765.7.

**Former law:** See section 1 of Act 159 of 1917.

## **770.13-770.15 Repealed. 1980, Act 506, Imd. Eff. Jan. 22, 1981.**

**Compiler's note:** The repealed sections pertained to writ of error in criminal cases, rules of practice, and the repeal of inconsistent provisions.

## **770.16 DNA testing; petition; filing; availability of biological material; court order; findings; costs; results; granting or denying request for new trial; notice of petition to victim; preservation of biological material identified.**

Sec. 16. (1) Notwithstanding the limitations of section 2 of this chapter, a defendant convicted of a felony at trial before January 8, 2001 who is serving a prison sentence for the felony conviction may petition the circuit court to order DNA testing of biological material identified during the investigation leading to his or her conviction, and for a new trial based on the results of that testing. Notwithstanding the limitations of section 2 of this chapter, a defendant convicted of a felony at trial on or after January 8, 2001 who establishes that all of the following apply may petition the circuit court to order DNA testing of biological material identified during the investigation leading to his or her conviction, and for a new trial based on the results of that testing:

- (a) That DNA testing was done in the case or under this act.
  - (b) That the results of the testing were inconclusive.
  - (c) That testing with current DNA technology is likely to result in conclusive results.
- (2) A petition under this section shall be filed in the circuit court for the county in which the defendant was sentenced and shall be assigned to the sentencing judge or his or her successor. The petition shall be served on the prosecuting attorney of the county in which the defendant was sentenced.
- (3) A petition under this section shall allege that biological material was collected and identified during the investigation of the defendant's case. If the defendant, after diligent investigation, is unable to discover the location of the identified biological material or to determine whether the biological material is no longer available, the defendant may petition the court for a hearing to determine whether the identified biological material is available. If the court determines that identified biological material was collected during the investigation, the court shall order appropriate police agencies, hospitals, or the medical examiner to search for the material and to report the results of the search to the court.
- (4) The court shall order DNA testing if the defendant does all of the following:
- (a) Presents prima facie proof that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime that resulted in the conviction.
  - (b) Establishes all of the following by clear and convincing evidence:
    - (i) A sample of identified biological material described in subsection (1) is available for DNA testing.
    - (ii) The identified biological material described in subsection (1) was not previously subjected to DNA testing or, if previously tested, will be subject to DNA testing technology that was not available when the defendant was convicted.
    - (iii) The identity of the defendant as the perpetrator of the crime was at issue during his or her trial.
- (5) The court shall state its findings of fact on the record or shall make written findings of fact supporting its decision to grant or deny a petition brought under this section.
- (6) If the court grants a petition for DNA testing under this section, the identified biological material and a biological sample obtained from the defendant shall be subjected to DNA testing by a laboratory approved by the court. If the court determines that the applicant is indigent, the cost of DNA testing ordered under this section shall be borne by the state. The results of the DNA testing shall be provided to the court and to the defendant and the prosecuting attorney. Upon motion by either party, the court may order that copies of the testing protocols, laboratory procedures, laboratory notes, and other relevant records compiled by the testing laboratory be provided to the court and to all parties.
- (7) If the results of the DNA testing are inconclusive or show that the defendant is the source of the identified biological material, both of the following apply:
- (a) The court shall deny the motion for new trial.
  - (b) The defendant's DNA profile shall be provided to the department of state police for inclusion under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.
- (8) If the results of the DNA testing show that the defendant is not the source of the identified biological material, the court shall appoint counsel pursuant to MCR 6.505(A) and hold a hearing to determine by clear and convincing evidence all of the following:
- (a) That only the perpetrator of the crime or crimes for which the defendant was convicted could be the source of the identified biological material.
  - (b) That the identified biological material was collected, handled, and preserved by procedures that allow the court to find that the identified biological material is not contaminated or is not so degraded that the DNA profile of the tested sample of the identified biological material cannot be determined to be identical to the DNA profile of the sample initially collected during the investigation described in subsection (1).
  - (c) That the defendant's purported exclusion as the source of the identified biological material, balanced against the other evidence in the case, is sufficient to justify the grant of a new trial.
- (9) Upon motion of the prosecutor, the court shall order retesting of the identified biological material and shall stay the defendant's motion for new trial pending the results of the DNA retesting.
- (10) The court shall state its findings of fact on the record or make written findings of fact supporting its decision to grant or deny the defendant a new trial under this section. Notwithstanding section 3 of this chapter, an aggrieved party may appeal the court's decision to grant or deny the petition for DNA testing and for new trial by application for leave granted by the court of appeals.
- (11) If the name of the victim of the felony conviction described in subsection (1) is known, the prosecuting attorney shall give written notice of a petition under this section to the victim. The notice shall be by first-class mail to the victim's last known address. Upon the victim's request, the prosecuting attorney shall give the victim notice of the time and place of any hearing on the petition and shall inform the victim of the court's grant or denial of a new trial to the defendant.

(12) The investigating law enforcement agency shall preserve any biological material identified during the investigation of a crime or crimes for which any person may file a petition for DNA testing under this section. The identified biological material shall be preserved for the period of time that any person is incarcerated in connection with that case.

**History:** Add. 2000, Act 402, Imd. Eff. Jan. 8, 2001;—Am. 2005, Act 4, Imd. Eff. Apr. 1, 2005;—Am. 2008, Act 410, Imd. Eff. Jan. 6, 2009;—Am. 2011, Act 212, Imd. Eff. Nov. 8, 2011;—Am. 2015, Act 229, Imd. Eff. Dec. 17, 2015.