

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

CHAPTER XXVII

DESERTION AND NON-SUPPORT

750.161 Desertion, abandonment, or refusal or neglect to provide shelter, food, care, and clothing; felony; penalty; bond; probation; failure to comply with conditions in bond; forfeiture of bond; disposition of sums received; continuing offense; proof.

Sec. 161. (1) A person who deserts and abandons his or her spouse or deserts and abandons his or her children under 17 years of age, without providing necessary and proper shelter, food, care, and clothing for them, and a person who being of sufficient ability fails, neglects, or refuses to provide necessary and proper shelter, food, care, and clothing for his or her spouse or his or her children under 17 years of age, is guilty of a felony, punishable by imprisonment in a state correctional facility for not less than 1 year and not more than 3 years, or by imprisonment in the county jail for not less than 3 months and not more than 1 year.

(2) If at any time before sentence the defendant enters into bond to the people of the state of Michigan in such penal sum for such term and with such surety or sureties as may be fixed by the court, conditioned that he or she will furnish his or her spouse and children with necessary and proper shelter, food, care, and clothing, or will pay to the clerk of the court, or other designated person, such sums of money at such times as the court shall order to be used to provide food, shelter, and clothing for his or her spouse and children, or either of them, then the court may make an order placing the defendant in charge of a probation officer. The court may require that the defendant shall from time to time report to the probation officer as provided by law. The court may extend the period of probation from time to time or the court may defer sentence in the cause, but no term of any bond or any probation period shall exceed the maximum term of imprisonment as provided for in this section.

(3) Upon failure of the defendant to comply with any of the conditions contained in the bond, the defendant may be ordered to appear before the court and show cause why sentence should not be imposed, whereupon the court may pass sentence, or for good cause shown may modify the order and further defer sentence as may be just and proper. Whenever the whereabouts of the defendant is unknown, the court may summarily issue a bench warrant for the arrest of the defendant.

(4) The court, upon default by the defendant to comply with the conditions of the bond and the orders of the court, shall notify the prosecuting attorney, who shall immediately file a petition in the court in which the cause is pending to declare the bond forfeited. A copy of the petition and a notice of hearing on the petition shall be served upon the surety or sureties, if any, named in the bond at least 4 days before the hearing of the petition. Upon holding a hearing on the petition, the court may declare the bond forfeited. When so ordered, the prosecuting attorney shall immediately institute the necessary action to collect the principal sum of the bond. If a cash bond has been filed, the cash bond shall be declared forfeited by the court.

(5) All sums received from bonds being forfeited shall be paid to the clerk of the court, who shall hold and disburse the money for the use of those entitled to the money in accordance with the orders of the court for their necessary food, care, shelter, and clothing.

(6) Desertion, abandonment, or refusal or neglect to provide necessary and proper shelter, food, care, and clothing as provided in this section shall be considered to be a continuing offense and may be so set out in any complaint or information. Proof of the offense charged at any time during the period alleged in the complaint or information shall be considered proof of a violation of this section.

History: 1931, Act 328, Eff. Sept. 18, 1931;—Am. 1947, Act 142, Eff. Oct. 11, 1947;—CL 1948, 750.161;—Am. 1984, Act 277, Eff. Mar. 29, 1985.

Former law: See section 1 of Act 144 of 1907, being CL 1915, § 7789; CL 1929, § 12788; Act 114 of 1921; and Act 239 of 1923.

750.161a Failure or refusal to pay child support; amnesty.

Sec. 161a. Prosecution shall not be initiated against an individual under section 161, 165, 167(1)(a), or 167(2) for failure or refusal to pay child support while the individual has amnesty for that child support arrearage under section 3b of the office of child support act, 1971 PA 174, MCL 400.233b.

History: Add. 2004, Act 568, Eff. June 1, 2005.

750.162 Payments for care and support of wife or children; sworn statement.

Sec. 162. When any person is convicted under section 161 and sentenced to serve a term of imprisonment either in 1 of the state prisons or other penal institution, the warden of the prison or superintendent of said penal institution in which said person shall be confined shall, in case funds are available for such purpose, at

the end of each and every week during the period of said term of imprisonment, pay over to any of the superintendents of the poor of the city or county in which the wife or children of such person resides, the sum of 2 dollars and 50 cents per week, if there be only a wife, and 75 cents per week additional for each minor child under the age of 17 years; if there be no wife and there are children under the age of 17 years, the sum of 2 dollars and 50 cents per week for the oldest child, and an additional sum of 1 dollar per week for each of the other children under said age in lieu of any earnings of such person while an inmate therein, said sums to be expended by said superintendent of the poor for the care and support of the wife or children of said person, as the case may be; and it shall be the duty of the superintendent of the poor of the city or county from which such person shall be committed to furnish the warden of the prison or superintendent of the penal institution in which said person is confined with a sworn statement, showing the names of the wife and children who are left dependent upon the city or county for support, their ages and the relation they bear to such convicted person.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.162;—Am. 1985, Act 52, Imd. Eff. June 14, 1985.

Former law: See section 2 of Act 144 of 1907, being CL 1915, § 7790; CL 1929, § 12789; Act 175 of 1913; and Act 239 of 1923.

750.163 Complaints.

Sec. 163. Complainants—Any of the superintendents of the poor of the city or county or the county agent of the state welfare commission for the county wherein the wife or minor children of the person complained of reside, may make the complaint under the first section of this chapter.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.163.

Former law: See section 4 of Act 144 of 1907, being CL 1915, § 7792; and CL 1929, § 12791.

750.164 Desertion following marriage to escape prosecution.

Sec. 164. Desertion following marriage to escape prosecution for rape, etc.—Any man or boy, who being the father of a child born out of wedlock, shall marry any woman or girl for the purpose of escaping prosecution therefor, and any man or boy who shall marry any woman or girl for the purpose of escaping prosecution for rape or seduction, and shall afterwards desert her without good cause, shall be guilty of a felony: Provided, That no prosecution shall be brought under this section after 5 years from the date of the marriage.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.164.

Former law: See section 1 of Act 284 of 1907, being CL 1915, § 7794; CL 1929, § 12793; and Act 310 of 1913.

750.165 Failure to support spouse or child as required by court order; violation as felony; penalty; applicability; cash bond; suspension of sentence; bond; order of restitution; "state disbursement unit" or "SDU" defined.

Sec. 165. (1) If the court orders an individual to pay support for the individual's former or current spouse, or for a child of the individual, and the individual does not pay the support in the amount or at the time stated in the order, the individual is guilty of a felony punishable by imprisonment for not more than 4 years or by a fine of not more than \$2,000.00, or both.

(2) This section does not apply unless the court in which the support order was issued had personal jurisdiction over the individual ordered to pay support.

(3) Unless the individual deposits a cash bond of not less than \$500.00 or 25% of the arrearage, whichever is greater, upon arrest for a violation of this section, the individual shall remain in custody until the arraignment. If the individual remains in custody, the court shall address the amount of the cash bond at the arraignment and at the preliminary examination and, except for good cause shown on the record, shall order the bond to be continued at not less than \$500.00 or 25% of the arrearage, whichever is greater. At the court's discretion, the court may set the cash bond at an amount not more than 100% of the arrearage and add to that amount the amount of the costs that the court may require under section 31(3) of the support and parenting time enforcement act, 1982 PA 295, MCL 552.631. The court shall specify that the cash bond amount be entered into the law enforcement information network. If a bench warrant under section 31 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.631, is outstanding for an individual when the individual is arrested for a violation of this section, the court shall notify the court handling the civil support case under the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, that the bench warrant may be recalled.

(4) The court may suspend the sentence of an individual convicted under this section if the individual files with the court a bond in the amount and with the sureties the court requires. At a minimum, the bond must be conditioned on the individual's compliance with the support order. If the court suspends a sentence under this

subsection and the individual does not comply with the support order or another condition on the bond, the court may order the individual to appear and show cause why the court should not impose the sentence and enforce the bond. After the hearing, the court may enforce the bond or impose the sentence, or both, or may permit the filing of a new bond and again suspend the sentence. The court shall order a support amount enforced under this section to be paid to the clerk or friend of the court or to the state disbursement unit.

(5) An order for restitution for a violation of this section shall not include a separate award for the unpaid amount in arrearage under the support order. The restitution order shall reference the support order and direct the individual to pay the unpaid amount in arrearage under the support order pursuant to the support order. The court may impose such terms and conditions in the restitution order as are appropriate to ensure compliance with payment of the arrearage due under the support order. The court may order additional restitution as provided under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

(6) As used in this section, "state disbursement unit" or "SDU" means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

History: 1931, Act 328, Eff. Sept. 18, 1931;—Am. 1939, Act 89, Eff. Sept. 29, 1939;—CL 1948, 750.165;—Am. 1999, Act 152, Imd. Eff. Nov. 3, 1999;—Am. 2004, Act 570, Imd. Eff. Jan. 3, 2005;—Am. 2014, Act 377, Eff. Mar. 17, 2015.

Former law: See section 1 of Act 276 of 1917, being CL 1929, § 12781.

750.166 Wife may testify against husband.

Sec. 166. Wife may testify against husband—In all prosecutions under this chapter, the wife may testify against the husband without his consent.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.166.

Former law: See section 1 of Act 284 of 1907, being CL 1915, § 7794; CL 1929, § 12793; Act 310 of 1913; and section 2 of Act 276 of 1917, being CL 1929, § 12782.