



# SENATE BILL No. 1047

May 21, 1996, Introduced by Senator SCHUETTE and referred to the Committee on Judiciary.

A bill to amend section 1 of chapter I, sections 15f, 25b, and 27 of chapter IV, and section 14 of chapter VI of Act No. 175 of the Public Acts of 1927, entitled as amended "The code of criminal procedure," section 1 of chapter I as amended by Act No. 229 of the Public Acts of 1994, section 15f of chapter IV as added by Act No. 113 of the Public Acts of 1993, section 25b of chapter IV as amended by Act No. 92 of the Public Acts of 1983, section 27 of chapter IV as amended by Act No. 67 of the Public Acts of 1988, and section 14 of chapter VI as amended by Act No. 195 of the Public Acts of 1994, being sections 761.1, 764.15f, 764.25b, 764.27, and 766.14 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Section 1 of chapter I, sections 15f, 25b, and  
2 27 of chapter IV, and section 14 of chapter VI of Act No. 175 of

1 the Public Acts of 1927, section 1 of chapter I as amended by Act  
2 No. 229 of the Public Acts of 1994, section 15f of chapter IV as  
3 added by Act No. 113 of the Public Acts of 1993, section 25b of  
4 chapter IV as amended by Act No. 92 of the Public Acts of 1983,  
5 section 27 of chapter IV as amended by Act No. 67 of the Public  
6 Acts of 1988, and section 14 of chapter VI as amended by Act  
7 No. 195 of the Public Acts of 1994, being sections 761.1,  
8 764.15f, 764.25b, 764.27, and 766.14 of the Michigan Compiled  
9 Laws, are amended to read as follows:

10    CHAPTER I

11         Sec. 1. As used in this act:

12         (a) "Person", "accused", or a similar word means an individ-  
13 ual ~~—~~ or, unless a contrary intention appears, a public or pri-  
14 vate corporation, ~~a~~ partnership, or ~~an~~ unincorporated or vol-  
15 untary association.

16         (b) "Act" or "doing of an act" includes "omission to act".

17         (c) "Property" includes any matter or thing upon or in  
18 respect to which ~~any~~ AN offense may be committed.

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

20               (i) An indictment.

21               (ii) An information.

22               (iii) A presentment.

23               (iv) A complaint.

24               (v) A warrant.

25               (vi) A formal written accusation.

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

1 (e) "Writing", "written", or a similar term refers to words  
2 printed, painted, engraved, lithographed, photographed, copied,  
3 traced, or otherwise made visible to the eye.

4 (f) "Magistrate" means a judge of the district court or a  
5 judge of a municipal court. Magistrate does not include a dis-  
6 trict court magistrate, except that a district court magistrate  
7 may exercise the powers, jurisdiction, and duties of a magistrate  
8 if specifically provided in this act, ~~in~~ the revised judicature  
9 act of 1961, Act No. 236 of the Public Acts of 1961, ~~as~~  
10 ~~amended,~~ being sections 600.101 to 600.9947 of the Michigan  
11 Compiled Laws, or ~~in~~ any other statute. This definition does  
12 not limit the power of a justice of the supreme court, a circuit  
13 judge, or a judge of a court of record having jurisdiction of  
14 criminal cases under this act, or deprive him or her of the power  
15 to exercise ~~in his or her discretion,~~ the authority of a  
16 magistrate.

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

21 (h) "Misdemeanor" means a violation of a penal law of this  
22 state that is not a felony ~~or~~ or a violation of an order, rule,  
23 or regulation of a state agency that is punishable by imprison-  
24 ment or ~~by~~ a fine that is not a civil fine.

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

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

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

8 (k) "Minor offense" means a misdemeanor or ordinance viola-  
9 tion for which the maximum permissible imprisonment does not  
10 exceed 92 days and the maximum permissible fine does not exceed  
11 \$500.00 and includes a violation described in section 9f(2) of  
12 chapter IV for which the maximum permissible penalty does not  
13 exceed 92 days in jail and a fine.

14 (l) "Prosecuting attorney" means the prosecuting attorney  
15 for a county, an assistant prosecuting attorney for a county, the  
16 attorney general, the deputy attorney general, an assistant  
17 attorney general, a special prosecuting attorney, or, in connec-  
18 tion with the prosecution of an ordinance violation, an attorney  
19 for the political subdivision or governmental entity ~~which~~ THAT  
20 enacted the ordinance, charter, rule, or regulation upon which  
21 the ordinance violation is based.

22 (m) "Judicial district" means the following:

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

24 (ii) With regard to the recorder's court of the city of  
25 Detroit, the city of Detroit.

26 (iii) With regard to municipal courts, the city in which the  
27 municipal court functions or the village served by a municipal

1 court ~~pursuant to~~ UNDER section 9928 of the revised judicature  
2 act of 1961, Act No. 236 of the Public Acts of 1961, being sec-  
3 tion 600.9928 of the Michigan Compiled Laws.

4 (iv) With regard to the district court, the county, dis-  
5 trict, or political subdivision in which venue is proper for  
6 criminal actions.

7 (n) "Complaint" means a written accusation, under oath or  
8 upon affirmation, that a felony, misdemeanor, or ordinance viola-  
9 tion has been committed and that the person named or described in  
10 the accusation is guilty of the offense.

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

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

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

19 (r) "Juvenile" means a person within the GENERAL CRIMINAL  
20 jurisdiction of the circuit court under section 606 of the  
21 revised judicature act of 1961, Act No. 236 of the Public Acts of  
22 1961, being section 600.606 of the Michigan Compiled Laws, or  
23 within the jurisdiction of the recorder's court of the city of  
24 Detroit under section 10a(1)(c) of Act No. 369 of the Public Acts  
25 of 1919, being section 725.10a of the Michigan Compiled Laws.

26 (s) "Juvenile facility" means a county facility, institution  
27 operated as an agency of the county, ~~or the~~ juvenile division

1 of the probate court, OR FAMILY DIVISION OF THE CIRCUIT COURT, or  
2 a state institution or agency described in the youth rehabilita-  
3 tion services act, Act No. 150 of the Public Acts of 1974, being  
4 sections 803.301 to 803.309 of the Michigan Compiled Laws, to  
5 which a juvenile has been committed under section 27a of chapter  
6 IV. ~~of this act.~~

7 (t) "Taken", "brought", or "before" a magistrate or judge  
8 for purposes of criminal arraignment or the setting of bail means  
9 either of the following:

10 (i) Physical presence before a judge or district court  
11 magistrate.

12 (ii) Presence before a judge or district court magistrate by  
13 use of 2-way closed circuit television.

14 CHAPTER IV

15 Sec. 15f. (1) A peace officer, without a warrant, may  
16 arrest and take into custody a person if the peace officer has  
17 reasonable cause to believe all of the following exist:

18 (a) The JUVENILE DIVISION OF THE probate court OR THE FAMILY  
19 DIVISION OF THE CIRCUIT COURT has issued an order ~~pursuant to~~  
20 UNDER section 13a(4) of chapter XIIIA of Act No. 288 of the Public  
21 Acts of 1939, being section 712A.13a of the Michigan Compiled  
22 Laws, stating on its face the period of time for which the order  
23 is valid.

24 (b) A true copy of the order and proof of service has been  
25 filed with the law enforcement agency having jurisdiction of the  
26 area in which the person having custody of the child pursuant to

1 section 13a(4) of chapter XIIIA of Act No. 288 of the Public Acts  
2 of 1939 resides.

3 (c) The person named in the order has received notice of the  
4 order.

5 (d) The person named in the order is acting in violation of  
6 the order.

7 (e) The order states on its face that a violation of its  
8 terms subjects the person to criminal contempt of court and, if  
9 found guilty, the person shall be imprisoned for not more than 90  
10 days and may be fined not more than \$500.00.

11 (2) If a peace officer arrests a person pursuant to this  
12 section, the peace officer shall do all of the following:

13 (a) Prepare a complaint of violation of the order substan-  
14 tially in the following format:

15 COMPLAINT OF VIOLATION OF CHILD PROTECTIVE ORDER

16 I \_\_\_\_\_ am a peace officer. I have determined by:  
17 (name)

18 \_\_\_\_\_ L.E.I.N. and verification with the police agency holding  
19 the order

20 \_\_\_\_\_ Certified or true copy of order

1 \_\_\_\_\_ Other (Describe) \_\_\_\_\_

2 That \_\_\_\_\_ ~~Probate~~ JUVENILE DIVISION OF PROBATE court

3 (county)

4 ordered \_\_\_\_\_

5 (name)

6 \_\_\_\_\_ FAMILY DIVISION OF CIRCUIT COURT

7 (CIRCUIT)

8 ORDERED \_\_\_\_\_

9 (NAME)

10 NOT TO ENTER THE FOLLOWING PREMISES:

11 I HAVE REASONABLE CAUSE TO BELIEVE THAT ON \_\_\_\_\_

12 (DATE)

13 AT \_\_\_\_\_ THE PERSON SUBJECT TO THE ORDER VIOLATED THE ORDER

14 (TIME)

15 AS FOLLOWS:

16 (STATE VIOLATIONS)



1

2

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(SIGNATURE OF OFFICER)

3

4

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(DATE)

5 (B) PROVIDE 1 COPY OF THE COMPLAINT TO THE PERSON SUBJECT TO  
6 THE ORDER AND THE ORIGINAL AND 1 COPY TO THE COURT THAT IMPOSED  
7 THE CONDITIONS. THE LAW ENFORCEMENT AGENCY SHALL RETAIN 1 COPY  
8 OF THE COMPLAINT.

9 (3) A PERSON ARRESTED PURSUANT TO THIS SECTION SHALL BE  
10 BROUGHT BEFORE THE JUVENILE DIVISION OF THE probate court OR  
11 FAMILY DIVISION OF CIRCUIT COURT having jurisdiction in the cause  
12 within 24 hours after arrest to answer to a charge of contempt  
13 for violation of the order, at which time the court shall do each  
14 of the following:

15 (a) Set a time certain for a hearing on the alleged viola-  
16 tion of the order. The hearing shall be conducted within 72  
17 hours after arrest, unless extended by the court on the motion of  
18 the arrested person.

19 (b) Set a reasonable bond pending a hearing of the alleged  
20 violation of the order.

21 (c) Notify the person having custody of the child ~~pursuant~~  
22 ~~to~~ UNDER section 13a(4) of chapter XIIA of Act No. 288 of the  
23 Public Acts of 1939 and direct that person to appear at the hear-  
24 ing and give evidence on the charge of contempt.

25 (4) For purposes of this section, a probate judge may  
26 arraign, take a plea, or sentence the person for criminal

1 contempt in the same manner that the circuit court may arraign,  
2 take a plea, or sentence a person in other criminal cases.

3 (5) If the ~~probate~~ judge is not present or available  
4 within 24 hours after arrest, a person arrested pursuant to this  
5 section shall be taken before the district court within 24 hours  
6 after arrest, at which time the district court shall order the  
7 defendant to appear before the ~~probate~~ court that entered OR  
8 HAS JURISDICTION OVER the order for a hearing on the charge. The  
9 district court shall set bond for the person.

10 (6) Upon receipt of a true copy of an order and proof of  
11 service pursuant to this section, the law enforcement agency  
12 shall enter the order into the law enforcement information net-  
13 work as provided by the L.E.I.N. policy council act of 1974, Act  
14 No. 163 of the Public Acts of 1974, being sections 28.211 to  
15 28.216 of the Michigan Compiled Laws.

16 (7) If an order entered pursuant to section 13a(4) of chap-  
17 ter XIIIA of Act No. 288 of the Public Acts of 1939 is rescinded,  
18 the court shall immediately order the law enforcement agency to  
19 remove the order from the law enforcement information network.

20 Sec. 25b. (1) As used in this section:

21 (a) "Body cavity" means the interior of the human body not  
22 visible by normal observation, being the stomach or rectal cavity  
23 of a person — and the vagina of a female person.

24 (b) "Body cavity search" means ~~the~~ A physical intrusion  
25 into a body cavity for the purpose of discovering any object con-  
26 cealed in a body cavity.

1 (2) Except as otherwise provided in this section, a search  
2 of a body cavity shall not be conducted without a valid search  
3 warrant.

4 (3) Subsection (2) ~~shall~~ DOES not apply to a body cavity  
5 search of a person who is any of the following:

6 (a) A person serving a sentence for a criminal offense in a  
7 detention facility or a state correctional facility under the  
8 jurisdiction of the department of corrections.

9 (b) A person who, as a result of an order by a court, is  
10 lodged in an inpatient facility operated by or under contract  
11 with the department of ~~mental~~ COMMUNITY health or a county com-  
12 munity mental health board, if the person is self-abusive and the  
13 search is necessary for his or her protection.

14 (c) A person who, as the result of a dispositional order  
15 entered by the juvenile division of the probate court OR THE  
16 FAMILY DIVISION OF THE CIRCUIT COURT after adjudication, is  
17 residing in a juvenile detention facility.

18 (4) If any of the circumstances described in subsection  
19 (3)(a), (b), or (c) applies, a search of a body cavity shall not  
20 be conducted unless the person conducting the search has obtained  
21 prior written authorization from the chief administrative officer  
22 of the facility ~~or~~ or from that officer's designee.

23 (5) A body cavity search shall be conducted by a licensed  
24 physician or a physician's assistant, licensed practical nurse,  
25 or registered professional nurse acting with the approval of a  
26 licensed physician. If the body cavity search is conducted by a  
27 person of the opposite sex ~~of~~ AS the person being searched, the

1 search shall be conducted in the presence of a person of the same  
2 sex as the person being searched.

3 (6) If a body cavity search is conducted pursuant to a valid  
4 search warrant, the law enforcement officer who executes the war-  
5 rant required under subsection (2) shall prepare a report con-  
6 taining all of the following:

7 (a) A copy of the search warrant required under subsection  
8 (2).

9 (b) The name and sex of the person searched, if not con-  
10 tained in the warrant.

11 (c) The name of the person who conducted the search.

12 (d) The time, date, and place of the search.

13 (e) A list of all items recovered from the person who was  
14 searched.

15 (f) The name and sex of all law enforcement officers or  
16 employees of the law enforcement agency present at the search.

17 (7) If a body cavity search is conducted ~~pursuant to~~ UNDER  
18 subsections (3) and (4), the personnel authorized to conduct the  
19 body cavity search shall prepare a report containing all of the  
20 following:

21 (a) A copy of the written authorization required under sub-  
22 section (4).

23 (b) The name and sex of the person searched, if not con-  
24 tained in the written authorization.

25 (c) The name of the person who conducted the search.

26 (d) The time, date, and place of the search.

1 (e) A list of all items recovered from the person who was  
2 searched.

3 (f) The name and sex of all personnel present at the  
4 search.

5 (8) A copy of the report required by subsection (6) or (7)  
6 ~~, as applicable,~~ shall be given without cost to the person who  
7 has been searched, subject to deletions permitted by section 13  
8 of the freedom of information act, Act No. 442 of the Public Acts  
9 of 1976.

10 (9) A law enforcement officer, an employee of the law  
11 enforcement agency, or the chief administrative officer or per-  
12 sonnel of a facility described in subsection (3) ~~—~~ who conducts  
13 or authorizes a body cavity search in violation of this section  
14 is guilty of a misdemeanor.

15 Sec. 27. (1) Except as otherwise provided in section 606 of  
16 the revised judicature act of 1961, Act No. 236 of the Public  
17 Acts of 1961, being section 600.606 of the Michigan Compiled  
18 Laws, or section 10a(1)(c) of Act No. 369 of the Public Acts of  
19 1919, being section 725.10a of the Michigan Compiled Laws, if a  
20 child under 17 years of age is arrested ~~—~~ with or without a  
21 warrant, the child shall be taken immediately before the juvenile  
22 division of the probate court OR THE FAMILY DIVISION OF THE CIR-  
23 CUIT COURT of the county where the offense is alleged to have  
24 been committed. ~~—, and the~~ THE officer making the arrest shall  
25 immediately make and file, or cause to be made and filed, a peti-  
26 tion against the child as provided in chapter XIIA of Act No. 288

1 of the Public Acts of 1939, ~~as amended,~~ being sections 712A.1  
2 to 712A.28 of the Michigan Compiled Laws.

3 (2) Except as otherwise provided in section 606 of Act  
4 No. 236 of the Public Acts of 1961 ~~, being section 600.606 of~~  
5 ~~the Michigan Compiled Laws,~~ or section 10a(1)(c) of Act No. 369  
6 of the Public Acts of 1919, ~~being section 725.10a of the~~  
7 ~~Michigan Compiled Laws,~~ if during the pendency of a criminal  
8 case against a child in a court in this state it is ascertained  
9 that the child is under 17 years of age, the court shall immedi-  
10 ately transfer the case, together with all papers connected with  
11 the case, to the juvenile division of the probate court OR THE  
12 FAMILY DIVISION OF THE CIRCUIT COURT of the county where the  
13 offense is alleged to have been committed.

14 (3) If a child 15 years of age or older is charged with a  
15 felony, the ~~judge of~~ JUVENILE DIVISION OF THE probate COURT OR  
16 THE FAMILY DIVISION OF THE CIRCUIT COURT, after investigation and  
17 examination and upon motion of the prosecuting attorney, may  
18 waive jurisdiction under section 4 of chapter XIIIA of Act No. 288  
19 of the Public Acts of 1939, being section 712A.4 of the Michigan  
20 Compiled Laws. If jurisdiction is waived, ~~it shall be lawful to~~  
21 ~~try~~ the child MAY BE TRIED in the court having general criminal  
22 jurisdiction of the offense.

23 (4) If during the pendency of a criminal case against a  
24 child in a court of record ~~other than a probate court~~ it is  
25 determined that the child is 17 years of age, ~~then the court if~~  
26 AND the court finds that any of the conditions exist as outlined  
27 in section 2(d) of chapter XIIIA of Act No. 288 of the Public Acts

1 of 1939, ~~as amended,~~ being section 712A.2 of the Michigan  
2 Compiled Laws, upon motion of the prosecuting attorney, the  
3 child, or his or her representative, THE COURT may transfer the  
4 case together with all papers connected with the case to the  
5 juvenile division of the probate court OR THE FAMILY DIVISION OF  
6 THE CIRCUIT COURT of the county where the offense is alleged to  
7 have been committed.

8

## CHAPTER VI

9       Sec. 14. (1) If the court determines at the conclusion of  
10 the preliminary examination of a person charged with a felony  
11 that the offense charged is not a felony or that an included  
12 offense that is not a felony has been committed, the accused  
13 shall not be dismissed but the magistrate shall proceed in the  
14 same manner as if the accused had initially been charged with an  
15 offense that is not a felony.

16       (2) If at the conclusion of the preliminary examination of a  
17 juvenile the magistrate finds that a violation of section 83, 89,  
18 91, 316, 317, 520b, 529, or 529a of the Michigan penal code, Act  
19 No. 328 of the Public Acts of 1931, being sections 750.83,  
20 750.89, 750.91, 750.316, 750.317, 750.520b, 750.529, and 750.529a  
21 of the Michigan Compiled Laws, or section 7401(2)(a)(i) or  
22 7403(2)(a)(i) of the public health code, Act No. 368 of the  
23 Public Acts of 1978, being sections 333.7401 and 333.7403 of the  
24 Michigan Compiled Laws, did not occur or that there is not proba-  
25 ble cause to believe that the juvenile committed the violation,  
26 but that there is probable cause to believe that some other  
27 offense occurred and that the juvenile committed that other

1 offense, the magistrate shall transfer the case to the juvenile  
2 division of the probate court OR THE FAMILY DIVISION OF THE CIR-  
3 CUIT COURT of the county where the offense is alleged to have  
4 been committed. A transfer under this subsection does not pre-  
5 vent the juvenile division of the probate court OR THE FAMILY  
6 DIVISION OF THE CIRCUIT COURT from waiving jurisdiction over the  
7 juvenile under section 4 of chapter XIIIA of Act No. 288 of the  
8 Public Acts of 1939, being section 712A.4 of the Michigan  
9 Compiled Laws.

10 Section 2. This amendatory act shall not take effect unless  
11 House Bill No. 5158 of the 88th Legislature is enacted into law.