

Act No. 316
Public Acts of 2014
Approved by the Governor
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Senators Pavlov, Jansen, Robertson, Booher, Proos, Brandenburg and Casperson

ENROLLED SENATE BILL No. 863

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 6b of chapter V (MCL 765.6b), as amended by 2013 PA 54.

The People of the State of Michigan enact:

CHAPTER V

Sec. 6b. (1) A judge or district court magistrate may release a defendant under this subsection subject to conditions reasonably necessary for the protection of 1 or more named persons. If a judge or district court magistrate releases a defendant under this subsection subject to protective conditions, the judge or district court magistrate shall make a finding of the need for protective conditions and inform the defendant on the record, either orally or by a writing that is personally delivered to the defendant, of the specific conditions imposed and that if the defendant violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bail forfeited or revoked and new conditions of release imposed, in addition to the penalty provided under section 3f of chapter XI and any other penalties that may be imposed if the defendant is found in contempt of court.

(2) An order or amended order issued under subsection (1) shall contain all of the following:

(a) A statement of the defendant's full name.

(b) A statement of the defendant's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or district court magistrate considers appropriate.

- (c) A statement of the date the conditions become effective.
- (d) A statement of the date on which the order will expire.
- (e) A statement of the conditions imposed.

(3) An order or amended order issued under this subsection and subsection (1) may impose a condition that the defendant not purchase or possess a firearm. However, if the court orders the defendant to carry or wear an electronic monitoring device as a condition of release as described in subsection (6), the court shall also impose a condition that the defendant not purchase or possess a firearm.

(4) The judge or district court magistrate shall immediately direct the issuing court or a law enforcement agency within the jurisdiction of the court, in writing, to enter an order or amended order issued under subsection (1) or subsections (1) and (3) into LEIN. If the order or amended order is rescinded, the judge or district court magistrate shall immediately order the issuing court or law enforcement agency to remove the order or amended order from LEIN.

(5) The issuing court or a law enforcement agency within the jurisdiction of the court shall immediately enter an order or amended order into LEIN or shall remove the order or amended order from the law enforcement information network upon expiration of the order or as directed by the court under subsection (4).

(6) If a defendant who is charged with a crime involving domestic violence, or any other assaultive crime, is released under this subsection and subsection (1), the judge or district court magistrate may order the defendant to wear an electronic monitoring device as a condition of release. With the informed consent of the victim, the court may also order the defendant to provide the victim of the charged crime with an electronic receptor device capable of receiving the global positioning system information from the electronic monitoring device worn by the defendant that notifies the victim if the defendant is located within a proximity to the victim as determined by the judge or district court magistrate in consultation with the victim. The victim shall also be furnished with a telephone contact with the local law enforcement agency to request immediate assistance if the defendant is located within that proximity to the victim. In addition, the victim may provide the court with a list of areas from which he or she would like the defendant excluded. The court shall consider the victim's request and shall determine which areas the defendant shall be prohibited from accessing. The court shall instruct the entity monitoring the defendant's position to notify the proper authorities if the defendant violates the order. In determining whether to order a defendant to wear an electronic monitoring device, the court shall consider the likelihood that the defendant's participation in electronic monitoring will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threaten the victim prior to trial. The victim may request the court to terminate the victim's participation in the monitoring of the defendant at any time. The court shall not impose sanctions on the victim for refusing to participate in monitoring under this subsection. A defendant described in this subsection shall only be released if he or she agrees to pay the cost of the device and any monitoring as a condition of release or to perform community service work in lieu of paying that cost. An electronic monitoring device ordered to be worn under this subsection shall provide reliable notification of removal or tampering. As used in this subsection:

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

(b) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(c) "Electronic monitoring device" includes any electronic device or instrument that is used to track the location of an individual or to monitor an individual's blood alcohol content, but does not include any technology that is implanted or violates the corporeal body of the individual.

(d) "Informed consent" means that the victim was given information concerning all of the following before consenting to participate in electronic monitoring:

(i) The victim's right to refuse to participate in that monitoring and the process for requesting the court to terminate the victim's participation after it has been ordered.

(ii) The manner in which the monitoring technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements.

(iii) The boundaries imposed on the defendant during the monitoring program.

(iv) Sanctions that the court may impose on the defendant for violating an order issued under this subsection.

(v) The procedure that the victim is to follow if the defendant violates an order issued under this subsection or if monitoring equipment fails to operate properly.

(vi) Identification of support services available to assist the victim to develop a safety plan to use if the court's order issued under this subsection is violated or if the monitoring equipment fails to operate properly.

(vii) Identification of community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other help in addressing the consequences and effects of domestic violence.

(viii) The nonconfidential nature of the victim's communications with the court concerning electronic monitoring and the restrictions to be imposed upon the defendant's movements.

(7) A judge or district court magistrate may release under this subsection a defendant subject to conditions reasonably necessary for the protection of the public if the defendant has submitted to a preliminary roadside analysis

that detects the presence of alcoholic liquor, a controlled substance, or other intoxicating substance, or any combination of them, and that a subsequent chemical test is pending. The judge or district court magistrate shall inform the defendant on the record, either orally or by a writing that is personally delivered to the defendant, of all of the following:

(a) That if the defendant is released under this subsection, he or she shall not operate a motor vehicle under the influence of alcoholic liquor, a controlled substance, or another intoxicating substance, or any combination of them, as a condition of release.

(b) That if the defendant violates the condition of release under subdivision (a), he or she will be subject to arrest without a warrant, shall have his or her bail forfeited or revoked, and shall not be released from custody prior to arraignment.

(8) The judge or district court magistrate shall immediately direct the issuing court or a law enforcement agency within the jurisdiction of the court, in writing, to enter an order or amended order issued under subsection (7) into LEIN. If the order or amended order is rescinded, the judge or district court magistrate shall immediately order the issuing court or law enforcement agency to remove the order or amended order from LEIN.

(9) The issuing court or a law enforcement agency within the jurisdiction of the court shall immediately enter an order or amended order into LEIN. If the order or amended order is rescinded, the court or law enforcement agency shall immediately remove the order or amended order from LEIN upon expiration of the order under subsection (8).

(10) This section does not limit the authority of judges or district court magistrates to impose protective or other release conditions under other applicable statutes or court rules, including ordering a defendant to wear an electronic monitoring device.

(11) As used in this section, "LEIN" means the law enforcement information network regulated under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215, or by the department of state police.

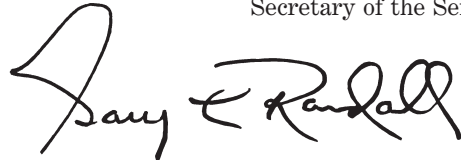
Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5385 of the 97th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor