

HOUSE BILL NO. 5805

May 20, 2020, Introduced by Reps. Berman, Wozniak, Yaroach, Elder and Warren and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 1 of chapter I (MCL 761.1), as amended by 2017
PA 2, and by adding section 12 to chapter III.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER I

Sec. 1. As used in this act:

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

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

(c) "Complaint" means a written accusation, under oath or upon



1 affirmation, that a felony, misdemeanor, or ordinance violation has
2 been committed and that the person named or described in the
3 accusation is guilty of the offense.

4 (d) "County juvenile agency" means that term as defined in
5 section 2 of the county juvenile agency act, 1998 PA 518, MCL
6 45.622.

7 (e) "Emergency motion" means a motion that is filed by the
8 defendant alleging a need for an emergency hearing for any of the
9 following reasons:

10 (i) Deprivation of liberty.

11 (ii) A constitutional violation including, but not limited to,
12 a due process or a cruel and unusual punishment violation.

13 (iii) A matter that would result in irreparable harm to the
14 defendant if not heard on an emergency basis.

15 (f) ~~(e)~~—"Federal law enforcement officer" means an officer or
16 agent employed by a law enforcement agency of the United States
17 government whose primary responsibility is enforcing laws of the
18 United States.

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

23 (h) ~~(g)~~—"Indictment" means 1 or more of the following:

24 (i) An indictment.

25 (ii) An information.

26 (iii) A presentment.

27 (iv) A complaint.

28 (v) A warrant.



1 (vi) A formal written accusation.

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

4 (i) ~~(h)~~ "Jail", "prison", or a similar word includes a
5 juvenile facility in which a juvenile has been placed pending trial
6 under section 27a of chapter IV.

7 (j) ~~(i)~~ "Judicial district" means the following:

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

9 (ii) With regard to municipal courts, the city in which the
10 municipal court functions or the village served by a municipal
11 court under section 9928 of the revised judicature act of 1961,
12 1961 PA 236, MCL 600.9928.

13 (iii) With regard to the district court, the county, district,
14 or political subdivision in which venue is proper for criminal
15 actions.

16 (k) ~~(j)~~ "Juvenile" means a person within the jurisdiction of
17 the circuit court under section 606 of the revised judicature act
18 of 1961, 1961 PA 236, MCL 600.606.

19 (l) ~~(k)~~ "Juvenile facility" means a county facility, an
20 institution operated as an agency of the county or family division
21 of the circuit court, or an institution or agency described in the
22 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
23 803.309, to which a juvenile has been committed under section 27a
24 of chapter IV.

25 (m) ~~(l)~~ "Magistrate" means a judge of the district court or a
26 judge of a municipal court. Magistrate does not include a district
27 court magistrate, except that a district court magistrate may
28 exercise the powers, jurisdiction, and duties of a magistrate if
29 specifically provided in this act, the revised judicature act of



1 1961, 1961 PA 236, MCL 600.101 to 600.9947, or any other statute.
 2 This definition does not limit the power of a justice of the
 3 supreme court, a circuit judge, or a judge of a court of record
 4 having jurisdiction of criminal cases under this act, or deprive
 5 him or her of the power to exercise the authority of a magistrate.

6 **(n)** ~~(m)~~—"Minor offense" means a misdemeanor or ordinance
 7 violation for which the maximum permissible imprisonment does not
 8 exceed 92 days and the maximum permissible fine does not exceed
 9 \$1,000.00.

10 **(o)** ~~(n)~~—"Misdemeanor" means a violation of a penal law of this
 11 state that is not a felony or a violation of an order, rule, or
 12 regulation of a state agency that is punishable by imprisonment or
 13 a fine that is not a civil fine.

14 **(p)** ~~(o)~~—"Ordinance violation" means either of the following:

15 (i) A violation of an ordinance or charter of a city, village,
 16 township, or county that is punishable by imprisonment or a fine
 17 that is not a civil fine.

18 (ii) A violation of an ordinance, rule, or regulation of any
 19 other governmental entity authorized by law to enact ordinances,
 20 rules, or regulations that is punishable by imprisonment or a fine
 21 that is not a civil fine.

22 **(q)** ~~(p)~~—"Person", "accused", or a similar word means an
 23 individual or, unless a contrary intention appears, a public or
 24 private corporation, partnership, or unincorporated or voluntary
 25 association.

26 **(r)** ~~(q)~~—"Property" includes any matter or thing upon or in
 27 respect to which an offense may be committed.

28 **(s)** ~~(r)~~—"Prosecuting attorney" means the prosecuting attorney
 29 for a county, an assistant prosecuting attorney for a county, the



1 attorney general, the deputy attorney general, an assistant
 2 attorney general, a special prosecuting attorney, or, in connection
 3 with the prosecution of an ordinance violation, an attorney for the
 4 political subdivision or governmental entity that enacted the
 5 ordinance, charter, rule, or regulation upon which the ordinance
 6 violation is based.

7 **(t)** ~~(s)~~—"Recidivism" means any rearrest, reconviction, or
 8 reincarceration in prison or jail for a felony or misdemeanor
 9 offense or a probation or parole violation of an individual as
 10 measured first after 3 years and again after 5 years from the date
 11 of his or her release from incarceration, placement on probation,
 12 or conviction, whichever is later.

13 **(u)** ~~(t)~~—"Taken", "brought", or "before" a magistrate or judge
 14 for purposes of criminal arraignment or the setting of bail means
 15 either of the following:

16 (i) Physical presence before a judge or district court
 17 magistrate.

18 (ii) Presence before a judge or district court magistrate by
 19 use of 2-way interactive video technology.

20 **(v)** ~~(u)~~—"Technical parole violation" means a violation of the
 21 terms of a parolee's parole order that is not a violation of a law
 22 of this state, a political subdivision of this state, another
 23 state, or the United States or of tribal law.

24 **(w)** ~~(v)~~—"Technical probation violation" means a violation of
 25 the terms of a probationer's probation order that is not a
 26 violation of a law of this state, a political subdivision of this
 27 state, another state, or the United States or of tribal law.

28 **(x)** ~~(w)~~—"Writing", "written", or a similar term refers to
 29 words printed, painted, engraved, lithographed, photographed,



1 copied, traced, or otherwise made visible to the eye.

2 CHAPTER III

3 Sec. 12. (1) In all criminal cases in the courts of this
4 state, the court shall hear an emergency motion by the defendant
5 for alleged deprivation of liberty within 24 hours after filing the
6 motion with the court.

7 (2) Subject to subsection (1), in all criminal cases in the
8 courts of this state, the court shall hear an emergency motion by
9 the defendant within 48 hours after filing the motion with the
10 court.

11 (3) In all probation violation and post-conviction contempt
12 matters in the courts of this state, the court may allow emergency
13 motions under subsection (1) or (2) to be heard ex parte. In the
14 case of an ex parte hearing, notice and opportunity to be heard
15 must be provided to the prosecution within 24 hours for a hearing
16 under subsection (1) or 48 hours for a hearing under subsection
17 (2).

18 (4) The emergency motion under subsection (1) or (2) must
19 include the following:

20 (a) The basis for the emergency nature of the hearing under
21 subsection (1) or (2).

22 (b) A statement of whether the defendant or his or her counsel
23 provided a copy of the notice and motion to the prosecution.

24 (c) The remedy requested by the defendant from the court.

25 (d) The notice and motion must be provided in writing, by
26 first-class mail, personal delivery, or electronic communication.

27 (5) An emergency motion must be given precedence on the court
28 calendar. If no judge has been assigned to hear the case or the
29 assigned judge is unable to hear the emergency motion, the chief



1 judge shall hear the motion. If the chief judge is unable to hear
2 the emergency motion, any available judge shall hear the motion.

3 (6) Emergency motions do not include standard motions for
4 bond.

5 (7) An individual who knowingly and intentionally makes a
6 false statement to the court in support of his or her emergency
7 motion is subject to the contempt powers of the court.

8 (8) The court may deny without hearing a defendant's second or
9 subsequent emergency motion based on the same allegations or facts.

