

EMERGENCY MOTIONS IN CERTAIN CRIMINAL MATTERS

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House Bill 4795 as introduced
Sponsor: Rep. Ryan Berman
Committee: Oversight
Complete to 6-9-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4795 would add a new section to the Code of Criminal Procedure regarding an emergency motion filed in a criminal matter and define the term. Under the bill, a court would be required to hear an *emergency motion* filed by the defendant in a criminal matter within 48 hours of its being filed or within 24 hours if the emergency motion alleged deprivation of liberty.

Emergency motion would mean a motion filed by the defendant that alleges a need for an emergency hearing for any of the following reasons:

- Deprivation of liberty.
- A constitutional violation, including a due process or a cruel and unusual punishment violation.
- A matter that would result in irreparable harm to the defendant if not heard on an emergency basis.

In all probation violation and post-conviction contempt matters, the court could allow an emergency motion filed by a defendant to be heard *ex parte* (meaning the opposing party would not have to be present). In the case of an *ex parte* hearing, notice and opportunity to be heard would have to be provided to the prosecution within 24 hours for a hearing on a motion alleging deprivation of liberty or within 48 hours for a hearing on a motion alleging a constitutional violation or irreparable harm.

An emergency motion filed under the bill's provisions would have to be provided in writing by first-class mail, personal delivery, or electronic communication and would have to include the following:

- The basis for the emergency nature of the hearing.
- A statement of whether the defendant or his or her counsel provided a copy of the notice and motion to the prosecution.
- The remedy requested by the defendant from the court.

An emergency motion would have to be given precedence on the court calendar. If no judge had been assigned to hear the case or if the assigned judge were unable to hear the emergency motion, the chief judge would have to hear the motion. If the chief judge were unable to hear the motion, any available judge could hear it.

Emergency motions would not include standard motions for bond. A court could deny without a hearing a defendant's second or subsequent emergency motion that is based on the same allegations or facts. Further, an individual who knowingly and intentionally made a false

statement to the court in support of his or her emergency motion would be subject to the court's contempt powers.

MCL 761.1 and proposed MCL 763.12

FISCAL IMPACT:

House Bill 4795 would have no fiscal impact on the state and no foreseeable fiscal impact on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.