

**SUBSTITUTE FOR
HOUSE BILL NO. 4795**

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



1 (d) "County juvenile agency" means that term as defined in
2 section 2 of the county juvenile agency act, 1998 PA 518, MCL
3 45.622.

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

7 (i) Deprivation of liberty.

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

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

12 (f) ~~(e)~~—"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 enforcing laws of the
15 United States.

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

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

21 (i) An indictment.

22 (ii) An information.

23 (iii) A presentment.

24 (iv) A complaint.

25 (v) A warrant.

26 (vi) A formal written accusation.

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

29 (i) ~~(h)~~—"Jail", "prison", or a similar word includes a



1 juvenile facility in which a juvenile has been placed pending trial
2 under section 27a of chapter IV.

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

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

5 (ii) With regard to municipal courts, the city in which the
6 municipal court functions or the village served by a municipal
7 court under section 9928 of the revised judicature act of 1961,
8 1961 PA 236, MCL 600.9928.

9 (iii) With regard to the district court, the county, district,
10 or political subdivision in which venue is proper for criminal
11 actions.

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

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

21 (m) ~~(l)~~—"Magistrate" means a judge of the district court or a
22 judge of a municipal court. Magistrate does not include a district
23 court magistrate, except that a district court magistrate may
24 exercise the powers, jurisdiction, and duties of a magistrate if
25 specifically provided in this act, the revised judicature act of
26 1961, 1961 PA 236, MCL 600.101 to 600.9947, or any other statute.
27 This definition does not limit the power of a justice of the
28 supreme court, a circuit judge, or a judge of a court of record
29 having jurisdiction of criminal cases under this act, or deprive



1 him or her of the power to exercise the authority of a magistrate.

2 **(n)** ~~(m)~~ "Minor offense" means a misdemeanor or ordinance
3 violation for which the maximum permissible imprisonment does not
4 exceed 92 days and the maximum permissible fine does not exceed
5 \$1,000.00.

6 **(o)** ~~(n)~~ "Misdemeanor" means a violation of a penal law of this
7 state that is not a felony or a violation of an order, rule, or
8 regulation of a state agency that is punishable by imprisonment or
9 a fine that is not a civil fine.

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

11 *(i)* A violation of an ordinance or charter of a city, village,
12 township, or county that is punishable by imprisonment or a fine
13 that is not a civil fine.

14 *(ii)* A violation of an ordinance, rule, or regulation of any
15 other governmental entity authorized by law to enact ordinances,
16 rules, or regulations that is punishable by imprisonment or a fine
17 that is not a civil fine.

18 **(q)** ~~(p)~~ "Person", "accused", or a similar word means an
19 individual or, unless a contrary intention appears, a public or
20 private corporation, partnership, or unincorporated or voluntary
21 association.

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

24 **(s)** ~~(r)~~ "Prosecuting attorney" means the prosecuting attorney
25 for a county, an assistant prosecuting attorney for a county, the
26 attorney general, the deputy attorney general, an assistant
27 attorney general, a special prosecuting attorney, or, in connection
28 with the prosecution of an ordinance violation, an attorney for the
29 political subdivision or governmental entity that enacted the



1 ordinance, charter, rule, or regulation upon which the ordinance
2 violation is based.

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

9 (u) ~~(t)~~—"Taken", "brought", or "before" a magistrate or judge
10 for purposes of criminal arraignment or the setting of bail means
11 either of the following:

12 (i) Physical presence before a judge or district court
13 magistrate.

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

16 (v) ~~(u)~~—"Technical parole violation" means a violation of the
17 terms of a parolee's parole order that is not a violation of a law
18 of this state, a political subdivision of this state, another
19 state, or the United States or of tribal law.

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

24 (x) ~~(w)~~—"Writing", "written", or a similar term refers to
25 words printed, painted, engraved, lithographed, photographed,
26 copied, traced, or otherwise made visible to the eye.

27 CHAPTER III

28 **Sec. 12. (1) In all criminal cases in the courts of this**
29 **state, the court shall hear an emergency motion by the defendant**



1 for alleged deprivation of liberty within 24 hours after filing the
2 motion with the court.

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

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

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

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

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

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

21 (5) The notice and emergency motion must be provided in
22 writing, by first-class mail, personal delivery, or electronic
23 communication.

24 (6) An emergency motion must be given precedence on the court
25 calendar. If no judge has been assigned to hear the case or the
26 assigned judge is unable to hear the emergency motion, the chief
27 judge shall hear the motion. If the chief judge is unable to hear
28 the emergency motion, any available judge shall hear the motion.

29 (7) Emergency motions under this section must be filed in



1 conformity with the court rules.

2 (8) If an individual knowingly and intentionally makes a false
3 statement to the court in support of his or her emergency motion,
4 the court may impose an appropriate sanction, which may include a
5 fine of not more than \$1,000.00.

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

