

HOUSE BILL NO. 5438

October 20, 2021, Introduced by Reps. VanWoerkom, LaGrand, Steven Johnson, Brann, Young, Hood, Sowerby, Aiyash, Kuppa, Stone, Whitsett and Yancey 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 and section 1 of chapter VIII
(MCL 761.1 and 768.1), section 1 of chapter I as amended by 2017 PA
2.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 CHAPTER I
- 2 Sec. 1. As used in this act:
- 3 (a) "Abscond" means failure to appear with the willful intent

1 **to avoid or delay adjudication.**

2 (b) ~~(a)~~—"Act" or "doing of an act" includes an omission to
3 act.

4 (c) ~~(b)~~—"Clerk" means the clerk or a deputy clerk of the
5 court.

6 (d) ~~(e)~~ "Complaint" means a written accusation, under oath or
7 upon affirmation, that a felony, misdemeanor, or ordinance
8 violation has been committed and that the person named or described
9 in the accusation is guilty of the offense.

10 (e) ~~(d)~~—"County juvenile agency" means that term as defined in
11 section 2 of the county juvenile agency act, 1998 PA 518, MCL
12 45.622.

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

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

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

22 (i) An indictment.

23 (ii) An information.

24 (iii) A presentment.

25 (iv) A complaint.

26 (v) A warrant.

27 (vi) A formal written accusation.

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

1 **(i)** ~~(h)~~—"Jail", "prison", or a similar word includes a
2 juvenile facility in which a juvenile has been placed pending trial
3 under section 27a of chapter IV.

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

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

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

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

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

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

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

1 having jurisdiction of criminal cases under this act, or deprive
2 him or her of the power to exercise the authority of a magistrate.

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

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

11 **(p)** **"Nonappearance" means a failure to appear without the**
12 **intent to avoid or delay adjudication.**

13 **(q)** ~~(o)~~—"Ordinance violation" means either of the following:

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

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

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

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

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

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

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

13 (v) ~~(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 (w) ~~(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 (x) ~~(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 (y) **"Without unnecessary delay" means not more than 24 hours**
29 **after a person is arrested or, upon a showing of good cause, not**

1 more than 48 hours after a person is arrested.

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

5 CHAPTER VIII

6 Sec. 1. (1) The people of this state and persons charged with
7 crime are entitled to and shall have a speedy trial and
8 determination of all prosecutions. ~~and it is hereby made~~ **It is** the
9 duty of all public officers having duties to perform in any
10 criminal case, to bring such case to a final determination without
11 delay except as may be necessary to secure to the accused a fair
12 and impartial trial. **Except as provided in subsection (2), a**
13 **defendant must be tried, and a final determination of the charge**
14 **must be made, not more than 18 months after arrest or the issuance**
15 **of an appearance ticket.**

16 (2) The time period in subsection (1) may be tolled if any of
17 the following apply:

18 (a) The defendant explicitly waives the time period on the
19 record or implicitly waives the time period by his or her conduct.

20 (b) The delay is attributable to the defendant.

21 (c) The delay is necessary to accommodate the request of any
22 victim or victims in the case, if the court finds on the record
23 that the request is reasonable.

24 (d) The delay is attributable to an act of God, including, but
25 not limited to, a fire, earthquake, hurricane, storm, pandemic, or
26 similar natural disaster or phenomenon.

27 (e) The delay is otherwise justified by good cause found on
28 the record, but not including delays caused by docket congestion.

29 (3) If a defendant is not tried or a final determination on

1 the charge or charges is not made within the time period under
2 subsection (1) and none of the circumstances under subsection (2)
3 apply, then the charge against the defendant must be dismissed
4 without prejudice.

5 (4) It is the responsibility of the court to ensure that
6 judicial or docket delays do not result in case dismissal under
7 this section.

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