

HOUSE BILL No. 5279

October 17, 2001, Introduced by Reps. Woronchak, George, Vander Veen, Allen, Birkholz, Meyer, Middaugh, Cassis, Shackleton, Newell, Jelinek, Richardville, Toy, Pumford, Scranton, Patterson, Kuipers, Sanborn, Gilbert and DeVuyst and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 15b of chapter IV and section 9a of chapter X
(MCL 764.15b and 770.9a), section 15b of chapter IV as amended by
1999 PA 269 and section 9a of chapter X as amended by 1994 PA
195.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER IV

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Sec. 15b. (1) A peace officer, without a warrant, may

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arrest and take into custody an individual when the peace officer

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has or receives positive information that another peace officer

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has reasonable cause to believe all of the following apply:

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(a) A personal protection order has been issued under

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section 2950 or 2950a of the revised judicature act of 1961, 1961

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PA 236, MCL 600.2950 and 600.2950a.

1 (b) The individual named in the personal protection order is
2 violating or has violated the order. An individual is violating
3 or has violated the order if that individual commits 1 or more of
4 the following acts the order specifically restrains or enjoins
5 the individual from committing:

6 (i) Assaulting, attacking, beating, molesting, or wounding a
7 named individual.

8 (ii) Removing minor children from an individual having legal
9 custody of the children, except as otherwise authorized by a cus-
10 tody or parenting time order issued by a court of competent
11 jurisdiction.

12 (iii) Entering onto premises.

13 (iv) Engaging in conduct prohibited under section 411h or
14 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and
15 750.411i.

16 (v) Threatening to kill or physically injure a named
17 individual.

18 (vi) Purchasing or possessing a firearm.

19 (vii) Interfering with petitioner's efforts to remove
20 petitioner's children or personal property from premises that are
21 solely owned or leased by the individual to be restrained or
22 enjoined.

23 (viii) Interfering with petitioner at petitioner's place of
24 employment or education or engaging in conduct that impairs
25 petitioner's employment or educational relationship or
26 environment.

1 (ix) Any other act or conduct specified by the court in the
2 personal protection order.

3 (c) The personal protection order states on its face that a
4 violation of its terms subjects the individual to immediate
5 arrest and either of the following:

6 (i) If the individual restrained or enjoined is 17 years of
7 age or older, to criminal contempt of court and, if found guilty
8 of criminal contempt, to imprisonment for not more than 93 days
9 and to a fine of not more than \$500.00.

10 (ii) If the individual restrained or enjoined is less than
11 17 years of age, to the dispositional alternatives listed in sec-
12 tion 18 of chapter XIIIA of the probate code of 1939, 1939 PA 288,
13 MCL 712A.18.

14 (2) An individual arrested under this section shall be
15 brought before the family division of the circuit court having
16 jurisdiction in the cause within 24 hours after arrest to answer
17 to a charge of contempt for violating the personal protection
18 order, at which time the court shall do each of the following:

19 (a) Set a time certain for a hearing on the alleged viola-
20 tion of the personal protection order. The hearing shall be held
21 within 72 hours after arrest, unless extended by the court on the
22 motion of the arrested individual or the prosecuting attorney.

23 (b) Set a reasonable bond pending a hearing of the alleged
24 violation of the personal protection order. HOWEVER, IF THE
25 INDIVIDUAL ARRESTED HAS PREVIOUSLY BEEN CONVICTED UNDER SECTION
26 411I OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.411I, THE
27 COURT SHALL NOT SET BOND UNLESS THE COURT FIRST FINDS, BY CLEAR

1 AND CONVINCING EVIDENCE, THAT THE INDIVIDUAL ARRESTED POSES NO
2 DANGER TO OTHERS.

3 (c) Notify the prosecuting attorney of the criminal contempt
4 proceeding.

5 (d) Notify the party who procured the personal protection
6 order and his or her attorney of record, if any, and direct the
7 party to appear at the hearing and give evidence on the charge of
8 contempt.

9 (3) In circuits in which the circuit court judge may not be
10 present or available within 24 hours after arrest, an individual
11 arrested under this section shall be taken before the district
12 court within 24 hours after arrest, at which time the district
13 court shall set bond and order the defendant to appear before the
14 family division of circuit court in the county for a hearing on
15 the charge. If the district court will not be open within 24
16 hours after arrest, a judge or district court magistrate shall
17 set bond AS PROVIDED UNDER SUBSECTION (2)(B) and order the
18 defendant to appear before the circuit court in the county for a
19 hearing on the charge.

20 (4) If a criminal contempt proceeding for violation of a
21 personal protection order is not initiated by an arrest under
22 this section but is initiated as a result of a show cause order
23 or other process or proceedings, the court shall do all of the
24 following:

25 (a) Notify the party who procured the personal protection
26 order and his or her attorney of record, if any, and direct the

1 party to appear at the hearing and give evidence on the contempt
2 charge.

3 (b) Notify the prosecuting attorney of the criminal contempt
4 proceeding.

5 (5) The family division of circuit court in each county of
6 this state has jurisdiction to conduct contempt proceedings based
7 upon a violation of a personal protection order described in this
8 section issued by the circuit court in any county of this state.
9 The court of arraignment shall notify the circuit court that
10 issued the personal protection order that the issuing court may
11 request that the defendant be returned to that court for violat-
12 ing the personal protection order. If the court that issued the
13 personal protection order requests that the defendant be returned
14 to that court to stand trial, the county of the requesting court
15 shall bear the cost of transporting the defendant to that
16 county.

17 (6) The family division of circuit court has jurisdiction to
18 conduct contempt proceedings based upon a violation of a personal
19 protection order issued pursuant to section 2(h) of chapter XIIIA
20 of the probate code of 1939, 1939 PA 288, MCL 712A.2, by the
21 family division of circuit court in any county of this state.
22 The family division of circuit court that conducts the prelimi-
23 nary inquiry shall notify the family division of circuit court
24 that issued the personal protection order that the issuing court
25 may request that the respondent be returned to that county for
26 violating the personal protection order. If the family division
27 of circuit court that issued the personal protection order

1 requests that the respondent be returned to that court to stand
2 trial, the county of the requesting court shall bear the cost of
3 transporting the respondent to that county.

4 (7) The prosecuting attorney shall prosecute a criminal con-
5 tempt proceeding initiated by the court under subsection (2) or
6 initiated by a show cause order under subsection (4), unless the
7 party who procured the personal protection order retains his or
8 her own attorney for the criminal contempt proceeding or the
9 prosecuting attorney determines that the personal protection
10 order was not violated or that it would not be in the interest of
11 justice to prosecute the criminal contempt violation. If the
12 prosecuting attorney prosecutes the criminal contempt proceeding,
13 the court shall grant an adjournment for not less than 14 days or
14 a lesser period requested if the prosecuting attorney moves for
15 adjournment. If the prosecuting attorney prosecutes the criminal
16 contempt proceeding, the court may dismiss the proceeding upon
17 motion of the prosecuting attorney for good cause shown.

18 (8) A court shall not rescind a personal protection order,
19 dismiss a contempt proceeding based on a personal protection
20 order, or impose any other sanction for a failure to comply with
21 a time limit prescribed in this section.

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CHAPTER X

23 Sec. 9a. (1) A defendant convicted of an assaultive crime
24 and awaiting sentence shall be detained and shall not be admitted
25 to bail unless the trial court finds by clear and convincing evi-
26 dence that the defendant is not likely to pose a danger to other
27 persons.

1 (2) A defendant convicted of an assaultive crime and
2 sentenced to a term of imprisonment who has filed an appeal or an
3 application for leave to appeal shall be detained and shall not
4 be admitted to bail unless the trial court or the court to which
5 the appeal is taken finds by clear and convincing evidence that
6 both of the following exist:

7 (a) The defendant is not likely to pose a danger to other
8 persons.

9 (b) The appeal or application raises a substantial question
10 of law or fact.

11 (3) As used in this section, "assaultive crime" means an
12 offense against a person described in section 82, 83, 84, 86, 87,
13 88, 89, 316, 317, 321, 349, 349a, 350, 397, 411I, 520b, 520c,
14 520d, 520e, 520g, 529, 529a, or 530 of ~~Act No. 328 of the Public~~
15 ~~Acts of 1931, as amended, being sections~~ THE MICHIGAN PENAL
16 CODE, 1931 PA 328, MCL 750.82, 750.83, 750.84, 750.86, 750.87,
17 750.88, 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a,
18 750.350, 750.397, 750.411I, 750.520b, 750.520c, 750.520d,
19 750.520e, 750.520g, 750.529, 750.529a, and 750.530. ~~of the~~
20 ~~Michigan Compiled Laws.~~

21 (4) The appeal or application for leave to appeal filed by a
22 person denied bail under this section shall be expedited pursuant
23 to rules adopted for that purpose by the supreme court.