

**SUBSTITUTE FOR
HOUSE BILL NO. 5409**

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 1a of chapter IV, section 16a of chapter IX, section 22 of chapter XVI, and sections 15g and 16m of chapter XVII (MCL 764.1a, 769.16a, 776.22, 777.15g, and 777.16m), section 1a of chapter IV as amended by 1994 PA 70, section 16a of chapter IX as amended by 2004 PA 220, section 22 of chapter XVI as amended by 2001 PA 194, section 15g of chapter XVII as added by 2002 PA 206, and section 16m of chapter XVII as amended by 2001 PA 166.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER IV

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Sec. 1a. (1) A magistrate shall issue a warrant upon

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presentation of a proper complaint alleging the commission of an

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offense and a finding of reasonable cause to believe that the

1 individual accused in the complaint committed that offense. The
2 complaint shall be sworn to before a magistrate or clerk.

3 (2) The finding of reasonable cause by the magistrate may be
4 based upon 1 or more of the following:

5 (a) Factual allegations of the complainant contained in the
6 complaint.

7 (b) The complainant's sworn testimony.

8 (c) The complainant's affidavit.

9 (d) Any supplemental sworn testimony or affidavits of other
10 individuals presented by the complainant or required by the
11 magistrate.

12 (3) The magistrate may require sworn testimony of the
13 complainant or other individuals. Supplemental affidavits may be
14 sworn to before an individual authorized by law to administer
15 oaths. The factual allegations contained in the complaint,
16 testimony, or affidavits may be based upon personal knowledge,
17 information and belief, or both.

18 (4) The magistrate shall not refuse to accept a complaint
19 alleging a violation of section 81 or 81a of the Michigan penal
20 code, ~~Act No. 328 of the Public Acts of 1931, being sections~~
21 ~~750.81 and 750.81a of the Michigan Compiled Laws~~ **1931 PA 328,**
22 **MCL 750.81 and 750.81a,** or a violation of a local ordinance
23 substantially corresponding to section 81 of ~~Act No. 328 of the~~
24 ~~Public Acts of 1931~~ **the Michigan penal code, 1931 PA 328, MCL**
25 **750.81,** by the spouse of the victim, a former spouse of the
26 victim, an individual with whom the victim has had a child in
27 common, **an individual with whom the victim has or has had a**

1 **dating relationship**, or an individual residing or having resided
2 in the same household as the victim on grounds that the complaint
3 is signed upon information and belief by an individual other than
4 the victim.

5 (5) A warrant may be issued under this section only upon
6 compliance with the requirements of section 1 of this chapter.

7 (6) **As used in this section, "dating relationship" means**
8 **frequent, intimate associations primarily characterized by the**
9 **expectation of affectional involvement. Dating relationship does**
10 **not include a casual relationship or an ordinary fraternization**
11 **between 2 individuals in a business or social context.**

12 CHAPTER IX

13 Sec. 16a. (1) Except as otherwise provided in subsection
14 (3), upon final disposition of an original charge against a
15 person of a felony or a misdemeanor for which the maximum
16 possible penalty exceeds 92 days' imprisonment or a local
17 ordinance for which the maximum possible penalty is 93 days'
18 imprisonment and that substantially corresponds to a violation of
19 state law that is a misdemeanor for which the maximum possible
20 penalty is 93 days' imprisonment, or a misdemeanor in a case in
21 which the appropriate court was notified that fingerprints were
22 forwarded to the department of state police, or upon final
23 disposition of a charge of criminal contempt under section 2950
24 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL
25 600.2950 and 600.2950a, or final disposition of a charge of
26 criminal contempt for violating a foreign protection order that
27 satisfies the conditions for validity provided in section 2950i

1 of the revised judicature act of 1961, 1961 PA 236, MCL
2 600.2950i, the clerk of the court entering the disposition shall
3 immediately report to the department of state police the final
4 disposition of the charge on forms approved by the state court
5 administrator and in a manner consistent with section 3 of 1925
6 PA 289, MCL 28.243. The report to the department of state police
7 shall include the finding of the judge or jury, including a
8 finding of guilty, guilty but mentally ill, not guilty, or not
9 guilty by reason of insanity, or the person's plea of guilty,
10 nolo contendere, or guilty but mentally ill; if the person was
11 convicted, the offense of which the person was convicted; and a
12 summary of any sentence imposed. The summary of the sentence
13 shall include any probationary term; any minimum, maximum, or
14 alternative term of imprisonment; the total of all fines, costs,
15 and restitution ordered; and any modification of sentence. The
16 report shall include the sentence if imposed under any of the
17 following:

18 (a) Section 7411 of the public health code, 1978 PA 368,
19 MCL 333.7411.

20 (b) Section 1076(4) of the revised judicature act of 1961,
21 1961 PA 236, MCL 600.1076.

22 (c) Section 350a of the Michigan penal code, 1931 PA 328, MCL
23 750.350a.

24 (d) Section 430 of the Michigan penal code, 1931 PA 328, MCL
25 750.430.

26 (e) Sections 11 to 15 of chapter II.

27 (f) Section 4a of chapter IX.

1 (2) Upon sentencing a person convicted of a misdemeanor or of
2 a violation of a local ordinance, other than a misdemeanor or
3 local ordinance described in subsection (1), the clerk of the
4 court imposing sentence immediately shall, if ordered by the
5 court, advise the department of state police of the conviction on
6 forms approved by the state court administrator.

7 (3) Except as otherwise provided in subsections (4) and (6),
8 the clerk of a court shall not report a conviction of a
9 misdemeanor offense under the Michigan vehicle code, 1949 PA 300,
10 MCL 257.1 to 257.923, or a local ordinance substantially
11 corresponding to a provision of that act unless 1 or more of the
12 following apply:

13 (a) The offense is punishable by imprisonment for more than
14 92 days.

15 (b) The offense is an offense that would be punishable by
16 more than 92 days as a second conviction.

17 (c) A judge of the court orders the clerk to report the
18 conviction.

19 (4) Unless ordered by the court, the clerk of a court is not
20 required to report a conviction of a misdemeanor offense for a
21 violation of section 904(3)(a) of the Michigan vehicle code, 1949
22 PA 300, MCL 257.904, or a local ordinance substantially
23 corresponding to section 904(3)(a) of the Michigan vehicle code,
24 1949 PA 300, MCL 257.904.

25 (5) As part of the sentence for a conviction of an offense
26 described in ~~subsection (2)~~ **this section**, if fingerprints have
27 not already been taken, the court shall order that the

1 fingerprints of the person convicted be taken and forwarded to
2 the department of state police.

3 (6) As part of the sentence for a conviction of a listed
4 offense as defined in section 2 of the sex offenders registration
5 act, 1994 PA 295, MCL 28.722, the court shall order that the
6 fingerprints of the person convicted be taken and forwarded as
7 provided in the sex offenders registration act, 1994 PA 295,
8 MCL 28.721 to 28.732, if fingerprints have not already been taken
9 and forwarded as provided in that act.

10 (7) Within 21 days after the date a person licensed or
11 registered under article 15 of the public health code, 1978
12 PA 368, MCL 333.16101 to 333.18838, is convicted of a misdemeanor
13 involving the illegal delivery, possession, or use of alcohol or
14 a controlled substance or a felony, the clerk of the court
15 entering the conviction shall report the conviction to the
16 department of consumer and industry services on a form prescribed
17 and furnished by that department.

18 CHAPTER XVI

19 Sec. 22. (1) Each police agency in this state shall, by
20 January 1, 1995, develop, adopt, and implement written policies
21 for police officers responding to domestic violence calls. The
22 policies shall reflect that domestic violence is criminal
23 conduct.

24 (2) Each police agency shall consult with the prosecuting
25 attorney and with an area shelter for victims of domestic
26 violence in the development, implementation, including training,
27 and evaluation of the policies and standards.

1 (3) The policies shall address, but not be limited to
2 addressing, all of the following:

3 (a) Procedures for conducting a criminal investigation with
4 specific standards for misdemeanor and felony arrests.

5 (b) Procedures for making a criminal arrest. The procedures
6 shall emphasize all of the following:

7 (i) In most circumstances, an officer should arrest and take
8 an individual into custody if the officer has probable cause to
9 believe the individual is committing or has committed domestic
10 violence and his or her actions constitute a crime.

11 (ii) When the officer has probable cause to believe spouses,
12 former spouses, individuals who have had a child in common,
13 **individuals who have or have had a dating relationship**, or other
14 individuals who reside together or formerly resided together are
15 committing or have committed crimes against each other, the
16 officer, when determining whether to make an arrest of 1 or both
17 individuals, should consider the intent of this section to
18 protect victims of domestic violence, the degree of injury
19 inflicted on the individuals involved, the extent to which the
20 individuals have been put in fear of physical injury to
21 themselves or other members of the household, and any history of
22 domestic violence between the individuals, if that history can
23 reasonably be ascertained by the officer. In addition, the
24 officer should not arrest an individual if the officer has
25 reasonable cause to believe the individual was acting in lawful
26 self-defense or in lawful defense of another individual.

27 (iii) A police officer's decision as to whether to arrest an

1 individual should not be based solely on the consent of the
2 victim to any subsequent prosecution or on the relationship of
3 the individuals involved in the incident.

4 (iv) A police officer's decision not to arrest an individual
5 should not be based solely upon the absence of visible
6 indications of injury or impairment.

7 (c) Procedures for denial of interim bond, as provided in
8 1961 PA 44, MCL 780.581 to 780.588.

9 (d) Procedures for verifying a personal protection order
10 issued under section 2950 or 2950a of the revised judicature act
11 of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.

12 (e) Procedures for making an arrest for a violation of a
13 personal protection order.

14 (f) Procedures for enforcing a valid foreign protection
15 order.

16 (g) Procedures for providing or arranging for emergency
17 assistance to victims including, but not limited to, medical
18 care, transportation to a shelter, or remaining at the scene of
19 an alleged incident of domestic violence for a reasonable time
20 until, in the reasonable judgment of the police officer, the
21 likelihood of further imminent violence has been eliminated.

22 (h) Procedures for informing the victim of community services
23 and legal options that are available pursuant to section 15c of
24 chapter IV of this act.

25 (i) Procedures for preparing a written report, whether or not
26 an arrest is made.

27 (j) Training of peace officers, dispatchers, and

1 supervisors.

2 (k) Discipline for noncompliance with the policy.

3 (l) Annual evaluations of the policy.

4 (4) The local policies developed, adopted, and implemented
5 pursuant to this section shall be in writing and shall be
6 available to the public upon request.

7 (5) As used in this section:

8 (a) "Dating relationship" means frequent, intimate
9 associations primarily characterized by the expectation of
10 affectional involvement. Dating relationship does not include a
11 casual relationship or an ordinary fraternization between 2
12 individuals in a business or social context.

13 (b) ~~(a)~~ "Foreign protection order" means that term as
14 defined in section 2950h of the revised judicature act of 1961,
15 1961 PA 236, MCL 600.2950h.

16 (c) ~~(b)~~ "Valid foreign protection order" means a foreign
17 protection order that satisfies the conditions for validity
18 provided in section 2950i of the revised judicature act of 1961,
19 1961 PA 236, MCL 600.2950i.

20 CHAPTER XVII

21 Sec. 15g. This chapter applies to the following felonies
22 enumerated in chapters 721 to 730 of the Michigan Compiled Laws:

23	<u>M.C.L.</u>	<u>Category</u>	<u>Class</u>	<u>Description</u>	<u>Stat Max</u>
24	722.633(5)(b)	Person	F	Intentional false report	
25				of child abuse	
26				constituting a felony	-4
27					Variable
28	722.675	Pub ord	E	Distributing obscene	

1				matter to children	2
2	722.857	Person	E	Surrogate parenting act	
3				-- contracts involving	
4				minors, mentally	
5				retarded, etc.	5
6	722.859(3)	Person	E	Surrogate parenting act	
7				-- contracts for	
8				compensation	5

9 Sec. 16m. This chapter applies to the following felonies
10 enumerated in chapter 750 of the Michigan Compiled Laws:

11	<u>M.C.L.</u>	<u>Category</u>	<u>Class</u>	<u>Description</u>	<u>Stat Max</u>
12	750.223(2)	Pub saf	F	Sale of firearm to minor	
13				-- subsequent offense	4
14	750.223(3)	Pub ord	D	Sale of firearm to person	
15				prohibited from	
16				possessing	10
17	750.224	Pub saf	E	Manufacture or sale of	
18				silencer, bomb,	
19				blackjack, automatic	
20				weapon, gas spray, etc.	5
21	750.224a	Pub saf	F	Possession or sale of	
22				electrical current	
23				weapons	4
24	750.224b	Pub saf	E	Possession of short	
25				barreled shotgun or	
26				rifle	5
27	750.224c	Pub saf	F	Armor piercing ammunition	4
28	750.224d(2)	Person	G	Using self-defense spray	
29				device	2
30	750.224e	Pub saf	F	Manufacture/sale/possession	
31				of devices to convert	
32				semiautomatic weapons	4
33	750.224f	Pub saf	E	Possession or sale of	
34				firearm by felon	5
35	750.226	Pub saf	E	Carrying firearm or	
36				dangerous weapon with	
37				unlawful intent	5

1 2	750.227	Pub saf	E	Carrying a concealed weapon	5
3 4	750.227a	Pub saf	F	Unlawful possession of pistol	4
5 6 7	750.227c	Pub saf	G	Possessing a loaded firearm in or upon a vehicle	2
8 9 10	750.227f	Pub saf	F	Wearing body armor during commission of violent crime certain crimes	4
11 12 13	750.227g(1)	Pub saf	F	Felon purchasing, owning, possessing, or using body armor	4
14 15	750.230	Pub saf	G	Altering ID mark on firearm	2
16 17	750.232a(3)	Pub saf	G	False statement in a pistol application	4
18 19	750.234a	Pub saf	F	Discharging firearm from vehicle	4
20 21	750.234b	Pub saf	F	Discharging firearm in or at a building	4
22 23 24	750.234c	Pub saf	F	Discharging firearm at emergency/police vehicle	4
25 26	750.236	Person	C	Setting spring gun -- death resulting	15
27 28 29 30	750.237(3)	Person	E	Using firearm while under the influence or impaired causing serious impairment	5
31 32 33	750.237(4)	Person	C	Using firearm while under the influence or impaired causing death	15