

HOUSE BILL No. 5409

January 20, 2004, Introduced by Reps. Vander Veen, Julian, Farhat, Voorhees, Caul and Ruth Johnson and referred to the Committee on Criminal Justice.

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 1, 15g, 16m, 16z, 22, and 35 of chapter XVII (MCL 764.1a, 769.16a, 776.22, 777.1, 777.15g, 777.16m, 777.16z, 777.22, and 777.35), section 1a of chapter IV as amended by 1994 PA 70, section 16a of chapter IX as amended by 2001 PA 204, section 22 of chapter XVI as amended by 2001 PA 194, section 1 of chapter XVII as amended by 2002 PA 34, section 15g of chapter XVII as added by 2002 PA 206, section 16m of chapter XVII as amended by 2001 PA 166, section 16z of chapter XVII as amended by 2002 PA 271, section 22 of chapter XVII as amended by 2003 PA 134, and section 35 of chapter XVII as amended by 2000 PA 279.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IV

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Sec. 1a. (1) A magistrate shall issue a warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense. The complaint shall be sworn to before a magistrate or clerk.

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

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

(b) The complainant's sworn testimony.

(c) The complainant's affidavit.

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

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

(4) The magistrate shall not refuse to accept a complaint alleging a violation of section 81 or 81a of the Michigan penal code, ~~Act No. 328 of the Public Acts of 1931, being sections 750.81 and 750.81a of the Michigan Compiled Laws~~ **1931 PA 328, MCL 750.81 and 750.81a**, or a violation of a local ordinance substantially corresponding to section 81 of ~~Act No. 328 of the~~

1 ~~Public Acts of 1931~~ **the Michigan penal code, 1931 PA 328, MCL**
2 **750.81**, by the spouse of the victim, a former spouse of the
3 victim, an individual with whom the victim has had a child in
4 common, **an individual with whom the victim has or has had a**
5 **dating relationship**, or an individual residing or having resided
6 in the same household as the victim on grounds that the complaint
7 is signed upon information and belief by an individual other than
8 the victim.

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

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

16 CHAPTER IX

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

1 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL
2 600.2950 and 600.2950a, or final disposition of a charge of
3 criminal contempt for violating a foreign protection order that
4 satisfies the conditions for validity provided in section 2950i
5 of the revised judicature act of 1961, 1961 PA 236, MCL
6 600.2950i, the clerk of the court entering the disposition shall
7 immediately report to the department of state police the final
8 disposition of the charge on forms approved by the state court
9 administrator and in a manner consistent with section 3 of 1925
10 PA 289, MCL 28.243. The report to the department of state police
11 shall include the finding of the judge or jury, including a
12 finding of guilty, guilty but mentally ill, not guilty, or not
13 guilty by reason of insanity, or the person's plea of guilty,
14 nolo contendere, or guilty but mentally ill; if the person was
15 convicted, the offense of which the person was convicted; and a
16 summary of any sentence imposed. The summary of the sentence
17 shall include any probationary term; any minimum, maximum, or
18 alternative term of imprisonment; the total of all fines, costs,
19 and restitution ordered; and any modification of sentence. The
20 report shall include the sentence if imposed under any of the
21 following:

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

24 (b) Sections 11 to 15 of chapter II.

25 (c) Section 4a of chapter IX.

26 (2) Upon sentencing a person convicted of a misdemeanor or of
27 a violation of a local ordinance, other than a misdemeanor or

1 local ordinance described in subsection (1), the clerk of the
2 court imposing sentence immediately shall, if ordered by the
3 court, advise the department of state police of the conviction on
4 forms approved by the state court administrator.

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

11 (a) The offense is punishable by imprisonment for more than
12 92 days.

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

15 (c) A judge of the court orders the clerk to report the
16 conviction.

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

23 (5) As part of the sentence for a conviction of an offense
24 described in ~~subsection (2)~~ **this section**, if fingerprints have
25 not already been taken, the court shall order that the
26 fingerprints of the person convicted be taken and forwarded to
27 the department of state police.

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

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

16 CHAPTER XVI

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

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

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

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

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

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

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

25 (iii) A police officer's decision as to whether to arrest an
26 individual should not be based solely on the consent of the
27 victim to any subsequent prosecution or on the relationship of

1 the individuals involved in the incident.

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

5 (c) Procedures for denial of interim bond, as provided in
6 1961 PA 44, MCL 780.581 to 780.588.

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

10 (e) Procedures for making an arrest for a violation of a
11 personal protection order.

12 (f) Procedures for enforcing a valid foreign protection
13 order.

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

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

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

25 (j) Training of peace officers, dispatchers, and
26 supervisors.

27 (k) Discipline for noncompliance with the policy.

1 (l) Annual evaluations of the policy.

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

5 (5) As used in this section:

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

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

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

18 CHAPTER XVII

19 Sec. 1. As used in this chapter:

20 (a) "Aircraft" means that term as defined in section 2 of the
21 aeronautics code of the state of Michigan, 1945 PA 327,
22 MCL 259.2.

23 (b) "Departure" means that term as defined in section 31 of
24 chapter IX.

25 (c) "Homicide" means any crime in which the death of a human
26 being is an element. ~~of that crime.~~

27 (d) "Intermediate sanction" means that term as defined in

1 section 31 of chapter IX.

2 (e) "ORV" means that term as defined in section 81101 of the
3 natural resources and environmental protection act, 1994 PA 451,
4 MCL 324.81101.

5 (f) "Snowmobile" means that term as defined in section 82101
6 of the natural resources and environmental protection act, 1994
7 PA 451, MCL 324.82101.

8 (g) "Vehicle" means that term as defined in section 79 of the
9 Michigan vehicle code, 1949 PA 300, MCL 257.79.

10 (h) "Vessel" means that term as defined in section 80104 of
11 the natural resources and environmental protection act, 1994
12 PA 451, MCL 324.80104.

13 (i) "Violent crime" means a homicide or a crime against a
14 person in which physical force or violence was used or
15 threatened, including an attempt, conspiracy, or solicitation to
16 commit such a crime.

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

19	<u>M.C.L.</u>	<u>Category</u>	<u>Class</u>	<u>Description</u>	<u>Stat Max</u>
20	722.633(5)(b)	Person	F	Intentional false report of child abuse constituting a felony	-4
21					
22					
23					Variable
24	722.675	Pub ord	E	Distributing obscene matter to children	2
25					
26	722.857	Person	E	Surrogate parenting act -- contracts involving minors, mentally retarded, etc.	5
27					
28					
29					
30	722.859(3)	Person	E	Surrogate parenting act	

1 -- contracts for
2 compensation 5

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

5	<u>M.C.L.</u>	<u>Category</u>	<u>Class</u>	<u>Description</u>	<u>Stat Max</u>
6 7	750.223(2)	Pub saf	F	Sale of firearm to minor -- subsequent offense	4
8 9 10	750.223(3)	Pub ord	D	Sale of firearm to person prohibited from possessing	10
11 12	750.224	Pub saf	E	Manufacture or sale of silencer, bomb,	
13 14				blackjack, automatic weapon, gas spray, etc.	5
15 16 17	750.224a	Pub saf	F	Possession or sale of electrical current weapons	4
18 19 20	750.224b	Pub saf	E	Possession of short barreled shotgun or rifle	5
21	750.224c	Pub saf	F	Armor piercing ammunition	4
22 23	750.224d(2)	Person	G	Using self-defense spray device	2
24 25 26	750.224e	Pub saf	F	Manufacture/sale/possession of devices to convert semiautomatic weapons	4
27 28	750.224f	Pub saf	E	Possession or sale of firearm by felon	5
29 30 31	750.226	Pub saf	E	Carrying firearm or dangerous weapon with unlawful intent	5
32 33	750.227	Pub saf	E	Carrying a concealed weapon	5
34 35	750.227a	Pub saf	F	Unlawful possession of pistol	4
36	750.227c	Pub saf	G	Possessing a loaded	

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

29 Sec. 16z. This chapter applies to the following felonies
30 enumerated in chapter 750 of the Michigan Compiled Laws:

31	<u>M.C.L.</u>	<u>Category</u>	<u>Class</u>	<u>Description</u>	<u>Stat Max</u>
32	750.535(2)	Property	D	Receiving or concealing	
33				stolen property having	
34				a value of \$20,000 or	
35				more or with prior	
36				convictions	10
37	750.535(3)	Property	E	Receiving or concealing	
38				stolen property having	

1				a value of \$1,000 to	
2				\$20,000 or with prior	
3				convictions	5
4	750.535(7)	Property	E	Receiving or concealing a	
5				motor vehicle	5
6	750.535a(2)	Pub ord	D	Operating a chop shop	10
7	750.535a(3)	Pub ord	D	Operating a chop shop,	
8				subsequent violation	10
9	750.535b	Pub saf	E	Stolen firearms or	
10				ammunition	10
11	750.539c	Pub ord	H	Eavesdropping	2
12	750.539d	Pub ord	H	Installing eavesdropping	
13				device	2
14	750.539e	Pub ord	H	Divulging or using	
15				information obtained by	
16				eavesdropping	2
17	750.539f	Pub ord	H	Manufacture or possession	
18				of eavesdropping device	2
19	750.540	Pub ord	H	Tapping or cutting	
20				telephone lines	2
21	750.540c(3)	Property	F	Manufacturing or	
22				delivering a	
23				counterfeit	
24				communications device	4
25	750.540f(2)	Property	E	Knowingly publishing a	
26				communications access	
27				device with prior	
28				convictions	5
29	750.540g(1)(c)	Property	E	Diverting	
30				telecommunication	
31				services having a value	
32				of \$1,000 to \$20,000 or	
33				with prior convictions	5
34	750.540g(1)(d)	Property	D	Diverting	
35				telecommunications	
36				services having a value	
37				of \$20,000 or more or	
38				with prior convictions	10
39	750.543f	Person	A	Terrorism without causing	

1				death	Life
2	750.543h(3)(a)	Pub ord	B	Hindering prosecution of terrorism -- certain	
3				terrorist acts	20
4					
5	750.543h(3)(b)	Pub ord	A	Hindering prosecution of terrorism -- act of	
6				terrorism	Life
7					
8	750.543k	Pub saf	B	Soliciting or providing material support for	
9				terrorism or terrorist	
10				acts	20
11					
12	750.543m	Pub ord	B	Threat or false report of terrorism	20
13					
14	750.543p	Pub saf	B	Use of internet or telecommunications to	
15				commit certain	
16				terrorist acts	20
17					
18	750.543r	Pub saf	B	Possession of vulnerable target information with	
19				intent to commit	
20				certain terrorist acts	20
21					
22	750.545	Pub ord	E	Misprision of treason	5
23	750.552b	Property	F	Trespassing on	
24				correctional facility	
25				property	4

26 Sec. 22. (1) For all crimes against a person, score offense
27 variables 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 19, and 20.
28 **Score offense variable 5 for violent crimes.** Score offense
29 ~~variables 5 and~~ **variable 6** for homicide, attempted homicide,
30 conspiracy or solicitation to commit a homicide, or assault with
31 intent to commit murder. Score offense variable 16 under this
32 subsection for a violation or attempted violation of section 110a
33 of the Michigan penal code, 1931 PA 328, MCL 750.110a. Score
34 offense variables 17 and 18 if the offense or attempted offense
35 involves the operation of a vehicle, vessel, ORV, snowmobile,

1 aircraft, or locomotive.

2 (2) For all crimes against property, score offense variables
3 1, 2, 3, 4, 9, 10, 12, 13, 14, 16, 19, and 20.

4 (3) For all crimes involving a controlled substance, score
5 offense variables 1, 2, 3, 12, 13, 14, 15, 19, and 20.

6 (4) For all crimes against public order and all crimes
7 against public trust, score offense variables 1, 3, 4, 9, 10, 12,
8 13, 14, 16, 19, and 20.

9 (5) For all crimes against public safety, score offense
10 variables 1, 3, 4, 9, 10, 12, 13, 14, 16, 19, and 20. Score
11 offense variable 18 if the offense or attempted offense involves
12 the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or
13 locomotive.

14 Sec. 35. (1) Offense variable 5 is psychological injury to
15 a member of a **violent crime** victim's family **or a child**. Score
16 offense variable 5 by determining which of the following apply
17 and by assigning the number of points attributable to the one
18 that has the highest number of points:

19 (a) Serious psychological injury, ~~requiring~~ **which**
20 **requires or which may require** professional treatment,
21 occurred to a **violent crime** victim's family **or to a**
22 **child as a result of the child witnessing a violent**
23 **crime..... 15 points**

24 ~~-(b) No serious psychological injury requiring~~
25 ~~professional treatment occurred to a victim's family.. 0 points~~

26 (b) **A child witnesses a violent crime..... 10 points**

27 (c) **A child observes the physical results of a**

1 violent crime against a family member..... 5 points

2 (d) Subdivisions (a), (b), and (c) do not apply..... 0 points

3 (2) ~~Score 15 points if the serious psychological injury to~~
4 ~~the victim's family may require professional treatment.~~ In
5 making ~~this~~ a determination of whether professional treatment
6 may be required under subsection (1)(a), the fact that treatment
7 has not been sought is not conclusive.