TRAFFIC BENCHBOOK– FOURTH EDITION

Content Derived from former MJI's Traffic Benchbook, Vols. 1-3 and Juvenile Traffic Benchbook

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Michigan Supreme Court

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- The Honorable David F. Viviano, *MJI Supervising Justice*
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Statements in this benchbook represent the professional judgment of the author and are not intended to be authoritative statements by the justices of the Michigan Supreme Court. This edition was initially published in 2015 and is current through January 1, 2017.

Foreword and Acknowledgments

MJI's *Traffic Benchbook* was first published in 1993, and a revised edition was released in 1993 through a project funded by the Michigan Office of Highway Safety Planning and the United States Department of Transportation. A third edition was released in 2005. The *Traffic Benchbook* was previously divided into Volume 1: Civil Infractions and Misdemeanor Traffic Offenses, Volume 2: Recreational Vehicles, and Volume 3: Drunk Driving and Driving While License Suspended Violations, and Felonies. The material has been reorganized into two benchbooks: the *Traffic Benchbook* and the *Recreational Vehicles Benchbook*. This version of the *Traffic Benchbook* was authored by MJI Research Attorney Alessa Boes and MJI Research Attorney Lisa Schmitz, and was edited by MJI Publications Manager Sarah Roth. The authors of this edition were greatly assisted by an editorial advisory committee whose members reviewed draft text and provided valuable feedback. The members of the editorial advisory committee were:

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Traffic Benchbook–Fourth Edition

Summaries of Updates: September 2, 2016–January 1, 2017

Updates have been issued for the *Traffic Benchbook–Fourth Edition*. A summary of each update appears below. The updates have been integrated into the website version of the manual. Clicking on the links below will take you to the page(s) in the manual where the updates appear. The text added or changed in each update is underlined.

Note: ADM File No. 2013-18

Effective January 1, 2017, ADM File No. 2013-18 amended several Michigan Court Rules in regard to the use of videoconferencing technology. Relevant to this benchbook, ADM File No. 2013-18 amended MCR 4.101 and MCR 4.401. The following sections of this benchbook were affected by ADM File No. 2013-18:

- 1.10(B) Authority to Conduct Civil Infraction Actions
- 1.14(B) Defendant's Options When a Citation is Issued
- 1.14(C) Defendant's Options When a Citation is Issued
- 1.15(A) Informal Hearings
- 1.15(E) Informal Hearings
- 1.16(A) Formal Hearings

Chapter 2: Juvenile Traffic Proceedings

2.12 Juvenile Traffic Violation Records

- Effective January 1, 2017, ADM File No. 2016-06 amended MCR 3.925 to delete the sub-subsection specifically addressing delinquency and motor vehicle code case files. MCR 3.925(E) no longer contains any sub-subsections and now states that "[t]he

court shall destroy its case files and other court records only as prescribed by the records retention and disposal schedule established under MCR 8.119(K). Destruction of a case record does not negate, rescind, or set aside an adjudication."

Chapter 4: Civil Infraction Moving Violations

4.7 Operating an Automated Vehicle

- Effective December 9, 2016, 2016 PA 332 repealed MCL 257.663 (providing that, in general, operation of an automated motor vehicle on a highway or street in automatic mode was prohibited).

4.14(B) Texting While Driving

- Effective December 9, 2016, 2016 PA 332 amended MCL 257.602b in regard to the circumstances under which MCL 257.602b(1) does not apply and to state that MCL 257.602b(1) does not apply to a person using an on-demand automated motor vehicle network.

Chapter 5: Misdemeanor Nonmoving Violations

5.9(C) Allowing Another to Operate in Violation of the Michigan Vehicle Code

- MCL 257.326 is not violated when a person allows someone who is not properly licensed to take "possession and control" of a motor vehicle; however, MCL 257.326 is violated by granting an unlicensed person permission to actually drive the motor vehicle. *Monaco v Home-Owners Ins Co*, ___ Mich App ___, ___ (2016).

Chapter 6: Misdemeanor Moving Violations

6.11(A) Improper Use of Emergency Lights

- Effective September 7, 2016, 2016 PA 161 amended MCL 257.698(5) to expand the circumstances under which the use or possession of flashing, oscillating, or rotating lights are permitted.

Chapter 9: Section 625 Offenses

9.14 Roadside Drug Testing

- Effective September 22, 2016, 2016 PA 242 added MCL 257.625r, and 2016 PA 243 added MCL 257.625t. MCL 257.625t provides for the establishment of a pilot roadside drug testing program, and MCL 257.625r addresses preliminary oral fluid analysis, which is how qualifying officers will administer roadside drug tests during the pilot program.

9.15 Testimony Regarding Field Sobriety Tests

- Effective September 22, 2016, 2016 PA 242 added MCL 257.625s to address who may testify regarding standardized field sobriety tests.

Glossary

- Effective December 9, 2016, 2016 PA 332 amended MCL 257.2b to define *automated driving system*.
- Effective December 9, 2016, 2016 PA 332 amended MCL 257.2b to amend the definition of *automated motor vehicle*.
- Effective December 9, 2016, 2016 PA 332 amended MCL 257.2b to amend the definition of *automated technology*.
- Effective December 9, 2016, 2016 PA 332 amended MCL 257.2b to remove the definition of *automatic mode*.
- Effective September 22, 2016, 2016 PA 243 added MCL 257.625t to define *certified drug recognition expert*.
- Effective September 22, 2016, 2016 PA 243 added MCL 257.625t to define *controlled substance* for purposes of MCL 257.625t.
- Effective December 9, 2016, 2016 PA 332 amended MCL 257.2b to change the definition of *manufacturer of automated technology* to *manufacturer of automated driving systems*.
- Effective December 9, 2016, 2016 PA 332 amended MCL 257.2b to define *motor vehicle manufacturer*.
- Effective December 9, 2016, 2016 PA 332 amended MCL 257.2b to define *on-demand automated motor vehicle network*.

- Effective December 9, 2016, 2016 PA 332 amended MCL 257.2b to define *participating fleet*.
- Effective September 22, 2016, 2016 PA 243 added MCL 257.43b to define *preliminary oral fluid analysis*.
- Effective December 9, 2016, 2016 PA 332 amended MCL 257.2b to define *SAVE project*.
- Effective September 22, 2016, 2016 PA 242 added MCL 257.62a to define *standardized field sobriety test*.
- Effective December 9, 2016, 2016 PA 332 amended MCL 257.2b to amend the definition of *upfitter*.

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1.1 Scope Note

This chapter discusses the jurisdictional and procedural requirements related to civil infractions involving traffic or parking violations, misdemeanor traffic offenses, and felony traffic offenses. It also provides an overview of the criminal penalties and licensing sanctions generally associated with violations of the Michigan Vehicle Code (MVC).[1] A more detailed discussion of criminal penalties and licensing sanctions is provided in the chapters covering specific civil infractions, misdemeanors, and felonies. Procedures regarding juveniles are discussed in Chapter 2.

1.2 Attempts

Attempted traffic offenses may be governed by either the MVC, MCL 257.204b, or by the general attempt statute, MCL 750.92.

A. MVC Provisions

MCL 257.204b establishes sanctions and penalties for attempted traffic offenses as follows:

> "(1) When assessing points, taking licensing or registration actions, or imposing other sanctions under [the MVC] for a conviction of an attempted violation of a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, the secretary of state or the court shall treat the conviction the same as if it were a conviction for the completed offense.
>
> (2) The court shall impose a criminal penalty for a conviction of an attempted violation of this act or a local ordinance substantially corresponding to a provision of this act in the same manner as if the offense had been completed."

[1]The MVC is the principal source of Michigan traffic law. "Except as otherwise provided in [MCL 257.901(3)], it is a misdemeanor for a person to violate [the MVC], unless that violation is by [the MVC] or other law of this state declared to be a felony or a civil infraction." MCL 257.901(1). "Except as otherwise provided in [the MVC], a violation of [the MVC] by the owner of a commercial quadricycle arising out of the ownership or operation of the commercial quadricycle is a civil infraction." MCL 257.901(3). Except as otherwise provided in the Revised Judicature Act, the MVC governs civil infractions involving a traffic or parking violation. MCL 600.113(2).

MCL 257.204b distinguishes between attempted offenses for purposes of imposing licensing or vehicle sanctions and for purposes of imposing criminal penalties.

Licensing and vehicle sanctions—MCL 257.204b(1) applies to attempted violations of any Michigan law, local ordinance substantially corresponding to a Michigan law, or substantially corresponding law from another state for which licensing or vehicle sanctions are imposed under the MVC. Under MCL 257.204b(1), any attempted offense that results in licensing or vehicle sanctions under the MVC must be treated as a completed offense for purposes of imposing sanctions.

Criminal penalties—MCL 257.204b(2) requires courts to treat attempted violations of "this act," i.e., of the MVC, or a substantially corresponding local ordinance, as completed offenses for purposes of imposing criminal penalties. Thus, MCL 257.204b(2) does not apply to attempted traffic offenses not codified in the MVC, such as unlawful driving away a motor vehicle under MCL 750.413. Criminal penalties for offenses not codified in the MVC are governed by the general attempt statute, MCL 750.92. See *People v Cervi*, 270 Mich App 603, 618 (2006) (general attempt statute applies only where there is no express provision for attempt in the statute under which the defendant is charged).

Moreover, MCL 257.204b(2) only addresses the penalties for attempted violations of the MVC; it does not criminalize them. *People v Burton*, 252 Mich App 130, 136 (2002) (addressing former MCL 257.625(17), which contained substantially similar language as MCL 257.204b(2)). In *Burton*, the defendant challenged his convictions of attempted violations of MCL 257.625 and MCL 257.904 on the grounds that the MVC did not criminalize attempts. *Burton*, 252 Mich App at 133. The Court of Appeals agreed, stating that the MVC "continues to treat violations of the code . . . *as if* they were completed offenses for purposes of punishment, but it does not specifically proscribe and include attempted violations within the bounds of the code." *Id.* at 136 n 7. In the absence of a statutory provision specifically criminalizing attempts, attempted violations of the MVC should be tried under the general attempt statute.

B. General Attempt Statute

The general attempt statute, MCL 750.92, applies to attempted traffic offenses that are not covered by MCL 257.204b. The general attempt statute provides:

> "Attempt to commit crime—Any person who shall attempt to commit an offense prohibited by law, and in

> such attempt shall do any act towards the commission of such offense, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same, when no express provision is made by law for the punishment of such attempt, shall be punished as follows . . ."

The elements of attempt are: "(1) an attempt to commit an offense prohibited by law, and (2) any act towards the commission of the intended offense." *People v Thousand*, 465 Mich 149, 164 (2001). Moreover, "the elements of attempt under [MCL 750.92 include] 'an intent to do an act or bring about certain consequences which would in law amount to a crime; and . . . an act in furtherance of that intent which, as it is most commonly put, goes beyond mere preparation.'" *Thousand*, 465 Mich at 164, quoting *People v Jones (Mearl)*, 443 Mich 88, 100 (1993). Attempt is a specific intent crime. *People v Langworthy*, 416 Mich 630, 644–645 (1982). When factually appropriate, the trial court should instruct the jury that it may convict the defendant of attempt even if the evidence proves that the crime was completed. CJI2d 9.1.

MCL 750.92 sets forth the punishment for a conviction of attempt:[2]

> "2. If the offense so attempted to be committed is punishable by imprisonment in the state prison for life, or for 5 years or more, the person convicted of such attempt shall be guilty of a felony, punishable by imprisonment in the state prison not more than 5 years or in the county jail not more than 1 year;
>
> 3. If the offense so attempted to be committed is punishable by imprisonment in the state prison for a term less than 5 years, or imprisonment in the county jail or by fine, the offender convicted of such attempt shall be guilty of a misdemeanor, punishable by imprisonment in the state prison or reformatory not more than 2 years or in any county jail not more than 1 year or by a fine not to exceed 1,000 dollars; but in no case shall the imprisonment exceed 1/2 of the greatest punishment which might have been inflicted if the offense so attempted had been committed."

1.3 Probation and Delayed Sentencing

MCL 771.1(1) permits the court to place the defendant on probation:

[2] MCL 750.92(1) applies to offenses punishable by death and is not included below.

> "In all prosecutions for felonies, misdemeanors, or ordinance violations other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, or major controlled substance offenses, if the defendant has been found guilty upon verdict or plea[3] and the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer." MCL 771.1(1).

If the defendant is placed on probation, "the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation[.]" MCL 771.1(2). "When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay." *Id.*

"[T]he plain language of MCL 771.1(2) does not deprive a sentencing judge of jurisdiction if a defendant is not sentenced within one year after the imposition of a delayed sentence[.]" *People v Smith (Ryan)*, 496 Mich 133, 143 (2014).[4] Rather, "[a]fter the one-year statutory limitation elapses, sentencing may no longer be delayed for the purpose of permitting a defendant the opportunity to prove that he [or she] is worthy of leniency, and the judge is required to sentence [the] defendant as provided by law." *Id.* at 142.

Committee Tip: Note that the MVC requires *convictions* to be abstracted as required by MCL 257.732. MCL 257.8a defines *conviction* to include "[a] final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication, probate court

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[3] MCR 6.302 sets forth the procedures for pleas of guilty and nolo contendere in cases cognizable in the circuit court or court of equivalent jurisdiction. See MCR 6.001(A). MCR 6.302(F) provides that "[t]he court may take the plea under advisement."

[4] Overruling *People v McLott*, 70 Mich App 524 (1976), *People v Turner*, 92 Mich App 485 (1979), *People v Dubis*, 158 Mich App 504 (1987), *and People v Boynton*, 185 Mich App 669 (1990), "to the extent they hold that a court loses jurisdiction to sentence a defendant as a remedy for a violation of MCL 771.1(2)." *Smith (Ryan)*, 496 Mich at 142.

> disposition, or juvenile disposition for a violation that if committed by an adult would be a crime, *regardless of whether the penalty is rebated or suspended*." (Emphasis added.) See also *People v McCann*, 314 Mich App 605, 613 (2016) (noting that "[a]lthough a trial judge has discretion to delay sentencing[,] . . . the [MVC] regards [a guilty] plea . . . as a conviction[]"). Abstracting requirements are not mentioned in MCL 771.1, and thus, do not appear to be implicated by that statute. Accordingly, a court should send timely abstracts to the Secretary of State for *convictions* under the MVC, regardless of whether probation or a delayed sentence has been ordered. See Section 1.38 for abstracting requirements in cases involving MVC violations.

"[A] trial court may not require the Secretary of State to amend driving records when a conviction is dismissed following [a] guilty plea and delayed sentencing[under MCL 771.1;]" although MCL 257.732(1)(b) of the MVC "requires a trial court to forward abstracts to the Secretary of State following the dismissal of charges, . . . it does not command the secretary to take specific action in response[,]" and MCL 257.732(22) prohibits a court from ordering the expunction of a Secretary of State record of a reportable offense that has been set aside or dismissed. *McCann*, 314 Mich App at 614 (citations omitted).

For more information on probation and sentencing, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2,* Chapters 2 and 3.

1.4 Taking Pleas Under Advisement

A. Felony Cases Generally

In a felony case, the court may take a plea under advisement and must make a verbatim record of the proceedings. MCR 6.001(A); MCR 6.302(F). For more information on felony pleas, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 5.

B. Misdemeanor Cases Generally

MCR 6.302(F) is not applicable to misdemeanor pleas. See MCR 6.001(B). In addition, no statute or court rule language has been identified that authorizes district courts to take a misdemeanor guilty plea under advisement. As a result, the State Court administrative

Office (SCAO) continues to "recommend[] that courts discontinue the practice of taking [these] matters under advisement." See the *Michigan Supreme Court Report*, October 1998. For more information on misdemeanor pleas, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 5.

C. Traffic Exception

MCL 257.732(21) states:

"Notwithstanding any other law of this state, a court shall not take under advisement an offense committed by a person while operating a motor vehicle for which this act requires a conviction or civil infraction determination to be reported to the secretary of state. A conviction or civil infraction determination that is the subject of this subsection shall not be masked, delayed, diverted, suspended, or suppressed by a court. Upon a conviction or civil infraction determination, the conviction or civil infraction determination shall immediately be reported to the secretary of state in accordance with this section."

1.5 Restitution

Restitution is mandatory for an offender convicted of a felony, misdemeanor, or ordinance violation. MCL 769.1a(2); MCL 780.766(2); MCL 780.794(2); MCL 780.826(2). Restitution is also mandatory "[f]or an offense that is resolved by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal[.]" MCL 780.766(2); MCL 780.826(2). See also MCL 780.794(2), which also requires the court to order restitution "[f]or an offense that is resolved informally by means of a consent calendar diversion or by another informal method that does not result in a dispositional hearing[.]" See the Michigan Judicial Institute's *Crime Victim Rights Benchbook*, Chapter 8, for detailed information about restitution.

1.6 Investigative Stops

The federal and Michigan constitutions grant all persons the right to be secure against unreasonable searches and seizures. US Const, Am IV, and Const 1963, art 1, §11. For a detailed discussion of investigative stops, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 9.

Part A—Civil Infractions

1.7 Courts With Jurisdiction Over Civil Infraction Actions

"Except as otherwise provided in [the Revised Judicature Act,] [a] civil infraction action involving a traffic or parking violation is governed by [the MVC.]" MCL 600.113(2).

MCL 257.741(2) states that the district court and any municipal court "shall have jurisdiction over civil infraction actions[.]" See also MCL 600.8301(2) ("[t]he district court has jurisdiction over civil infraction actions").

"If the person cited is a minor, that individual shall be permitted to appear in court or to admit responsibility for a civil infraction without the necessity of appointment of a guardian or next friend." MCL 257.741(5). The district court or any municipal court "shall have jurisdiction over the minor and may proceed in the same manner and in all respects as if that individual were an adult." *Id.*[5]

1.8 Venue for Civil Infraction Actions

"The place specified in the citation for appearance shall be the [district or municipal] court . . . which has territorial jurisdiction of the place where the civil infraction occurred." MCL 257.741(4).

"Venue in the district court shall be governed by [MCL 600.8312]." MCL 257.741(4). MCL 600.8312(6) provides that "[v]enue in civil infraction actions shall be determined as follows:

> (a) In a district of the first class, venue shall be in the county where the civil infraction occurred.
>
> (b) In a district of the second class, venue shall be in the district where the civil infraction occurred.
>
> (c) In a district of the third class, venue shall be in the political subdivision where the civil infraction occurred, except that when the violation is alleged to have taken place within a political subdivision where the court is not required to sit, the action may be heard or an admission entered in any political subdivision within the district where the court is required to sit."

[5]See Chapter 2 for a more detailed discussion of jurisdiction over civil infractions committed by minors.

1.9 Time Guidelines for Processing Civil Infraction Actions

"The time specified in a citation for appearance shall be within a reasonable time after the citation is issued[.]" MCL 257.741(3). Administrative Order No. 2013-12 provides that "90% of all civil infraction cases, including traffic, nontraffic, and parking cases, should be adjudicated within 35 days from the date of filing and 98% within 84 days." However, "90% of all citations [for juvenile traffic and ordinance violations] should have adjudication and disposition completed within 63 days from the date of first appearance and 98% within 126 days."[6] Administrative Order No. 2013-12.

1.10 Authority to Conduct Civil Infraction Actions

A. District Court or Municipal Judge

"A formal hearing shall be conducted only by a judge of a court having jurisdiction over civil infraction actions under [MCL 257.741(2)]."[7] MCL 257.747(1). A judge of a court having jurisdiction over the action may also conduct informal hearings.[8] See MCL 257.746(1).

A district court judge must preside over an appeal from an informal hearing conducted by a district court magistrate.[9] MCL 257.746(5)(b). "The appeal from a judge of the district court shall be heard by a different judge of the district." MCL 257.746(5)(a).

B. District Court Magistrate

"A district court magistrate may exercise the authority conferred by [MCL 600.8512] only to the extent expressly authorized by the chief judge, presiding judge, or only judge of the district court district." MCL 600.8512(3). See also MCR 4.401(B) ("[n]otwithstanding statutory provisions to the contrary, district court magistrates exercise only those duties expressly authorized by the chief judge of the district or division").

"A district court magistrate shall not conduct an informal hearing in a civil infraction action involving a traffic or parking violation

[6] See Chapter 2, for a more detailed discussion of jurisdiction over civil infractions committed by minors.

[7] See Section 1.16 for more information on formal hearing requirements.

[8] See Section 1.15 for more information on informal hearing requirements.

[9] See Section 1.15(E) for more information on appeals from informal hearings.

governed by [MCL 257.1 to MCL 257.923] until he or she has successfully completed a special training course in traffic law adjudication and sanctions." MCL 600.8512(2).

"An informal hearing shall be conducted by a district court magistrate when authorized by the judge or judges of the district court district or by a judge of a court listed in [MCL 257.741(2)]."[10] MCL 257.746(1). See also MCL 600.8512(1). "A district court magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing." MCL 257.746(1). See also MCL 600.8512(1) (permitting a district court magistrate to "conduct informal hearings in civil infraction actions[,]" and to "hear and preside over civil infraction admissions, admissions with explanation, [and] motions to set aside default or withdraw admissions[]").

"Only to the extent expressly authorized by the chief judge, presiding judge, or only judge of the district court district, a district court magistrate may . . . [a]ccept an admission of responsibility, decide a motion to set aside a default or withdraw an admission, and order civil sanctions for a civil infraction and order an appropriate civil sanction permitted by the statute or ordinance defining the act or omission." MCL 600.8512a(a).

"The judges of the district court shall exercise superintending control over all magistrates within their districts." MCL 600.8541(1). "A district judge may not extend the jurisdiction of a district court magistrate beyond the jurisdiction expressly provided by law." *Id*. See also MCR 4.401(C) ("[a]n action taken by a district court magistrate may be superseded, without formal appeal, by order of a district judge in the district in which the magistrate serves").

1.11 Technical Requirements of Traffic Citations and Parking Violation Notices

"Each citation shall be numbered consecutively, be in a form as determined by the secretary of state, the attorney general, the state court administrator, and the director of the department of state police[.]" MCL 257.727c(1). A citation must consist of the following:

> "(a) The original which shall be a complaint or notice to appear by the officer and shall be filed with the court in which the appearance is to be made.
>
> (b) The first copy which shall be retained by the local traffic enforcement agency.

[10] See Section 1.15 for more information on informal hearing requirements.

(c) The second copy which shall be delivered to the alleged violator if the violation is a misdemeanor.

(d) The third copy which shall be delivered to the alleged violator if the violation is a civil infraction."[11] MCL 257.727c(1).

"The citation serves as a summons to command (a) the initial appearance of the defendant; and (b) a response from the defendant as to his or her responsibility for the alleged violation." MCR 4.101(A)(3).

A. Contents of the Citation[12]

A citation issued pursuant to MCL 257.742 must contain the following:

- The name of the state or political subdivision acting as plaintiff;
- The name and address of the person to whom the citation is issued;
- The civil infraction alleged;[13]
- The place where the person must appear in court;
- The telephone number of the court;
- The time at or by which the appearance must be made. MCL 257.743(1). "The time specified in a citation for appearance shall be within a reasonable time after the citation is issued pursuant to [MCL 257.742]." MCL 257.741(3).

A citation must also inform the defendant that he or she, at or by the time specified for appearance, may:

- Admit responsibility for the civil infraction in person, by representation, or by mail.
- Admit responsibility for the civil infraction with explanation in person, by representation, or by mail.

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[11] With proper prior approval, "the citation may be appropriately modified as to content or number of copies to accommodate law enforcement and local court procedures and practices. Use of this citation for other than moving violations is optional." MCL 257.727c(2).

[12] With proper prior approval, "the citation may be appropriately modified as to content or number of copies to accommodate law enforcement and local court procedures and practices. Use of this citation for other than moving violations is optional." MCL 257.727c(2).

[13] "A violation alleged on a citation may not be amended except by the prosecuting official or a police officer for the plaintiff." MCR 4.101(A)(2).

- Deny responsibility for the civil infraction by either:
  - Appearing in person for an informal hearing without the opportunity of being represented by an attorney; or
  - Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney. MCL 257.743(2).[14]

"The citation shall inform the defendant that if the person desires to admit responsibility 'with explanation' other than by mail or to have an informal hearing or a formal hearing, the person must apply to the court in person, by mail, or by telephone, within the time specified for appearance and obtain a scheduled date and time to appear for a hearing." MCL 257.743(3). "A hearing date may be specified on the citation." *Id*.

"The citation shall contain a notice in boldface type that the failure of a person to appear within the time specified in the citation or at the time scheduled for a hearing or appearance will result in entry of a default judgment against the person and in the immediate suspension of the person's operator's or chauffeur's license." MCL 257.743(4). "Timely application to the court for a hearing or return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs constitute a timely appearance." *Id*.

B. Signed Under Oath

A complaint signed by a police officer must be treated as made under oath if the violation alleged in the complaint:

- Is a civil infraction or a misdemeanor or ordinance violation for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both;
- Occurred or was committed in the signing officer's presence, or under circumstances permitting the officer's issuance of a citation under MCL 257.625a (warrantless arrests for operating while intoxicated offenses) or MCL 257.728(8) (citations issued after investigation of a traffic accident); and
- If the complaint contains the following statement immediately above the date and signature of the officer:

[14] See Section 1.14 for more information on admitting or denying responsibility.

> "'I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.'" MCL 257.727c(3).

"A citation that contains the full name of the police officer or authorized local official who issued it will be deemed to have been signed pursuant to MCL 257.727c(3)[.]" MCR 8.125(B).

C. Parking Violation Notice

"A parking violation notice may be issued by a police officer, including a limited duty officer, or other personnel duly authorized by the city, village, township, college, or university to issue such a notice under its ordinance." MCL 257.742(7). "If a parking violation notice other than a citation is attached to a motor vehicle, and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by ordinance for the violation are not paid at the parking violations bureau, a citation may be filed with the court described in [MCL 257.741(4)] and a copy of the citation may be served by first-class mail upon the registered owner of the vehicle at the owner's last known address." MCL 257.742(7). "The citation filed with the court pursuant to [MCL 257.742(7)] need not comply in all particulars with [MCL 257.727c and MCL 257.743] but shall consist of a sworn complaint containing the allegations stated in the parking violation notice and shall fairly inform the defendant how to respond to the citation." MCL 257.742(7).

1.12 Initiating a Civil Infraction Action

"A civil infraction action is commenced upon the issuance and service of a citation as provided in [MCL 257.742]." MCL 257.741(1). See also MCR 4.101(A)(1) ("a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator, and filing the citation in the district court").

"The plaintiff in a civil infraction action shall be either the state if the alleged civil infraction is a violation of [the MVC], or a political subdivision if the alleged civil infraction action is a violation of a local ordinance of that subdivision which substantially corresponds to a provision of [the MVC]." MCL 257.741(1).

A. Authority to Issue a Citation[15]

"The form of a citation issued under [MCL 257.742(1) or MCL 257.742(3)] shall be as prescribed in [MCL 257.727c and MCL 257.743]."[16] MCL 257.742(4).

1. Officer Witnesses Violation

"A police officer who witnesses a civil infraction may stop and temporarily detain the offender for the purpose of issuing a written citation." *People v Chapo*, 283 Mich App 360, 366 (2009), citing MCL 257.742(1), which states:

> "A police officer who witnesses a person violating [the MVC] or a local ordinance substantially corresponding to [the MVC], which violation is a civil infraction, may stop the person, detain the person temporarily for purposes of making a record of vehicle check, and prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a written citation, which shall be a notice to appear in court for 1 or more civil infractions."

"If a police officer of a village, city, township, or county, or a police officer who is an authorized agent of a county road commission, witnesses a person violating [the MVC] or a local ordinance substantially corresponding to [the MVC] within that village, city, township, or county and that violation is a civil infraction, that police officer may pursue, stop, and detain the person outside the village, city, township, or county where the violation occurred for the purpose of exercising the authority and performing the duties prescribed in [MCL 257.742] and [MCL 257.749], as applicable." MCL 257.742(1).

2. Officer's Personal Investigation of Accident

"A police officer may issue a citation to a person who is a driver of a motor vehicle involved in an accident when, based upon personal investigation, the officer has reasonable cause to believe that the person is responsible for a civil infraction in connection with the accident." MCL 257.742(3). See also *People v Estabrooks*, 175 Mich App 532, 537 (1989) ("[a] police officer may stop and

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[15] This subsection does not discuss issuing a citation under MCL 257.742(2), because it is outside the scope of this benchbook.

[16] See Section 1.11(B) for a discussion of the requirements under MCL 257.727c, and Section 1.11(A) on requirements under MCL 257.743.

detain a driver involved in a motor vehicle accident for the purpose of issuing a citation for a civil infraction when . . . based upon the officer's personal investigation, the officer has reasonable cause to believe that the driver is responsible for a civil infraction").

3. Officer's Personal Investigation of Violation Based on Witness Complaint

"A police officer may not stop a driver for a civil infraction solely on the basis of a witness' complaint." *Estabrooks*, 175 Mich App at 537, citing MCL 257.743(3). Rather, the statute requires the officer to investigate and have a reasonable belief that a civil infraction occurred. See *Estabrooks*, 175 Mich App at 538. MCL 257.742(3) states:

> "A police officer may issue a citation to a person who is a driver of a motor vehicle when, based upon personal investigation by the police officer of a complaint by someone who witnessed the person violating [the MVC] or a local ordinance substantially corresponding to [the MVC], which violation is a civil infraction, the officer has reasonable cause to believe that the person is responsible for a civil infraction and if the prosecuting attorney or attorney for the political subdivision approves in writing the issuance of the citation." MCL 257.742(3).

B. Serving and Filing[17] a Citation or Parking Notice Violation

1. General Service and Filing Requirements

"Except as otherwise provided by court rule or statute, a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator, and filing the citation in the district court." MCR 4.101(A)(1). See also MCL 257.742(5), which states that "[t]he officer shall inform the person of the alleged civil infraction or infractions and shall deliver the third copy of the citation to the offender."[18] "If the infraction is a parking violation, the action may be initiated by

[17] "The citation serves as the complaint in a civil infraction action, and may be filed either on paper or electronically." MCR 4.101(A). See also MCR 8.125 (permitting the electronic filing of citations). "An electronic citation must contain all the information that would be required if the citation were filed on paper." MCR 8.125(B).

[18] A written citation consists of "an original and 3 copies." MCL 257.742(1).

an authorized person placing a citation securely on the vehicle or mailing a citation to the registered owner of the vehicle." MCR 4.101(A)(1)(a). See also MCL 257.742(6). "In either event, the citation must be filed in the district court." *Id*.

"If a parking violation notice[19] other than a citation is attached to a motor vehicle, and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by ordinance for the violation are not paid at the parking violations bureau, a citation may be filed with the court described in [MCL 257.741(4)] and a copy of the citation may be served by first-class mail upon the registered owner of the vehicle at the owner's last known address." MCL 257.742(7). "The citation filed with the court pursuant to [MCL 257.742(7)] need not comply in all particulars with [MCL 257.727c and MCL 257.743] but shall consist of a sworn complaint containing the allegations stated in the parking violation notice and shall fairly inform the defendant how to respond to the citation." MCL 257.742(7).

"If the infraction is a municipal civil infraction, the action may be initiated by an authorized local official serving a written citation on the alleged violator." MCR 4.101(A)(1)(b).

"The citation serves as the complaint in a civil infraction action, and may be filed either on paper or electronically." MCR 4.101(A).

2. Depositing Citation With Court

"At or before the completion of his or her tour of duty a police officer to whom a citation book has been issued and who has recorded the occurrence of a vehicle law violation upon a citation shall deliver to his or her police chief or to a person duly authorized by the police chief to receive citations all copies of such citation duly signed." MCL 257.728a(1). "The police chief or a person duly authorized by the police chief shall deposit the original of the citation with the court having jurisdiction over the offense not later than 3 days after the date of the citation, excluding Saturdays, Sundays, and legal holidays." *Id*.[20]

"The citation shall be considered to have been deposited with the court as required under [MCL 257.728a(1)] if the original of

[19] *Parking violation notice* means "a notice, other than a citation, directing a person to appear at a parking violations bureau in the city, village, or township in which, or of the college or university for which, the notice is issued and to pay the fine and costs, if any, prescribed by ordinance for the parking or standing of a motor vehicle in violation of the ordinance." MCL 257.742(9)(a).

[20] MCL 257.728a does not address the consequences of a violation of the 3-day rule.

the citation is mailed not later than 2 days after the date of the citation as specified under [MCL 257.728a(2)]." MCL 257.728a(2). "Mailing shall be accomplished by enclosing the original of the citation in a sealed envelope with first class postage fully prepaid, addressed to the court, and depositing the envelope and contents in the United States government mail." *Id*.

C. Sworn Complaint Requirements

"If an officer issues a citation under [MCL 257.742] for a civil infraction or if a citation is issued under [MCL 257.742] for a parking or standing violation, the court may accept an admission with explanation or an admission or denial of responsibility upon the citation without the necessity of a sworn complaint."[21] MCL 257.744. "If the person denies responsibility for the civil infraction, further proceedings shall not be had until a sworn complaint is filed with the court." *Id*. See also MCR 4.101(F)(1) ("[a] contested action may not be heard until a citation is filed with the court"). "[A] sworn traffic citation filed with the district court constitutes a sworn complaint for purposes of MCL 257.744[.]" *People v Ferency*, 133 Mich App 526, 530 (1984). "If the citation is filed electronically, the court may decline to hear the matter until the citation is signed by the officer or official who issued it, and is filed on paper." MCR 4.101(F)(1). See also MCR 8.125(C) ("[i]f an electronic citation is contested, the court may decline to hear the matter until the citation is signed and filed on paper"). "A citation that is not signed and filed on paper, when required by the court, may be dismissed with prejudice." MCR 4.101(F)(1).[22]

"A warrant for arrest under [MCL 257.321a] for failure to appear on the civil infraction citation shall not issue until a sworn complaint relative to the civil infraction is filed with the court." MCL 257.744.

1.13 Special Requirements for Nonresidents

"When a nonresident is stopped under [MCL 257.742] for a civil infraction, the police officer making the stop shall take that person's operator's license . . . as security for the nonresident's appearance in court and satisfaction of any order that may be issued under [MCL 257.907] and shall issue to that person a citation as provided in [MCL 257.727c and MCL 257.742]." MCL 257.749(1). "At or before the completion of his or her tour of duty, a police officer taking the operator's license . . . shall deliver that license either to the court named in the citation or to the

[21] See Section 1.14 for more information on admitting or denying responsibility.

[22] MCR 8.125(C) states that "[a] citation that is not signed and filed on paper, when required by the court, *will* be dismissed with prejudice. (Emphasis added.)

police chief or person authorized by the police chief to receive citations and operator's licenses[.]" MCL 257.749(1). "The police chief or person authorized shall deposit the license and citation with the court in the same manner as prescribed for citations in [MCL 257.728a]." MCL 257.749(1).

"If the person does not have an operator's license . . . in immediate possession in violation of [MCL 257.301] or a license or the receipt described in [MCL 257.311a] in violation of [MCL 257.311], the officer shall arrest that person under [MCL 257.727(d)]." MCL 257.749(1).

"In lieu of the officer's taking of the license under [MCL 257.749(1)] or before appearance in court, the person stopped may recognize to the officer or to the court for his or her appearance by leaving with the officer or court a guaranteed appearance certificate or a sum of money not to exceed $100.00."[23] MCL 257.749(2).

"If a magistrate is available for an immediate appearance, upon demand of the person stopped, the officer immediately shall take the nonresident driver before the magistrate to answer to the civil infraction alleged." MCL 257.749(3).

"Upon entry of an admission of responsibility for the civil infraction, with or without explanation, or upon completion of an informal hearing, the defendant's license shall be returned if judgment is entered for the defendant, if any adverse judgment entered against the defendant is satisfied, or if the defendant leaves with the court a guaranteed appearance certificate or a sum of money not to exceed $100.00 as security for payment of any fines or costs ordered." MCL 257.749(3). "If the nonresident defendant requests a formal hearing, the hearing shall be scheduled as provided in [MCL 257.747] but the defendant's license shall be retained by the court until final resolution of the matter unless the defendant leaves with the court the guaranteed appearance certificate or deposit as provided in [MCL 257.749(2)] as security for appearance at the scheduled formal hearing." MCL 257.749(3).

"If the person who posts a certificate or deposit fails to appear as required in the citation or for a scheduled formal hearing, the court having jurisdiction and venue over the civil infraction shall enter a default judgment against the person, and the guaranteed appearance

[23]"At or before the completion of his or her tour of duty a police officer taking a certificate or deposit of money shall deliver the certificate or deposit of money and the citation to the court named in the citation, or to the police chief or person authorized by the police chief to receive certificates or deposits. The police chief or person authorized shall deposit the certificate or the money deposited with the court [having jurisdiction over the offense not later than 3 days after the date of the citation, excluding Saturdays, Sundays, and legal holidays, MCL 257.728a]." MCL 257.749(5). "Failure to deliver the money deposited shall be embezzlement of public money." *Id.*

certificate or money deposited shall be forfeited and applied to any civil fine or costs ordered under [MCL 257.907]." MCL 257.749(6).

1.14 Defendant's Options When a Citation Is Issued

"A person to whom a citation is issued under [MCL 257.742] shall appear by or at the time specified in the citation and may respond to the allegations in the citation as provided in [MCL 257.745]." MCL 257.745(1).[24]

A. Admit Responsibility Without Explanation

"If the person wishes to admit responsibility for the civil infraction, the person may do so by appearing in person, by representation, or by mail." MCL 257.745(2). "A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear." MCR 4.101(B)(2). "If appearance is made by representation or mail, the court may accept the admission with the same effect as though the person personally appeared in court." MCL 257.745(2). "Upon acceptance of the admission, the court may order any of the sanctions permitted under [MCL 257.907]." MCL 257.745(2).

"Except as provided in [MCR 4.101(E)(4)], an admission without explanation may be offered to and accepted by

> (a) a district judge;
>
> (b) a district court magistrate as authorized by the chief judge, the presiding judge, or the only judge of the district; or
>
> (c) other district court personnel, as authorized by a judge of the district." MCR 4.101(E)(1).

"There is no appeal of right from an admission of responsibility." MCR 4.101(H)(3). "However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in [MCR 4.101(H)(1)(a)]." MCR 4.101(H)(3). "If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court." *Id*. "If the court denies the request, the bond may be applied to the fine and costs." *Id*.

[24] "If the violation is a trailway municipal civil infraction, and there has been damage to property or a vehicle has been impounded, the defendant's response must be made at a formal hearing." MCR 4.101(E)(4). See also MCL 600.8717(4).

B. Admit Responsibility With Explanation

"If the person wishes to admit responsibility for the civil infraction 'with explanation', the person may do so in either of the following ways:

> (a) By appearing by mail.
>
> (b) By contacting the court in person, by mail, by telephone, or by representation to obtain from the court a scheduled date and time to appear, at which time the person shall appear in person or by representation." MCL 257.745(3).

"A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear." MCR 4.101(B)(2). "A defendant who obtains a hearing date other than the date specified in the citation, but who does not appear to explain or contest responsibility, is in default, and the procedures established by [MCR 4.101(B)(4)-(6)] apply."[25] MCR 4.101(F)(4). The court may allow the use of videoconferencing technology by any participant in any civil infraction action hearing under MCR 4.101. MCR 4.101(F)(5). A hearing held by videoconference must be held in accordance with MCR 2.407. MCR 4.101(F)(5).

"If a person admits responsibility for a civil infraction 'with explanation' under [MCL 257.745(3)], the court shall accept the admission as though the person has admitted responsibility under [MCL 257.745(2)] and may consider the person's explanation by way of mitigating any sanction which the court may order under [MCL 257.907]." MCL 257.745(4). "If appearance is made by representation or mail, the court may accept the admission with the same effect as though the person personally appeared in court, but the court may require the person to provide a further explanation or to appear in court." *Id*.

"Except as provided in [MCR 4.101(E)(4)], an admission with explanation may be written or offered orally to a judge or district court magistrate, as authorized by the district judge." MCR 4.101(E)(2).

"There is no appeal of right from an admission of responsibility." MCR 4.101(H)(3). "However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in [MCR 4.101(H)(1)(a)]." MCR 4.101(H)(3). "If the court grants the request, the

[25] See Section 1.17 for information on default procedures.

case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court." *Id*. "If the court denies the request, the bond may be applied to the fine and costs." *Id*.

C. Deny Responsibility

"If the person wishes to deny responsibility for a civil infraction, the person shall do so by appearing for an informal or formal hearing." MCL 257.745(5). "Unless the hearing date is specified on the citation, the person shall contact the court in person, by representation, by mail, or by telephone, and obtain a scheduled date and time to appear for an informal or formal hearing." *Id*. "A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear." MCR 4.101(B)(2). "The court shall schedule an informal hearing, unless the person expressly requests a formal hearing." MCL 257.745(5). "If the hearing date is specified on the citation, the person shall appear on that date for an informal hearing unless the person contacts the court at least 10 days before that date in person, by representation, by mail, or by telephone to request a formal hearing." *Id*.

"A defendant who obtains a hearing date other than the date specified in the citation, but who does not appear to explain or contest responsibility, is in default, and the procedures established by [MCR 4.101(B)(4)-(6)] apply."[26] MCR 4.101(F)(4). The court may allow the use of videoconferencing technology by any participant under MCR 4.101. MCR 4.101(F)(5). A hearing held by videoconference must be held in accordance with MCR 2.407. MCR 4.101(F)(5).

"If a hearing is scheduled by telephone, the court shall mail the defendant a confirming notice of that hearing by regular mail to the address appearing on the citation or to an address which may be furnished by the defendant." *Id*. "An informal hearing shall be conducted pursuant to [MCL 257.746[27]] and a formal hearing shall be conducted pursuant to [MCL 257.747[28]]." MCL 257.745(5).

"Except as provided in [MCR 4.101(E)(4)], a denial of responsibility must be made by the defendant appearing at a time set either by the citation or as the result of a communication with the court." MCR 4.101(E)(3).

[26] See Section 1.17 for information on default procedures.

[27] See Section 1.15.

[28] See Section 1.16.

1.15 Informal Hearings

"An informal hearing will be held unless

(a) a party expressly requests a formal hearing, or

(b) the violation is a trailway municipal civil infraction which requires a formal hearing pursuant to MCL 600.8717(4)." MCR 4.101(F)(2).

A. Conducting the Hearing

"An informal hearing shall be conducted by a district court magistrate when authorized by the judge or judges of the district court district or by a judge of a court listed in [MCL 257.741(2)]." MCL 257.746(1).

"A district court magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing." MCL 257.746(1). "The judge or district court magistrate shall conduct the informal hearing in an informal manner so as to do substantial justice according to the rules of substantive law but shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications." *Id*.

"There shall not be a jury at an informal hearing." MCL 257.746(1).

"For any hearing held under [MCR 4.101], in accordance with MCR 2.407,[29] the court may allow the use of videoconferencing technology by any participant[.]" MCR 4.101(F)(5).

"Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with or cited for a violation of [the MVC] or a local ordinance substantially corresponding to [the MVC] regulating the operation of vehicles on highways[.]" MCL 257.732(1). However, "[a] verbatim record of an informal hearing shall not be required." MCL 257.746(1).

B. No Representation at Hearing

"At an informal hearing the person cited may not be represented by an attorney nor may the plaintiff be represented by the prosecuting attorney or attorney for a political subdivision." MCL 257.746(2).

[29] MCR 2.407 addresses videoconferencing.

C. Notice and Subpoenas

"Notice of a scheduled informal hearing shall be given to the citing police agency, which agency may subpoena witnesses for the plaintiff." MCL 257.746(3).[30] "The defendant may also subpoena witnesses." *Id*. See also MCR 4.101(C)(1), requiring the court to "notify the police officer who issued the citation to appear at the informal hearing." "The attendance of the officer at the hearing may not be waived." MCR 4.101(C)(2). "Except when the court is notified before the commencement of a hearing of an emergency preventing an on-duty officer from appearing, failure of the police officer to appear as required by [MCR 4.101] shall result in a dismissal of the case without prejudice." MCR 4.101(C).

"The provisions of MCR 2.501(C) regarding the length of notice of trial assignment do not apply in civil infraction actions." MCR 4.101(F)(3).

D. Determining Responsibility

"If the judge or district court magistrate determines by a preponderance of the evidence that the person cited is responsible for a civil infraction, the judge or magistrate shall enter an order against the person as provided in [MCL 257.907]."[31] MCL 257.746(4). "Otherwise, a judgment shall be entered for the defendant, but the defendant shall not be entitled to costs of the action." *Id*.

E. Appeals

"The plaintiff and defendant shall be entitled to appeal an adverse judgment entered at an informal hearing." MCL 257.746(5). "An appeal following an informal hearing is a matter of right, and must be asserted in writing, within 7 days after the decision, on a form to be provided by the court."[32] MCR 4.101(H)(2). "The appeal will result in a de novo formal hearing." *Id*. "[A]n appeal shall be de novo in the form of a scheduled formal hearing as follows:

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[30] "Witness fees for a witness on behalf of the plaintiff are payable by the district control unit of the district court for the place where the hearing occurs, by the city or village when the hearing involves an ordinance violation in a district where the district court is not functioning, or by the county when the hearing involves a violation of [the MVC] in a district where the district court is not functioning." MCL 257.746(3).

[31] See Section 1.19 for more information on ordering a fine and costs under MCL 257.907.

[32] See SCAO Form CIA 05, *Claim of Appeal of Right/Request to Withdraw Admission and Order, Civil Infraction*. Note that MCR 4.401(D), which generally addresses appeals of district court magistrate decisions, requires a claim of appeal to be written "in substantially the same form provided by MCR 7.104[.]"

> (a) The appeal from a judge of the district court shall be heard by a different judge of the district.
>
> (b) The appeal from a district court magistrate shall be heard by a judge of the district." MCL 257.746(5).

See also MCR 4.401(D) ("[a]ppeals of right may be taken from a decision of the district court magistrate to the district court in the district in which the magistrate serves . . . [and] [t]he action is heard de novo by the district court"); MCL 600.8515. Additionally, "[a]n action taken by a district court magistrate may be superseded, without formal appeal, by order of a district judge in the district in which the magistrate serves." MCR 4.401(C).

"An appeal from a municipal judge shall be a trial de novo in the circuit court." MCL 257.746(5).

"A defendant who appeals must post a bond as provided in [MCR 4.101(H)(1)(a)]." MCR 4.101(H)(2)(a). "If a defendant who has posted a bond defaults by failing to appear at the formal hearing, or if the appeal is dismissed or the judgment is affirmed, the bond may be applied to the fine and costs." *Id*.

"A plaintiff's appeal must be asserted by the prosecuting authority of the political unit that is responsible for providing the plaintiff's attorney for the formal hearing." MCR 4.101(H)(2)(b). "A bond is not required." *Id*.

1.16 Formal Hearings

"An informal hearing will be held unless

> (a) a party expressly requests a formal hearing, or
>
> (b) the violation is a trailway municipal civil infraction which requires a formal hearing pursuant to MCL 600.8717(4)." MCR 4.101(F)(2). See also MCL 257.745(5) (when the defendant wishes to deny responsibility, "[t]he court shall schedule an informal hearing, unless the person expressly requests a formal hearing").

A. Conducting the Hearing

"A formal hearing shall be conducted only by a judge of a court having jurisdiction over civil infraction actions under [MCL 257.741(2)]." MCL 257.747(1).

"There shall not be a jury trial in a formal hearing." MCL 257.747(4).

"For any hearing held under [MCR 4.101], in accordance with MCR 2.407,[33] the court may allow the use of videoconferencing technology by any participant[.]" MCR 4.101(F)(5).

"Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with or cited for a violation of [the MVC] or a local ordinance substantially corresponding to [the MVC] regulating the operation of vehicles on highways[.]" MCL 257.732(1).

B. Representation Permitted

"In a formal hearing the person cited may be represented by an attorney, but is not entitled to appointed counsel at public expense." MCL 257.747(2).

C. Notice and Subpoenas

"Notice of a formal hearing shall be given to the prosecuting attorney or attorney for the political subdivision who represents the plaintiff." MCL 257.747(3). "That attorney shall appear in court for a formal hearing and that attorney shall be responsible for the issuance of a subpoena to each witness for the plaintiff." *Id*.[34] "The defendant may also subpoena witnesses." *Id*.

"The provisions of MCR 2.501(C) regarding the length of notice of trial assignment do not apply in civil infraction actions." MCR 4.101(F)(3).

D. Determining Responsibility

"If the judge determines by a preponderance of the evidence that the person cited is responsible for a civil infraction, the judge shall enter an order against the person as provided in [MCL 257.907]."[35] MCL 257.747(5). "Otherwise, a judgment shall be entered for the defendant, but the defendant shall not be entitled to costs of the action." *Id*. The "preponderance of the evidence" test, as it relates to civil infraction actions, does not violate due process. *People v Ferency*, 133 Mich App 526, 536 (1984).

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[33] MCR 2.407 addresses videoconferencing.

[34] "Witness fees for a witness on behalf of the plaintiff are payable by the district control unit of the district court for the place where the hearing occurs, by the city or village when the hearing involves an ordinance violation in a district where the district court is not functioning, or by the county when the hearing involves a violation of this act in a district where the district court is not functioning." MCL 257.747(3).

[35] See Section 1.19 for more information on ordering a fine and costs under MCL 257.907.

E. Appeals

"An appeal following a formal hearing is a matter of right." MCR 4.101(H)(1).[36]

1. Defendant's Appeal

"A defendant who appeals must post with the district court, at the time the appeal is taken, a bond equal to the fine and costs imposed." MCR 4.101(H)(1)(a). "A defendant who has paid the fine and costs is not required to post a bond." *Id*.

"If a defendant who has posted a bond fails to comply with the requirements of MCR 7.104(D), the appeal may be considered abandoned, and the district court may dismiss the appeal on 14 days' notice to the parties pursuant to MCR 7.113." MCR 4.101(H)(1)(b). "The court clerk must promptly notify the circuit court of a dismissal and the circuit court shall dismiss the claim of appeal." *Id*. "If the appeal is dismissed or the judgment is affirmed, the district court may apply the bond to the fine and costs." *Id*.

2. Plaintiff's Appeal

"A plaintiff's appeal must be asserted by the prosecuting authority of the political unit that provided the plaintiff's attorney for the formal hearing." MCR 4.101(H)(1)(c). "A bond is not required." *Id*.

1.17 Entering Default Judgment for Failure to Answer a Citation or Appear for a Scheduled Hearing

"Depending on the nature of the violation and on the procedure appropriate to the violation, a defendant may appear in person, by representation, or by mail." MCR 4.101(B)(1). "A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear." MCR 4.101(B)(2).

"A clerk of the court may enter a default after certifying, on a form to be furnished by the court,[37] that the defendant has not made a scheduled appearance, or has not answered a citation within the time allowed by

[36] "Except as otherwise provided in [MCR 4.101], the appeal [following a formal hearing] is governed by subchapter 7.100 [of the Michigan Court Rules]." MCR 4.101(H)(1). See the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Chapter 2, for information on circuit court appeals under subchapter 7.100.

[37] See SCAO Form CIA 07, *Default Judgment, Civil Infraction*.

statute." MCR 4.101(B)(3). See also MCL 257.6b(d) (*civil infraction determination* includes "a determination that a person is responsible for a civil infraction by . . . [a] default judgment, for failing to appear as directed by citation or other notice, at a scheduled appearance under [MCL 257.745(3)(b) or MCL 257.745(4)], at a scheduled informal hearing under [MCL 257.746], or at a scheduled formal hearing under [MCL 257.747]").

"If a defendant fails to appear or otherwise to respond to any matter pending relative to a civil infraction action, the court:

> (a) must enter a default against the defendant;
>
> (b) must make a determination of responsibility, if the complaint is sufficient;
>
> (c) must impose a sanction by entering a default judgment;
>
> (d) must send the defendant a notice of the entry of the default judgment and the sanctions imposed; and
>
> (e) may retain the driver's license of a nonresident[38] as permitted by statute, if the court has received that license pursuant to statute. The court need not retain the license past its expiration date." MCR 4.101(B)(4). See also MCL 257.748.

Additionally, "[i]f a defendant fails to appear or otherwise to respond to any matter pending relative to a *traffic* civil infraction, the court

> (a) must notify the secretary of state of the entry of the default judgment, as required by MCL 257.732,[39] and
>
> (b) must initiate the procedures required by MCL 257.321a.[40]" MCR 4.101(B)(5) (emphasis added).

1.18 Setting Aside a Default Judgment

"A defendant may move to set aside a default judgment within 14 days after the court sends notice of the judgment to the defendant." MCR 4.101(D)(1).

"The motion

> (a) may be informal,

[38] See Section 1.13 for more information on special provisions related to nonresidents.

[39] See Section 1.38 for information on abstracting requirements under MCL 257.732.

[40] See Section 1.43 for information on suspending an individual's license under MCL 257.321a.

(b) may be either written or presented to the court in person,

(c) must explain the reason for the nonappearance of the defendant,

(d) must state that the defendant wants to offer a defense to or an explanation of the complaint, and

(e) must be accompanied by a cash bond equal to the fine and costs due at the time the motion is filed." MCR 4.101(D)(1).

"For good cause, the court may

(a) set aside the default and direct that a hearing on the complaint take place, or

(b) schedule a hearing on the motion to set aside the default judgment." MCR 4.101(D)(2).

"A defendant who does not file [a motion to set aside a default judgment] on time may use the procedure set forth in MCR 2.603(D)." MCR 4.101(D)(3). "A motion to set aside . . . a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." MCR 2.603(D)(1). "Except as provided in MCR 2.612, if personal service was made on the party against whom the default was taken, the . . . default judgment if one has been entered, may be set aside only if the motion is filed . . . if a default judgment has been entered, within 21 days after the default judgment was entered." MCR 2.603(D)(2)(b).

1.19 Civil Fines, Costs, and Assessments for Civil Infractions[41]

"Each district of the district court and each municipal court may establish a schedule of civil fines, costs, and assessments to be imposed for civil infractions that occur within the respective district or city." MCL 257.907(7). "If a schedule is established, it shall be prominently posted and readily available for public inspection." *Id*. "A schedule need not include all violations that are designated by law or ordinance as civil infractions." *Id*. "A schedule may exclude cases on the basis of a defendant's prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses." *Id*.

[41] This section discusses the ordering of civil fines, costs, and assessments. See Section 1.20 for information on waiving a fine, costs, or assessment. In addition, see the Michigan Judicial Institute's table summarizing the information discussed in this section.

"The state court administrator shall annually publish and distribute to each district and court a recommended range of civil fines and costs for first-time civil infractions." MCL 257.907(8).[42] "This recommendation is not binding upon the courts having jurisdiction over civil infractions but is intended to act as a normative guide for judges and district court magistrates and a basis for public evaluation of disparities in the imposition of civil fines and costs throughout the state." *Id*.[43]

"Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown." MCR 1.110. See also MCL 257.907(2) ("Permission may be granted for payment of a civil fine and costs to be made within a specified period of time or in specified installments, but unless permission is included in the order or judgment, the civil fine and costs shall be payable immediately.").

A. Civil Fines

In general, "[i]f a person is determined under [MCL 257.741 to MCL 257.750] to be responsible or responsible 'with explanation' for a civil infraction under [the MVC] or a local ordinance substantially corresponding to a provision of [the MVC], the judge or district court magistrate may order the person to pay a civil fine of not more than $100.00[.]" MCL 257.907(2).

"A court may not increase a scheduled civil fine because the defendant has requested a hearing." MCR 4.101(G)(1).

1. Specific Fines and Fine Amounts

MCL 257.907(2)[44] provides specific fines and fine amounts for certain MVC violations:

- "[I]f the civil infraction was a moving violation that resulted in an at-fault collision with another vehicle, a person, or any other object, the civil fine ordered under [MCL 257.907] shall be increased by $25.00 but the total civil fine shall not exceed $100.00." MCL 257.907(2).

[42]The trial court fee schedules are available at http://courts.mi.gov/Administration/admin/Pages/Fines,-Fees,-Costs,-and-Rates.aspx.

[43]Recommended Range of Fines and Costs for Civil Infractions is available at http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/fc_ci.pdf.

[44] This list represents the civil infractions relevant to the scope of this benchbook. It does not include the civil infractions listed for commercial vehicle violations.

- "[F]or a violation of [MCL 257.602b, texting while driving], the person shall be ordered to pay . . . a civil fine of $100.00 for a first offense and $200.00 for a second or subsequent offense." MCL 257.907(2). See also ~~MCL 257.602b(5)~~ MCL 257.602b(6).

- "For a violation of [MCL 257.674(1)(s), disabled parking violations], or a local ordinance substantially corresponding to [MCL 257.674(1)(s)], the person shall be ordered to pay . . . a civil fine of not less than $100.00 or more than $250.00." MCL 257.907(2).

- "For a violation of [MCL 257.676c, soliciting business at the scene of an accident or disabled vehicle], the person shall be ordered to pay . . . a civil fine of $1,000.00." MCL 257.907(2).

- "For a violation of [MCL 257.328, no proof of insurance], the civil fine ordered under [MCL 257.907(2)] shall be not more than $50.00." MCL 257.907(2).

- "For a violation of [MCL 257.710d, child less than four years of age not properly secured in a child restraint system], the civil fine ordered under [MCL 257.907(2)] shall not exceed $10.00, subject to [MCL 257.907(12)[45]]." MCL 257.907(2).

- "For a violation of [MCL 257.710e, seat belt violations], the civil fine and court costs ordered under [MCL 257.907(2)] shall be $25.00." MCL 257.907(2).[46]

- "For a violation of [MCL 257.682,[47] failure to stop for school bus,] or a local ordinance substantially corresponding to [MCL 257.682], the person shall be ordered to pay . . . a civil fine of not less than $100.00 or more than $500.00." MCL 257.907(2).

- "For a violation of [MCL 257.240, damages or violation of law resulting from use or ownership of vehicle by another after title transfer], the civil fine ordered under [MCL 257.907(2)] shall be $15.00." MCL 257.907(2). See also MCL 257.240(3).

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[45] MCL 257.907(12) allows the court to waive the civil fine in certain circumstances. See Section 1.18(B) for more information on waiving a fine for a violation of MCL 257.710d.

[46] This is the only civil infraction where the fine and costs are combined into one lump sum.

[47] "In addition to the civil fine and costs provided for a civil infraction under [MCL 257.907], the judge, district court referee, or district court magistrate may order a person who violates [MCL 257.682] to perform not more than 100 hours of community service at a school." MCL 257.682(4).

- "For a violation of [MCL 257.252a(1), abandoned vehicle], the civil fine ordered under [MCL 257.907(2)] shall be $50.00." MCL 257.907(2).

- "For a violation of [MCL 257.676a(3), sale or display for sale of produce or merchandise within highway right-of-way in violation of permit], the civil fine ordered under [MCL 257.907(2)] shall be not more than $10.00." MCL 257.907(2).

2. Fines Doubled for Moving Violations in Work Zone, Emergency Scene, School Zone, or School Bus Zone

"Notwithstanding any other provision of [the MVC], a person responsible for a moving violation in a work zone, at an emergency scene, or in a school zone during the period beginning 30 minutes before school in the morning and through 30 minutes after school in the afternoon, or in a school bus zone is subject to a fine that is double the fine otherwise prescribed for that moving violation." MCL 257.601b(1)

3. Minimum Fines For Violating Maximum Speed Limit

MCL 257.629c(1) provides the minimum fine amounts for maximum speed limit violations:

> "Notwithstanding [MCL 257.320a and MCL 257.907], a person who is determined responsible or responsible 'with explanation' for a civil infraction for violating the maximum speed limit on a limited access freeway or part of a limited access freeway upon which the maximum speed limit is 55 miles per hour or more shall be ordered by the court to pay a minimum fine . . . only according to the following schedule, except as otherwise provided in subsections (2) and (3)[48]:"

Table 1:

Miles per hour over the speed limit	Minimum Fine
1– 5	$10
6–10	$20
11–15	$30

Table 1:

Miles per hour over the speed limit	Minimum Fine
16–25	$40
26 or over	$50

4. Distribution of Fines

"[A] civil fine which is ordered under [MCL 257.907] for a violation of [the MVC] or other state statute shall be exclusively applied to the support of public libraries and county law libraries in the same manner as is provided by law for penal fines assessed and collected for violation of a penal law of the state." MCL 257.909(1).[49]

B. Costs

"If a person is determined under [MCL 257.741 to MCL 257.750] to be responsible or responsible 'with explanation' for a civil infraction under [the MVC] or a local ordinance substantially corresponding to a provision of [the MVC], the judge or district court magistrate may order the person to pay . . . costs as provided in [MCL 257.907(4)]." MCL 257.907(2).

"If a civil fine is ordered under [MCL 257.907(2)], the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions, and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the civil infraction, up to the entry of judgment." MCL 257.907(4). "Costs shall not be in excess of $100.00." *Id*. "A civil fine ordered under [MCL 257.907(2)] shall not be waived unless costs ordered under [MCL 257.907(4)] are waived." MCL 257.907(4).

MCL 257.729 also authorizes the imposition of certain costs:

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[48] MCL 257.629c(1) "does not apply to a person operating a vehicle or vehicle combination for which the maximum rate of speed is established pursuant to [MCL 257.627(5)] or [MCL 257.627(7)]." MCL 257.629c(2). And "[f]or a violation of a maximum speed limit on a limited access freeway by a person operating a vehicle or vehicle combination described in [MCL 257.629c(2)], points shall be assessed under [MCL 257.320a] and fines shall be assessed under [MCL 257.907]." MCL 257.629c(3).

[49] "[MCL 257.909(1)] is intended to maintain a source of revenue for public libraries which previously received penal fines for misdemeanor violations of [the MVC] which are now civil infractions." MCL 257.909(2).

> "In addition to a fine assessed for the . . . civil infraction when . . . determined responsible, the magistrate may also add to any fine and costs levied additional costs incurred in compelling the appearance of the person, which additional costs shall be returned to the general fund of the unit of government incurring the costs."

1. Mandatory Order for Costs

MCL 257.907(2)[50] requires the court to order costs for specific MVC violations:

- "[F]or a violation of [MCL 257.602b, texting while driving], the person shall be ordered to pay costs as provided in [MCL 257.907(4).]" MCL 257.907(2).
- "For a violation of [MCL 257.674(1)(s), disabled parking violations], or a local ordinance substantially corresponding to [MCL 257.674(1)(s)], the person shall be ordered to pay costs as provided in [MCL 257.907(4).]" MCL 257.907(2).
- "For a violation of [MCL 257.676c, soliciting business at the scene of an accident or disabled vehicle], the person shall be ordered to pay costs as provided in [MCL 257.907(4).]" MCL 257.907(2).
- "For a violation of [MCL 257.710e, seat belt violations], the civil fine and court costs ordered under [MCL 257.907(2)] shall be $25.00." MCL 257.907(2).[51]
- "For a violation of [MCL 257.682, failure to stop for school bus] or a local ordinance substantially corresponding to [MCL 257.682], the person shall be ordered to pay costs as provided in [MCL 257.907(4).]" MCL 257.907(2).

2. Distribution of Costs

"Except as otherwise provided by law, costs are payable to the general fund of the plaintiff." MCL 257.907(4).

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[50] This list represents the civil infractions relevant to the scope of this benchbook. It does not include the civil infractions listed for commercial vehicle violations.

[51] This is the only civil infraction where the fine and costs are combined into one lump sum.

C. Assessments

"In addition to any civil fines or costs ordered to be paid under [MCL 257.907], the judge or district court magistrate shall order the defendant to pay a justice system assessment of $40.00 for each civil infraction determination, except for a parking violation or a violation for which the total fine and costs imposed are $10.00 or less." MCL 257.907(13).

"Upon payment of the assessment, the clerk of the court shall transmit the assessment collected to the state treasury to be deposited into the justice system fund created in [MCL 600.181]." MCL 257.907(13).

"An assessment levied under [MCL 257.907(13)] is not a civil fine for purposes of [MCL 257.909]." MCL 257.907(13).

1.20 Waiving Civil Fines, Costs, and Assessments

"The court may waive fines, costs and fees, pursuant to statute or court rule, or to correct clerical error." MCR 4.101(G)(4).

"A civil fine ordered under [MCL 257.907(2)] shall not be waived unless costs ordered under [MCL 257.907(4)] are waived." MCL 257.907(4).

A. Mandatory Waiver

A court must waive any ordered civil fine, costs, and assessment in the following circumstances:

- **Defective safety equipment violation under MCL 257.683.**

  "If a person has received a civil infraction citation for defective safety equipment on a vehicle under [MCL 257.683], the court shall waive a civil fine, costs, and assessments upon receipt of certification by a law enforcement agency that repair of the defective equipment was made before the appearance date on the citation." MCL 257.907(9).

- **Failing to carry or display registration certificate under MCL 257.223.**

  "If a person has received a citation for a violation of [MCL 257.223], the court shall waive any civil fine, costs, and assessment, upon receipt of certification by a law enforcement agency that the person, before the

appearance date on the citation, produced a valid registration certificate that was valid on the date the violation of [MCL 257.223] occurred." MCL 257.907(14).

- **Failing to produce certificate of insurance under MCL 257.328.**

  "If a person has received a citation for a violation of [MCL 257.328(1)] for failing to produce a certificate of insurance under [MCL 257.328(2)], the court . . . shall waive any fine, costs, and any other fee or assessment otherwise authorized under [the MVC] upon receipt of verification by the court that the person, before the appearance date on the citation, produced valid proof of insurance that was in effect at the time the violation of [MCL 257.328(1)] occurred." MCL 257.907(15).[52] "Insurance obtained subsequent to the time of the violation does not make the person eligible for a waiver under [MCL 257.907(15)]." *Id.*

  However, "[i]f, before the appearance date on a citation issued under [MCL 257.328(1)], the defendant submits proof to the court that the motor vehicle had insurance meeting the requirements of [MCL 500.3101 and MCL 500.3102], at the time the violation of [MCL 257.328(1)] occurred, all of the following apply:

  (a) The court shall not assess a fine or costs.

  (b) The court shall not forward an abstract of the court record to the secretary of state.

  (c) The court may assess a fee of not more than $25.00, which shall be paid to the court funding unit." MCL 257.328(3).

B. Discretionary Waiver

"The court may waive any civil fine, cost, or assessment against a person who received a civil infraction citation for a violation of [MCL 257.710d (child less than four years of age not properly secured in a child restraint system)] if the person, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the requirements of [MCL 257.710d]." MCL 257.907(12).

[52]Additionally, the court may waive the fee of not more than $25 set out in MCL 257.328(3)(c). MCL 257.907(15).

1.21 Civil Contempt Proceedings for Nonpayment of Monies Owed

"If a defendant defaults in the payment of a civil fine, costs, or both, or of any installment, as ordered pursuant to [MCL 257.907(2)], the court, upon the motion of the plaintiff or upon its own motion, may require the defendant to show cause why the default should not be treated as in civil contempt and may issue a summons or order to show cause or a bench warrant of arrest for the defendant's appearance." MCL 257.908(1).

"Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court shall find that the default constitutes a civil contempt and may order the defendant committed until the civil fine, costs, or both, or a specified part thereof, is paid." MCL 257.908(3). However, "[t]he court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of MCR 6.425(E)(3)." MCR 3.606(F) (addressing contempts outside the immediate presence of the court). MCR 6.425(E)(3) addresses incarceration for nonpayment, requires an ability to pay determination, provides for payment alternatives, and offers guidance for determining manifest hardship. For a detailed discussion of MCR 6.425(E)(3), see the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 2*.

"If it appears that the default in the payment of a civil fine or costs does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine or costs or the unpaid portion thereof in whole or in part." MCL 257.908(4).

"The term of imprisonment on civil contempt for nonpayment of a civil fine or costs shall be specified in the order of commitment, and shall not exceed 1 day for each $10.00 of the fine and costs." MCL 257.908(5). "A person committed for nonpayment of a civil fine or costs shall be given credit toward payment for each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of $10.00 per day." *Id*.

"A defendant committed to imprisonment for civil contempt for nonpayment of a civil fine or costs shall not be discharged from custody until 1 of the following occurs:

> (a) The defendant has been credited with the amount due pursuant to [MCL 257.908(5)].
>
> (b) The amount due has actually been collected through execution of process or otherwise.

> (c) The amount due has been satisfied pursuant to a combination of [MCL 257.908(6)(a) and MCL 257.908(6)(b)]." MCL 257.908(6).

"The civil contempt shall be purged upon discharge of the defendant pursuant to [MCL 257.908(6)]." MCL 257.908(7).

1.22 Treatment, Education, and Rehabilitation Programs

"In addition to a civil fine and costs ordered under [MCL 257.907(2)] and [MCL 257.907(4)] and the justice system assessment ordered under [MCL 257.907(13)], the judge or district court magistrate may order the person to attend and complete a program of treatment, education, or rehabilitation." MCL 257.907(5).

Part B—Misdemeanors

1.23 Courts With Jurisdiction Over Misdemeanor Traffic Offenses

The following courts have jurisdiction over misdemeanor traffic offenses:

- "The district court has jurisdiction of . . . [m]isdemeanors punishable by a fine or imprisonment not exceeding 1 year, or both[,]" "[o]rdinance and charter violations punishable by a fine or imprisonment, or both[,]" arraignments, fixing bail, accepting bonds, probable cause conferences in all cases not cognizable by the district court, preliminary examinations in all cases not cognizable by the district court,[53] and circuit court arraignments in all cases not cognizable by the district court. MCL 600.8311(a)-(f).

- "[M]unicipal courts . . . shall have original jurisdiction of all prosecutions and proceedings . . . for all misdemeanors and offenses arising under the laws of [Michigan] and committed within the corporate limits of the cities in which the courts are located, and which are punishable by a fine or imprisonment for not more than 1 year, or both, and may issue all lawful writs and process and do all lawful acts which may be necessary and proper to carry into effect the

[53] "There shall not be a preliminary examination for any misdemeanor to be tried in a district court." MCL 600.8311(e).

jurisdiction given by [the Municipal Courts Act]." MCL 730.551.

- The family division of circuit court has jurisdiction over all misdemeanor offenses committed by juveniles under age 17. MCL 712A.2(a)(1). See also MCL 600.1021(1)(e).

- Additionally, "[t]he circuit court or the district court in any judicial circuit or a district court in any judicial district may adopt or institute a mental health court pursuant to statute or court rules." MCL 600.1091(1). Adults and juveniles charged with criminal traffic offenses may be admitted into mental health court. See MCL 600.1094(1).

1.24 Jurisdiction and Duties of District Court Magistrates

MCL 600.8511(b) sets forth the jurisdiction and duty of district court magistrates in regard to violations of the MVC. MCL 600.8511(b) provides:

> "A district court magistrate has the . . . jurisdiction and dut[y] . . . [t]o arraign and sentence upon pleas of guilty or nolo contendere for violations of the Michigan vehicle code, . . . MCL 257.1 to MCL 257.923, or a local ordinance substantially corresponding to a provision of the Michigan vehicle code, [MCL 257.1 to MCL 257.923], except for violations of [MCL 257.625 and MCL 257.625m], or a local ordinance substantially corresponding to [MCL 257.625 or MCL 257.625m], if authorized by the chief judge of the district court district and if the maximum permissible punishment does not exceed 93 days in jail or a fine, or both." MCL 600.8511(b). "However, the chief judge may authorize the magistrate to arraign defendants and set bond with regard to violations of [MCL 257.625 and MCL 257.625m], or a local ordinance substantially corresponding to [MCL 257.625 or MCL 257.625m]."

See MCL 600.8511 for the jurisdiction and duties of district court magistrates in other contexts.

See also the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1,* for additional discussion of the jurisdiction and duties of district court magistrates.

1.25 Initiating a Misdemeanor Action by Issuing a Citation[54]

Under the MVC, a police officer *must* issue a citation to a person who is arrested without a warrant for "a violation of [the MVC] punishable as a misdemeanor, or an ordinance substantially corresponding to a provision of [the MVC] and punishable as a misdemeanor, under conditions not referred to in [MCL 257.617,[55] MCL 257.619,[56] or MCL 257.727.[57]]" MCL 257.728(1). However, where no arrest occurs, "[a] police officer *may* issue a citation to a person who is an operator of a motor vehicle involved in an accident if, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a misdemeanor under [the MVC] in connection with the accident." MCL 257.728(8) (emphasis added).

In lieu of being issued a citation to appear, a person arrested without a warrant for a traffic misdemeanor may demand to be brought to a judge or district court magistrate or, if the person is a juvenile,[58] to the family division of the circuit court for arraignment as provided in MCL 257.727. MCL 257.728(1). If a nonresident demands an immediate arraignment, and a judge or district court magistrate is not available to conduct the arraignment or if an immediate trial cannot be held, the nonresident may deposit with the officer a guaranteed appearance certificate or a sum of money not to exceed $100 and be issued a written citation. MCL 257.728(5). However, a nonresident may not be issued a written citation if he or she was arrested for a violation of any offense listed in MCL 257.727(a)-(d). MCL 257.728(5).

A. Citation Requirements

The citation serves as a summons to command the initial appearance of the accused and to command the accused's response regarding his or her guilt of or responsibility for the violation alleged. MCR 6.615(A)(2)(a)-(b). The citation must contain "the name and address of the person, the violation charged, and the time and place when and where the person shall appear in court." MCL 257.728(1) (warrantless arrest for alleged misdemeanor violation). See also MCL 257.728(8)

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[54] This section discusses citation requirements. For information on initiating a misdemeanor action by filing an order for an arrest warrant or by issuing a summons, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 2.

[55] Leaving the scene of an accident resulting in serious impairment of body function or death. MCL 257.617.

[56] Failing to give the proper information and aid after an accident. MCL 257.619.

[57] Requiring a person who was arrested without a warrant for certain specified violations to be arraigned (if an adult) or taken before the family division of circuit court (if a minor) "without unreasonable delay[.]"

[58] See Chapter 2 for more information on juvenile traffic procedures.

(requiring substantially similar information for traffic accidents allegedly involving a misdemeanor where no arrest is made). The officer must complete an original and three copies of the citation. MCL 257.728(1); MCL 257.728(8). The original must be filed with the court in which the appearance is to be made, the first copy is retained by the local traffic enforcement agency, the second copy is delivered to the violator if the violation is a misdemeanor, and the third copy is delivered to the violator if the violation is a civil infraction. MCL 257.727c(1).[59] See also MCL 257.743, which requires additional information pertaining to an accused's right to admit or deny responsibility for a traffic civil infraction citation.

B. Accepting a Plea Based on a Citation

A judge or district court magistrate (if authorized to do so)[60] can accept a plea of guilty or not guilty based solely on a citation. MCL 257.728e. However, if the accused pleads not guilty to a misdemeanor, a sworn complaint must be filed with the court before any further proceedings may be conducted. MCL 257.728e. "A warrant for arrest shall not issue for an offense [charged in the citation] until a sworn complaint is filed with the magistrate." MCL 257.728e.

C. Failure to Appear

For Michigan residents who fail to appear or respond to a misdemeanor traffic citation, the court "must initiate the procedures required by MCL 257.321a for the failure to answer a citation[,]"[61] and "may issue a warrant for the defendant's arrest." MCR 6.615(B)(1)(a)-(b).

For nonresidents who fail to appear or respond to a misdemeanor traffic citation, MCR 6.615(B)(2) states:

> "(a) the court may mail a notice to appear to the defendant at the address in the citation;

[59] With the approval of certain specified officials, the content or number of copies required by MCL 257.727c(1) may be modified "to accommodate law enforcement and local court and procedures and practices." MCL 257.727c(2).

[60] A district court magistrate has the power "[t]o arraign and sentence upon pleas of guilty or nolo contendere for violations of the [MVC] . . . or a local ordinance substantially corresponding to a provision of the [MVC] . . . except for violations of . . . MCL 257.625 and [MCL] 257.625m, or a local ordinance substantially corresponding to . . . MCL 257.625 and [MCL] 257.625m, if authorized by the chief judge of the district court district and if the maximum permissible punishment does not exceed 93 days in jail or a fine, or both. However, the chief judge may authorize the magistrate to arraign defendants and set bond with regard to violations of . . . MCL 257.625 and [MCL] 257.625m, or a local ordinance substantially corresponding to . . . MCL 257.625 and [MCL] 257.625m." MCL 600.8511(b).

[61] MCL 257.321a governs the cancellation, suspension, and revocation of a driver's license.

"(b) the court may issue a warrant for the defendant's arrest; and

"(c) if the court has received the driver's license of a nonresident, pursuant to statute, it may retain the license as allowed by statute. The court need not retain the license past its expiration date."

D. Restrictions on the Issuance of Citations

MCL 257.728(1) prohibits the issuance of citations for the following offenses[62]:

- Leaving the scene of an accident resulting in serious impairment of body function or death. MCL 257.617.
- Failing to give the proper information and aid after an accident. MCL 257.619.
- Committing a moving violation causing death or serious impairment of a body function to another person under MCL 257.601d. MCL 257.727(a).
- Operating a vehicle while intoxicated, visibly impaired, with any bodily alcohol content if under age 21, or while having a controlled substance in his or her body under MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), or MCL 257.625(8), or a substantially corresponding ordinance. MCL 257.727(b).
- Causing death or serious impairment of a body function by operating a vehicle while intoxicated or visibly impaired, or while having a controlled substance in his or her body, MCL 257.625(4)-257.625(5). MCL 257.727(b).
- Operating a vehicle while intoxicated or visibly impaired, with any bodily alcohol content if under age 21, or while having a controlled substance in his or her body, and having occupants under age 16 in the vehicle, MCL 257.625(7). MCL 257.727(b).
- Reckless driving, MCL 257.626, or a substantially corresponding ordinance, unless the officer deems that issuing a citation and releasing the person will not constitute a public menace. MCL 257.727(c).
- Not having in his or her immediate possession at the time of arrest a valid operator's or chauffeur's license,

[62]Some of the listed offenses are felonies, not punishable as misdemeanors, or may be punishable as felonies if the person has prior convictions.

MCL 257.311, or a receipt for an already surrendered license, MCL 257.311a. However, if the officer can satisfactorily determine the identity of the person and whether the person can be apprehended if he or she fails to appear before the designated magistrate, the officer may issue a citation. MCL 257.727(d).

E. Summons

- As an alternative to filing an order for a warrant after an arrest, the prosecutor may issue a written order for a summons addressed to the accused person under MCL 764.9a(1). See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Volume 1*, Chapter 2, for more information on summons to appear in misdemeanor cases.

F. Arraignment

MCL 257.727 provides:

> "If a person is arrested without a warrant in any of the following cases, the arrested person shall, without unreasonable delay, be arraigned by the magistrate who is nearest or most accessible within the judicial district as provided in . . . MCL 764.13, or, if a minor, taken before the family division of circuit court within the county in which the offense charged is alleged to have been committed:
>
> > (a) The person is arrested under [MCL 257.601d].
> >
> > (b) The person is arrested under [MCL 257.625(1), MCL 257.625(3), MCL 257.625(4), MCL 257.625(5), MCL 257.625(6), MCL 257.625(7), or MCL 257.625(8)], or an ordinance substantially corresponding to [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), or MCL 257.625(8)].
> >
> > (c) A person is arrested under [MCL 257.626] or an ordinance substantially corresponding to [MCL 257.626]. If under the existing circumstances it does not appear that releasing the person pending the issuance of a warrant will constitute a public menace, the arresting officer may proceed as provided by [MCL 257.728].
> >
> > (d) A person arrested does not have in his or her immediate possession a valid operator's or chauffeur's license or the receipt described in

[MCL 257.311a]. If the arresting officer otherwise satisfactorily determines the identity of the person and the practicability of subsequent apprehension if the person fails to voluntarily appear before a designated magistrate or the family division of circuit court as directed, the officer may release the person from custody with instructions to appear in court, given in the form of a citation as prescribed by [MCL 257.728]."

1.26 General Criminal Penalty for Misdemeanor Traffic Offenses

A. Generally

"Unless another penalty is provided in [the MVC] or by the laws of [Michigan], a person convicted of a misdemeanor for the violation of [the MVC] shall be punished by a fine of not more than $100.00, or by imprisonment for not more than 90 days, or both." MCL 257.901(2).

B. Exceptions

"Notwithstanding any other provision of [the MVC], a person responsible for a moving violation in a work zone, at an emergency scene, or in a school zone during the period beginning 30 minutes before school in the morning and through 30 minutes after school in the afternoon, or in a school bus zone is subject to a fine that is double the fine otherwise prescribed for that moving violation." MCL 257.601b(1).

"A person who commits a moving violation in a work zone or a school bus zone for which not fewer than 3 points are assigned under [MCL 257.320a] and as a result causes injury to another person in the work zone or school bus zone is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment for not more than 1 year, or both." MCL 257.601b(2).

1.27 Minimum State Costs for Misdemeanor Traffic Offenses

"Beginning October 1, 2003, when fines and costs are assessed by a judge or district court magistrate, the defendant shall be ordered to pay costs of not less than $50.00 for each conviction for a misdemeanor or for any ordinance violation." MCL 600.8381(4). See also MCL 769.1j(1)(b). Payment of the minimum state cost must be a condition of probation.

MCL 771.3(1)(g). "The court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order." MCR 6.425(E)(3)(a). MCR 6.425(E)(3) also addresses payment alternatives and offers guidance for determining manifest hardship. For a detailed discussion of MCR 6.425(E)(3), see the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 2*.

1.28 Costs[63]

MCL 769.1k(1)(b)(*ii*) provides that, at the time of sentencing or a delay in sentencing or entry of a deferred judgment of guilt, a court may impose "[a]ny cost authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty." Effective October 17, 2014, 2014 PA 352 amended MCL 769.1k in response to the Michigan Supreme Court's holding in *People v Cunningham (Cunningham II)*, 496 Mich 145 (2014), rev'g 301 Mich App 218 (2013) and overruling *People v Sanders (Robert) (After Remand)*, 298 Mich App 105 (2012), and *People v Sanders (Robert)*, 296 Mich App 710 (2012).[64] In *Cunningham II*, the Court held that MCL 769.1k(1)(b)— which, at the time, provided for the imposition of "[a]ny cost in addition to the minimum state cost"—did "not provide courts with the independent authority to impose 'any cost[;]'" rather, it "provide[d] courts with the authority to impose only those costs that the Legislature has separately authorized by statute." *Cunningham II*, 496 Mich at 147, 158 (concluding that "[t]he circuit court erred when it relied on [former] MCL 769.1k(1)(b)(*ii*) as independent authority to impose $1,000 in court costs[]"). 2014 PA 352, in addition to making other revisions to MCL 769.1k, added MCL 769.1k(1)(b)(*iii*) to provide for the imposition of "any cost reasonably related to the actual costs incurred by the trial court[.]"[65] The amendments effectuated by 2014 PA 352 "appl[y] to all fines, costs, and assessments ordered or assessed under . . . MCL

[63]Note that "[t]he court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order." MCR 6.425(E)(3)(a). MCR 6.425(E)(3) also addresses payment alternatives and offers guidance for determining manifest hardship. For a detailed discussion of MCR 6.425(E)(3), see the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 2*.

[64]The amended version of MCL 769.1k does not violate a defendant's due process or equal protection rights, nor does it violate the constitutional prohibition on ex post facto punishments or the principle of separation of powers. *People v Konopka*, 309 Mich App 345, 367-70, 376 (2015).

[65] This provision expires "36 months after the date the amendatory act that added [MCL 769.1k(7)] is enacted into law[.]" MCL 769.1k(1)(b)(*ii*). MCL 769.1k(7) was added by 2014 PA 352, effective October 17, 2014.

769.1k[] *before June 18, 2014*, and *after [October 17, 2014]*." 2014 PA 352, enacting section 1 (emphasis supplied).

"MCL 769.1k(1)(b)(*iii*) independently authorizes the imposition of costs in addition to those costs authorized by the statute for the sentencing offense[,]" and "[a] trial court possesses the authority, pursuant to MCL 769.1k, as amended by 2014 PA 352, to order court costs[.]" *People v Konopka*, 309 Mich App 345, 350, 358 (2015). "However, although the costs imposed . . . need not be separately calculated, . . . the trial court [must] . . . establish a factual basis[]" demonstrating that "the court costs imposed [are] 'reasonably related to the actual costs incurred by the trial court[.]'" *Konopka*, 309 Mich App at 359, quoting MCL 769.1k(1)(b)(*iii*).

MCL 769.34(6) addresses the sentencing guidelines and the duties of the court when sentencing, and it generally authorizes the court to order court costs ("As part of the sentence, the court may also order the defendant to pay any combination of a fine, costs, or applicable assessments."). However, "MCL 769.34(6) allows courts to impose only those costs or fines that the Legislature has separately authorized by statute[]" and "does not provide courts with the independent authority to impose any fine or cost." *Cunningham II*, 496 Mich at 158 n 11.[66]

In addition to any costs specifically authorized by offense-specific statutes, MCL 257.729 provides that "[i]n addition to a fine assessed for the charge . . . when found guilty . . ., the magistrate may also add to any fine and costs levied additional costs incurred in compelling the appearance of the person, which additional costs shall be returned to the general fund of the unit of government incurring the costs."

Part C—Felonies

1.29 Courts With Jurisdiction Over Felony Traffic Offenses

The district court has jurisdiction to conduct felony arraignments, probable cause conferences, and preliminary examinations. MCL 600.8311(d)-(f); MCR 6.104; MCR 6.110. The circuit court has jurisdiction to try felony offenses and conduct sentencing proceedings. Const 1963, art 6, §13; MCL 600.8311(f); MCL 762.1. Generally, the Family Division of Circuit Court has jurisdiction over criminal cases involving juveniles.[67] MCL 600.1021(1)(e).

[66]For a more in-depth discussion of costs, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 3.

[67] See Chapter 2 for more information on required procedures for juveniles.

Additionally, "[t]he circuit court or the district court in any judicial circuit or a district court in any judicial district may adopt or institute a mental health court pursuant to statute or court rules." MCL 600.1091(1). Adults and juveniles charged with criminal traffic offenses may be admitted into mental health court. See MCL 600.1094(1).

For a general discussion of pretrial proceedings in criminal cases, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*.

1.30 Initiating a Felony Action

"'A police officer may arrest an individual without a warrant if a felony has been committed and the officer has probable cause to believe that individual committed a felony.'" *People v Tierney*, 266 Mich App 687, 705 (2005), quoting *People v Kelly (Albert)*, 231 Mich App 627, 631 (1998). A criminal defendant may also be arrested on the basis of an arrest warrant. "A court must issue an arrest warrant, or a summons . . . if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense." MCR 6.102(A). The prosecutor may also request that the court issue a summons[68] instead of an arrest warrant. MCR 6.103(A). For more information on the initiation of a felony action, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 2.

1.31 General Criminal Penalties for Felony Traffic Offenses

The MVC and the Michigan Penal Code (MPC) contain general penalty provisions that apply in felony cases where criminal sanctions are not otherwise fixed by statute.

Under the MVC, "[a]ny person who is convicted of a violation of any of the provisions of this act declared to constitute a felony, unless a different penalty is expressly provided herein, shall be punished by imprisonment for not less than 1 year nor more than 5 years, or by a fine of not less than $500.00 nor more than $5,000.00, or by both such fine and imprisonment." MCL 257.902.

Under the MPC, if the criminal penalty is not otherwise fixed by statute, a person convicted of a crime declared by the state of Michigan to be a felony "is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $5,000.00 dollars, or both." MCL 750.503.

[68]See SCAO Form MC 256, *Criminal Summons* (felony or misdemeanor).

A conflict between the penal provisions of the MVC and the Code of Criminal Procedure must be resolved in favor of the more specific MVC provisions. See *Wayne Co Prosecutor v Wayne Circuit Judge*, 154 Mich App 216, 221-222 (1986).

1.32 Felony Sentencing

Previously, sentencing courts were generally *required* to either impose a minimum sentence within the appropriate minimum range as calculated under the sentencing guidelines, MCL 769.34(2), or to articulate "a substantial and compelling reason" to depart from that range, MCL 769.34(3). However, in 2015, the Michigan Supreme Court, applying *Alleyne v United States*, 570 US ___ (2013), and *Apprendi v New Jersey*, 530 US 466 (2000), held that "Michigan's sentencing guidelines . . . [are] constitutionally deficient[] . . . [to] the extent [that they] . . . *require* judicial fact-finding beyond facts admitted by the defendant or found by the jury to score offense variables (OVs) that *mandatorily* increase the floor of the guidelines minimum sentence range[.]" *People v Lockridge*, 498 Mich 358, 364 (2015), rev'g in part 304 Mich App 278 (2014) and overruling *People v Herron*, 303 Mich App 392 (2013). "To remedy the constitutional violation," the *Lockridge* Court "sever[ed] MCL 769.34(2) to the extent that it is mandatory" and "[struck] down the requirement of a 'substantial and compelling reason' to depart from the guidelines range in MCL 769.34(3)[,]" further holding that although "a sentencing court must determine the applicable guidelines range and take it into account when imposing a sentence[,]" the legislative sentencing guidelines "are *advisory* only." *Lockridge*, 498 Mich at 364-365, 391, 399, citing *United States v Booker*, 543 US 220, 233, 264 (2005) (emphasis supplied).

When sentencing a defendant, the trial court's objective is to tailor a penalty that is appropriate to the seriousness of the offense and the criminal history of the offender. *People v Rice (On Remand)*, 235 Mich App 429, 445 (1999). The "framework" of an appropriate sentence consists of four basic considerations:

- the likelihood or potential that the offender could be reformed;
- the need to protect society;
- the penalty or consequence appropriate to the offender's conduct; and
- the goal of deterring others from similar conduct.

Rice, 235 Mich App at 446, citing *People v Snow*, 386 Mich 586, 592 (1972).

For more information about felony sentencing, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 3.

A. Calculating the Minimum Sentence Range

While the legislative sentencing guidelines are advisory, "a sentencing court must determine the applicable guidelines range and take it into account when imposing a sentence." *Lockridge*, 498 Mich at 365. The recommended minimum sentence range for an offense to which the sentencing guidelines apply is determined by scoring the appropriate offense variables (OVs) and prior record variables (PRVs) for a specific conviction. MCL 777.21. All felony offenses to which the sentencing guidelines apply fall into one of six offense categories called crime groups,[69] and each crime group is further organized into crime classes[70] that indicate the severity of the offense. See MCL 777.5 and MCL 777.21(1)(c). An offense's crime class determines which sentencing grid must be used for determination of the offender's recommended minimum sentence range. See, e.g., MCL 777.61 to MCL 777.69. The crime group an offense falls into dictates which OVs must be scored for that offense and how those variables must be scored.[71] *People v Bonilla-Machado*, 489 Mich 412, 422 (2011). For cases involving vehicles, OVs 17 (degree of negligence exhibited) and 18 (operator ability affected by alcohol/drugs) contain offense characteristics specific to offenses involving "the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive." MCL 777.22(1); MCL 777.22(5).[72]

The rule of *Apprendi*, 530 US at 490 ("[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt[]"), does not apply to prior convictions and therefore presumably does not implicate the scoring of *prior record* variables under Michigan's sentencing guidelines. See *Alleyne*, 570 US at ___ n 1 (noting that "[i]n *Almendarez–Torres v United States*, [523 US 224 (1998)], [the United States Supreme Court]

[69]There are six crime groups: crimes against a person, crimes against property, crimes involving a controlled substance, crimes against public order, crimes against public trust, and crimes against public safety. MCL 777.5(a)-(f).

[70]An offense's crime class is designated by the letters A through H and M2 (second-degree murder). The crime class determines which sentencing grid applies to the sentencing offense. MCL 777.21(1)(c).

[71]In contrast to OVs, PRVs are scored based on the severity of prior felony convictions, and are scored for every offense regardless of the offense's crime group or class. *People v Peltola*, 489 Mich 174, 187 (2011). See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 3, for detailed information about PRVs.

[72]MCL 777.22 sets forth a complete list of the OVs that must be scored for each crime group. For a complete discussion of the OVs applicable to a particular crime, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 3.

recognized a narrow exception to [the] general rule [of *Apprendi*] for the fact of a prior conviction[;]" the *Alleyne* Court declined to revisit *Almendarez-Torres* "[b]ecause the parties [did] not contest that decision's vitality[]"); see also, generally, *Lockridge*, 498 Mich at 370 n 12.

B. Departures

Rather than adhering to MCL 769.34(3) and articulating a substantial and compelling reason for a departure, "[w]hen a defendant's sentence is calculated using a guidelines minimum sentence range in which OVs have been scored on the basis of facts not admitted by the defendant or found beyond a reasonable doubt by the jury, the sentencing court may exercise its discretion to depart from that guidelines range without articulating substantial and compelling reasons for doing so." *Lockridge*, 498 Mich at 391-392. "A sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness[, and] . . . [r]esentencing will be required when a sentence is determined to be unreasonable." *Id*. at 392, citing *Booker*, 543 US at 261. "[S]entencing courts must justify the sentence imposed in order to facilitate appellate review." *Lockridge*, 498 Mich at 392. The reasonableness of a trial court's sentence is reviewed under the principle of proportionality standard set forth in *People v Milbourn*, 435 Mich 630, 636 (1990). *People v Steanhouse*, 313 Mich App 1, 45 (2015). The principle of proportionality requires "'sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.'" *Id.*, quoting *Milbourn*, 435 Mich at 636.

1.33 Minimum State Costs for Felony Traffic Offenses

Effective October 1, 2003, if a court orders a defendant convicted of a felony to pay any combination of a fine, costs, or assessments, the court must order the defendant to pay state minimum costs of not less than $68.00. MCL 769.1j(1)(a). Payment of the state minimum costs must be included as a condition of the defendant's probation. MCL 771.3(1)(g); MCL 769.1j(3). "The court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order." MCR 6.425(E)(3)(a). MCR 6.425(E)(3) also addresses payment alternatives and offers guidance for determining manifest hardship. For a detailed discussion of MCR 6.425(E)(3), see the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 2*.

1.34 Costs[73]

MCL 769.1k(1)(b)(*ii*) provides that, at the time of sentencing or a delay in sentencing or entry of a deferred judgment of guilt, a court may impose "[a]ny cost in addition to the minimum state cost[74] set forth in [MCL 769.1k(1)(a)[]" on a defendant convicted by plea (guilty or nolo contendere) or found guilty by the court after a hearing or trial. Effective October 17, 2014, 2014 PA 352 amended MCL 769.1k in response to the Michigan Supreme Court's holding in *People v Cunningham (Cunningham II)*, 496 Mich 145 (2014), rev'g 301 Mich App 218 (2013) and overruling *People v Sanders (Robert) (After Remand)*, 298 Mich App 105 (2012), and *People v Sanders (Robert)*, 296 Mich App 710 (2012).[75] In *Cunningham II*, the Court held that MCL 769.1k(1)(b)— which, at the time, provided for the imposition of "[a]ny cost in addition to the minimum state cost"—did "not provide courts with the independent authority to impose 'any cost[;]'" rather, it "provide[d] courts with the authority to impose only those costs that the Legislature has separately authorized by statute." *Cunningham II*, 496 Mich at 147, 158 (concluding that "[t]he circuit court erred when it relied on [former] MCL 769.1k(1)(b)(*ii*) as independent authority to impose $1,000 in court costs[]"). 2014 PA 352, in addition to making other revisions to MCL 769.1k, added MCL 769.1k(1)(b)(*iii*) to provide for the imposition of "any cost reasonably related to the actual costs incurred by the trial court[.]" The amendments effectuated by 2014 PA 352 "appl[y] to all fines, costs, and assessments ordered or assessed under . . . MCL 769.1k[] *before June 18, 2014*, and *after [October 17, 2014]*." 2014 PA 352, enacting section 1 (emphasis supplied).

"MCL 769.1k(1)(b)(*iii*) independently authorizes the imposition of costs in addition to those costs authorized by the statute for the sentencing offense[,]" and "[a] trial court possesses the authority, pursuant to MCL 769.1k, as amended by 2014 PA 352, to order court costs[.]" *People v Konopka*, 309 Mich App 345, 350, 358 (2015). "However, although the costs imposed . . . need not be separately calculated, . . . the trial court [must] . . . establish a factual basis[]" demonstrating that "the court costs imposed [are] 'reasonably related to the actual costs incurred by the trial court[.]'" *Konopka*, 309 Mich App at 359, quoting MCL 769.1k(1)(b)(*iii*).

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[73]Note that "[t]he court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order." MCR 6.425(E)(3)(a). MCR 6.425(E)(3) also addresses payment alternatives and offers guidance for determining manifest hardship. For a detailed discussion of MCR 6.425(E)(3), see the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 2*.

[74] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol 2*, Chapter 3 for a discussion of minimum state cost.

[75]The amended version of MCL 769.1k does not violate a defendant's due process or equal protection rights, nor does it violate the constitutional prohibition on ex post facto punishments or the principle of separation of powers. *People v Konopka*, 309 Mich App 345, 365, 367-70, 376 (2015).

MCL 769.34(6) addresses the sentencing guidelines and the duties of the court when sentencing, and it generally authorizes the court to order court costs ("As part of the sentence, the court may also order the defendant to pay any combination of a fine, costs, or applicable assessments."). However, "MCL 769.34(6) allows courts to impose only those costs or fines that the Legislature has separately authorized by statute[]" and "does not provide courts with the independent authority to impose any fine or cost." *Cunningham II*, 496 Mich at 158 n 11.[76]

1.35 Felony in Which a Motor Vehicle Was Used

The MVC defines a *felony in which a motor vehicle was used* as

> "a felony during the commission of which the person operated a motor vehicle and while operating the vehicle presented real or potential harm to persons or property and 1 or more of the following circumstances existed:
>
> (a) The vehicle was used as an instrument of the felony.
>
> (b) The vehicle was used to transport a victim of the felony.
>
> (c) The vehicle was used to flee the scene of the felony.
>
> (d) The vehicle was necessary for the commission of the felony." MCL 257.732(6). (Note: MCL 257.319(2)(d) and MCL 257.303(8) contain substantially similar definitions.)

The MVC mandates license suspension for one year upon conviction of any offense categorized as a *felony in which a motor vehicle was used*. MCL 257.319(1)(d). The MVC further includes a *felony in which a motor vehicle was used* in the list of specified offenses for which a combination of two or more convictions within 7 years requires license revocation and denial. MCL 257.303(2)(b).

"If a person is charged with a felony in which a motor vehicle was used, other than a felony specified in [MCL 257.732(4) or MCL 257.319], the prosecuting attorney shall include the following statement on the complaint and information filed in district or circuit court:

> 'You are charged with the commission of a felony in which a motor vehicle was used. If you are convicted and the judge finds that the conviction is for a felony in which a motor

[76]For a more in-depth discussion of costs, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 3.

> vehicle was used, as defined in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319, your driver's license shall be suspended by the secretary of state.'." MCL 257.732(7).

A substantially similar notice is required in juvenile proceedings when a juvenile is accused of an act, the nature of which constitutes a felony in which a motor vehicle was used, other than a felony specified in MCL 257.732(4) or MCL 257.319. MCL 257.732(8).

"If the court determines as part of the sentence or disposition that the felony for which the person was convicted or adjudicated and with respect to which notice was given under [MCL 257.732(7) or MCL 257.732(8)] is a felony in which a motor vehicle was used, the clerk of the court shall forward an abstract of the court record of that conviction to the secretary of state." MCL 257.732(9).

Felonies categorized as a *felony in which a motor vehicle was used* are not separate offenses that are subject to additional criminal penalties; rather, criminal penalties in these cases are imposed according to the applicable penal statute. The *felony in which a motor vehicle was used* categorization is a judicial determination made after conviction, MCL 257.732(9), that results in the imposition of licensing sanctions pursuant to MCL 257.319(1)(d) (suspension of the defendant's driver's license for one year for a first offense), and MCL 257.303(2)(b) (revocation and denial of the defendant's driver's license upon conviction within seven years of two *felonies in which a motor vehicle was used*, or a combination of convictions including one *felony in which a motor vehicle was used* and another enumerated offense).[77] Further, a $1,000.00 driver responsibility fee for two consecutive years is imposed if the violation constitutes "a felony resulting from the operation of a motor vehicle," MCL 257.732a(2)(a)(*i*),[78] and MCL 257.320a(1)(a) imposes 6 points for a felony resulting from the operation of a motor vehicle.

However, certain traffic offenses that are likely to meet the definition of a *felony in which a motor vehicle was used* will not be subject to the sanctions associated with the designation because the secretary of state has already coded many traffic offenses for specific licensing sanctions.[79] See the Secretary of State's Offense Code Index for Traffic Violations (setting forth the offense code numbers for particular offenses, including a

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[77] Note that revocation and denial under MCL 257.303(2)(b) does not necessarily require a conviction of a *felony in which a motor vehicle was used*; rather, revocation will occur if a defendant is twice convicted within seven years of *any* of the offenses listed in that statute. See Section 1.41 (license denial) and Section 1.34 (license revocation) for more information on licensing sanctions under MCL 257.303.

[78] Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated. See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

separate code for a *felony in which a motor vehicle was used,* and designating particularized licensing sanctions for each offense on the basis of its code).

Part D—General Overview of Licensing Sanctions for Civil Infractions, Misdemeanor, and Felony Traffic Offenses

1.36 Authority

"The Secretary of State has the statutory power to review driving records and determine sanctions." *People v Greenlee*, 133 Mich App 734, 737 (1984). "[I]t [is] not within the jurisdiction of the district court to place a civil defendant on probation and restrict his [or her] driving privileges." *Id.*

Accordingly, Part D addresses the secretary of state's authority to impose points, assess driver responsibility fees, impose license suspensions, revocations, and denials, and require vehicle immobilization or forfeiture.

1.37 Multiple Sanctions for the Same Offense

License sanctions imposed by more than one entity for the same offense run concurrently. MCL 257.303a.

> "Except as otherwise provided in [the MVC], the suspension, revocation, denial, disqualification, or cancellation of an operator's license, chauffeur's license, or commercial driver license by another state or the United States shall run concurrently with a suspension, revocation, denial, disqualification, or cancellation of an operator's license,

[79]For example, the following offenses may be committed in a fashion that satisfies the statutory definition of a *felony in which a motor vehicle was used*, but have separate offense codes and are subject to license revocation and denial, not license suspension: MCL 257.602a (fleeing and eluding); MCL 257.653a (failure to use due care and caution causing injury or death to emergency response personnel); MCL 257.617 (leaving the scene of an accident); MCL 257.601b (moving violation causing death in a work or school bus zone); MCL 257.601c (moving violation causing death of operator of implement of husbandry); MCL 257.904 (operating a motor vehicle while unlicensed); MCL 257.626 (reckless driving causing serious impairment of bodily function or death); and MCL 750.321 (manslaughter). All of these offenses are discussed in Chapter 8. The secretary of state code for a *felony in which a motor vehicle was used* is 1430, the above offenses are assigned different, individual codes that do not include the felony in which a motor vehicle was used code. The code for each offense is set forth in the Offense Code Index for Traffic Violations.

chauffeur's license, or commercial driver license by this state that is imposed for the same offense." MCL 257.303a.

1.38 Abstracts of Convictions

"Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with or cited for a violation of [the MVC] or a local ordinance substantially corresponding to [the MVC] regulating the operation of vehicles on highways[.]" MCL 257.732(1).

"Except as provided in [MCL 257.732(16)], the municipal judge or clerk of the court of record shall prepare and forward to the secretary of state an abstract of the court record as follows:

> (a) Not more than 5 days after a conviction, forfeiture of bail, or entry of a civil infraction determination or default judgment upon a charge of or citation for violating or attempting to violate [the MVC] or a local ordinance substantially corresponding to [the MVC] regulating the operation of vehicles on highways.
>
> (b) Immediately for each case charging a violation of [MCL 257.625(1) or MCL 257.625(3)-(8)] or [MCL 257.625m] or a local ordinance substantially corresponding to [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), or MCL 257.625(8) or MCL 257.625m] in which the charge is dismissed or the defendant is acquitted." MCL 257.732(1)(a)-(b).[80]

"The abstract or report required under [MCL 257.732] shall be made upon a form furnished by the secretary of state. An abstract shall be certified by signature, stamp, or facsimile signature of the person required to prepare the abstract as correct. An abstract or report shall include all of the following:

> (a) The name, address, and date of birth of the person charged or cited.
>
> (b) The number of the person's operator's . . . license, if any.
>
> (c) The date and nature of the violation.
>
> (d) The type of vehicle driven at the time of the violation[.]

[80] MCL 257.732(1)(c) is not included here as it does not pertain to violations of the MVC.

(e) The date of the conviction, finding, forfeiture, judgment, or civil infraction determination.

(f) Whether bail was forfeited.

(g) Any license restriction, suspension, or denial ordered by the court as provided by law.

(h) The vehicle identification number and registration plate number of all vehicles that are ordered immobilized or forfeited.

(i) Other information considered necessary to the secretary of state." MCL 257.732(3).

Certain offenses do not require submission of an abstract. See MCL 257.732(16). "Except for controlled substances offenses described in [MCL 257.732(4)], the court shall not submit, and the secretary of state shall discard and not enter on the master driving record, an abstract for a conviction or civil infraction determination for any of the following violations:

(a) The parking or standing of a vehicle.

(b) A nonmoving violation that is not the basis for the secretary of state's suspension, revocation, or denial of an operator's . . . license.[81]

(c) A violation of [MCL 257.201 *et seq*. (administration, registration, certificate of title)] that is not the basis for the secretary of state's suspension, revocation, or denial of an operator's . . . license.[82]

(d) A pedestrian, passenger, or bicycle violation, other than a violation of [MCL 436.1703(1) or MCL 436.1703(2) (minor in possession)], or a local ordinance substantially corresponding to [MCL 436.1703(1) or MCL 436.1703(2)], or [MCL 257.624a or MCL 257.624b (transporting or possessing open alcohol)] or a local ordinance substantially corresponding to [MCL 257.624a or MCL 257.624b].

(e) A violation of [MCL 257.710e (safety belt requirements)] or a local ordinance substantially corresponding to [MCL 257.710e].

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[81] MCL 257.732(18) requires the secretary of state to inform the trial courts "of the nonmoving violations . . . that are used by the secretary of state as the basis for the suspension, restriction, revocation, or denial of an operator's . . . license."

[82] MCL 257.732(18) requires the secretary of state to inform the trial courts "of the . . . violations of [MCL 257.201 *et seq.*,] that are used by the secretary of state as the basis for the suspension, restriction, revocation, or denial of an operator's . . . license."

> (f) A violation of [MCL 257.328(1) (proof of insurance)] if, before the appearance date on the citation, the person submits proof to the court that the motor vehicle had insurance meeting the requirements of . . . MCL 500.3101 and [MCL 500.3102], at the time the citation was issued. Insurance obtained subsequent to the time of the violation does not make the violation an exception under this subsection.
>
> * * *
>
> (h) A violation of [MCL 257.311 (operator's license in immediate possession)] if the person was driving a noncommercial vehicle and, before the court appearance date or the date fines are to be paid, the person submits proof to the court that he or she held a valid driver license on the date the citation was issued.
>
> (i) A violation of section [MCL 257.602b(1) (texting while driving)] or [MCL 257.602c (use of cell phone by individual with level 1 or 2 graduated license)]." MCL 257.732(16).

"Except as provided in [the MVC] and notwithstanding any other provision of law, a court shall not order expunction of any violation reportable to the secretary of state under [MCL 257.732]." MCL 257.732(22).

Upon receipt of an abstract, the secretary of state must determine an individual's eligibility to attend a basic driver improvement course. MCL 257.320d.[83]

1.39 Points

Except as otherwise provided in MCL 257.320a and MCL 257.629c, "[w]ithin 5 days after receipt of a properly prepared abstract from a court of [Michigan] or another state, the secretary of state shall record the date of conviction, civil infraction determination, or probate court disposition, and the number of points for each, based on the [formula set out in MCL 257.320a(1)]." MCL 257.320a(1).[84]

"If more than 1 conviction, civil infraction determination, or probate court disposition results from the same incident, points shall be entered

[83] See Section 1.49 for more information on the basic driver improvement course requirements.

[84] For the exact number of points to be imposed by the secretary of state for a specific traffic offense, see the section detailing that specific traffic offense in Chapters 3 and 4 (civil infractions), Chapters 5 and 6 (misdemeanors), and Chapters 7 and 8 (felonies). In addition, a person eligible to take a basic driver improvement course may be exempt from having points entered against him or her. See Section 1.49 for more information.

only for the violation that receives the highest number of points under [MCL 257.320a]." MCL 257.320a(5).

"[T]he court shall not submit, and the secretary of state shall discard and not enter on the master driving record, an abstract for a conviction . . . for . . . [a] nonmoving violation that is not the basis for the secretary of state's suspension, revocation, or denial of an operator's . . . license." MCL 257.732(16)(b). Similarly, "[t]he court shall not submit, and the secretary of state shall discard and not enter on the master driving record, an abstract for a conviction . . . for . . . [a] violation of [MCL 257.201 *et seq.*] that is not the basis for the secretary of state's suspension, revocation, or denial of an operator's license." MCL 257.732(16)(c).

Further, points shall not be entered for a violation of MCL 257.310e(14); MCL 257.311; MCL 257.602b(1); MCL 257.602c; MCL 257.625m; MCL 257.658; MCL 257.710d; MCL 257.717; MCL 257.719; MCL 257.719a; or MCL 257.723. MCL 257.320a(2). Points shall also not be entered for bond forfeitures, MCL 257.320a(3), overweight loads or defective equipment, MCL 257.320a(4), or when a conviction results solely because of the failure of a Michigan driver to appear in another state to contest a violation committed in another state that would be a civil infraction if committed in Michigan, MCL 257.320a(9).

1.40 Driver Responsibility Fees

Driver responsibility fees are imposed under MCL 257.732a when a driver accumulates seven or more points within a two-year period, MCL 257.732a(1), or upon conviction of certain enumerated offenses, MCL 257.732a(2).

A. Accumulation of Seven or More Points

"An individual, whether licensed or not, who accumulates 7 or more points on his or her driving record under [MCL 257.320a and MCL 257.629c] within a 2-year period for any violation not listed under [MCL 257.732a(2)] shall be assessed a $100.00 driver responsibility fee. For each additional point accumulated above 7 points not listed under [MCL 257.732a(2)], an additional fee of $50.00 shall be assessed. The secretary of state shall collect the fees described in [MCL 257.732a(1)] once each year that the point total on an individual driving record is 7 points or more. This subsection is subject to [MCL 257.732a(11)]." MCL 257.732a(1).

B. Conviction of Enumerated Offenses

"An individual, whether licensed or not, who violates any of the following sections or another law or local ordinance that substantially

corresponds to those sections shall be assessed a driver responsibility fee as follows:

(a) Subject to [MCL 257.732(11)], upon posting an abstract indicating that an individual has been found guilty for a violation of law listed or described in this subdivision, the secretary of state shall assess a $1,000.00 driver responsibility fee each year for 2 consecutive years:

(*i*) Manslaughter, negligent homicide, or a felony resulting from the operation of a motor vehicle, ORV, or snowmobile.

(*ii*) [MCL 257.601b(2); MCL 257.601b(3); MCL 257.601c(1); MCL 257.601c(2); MCL 257.601d; MCL 257.626(3); MCL 257.626(4); MCL 257.653a(3), or MCL 257.653a(4)].

(*iii*) [MCL 257.625(1), MCL 257.625(4), or MCL 257.625(5), MCL 257.625m, or MCL 324.81134].

(*iv*) Failing to stop and disclose identity at the scene of an accident when required by law.

(*v*) Fleeing or eluding an officer.

(b) Subject to [MCL 257.732(11)], upon posting an abstract indicating that an individual has been found guilty for a violation of law listed in this subdivision, the secretary of state shall assess a $500.00 driver responsibility fee each year for 2 consecutive years:

(*i*) [MCL 257.625(3); MCL 257.625(6); MCL 257.625(7); or MCL 257.625(8)]

(*ii*) [MCL 257.626], or beginning October 31, 2010, [MCL 257.626(2)].

(*iii*) [MCL 257.904].

(*iv*) [MCL 500.3101, MCL 500.3102, and MCL 500.3103].

(c) Through September 30, 2012, upon posting an abstract indicating that an individual has been found guilty for a violation of [MCL 257.301], the secretary of state shall assess a $150.00 driver responsibility fee each year for 2 consecutive years. However, a driver responsibility fee shall not be assessed under this

> subdivision for a violation committed on or after October 1, 2012.
>
> (d) Through September 30, 2012, upon posting an abstract indicating that an individual has been found guilty or determined responsible for a violation listed in [MCL 257.328], the secretary of state shall assess a $200.00 driver responsibility fee each year for 2 consecutive years. However, a driver responsibility fee shall not be assessed under this subdivision for a violation committed on or after October 1, 2012." MCL 257.732a(2).

"The driver responsibility 'fees' imposed by MCL 257.732a(2)(a) and [MCL 257.732a(2)(b)] do not violate the double jeopardy or the equal protection guarantees of the United States and Michigan constitutions[.]" *Dawson v Secretary of State*, 274 Mich App 723, 748 (2007) (opinion by WILDER, P.J.); see also *id.* (B.K. ZAHRA, J., concurring).

C. Sunset Provisions

2014 PA 250[85] amended MCL 257.732a to phase out the assessment of driver responsibility fees by October 1, 2019. MCL 257.732a(1)-(2) are subject to MCL 257.732a(11), which requires the reduction of fees collected each year until fees are completely eliminated.

1. MCL 257.732a(11)(a):Elimination of Fees Assessed and Collected Under MCL 257.732a(1)

MCL 257.732a(11)(a) states:

"(11) A driver responsibility fee shall be assessed and collected under [MCL 257.732a] as follows:

> (a) For an individual who accumulates 7 or more points on his or her driving record beginning on the following dates, a fee assessed under [MCL 257.732a(1)] shall be reduced as follows:
>
> > (*i*) Beginning October 1, 2015, the assessment shall be 75% of the fee calculated under [MCL 257.732a(1)].

[85]While signed by the governor on June 21, 2014 and filed with the secretary of state on June 27, 2014, 2014 PA 250 "does not take effect unless Senate Bill No. 633 of the 9th Legislature is enacted into law." Senate Bill No. 633 became 2014 PA 283, and was signed by the governor and filed with the secretary of state on September 23, 2014. 2014 PA 283 is effective December 31, 2014.

(*ii*) Beginning October 1, 2016, the assessment shall be 50% of the fee calculated under [MCL 257.732a(1)].

(*iii*) Beginning October 1, 2018, the assessment shall be 25% of the fee calculated under [MCL 257.732a(1)].

(*iv*) Beginning October 1, 2019, no fee shall be assessed under [MCL 257.732a(1)]."

2. MCL 257.732a(11)(b): Elimination of Fees Assessed and Collected Under MCL 257.732a(2)

MCL 257.732a(11)(b) states:

"(11) A driver responsibility fee shall be assessed and collected under [MCL 257.732a] as follows:

* * *

(b) A fee assessed under [MCL 257.732a(2)(a) or MCL 257.732a(2)(b)] shall be reduced as follows:

(*i*) For a violation that occurs on or after October 1, 2015, 100% of the fee shall be assessed for the first year and 50% for the second year.

(*ii*) For a violation that occurs on or after October 1, 2016, 100% of the fee shall be assessed for the first year and no fee shall be assessed for the second year.

(*iii*) For a violation that occurs on or after October 1, 2018, 50% of the fee shall be assessed for the first year and no fee shall be assessed for the second year.

(*iv*) For a violation that occurs on or after October 1, 2019, no fee shall be assessed under [MCL 257.732a(2)(a) or MCL 257.732a(2)(b)]."

D. Community Service in Lieu of Paying Driver Responsibility Fees

Effective December 31, 2014, 2014 PA 283 added MCL 257.732b, which permits individuals who are assessed a driver responsibility fee

under MCL 257.732(2)(c)-(d) to engage in community service as an alternative to paying the fee. MCL 257.732b provides:

> "(1) If an individual was assessed a driver responsibility fee under [MCL 257.732a(2)(c) or MCL 257.732a(2)(d)], the individual may engage in 10 hours of community service as an alternative to paying that fee or any unpaid portion of that fee. Community service under this subsection shall be completed within 45 days after the application to engage in community service is filed with the department of treasury under [MCL 257.732b(3)].
>
> (2) An individual may engage in community service under subsection (1) by obtaining a community service form from the secretary of state or the department of treasury. The department of treasury shall mail to each individual who is required to pay a driver responsibility fee under [MCL 257.732a(2)(c) or MCL 257.732a(2)(d)] a 1-time-only written notice of the option of completing community service as an alternative to paying that driver responsibility fee. The notice shall include a statement that community service forms for that purpose can be obtained from the department of state or from the department of treasury. The notice shall be sent to the last known address of the individual as shown in the records of the department of treasury. The secretary of state shall make community service forms available to the public at all branch offices and on the department's website for purposes of this section and shall provide community service forms to the department of treasury for purposes of this section.
>
> (3) If an individual chooses to engage in community service under this section, the individual shall complete the community service form obtained under subsection (2) and return the form to the department of treasury in the manner prescribed by the department of treasury by December 31, 2015. Upon receiving a properly completed community service form under this subsection, the department of treasury shall inform the department of state that the individual intends to complete community service under this section as an alternative to paying a driver responsibility fee or any portion of a driver responsibility fee. If the secretary of state is notified by the department of treasury that the individual has elected to complete community service under this section as an alternative to paying the fee, that fee shall be held in abeyance for a period of 45 days.

If the individual's license is suspended for failing to pay the driver responsibility fee or portion of the driver responsibility fee, the department of state shall, upon payment of the reinstatement fee, reinstate the individual's driver license.

(4) An individual who engages in community service under this section shall be allowed only 1 opportunity to complete the community service alternative for each driver responsibility fee owed. However, the department of treasury may allow an individual to withdraw from that community service before the expiration of the 45-day period for completing that community service for good cause shown. If the individual is allowed to withdraw from community service for good cause shown, that opportunity for completing community service shall not be considered in the number of opportunities to perform community service under this subsection, but the individual is subject to the suspension of his or her driving privileges under [MCL 257.732a(5)].

(5) Upon completing community service under this section, the individual may request the person with whom he or she engaged in community service under this section to verify on the community service form in the manner designated by the secretary of state that he or she successfully completed that community service. Upon verification, the individual may return the community service form to the department of treasury for purposes of this section. Any person who falsely verifies community service under this subsection and any individual who falsely requests the verification of community service under this section or who returns a community service form to the department of treasury under this subsection knowing that his or her community service is falsely verified is responsible for a state civil infraction and may be fined not more than $200.00.

(6) The department of treasury shall waive the driver responsibility fee or any portion of the driver responsibility fee otherwise required to be paid under [MCL 257.732a(2)(c) or MCL 257.732a(2)(d)] upon receiving verification that the individual successfully completed the community service requirements of this section. The department of treasury shall notify the department of state when it has waived the fee under this section or, if the fee is not waived under this section,

that the 45-day period has expired and the fee has not been waived. If the secretary of state is notified by the department of treasury that the fee has not been waived, the department of state shall enter that information into the records of the department and shall suspend the individual's driver license and proceed as provided by law for the individual's failure to pay the driver responsibility fee or to complete community service under this section.

(7) As used in this section, "community service" means engaging in a useful and productive activity without compensation for a person other than a family member, including, but not limited to, an entity organized under section 501(c)(3) of the internal revenue code, 26 USC 501, and community service offered through the Michigan community service commission."

E. Required Notice

"The secretary of state shall send a notice of the driver responsibility assessment, as prescribed under [MCL 257.732a(1) or MCL 257.732a(2)], to the individual by regular mail to the address on the records of the secretary of state. If payment is not received within 30 days after the notice is mailed, the secretary of state shall send a second notice that indicates that if payment is not received within the next 30 days, the driver's driving privileges will be suspended." MCL 257.732a(3).

"Except as otherwise provided in this subsection or [MCL 257.732b], if payment is not received or an installment plan is not established after the time limit required by the second notice prescribed under [MCL 257.732a(3)] expires, the secretary of state shall suspend the driving privileges until the assessment and any other fees prescribed under [the MVC] are paid. However, if the individual's license to operate a motor vehicle is not otherwise required under [the MVC] to be denied, suspended, or revoked, the secretary of state shall reinstate the individual's operator's driving privileges if the individual requests an installment plan under [MCL 257.732a(4)] and makes proper payment under that plan. Fees required to be paid for the reinstatement of an individual's operator's driving privileges as described under this subsection shall, at the individual's request, be included in the amount to be paid under the installment plan. If the individual establishes a payment plan as described in this subsection and [MCL 257.732a(4)] but the individual fails to make full or timely payments under that plan, or enters into community service under [MCL 257.732b] but fails to successfully complete that service within the 45-day period allowed, or withdraws from community service

with or without good cause shown, the secretary of state shall suspend the individual's driving privileges.[86] The secretary of state shall only reinstate a license under this subsection once. Not later than April 1, 2013, the secretary of state shall only reinstate a license under this subsection 3 times." MCL 257.732a(5).

1.41 License Denial

MCL 257.303(1) lists conditions that require the secretary of state to deny issuance of an operator's license. Although most of the enumerated circumstances are outside the scope of this benchbook, a person's application for a license must be denied if the person's "license is suspended, revoked, denied, or canceled in any state. If the suspension, revocation, denial, or cancellation is not from the jurisdiction that issued the last license to the person, the secretary of state may issue a license after the expiration of 5 years from the effective date of the most recent suspension, revocation, denial, or cancellation." MCL 257.303(1)(c). See also MCL 257.303(2) ("[u]pon receiving the appropriate records of conviction, the secretary of state shall . . . deny issuance of an operator's . . . license[.]") In addition, certain individuals with certain enumerated convictions, juvenile dispositions, or civil infraction determinations must also be denied an operator's license. See MCL 257.303(1)(g); MCL 257.303(1)(j)-(*l*). Finally, the secretary of state has discretion to deny issuance of an operator's license under certain circumstances. See MCL 257.303(5).

Generally,[87] the secretary of state must not issue a license to a person whose license was denied under MCL 257.303(2) "until all of the following occur, as applicable:

> (a) The later of the following
>
> > (*i*) The expiration of not less than 1 year after the license was . . . denied.
> >
> > (*ii*) The expiration of not less than 5 years after the date of a subsequent revocation or denial occurring within 7 years after the date of any prior revocation or denial.
>
> (b) For a denial under [MCL 257.303(2)(a), MCL 257.303(2)(b), MCL 257.303(2)(c), and MCL 257.303(2)(g)], the person rebuts by clear and convincing evidence the presumption resulting from the prima facie evidence that he

[86] See Section 1.43(B) for more information on suspending driver privileges under MCL 257.321a.

[87] MCL 257.304 provides for the issuance of a restricted license for certain drunk/intoxicated driving offenses. See Section 9.1(H) for more information.

> or she is a habitual offender. The convictions that resulted in the revocation and denial constitute prima facie evidence that he or she is a habitual offender.
>
> (c) The person meets the requirements of the department." MCL 257.303(4).

"Multiple convictions or civil infraction determinations resulting from the same incident shall be treated as a single violation for purposes of [license] denial[.]" MCL 257.303(7).

1.42 License Revocation

"Upon receiving the appropriate records of conviction, the secretary of state shall revoke the operator's . . . license of a person and deny issuance of an operator's . . . license to a person" who has a conviction or a combination of convictions for the offenses specified in the statute. MCL 257.303(2).

Generally,[88] the secretary of state must not issue a license to a person whose license was revoked under the MVC or revoked and denied under MCL 257.303(2) "until all of the following occur, as applicable:

> (a) The later of the following
>
> > (*i*) The expiration of not less than 1 year after the license was revoked or denied.
> >
> > (*ii*) The expiration of not less than 5 years after the date of a subsequent revocation or denial occurring within 7 years after the date of any prior revocation or denial.
>
> (b) For a denial under [MCL 257.303(2)(a), MCL 257.303(2)(b), MCL 257.303(2)(c), and MCL 257.303(2)(g)], the person rebuts by clear and convincing evidence the presumption resulting from the prima facie evidence that he or she is a habitual offender. The convictions that resulted in the revocation and denial constitute prima facie evidence that he or she is a habitual offender.
>
> (c) The person meets the requirements of the department." MCL 257.303(4).

"Multiple convictions . . . resulting from the same incident shall be treated as a single violation for purposes of . . . [license] revocation[.]" MCL 257.303(7).

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[88] MCL 257.304 provides for the issuance of a restricted license for certain drunk/intoxicated driving offenses. See Section 9.1(H) for more information.

License revocation only applies to misdemeanor and felony traffic offenses and is discussed in conjunction with the applicable offenses.

1.43 License Suspension

A. Mandatory Suspension Under § 319

"The secretary of state shall immediately suspend a person's license as provided in [MCL 257.319] upon receiving a record of the person's conviction for a crime described in [MCL 257.319], whether the conviction is under a law of [Michigan], a local ordinance substantially corresponding to a law of [Michigan], a law of another state substantially corresponding to a law of [Michigan], or, beginning October 31, 2010, a law of the United States substantially corresponding to a law of [Michigan]." MCL 257.319(1). For information regarding when license suspension applies under MCL 257.319, see the section on sanctions for each offense(s) in Chapters 3 and 4 (civil infractions), Chapters 5 and 6 (misdemeanors), and Chapters 7 and 8 (felonies).

"If the secretary of state receives records of more than 1 conviction of a person resulting from the same incident, a suspension shall be imposed only for the violation to which the longest period of suspension applies[.]" MCL 257.319(14). Moreover, the secretary of state may waive any suspension "if the person submits proof that a court in another state revoked, suspended, or restricted his or her license for a period equal to or greater than the period of a restriction, suspension, or revocation prescribed under [the MVC] for the violation and that the revocation, suspension, or restriction was served for the violation[.]" MCL 257.319(15). The secretary of state may also issue a restricted license under these circumstances. *Id*. However, "[t]he secretary of state shall not issue a restricted license to a person whose license is suspended under [MCL 257.319] unless a restricted license is authorized under [MCL 257.319] and the person is otherwise eligible for a license." MCL 257.319(16). For more information on license denial see Section 1.41. See also MCL 257.319(17) and MCL 257.319(18) for the circumstances under which a restricted license may be issued.

B. Mandatory Suspension for Failure to Answer Citation/ Notice to Appear or Failure to Comply with Order/ Judgment

"A person who fails to answer a citation, or a notice to appear in court for a violation reportable to the secretary of state under [MCL 257.732] or a local ordinance substantially corresponding to a violation of a law of [Michigan] reportable to the secretary of state

under [MCL 257.732], or for any matter pending, or who fails to comply with an order of judgment of the court, including, but not limited to, paying all fines, costs, fees, and assessments, is guilty of a misdemeanor punishable by imprisonment for not more that 93 days or a fine not more than $100.00, or both." MCL 257.321a(1). Failure to answer a citation or notice to appear or failure to comply with an order or judgment may result in a mandatory license suspension. See MCL 257.321a. See MCL 257.321a(2)-(4); MCL 257.907(11); MCR 4.101(G)(2)(b). These provisions are discussed in detail below.

1. Provisions Specific to Traffic Civil Infractions

"If a person fails to comply with an order or judgment issued under [MCL 257.907 (order to pay fine and/or costs upon civil infraction determination)] within the time prescribed by the court, the driver's license of that person shall be suspended under [MCL 257.321a] until full compliance with that order or judgment occurs." MCL 257.907(11). See also MCR 4.101(G)(2)(b); MCL 257.321a(1). However, "[t]he court shall not notify the secretary of state, and the secretary of state shall not suspend the person's license, if the person fails to appear in response to a citation issued for, or fails to comply with an order or judgment involving 1 or more of the following infractions:

> (a) The parking or standing of a vehicle.
>
> (b) A pedestrian, passenger, or bicycle violation, other than a violation of [MCL 257.33b(1) or MCL 257.33b(2)], [MCL 436.1703(1) or MCL 436.1703(2),] [MCL 257.624a or MCL 257.624b], or a local ordinance substantially corresponding to [any of these specified provisions]." MCL 257.321a(6).

"In addition to [suspending an individual's driver's license under MCL 257.321a], the court may also proceed under [MCL 257.908, default as civil contempt,]" if the individual "fails to comply with an order or judgment issued under [MCL 257.907.]" MCL 257.907(11).[89] See Section 1.21 for more information on MCL 257.908.

[89]However, "[t]he court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of MCR 6.425(E)(3)." MCR 3.606(F) (addressing contempts outside the immediate presence of the court). MCR 6.425(E)(3) addresses incarceration for nonpayment, requires an ability to pay determination, provides for payment alternatives, and offers guidance for determining manifest hardship. For a detailed discussion of MCR 6.425(E)(3), see the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 2*.

2. Notice to Individual of Possible Suspension

"Except as provided in [MCL 257.321a(3)[90]], 28 days or more after a person fails to answer a citation, or a notice to appear in court for a violation reportable to the secretary of state under [MCL 257.732] or a local ordinance substantially corresponding to a violation of a law of this state reportable to the secretary of state under [MCL 257.732], or for any matter pending, or fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, fees, and assessments, the court shall give notice by mail at the last known address of the person that if the person fails to appear or fails to comply with the order or judgment within 14 days after the notice is issued, the secretary of state shall suspend the person's operator's . . . license." MCL 257.321a(2).

Pursuant to MCL 257.321a(3), "[i]f the person is charged with, or convicted of, a violation of [MCL 257.625] or a local ordinance substantially corresponding to [MCL 257.625(1)-(3), MCL 257.625(6), or MCL 257.625(8)] and the person fails to answer a citation or a notice to appear in court, or for any matter pending, or fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, the court shall immediately give notice by first-class mail sent to the person's last known address that if the person fails to appear within 7 days after the notice is issued, or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within 14 days after the notice is issued, the secretary of state shall suspend the person's operator's or chauffeur's license. If the person fails to appear within the 7-day period, or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within the 14-day period, the court shall immediately inform the secretary of state who shall immediately suspend the person's operators . . . license[.]"

MCL 257.321a(4) provides a similar procedure for other enumerated offenses: "If the person is charged with, or convicted of a violation of section 33b of former 1933 (Ex Sess) PA 8, . . . [MCL 436.1703(1)], [MCL 257.624a], [MCL 257.624b], or a local ordinance substantially corresponding to those sections and the person fails to answer a citation or a notice to appear in court issued under section 33b of former 1933 (Ex Sess) PA 8, . . .

[90] MCL 257.321a(3) applies to criminal traffic offenses involving alcohol, drugs, and/or intoxicating substances.

MCL 436.1703, [MCL 257.624a], [MCL 257.624b], or a local ordinance substantially corresponding to those sections or fails to comply with an order or judgment of the court issued [those sections], or a local ordinance substantially corresponding to those sections including, but not limited to, paying all fines and costs, the court shall immediately give notice by first-class mail sent to the person's last known address that if the person fails to appear within 7 days after the notice is issued, or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines and costs, within 14 days after the notice is issued, the secretary of state shall suspend the person's operator's . . . license."

In addition, "[t]he court may notify a person who has done either of the following, that if the person does not appear within 10 days after the notice is issued, the court will inform the secretary of state of the person's failure to appear:

> (a) Failed to answer 2 or more parking violation notices or citations for violating a provision of [the MVC] or an ordinance substantially corresponding to a provision of [the MVC] pertaining to parking for persons with disabilities.
>
> (b) Failed to answer 3 or more parking violation notices or citations regarding illegal parking or, beginning January 1, 2018, failed to answer 6 or more parking violation notices or citations regarding illegal parking." MCL 257.321a(7).[91]

3. Notice to Secretary of State to Suspend License

Generally, "[i]f the person fails to appear or fails to comply with the order or judgment within the 14-day period, the court shall, within 14 days, inform the secretary of state, who shall immediately suspend the license of the person."[92] MCL 257.321a(2). However, if the violation is one listed in MCL 257.321a(3), and "the person fails to appear within the 7-day

[91] The secretary of state must not issue or renew the license of a person who fails to appear or comply as provided in MCL 257.321a(7), until "[t]he court informs the secretary of state that the person has resolved all outstanding matters regarding the notices or citations" and "[t]he person has paid to the court a $45.00 driver license clearance fee[.]" MCL 257.321a(8)(a)-(b). The court may waive the driver license clearance fee as specified in MCL 257.321a(8)(b). In addition, "the court shall give . . . the person a copy of the information being transmitted to the secretary of state. Upon showing that copy, the person shall not be arrested or issued a citation for driving on a suspended license, on an expired license, or without a license[,] . . . even if the information being sent to the secretary of state has not yet been received or recorded by the department." MCL 257.321a(10).

[92] "The secretary of state shall immediately notify the person of the suspension by regular mail at the person's last known address." MCL 257.321a(2).

period, or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within the 14-day period, the court shall immediately inform the secretary of state who shall immediately suspend the person's operator's . . . license[.]"[93] *Id.* Similarly, if the violation is one listed in MCL 257.321a(4), and "the person fails to appear within the 7-day period, or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines and costs, within the 14-day period, the court shall immediately inform the secretary of state who shall immediately suspend the person's operator's . . . license[.]"[94] *Id.*

4. Length of Suspension

"A suspension imposed under [MCL 257.321a(2) or MCL 257.321a(3)] remains in effect until both of the following occur:

> (a) The secretary of state is notified by each court in which the person failed to answer a citation or notice to appear or failed to pay a fine or cost that the person has answered that citation or notice to appear or paid that fine or cost.[95]
>
> (b) The person has paid to the court a $45.00 driver license clearance fee for each failure to answer a citation or failure to pay a fine or cost." MCL 257.321a(5).

The distribution of fees collected pursuant to MCL 257.321a(5)(b) is set forth by MCL 257.321a(11).

5. Suspension under MCL 257.732a

Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3); MCL 257.732a(5).

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[93] The secretary of state must immediately "notify the person of the suspension by first-class mail sent to the person's last known address." MCL 257.321a(3).

[94] The secretary of state must immediately "notify the person of the suspension by first-class mail sent to the person's last known address." MCL 257.321a(4).

[95] "[T]he court shall give . . . the person a copy of the information being transmitted to the secretary of state. Upon showing that copy, the person shall not be arrested or issued a citation for driving on a suspended license, on an expired license, or without a license[,] . . . even if the information being sent to the secretary of state has not yet been received or recorded by the department." MCL 257.321a(10).

C. No Appeal to the Secretary of State

"Any period of suspension or restriction required under [MCL 257.319] is not subject to appeal to the secretary of state." MCL 257.319(23).

D. Improper Suspension

"If [a] defendant believe[s] that his [or her] license was improperly suspended, his [or her] action should [be] to petition for a hearing in circuit court for an order modifying or setting aside the suspension." *People v Glantz*, 124 Mich App 531, 533 (1983) (holding that "[a] collateral attack on the validity of the suspension of a driver's license in a case where the defendant is charged with driving while his [or her] license is suspended is improper").

1.44 Out-of-State Offenses and Nonresidents

"The secretary of state may suspend or revoke the license issued under [the MVC] upon receiving notice of the conviction of that person in another state of an offense in that state, or the determination of responsibility of that person in an administrative adjudication in another state for a violation in that state which, if committed in [Michigan], would be grounds for the suspension or revocation of the license of an operator[.]" MCL 257.318.

"Except as otherwise provided in [the MVC], the suspension, revocation, denial, disqualification, or cancellation of an operator's license . . . by another state or the United States shall run concurrently with a suspension, revocation, denial, disqualification, or cancellation of an operator's license . . . by [Michigan] that is imposed for the same offense." MCL 257.303a.

"The secretary of state may suspend, deny, or revoke the right of a nonresident to operate a motor vehicle in [Michigan] for a cause for which the license of a resident driver may be suspended, denied, or revoked." MCL 257.317(1).

1.45 Vehicle Immobilization

A. Circumstances Under Which Immobilization is Permitted

Under MCL 257.904d(1), vehicle immobilization may be a mandatory or discretionary sanction for a conviction of certain enumerated offenses. Similarly, immobilization is authorized if the person violates any of the enumerated offenses found in MCL 257.904d(2) "during a

period of suspension, revocation, or denial[.]" Traffic offenses are discussed throughout the other chapters of this benchbook and will indicate if vehicle immobilization is available or required as a sanction.

"The court may order vehicle immobilization under [MCL 257.904d] under either of the following circumstances:

> (a) The defendant is the owner, co-owner, lessee, or co-lessee of the vehicle operated during the violation.
>
> (b) The owner, co-owner, lessee, or co-lessee knowingly permitted the vehicle to be operated in violation of [MCL 257.625(2) or MCL 257.904(2)] regardless of whether a conviction resulted." MCL 257.904d(4).

When vehicle immobilization applies, "[t]he defendant shall provide to the court the vehicle identification number and registration plate number of the vehicle involved in the violation." MCL 257.904d(3).

B. Exceptions

Certain violations and certain vehicles are exempt from vehicle immobilization. See MCL 257.904d(7), which states that "[MCL 257.904d] does not apply to any of the following:

> (a) A suspension, revocation, or denial based on a violation of the support and parenting time enforcement act, . . . [MCL 552.601 to MCL 552.650].
>
> (b) A vehicle that is registered in another state or that is a rental vehicle.
>
> (c) A vehicle owned by the federal government, [Michigan], or a local unit of government of [Michigan].
>
> (d) A vehicle not subject to registration under [MCL 257.216].
>
> (e) Any of the following:
>
> > (*i*) A violation of [MCL 257.201 *et seq*].
> >
> > (*ii*) A violation of [MCL 257.501 *et seq*].
> >
> > (*iii*) A violation for failure to change address.
> >
> > (*iv*) A parking violation.
> >
> > (*v*) A bad check violation.
> >
> > (*vi*) An equipment violation.

> (*vii*) A pedestrian, passenger, or bicycle violation, other than a violation of [MCL 436.1703(1) or MCL 436.1703(2)], or a local ordinance substantially corresponding to [MCL 436.1703(1) or MCL 436.1703(2)], or [MCL 257.624a or MCL 257.624b] or a local ordinance substantially corresponding to [MCL 257.624a or MCL 257.624b].
>
> (*viii*) A violation of a local ordinance substantially corresponding to a violation described in [MCL 257.904d(7)(*i*)-(*vii*).” MCL 257.904d(7).

C. Period of Immobilization

The length of time a vehicle may be immobilized depends on the offense. See MCL 257.904d(1)-(2). For the specific vehicle immobilization periods under MCL 257.904d, see the section on sanctions for each offense(s) in Chapter 5 and Chapter 6 (misdemeanors) and Chapter 7 and Chapter 8 (felonies).

“If a defendant is ordered imprisoned for the violation for which immobilization is ordered, the period of immobilization shall begin at the end of the period of imprisonment.” MCL 257.904d(6).

D. Manner of Immobilization

The execution of an immobilization order is governed by MCL 257.904e, which provides:

> “(1) A court shall order a vehicle immobilized under [MCL 257.904d] by the use of any available technology approved by the court that locks the ignition, wheels, or steering of the vehicle or otherwise prevents any person from operating the vehicle or that prevents the defendant from operating the vehicle. If a vehicle is immobilized under this section, the court may order the vehicle stored at a location and in a manner considered appropriate by the court. The court may order the person convicted of violating [MCL 257.625] or a suspension, revocation, or denial under [MCL 257.904] to pay the cost of immobilizing and storing the vehicle.
>
> (2) A vehicle subject to immobilization under this section may be sold during the period of immobilization, but shall not be sold to a person who is exempt from paying a use tax under [MCL 205.93(3)], without a court order.

(3) A defendant who is prohibited from operating a motor vehicle by vehicle immobilization shall not purchase, lease, or otherwise obtain a motor vehicle during the immobilization period.

(4) A person shall not remove, tamper with, or bypass or attempt to remove, tamper with, or bypass a device that he or she knows or has reason to know has been installed on a vehicle by court order for vehicle immobilization or operate or attempt to operate a vehicle that he or she knows or has reason to know has been ordered immobilized.

(5) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.

(6) To the extent that a local ordinance regarding the storage or removal of vehicles conflicts with an order of immobilization issued by the court, the local ordinance is preempted.

(7) If a peace officer stops a vehicle that is being operated in violation of an immobilization order, the vehicle shall be impounded pending an order of a court of competent jurisdiction.

(8) The court shall require the defendant or a person who provides immobilization services to the court under this section to certify that a vehicle ordered immobilized by the court is immobilized as required."

E. Immobilization Suspension

"Except as otherwise provided in [MCL 257.904d(11) and MCL 257.904d(13)], an order required to be issued under [MCL 257.904d] shall not be suspended." MCL 257.904d(5).

"Beginning October 31, 2010, if the person obtains a restricted operator's . . . license from the secretary of state and an ignition interlock device is properly installed in the vehicle, the court shall suspend the immobilization order issued under [MCL 257.904d(1)(c)] for a conviction under [MCL 257.625l(2)]." MCL 257.904d(11).

"Vehicle immobilization under [MCL 257.904d] is subject to [MCL 257.304] if the defendant obtains a restricted license under [MCL 257.304]." MCL 257.904d(13).

F. Immobilization Reinstatement

"Beginning October 31, 2010, the court may reinstate vehicle immobilization issued under [MCL 257.904d(1)(c)] for a conviction under [MCL 257.625*l*(2)] if an ignition interlock device is tampered with, circumvented, or disabled, or if the person's restricted operator's . . . license is suspended or revoked." MCL 257.904d(12).

1.46 Vehicle Impoundment

Vehicle impoundment is a required sanction when a person is convicted of an offense punishable under MCL 257.904(1)(b) or MCL 257.904(1)(c)[96] or a substantially corresponding local ordinance. MCL 257.904b(1).[97] Impoundment is also a sanction for certain ignition interlock violations, discussed in Section 9.12(B). See MCL 257.625*l*.

"An order for the impounding of a motor vehicle issued pursuant to [MCL 257.904b] is valid throughout the state. Any peace officer may execute the impoundment order. The order shall include the implied consent of the owner of the vehicle to the storage for insurance coverage purposes." MCL 257.904b(3).

"The owner of a motor vehicle impounded pursuant to [MCL 257.904b] is liable for expenses incurred in the removal and storage of the vehicle whether or not the vehicle is returned to him or her. The vehicle shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the vehicle is not returned as provided in [MCL 257.904b] within 30 days after the time set in the impoundment order for return of the vehicle, the vehicle shall be

[96]Note that MCL 257.904 no longer has subdivision (1)(b) or (1)(c). 1994 PA 450 omitted MCL 257.904(1)(c) and 1998 PA 341 omitted all of the subdivisions from MCL 257.904(1). 1998 PA 341 included MCL 257.904(3)(a)-(b), which contained language very similar to what was formerly in MCL 257.904(1)(b)-(c). The former MCL 257.904(1)(b)-(c) stated that a person who violated MCL 257.904(1) was guilty of a misdemeanor punishable as follows: "(b) For a violation, other than a violation punishable under subdivision a), by imprisonment for not more than 90 days, or by a fine of not more than $500.00, or both. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be confiscated. (c) For a second or subsequent violation punishable under subdivision (b), by imprisonment for not more than 1 year, or a fine of not more than $1,000.00, or both. Unless the vehicle was stolen, the registration plates of the vehicle shall be confiscated." Currently, MCL 257.904(3)(a)-(b) provide that a person who violations MCL 257.904(1)-(2) is guilty of a misdemeanor as follows: "(a) For a first violation, by imprisonment for not more than 93 days or a fine of not more than $500.00, or both. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be canceled by the secretary of state upon notification by a peace officer. (b) For a violation that occurs after a prior conviction, by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both. Unless the vehicle was stolen, the registration plates of the vehicle shall be canceled by the secretary of state upon notification by a peace officer."

[97]MCL 257.904b(2) is not discussed because it references a subdivision of MCL 257.904 that does not appear to exist in any form in the current version of MCL 257.904.

considered an abandoned vehicle and disposed of as provided in [MCL 257.252a]. MCL 257.904b(4).

"[MCL 257.904b] does not affect the rights of a conditional vendor, chattel mortgagee, or lessor of a motor vehicle registered in the name of another person as owner who becomes subject to this act." MCL 257.904b(5).

1.47 Vehicle Forfeiture

Vehicle forfeiture may be required following a conviction of certain enumerated offenses.[98] MCL 257.625n(1). Forfeiture of the vehicle used in the offense will occur if the defendant owns the vehicle in whole or in part; if the defendant leases the vehicle, it will be returned to the lessor. *Id*. "The vehicle may be seized under a seizure order issued by the court having jurisdiction upon a showing of probable cause that the vehicle is subject to forfeiture or return to the lessor." MCL 257.625n(2). "The forfeiture of a vehicle is subject to the interest of the holder of a security interest who did not have prior knowledge of or consent to the violation." MCL 257.625n(3).

The prosecuting attorney may file a petition for the forfeiture or return of the vehicle within 14 days of a qualifying conviction. MCL 257.625n(4). Notice must be given to the defendant and his or her attorney, to all owners of the vehicle, and to any person holding a security interest in the vehicle that the court may require forfeiture or return of the vehicle. *Id*. The defendant, owner, lessee, or holder of a security interest may file a claim of interest in the vehicle with the court within 14 days after notice by the prosecuting attorney. MCL 257.625n(6). The court must hold a hearing within 21 days after the period for filing claims expires. *Id*. "In considering whether to order forfeiture, the court shall review the defendant's driving record to determine whether the defendant has multiple convictions under [MCL 257.625] or a local ordinance substantially corresponding to [MCL 257.625], or multiple suspensions, restrictions, or denials under [MCL 257.904], or both. If the defendant has multiple convictions under [MCL 257.625] or multiple suspensions, restrictions, or denials under [MCL 257.904], or both, that factor shall weigh heavily in favor of forfeiture." MCL 257.625n(6).

If a vehicle is seized before disposition of the criminal proceedings, the defendant may move the court to require the seizing agency to file a lien against the vehicle and to return the vehicle to the owner or lessee pending disposition of the proceedings. MCL 257.625n(5). The court

[98] Specific traffic offenses are discussed throughout this benchbook and will indicate if forfeiture is an authorized sanction. See Chapters 5 and 6 (misdemeanors), Chapters 7 and 8 (felonies), and Chapter 9 (violations of MCL 257.625).

must hear the motion within seven days. *Id.* "If the defendant establishes at the hearing that he or she holds the legal title to the vehicle or that he or she has a leasehold interest and that it is necessary for him or her or a member of his or her family to use the vehicle pending the outcome of the forfeiture action, the court may order the seizing agency to return the vehicle to the owner or lessee. If the court orders the return of the vehicle to the owner or lessee, the court shall order the defendant to post a bond in an amount equal to the retail value of the vehicle, and shall also order the seizing agency to file a lien against the vehicle." *Id.*

"The failure of the court or prosecutor to comply with any time limit specified in [MCL 257.625n] does not preclude the court from ordering forfeiture of a vehicle or its return to a lessor, unless the court finds that the owner or claimant suffered substantial prejudice as a result of that failure." MCL 257.625n(11).

"The forfeiture provisions of [MCL 257.625n] do not preclude the prosecuting attorney from pursuing a forfeiture proceeding under any other law of this state or a local ordinance substantially corresponding to [MCL 257.625n]." MCL 257.625n(12).

"A person who knowingly conceals, sells, gives away, or otherwise transfers or disposes of a vehicle with the intent to avoid forfeiture or return of the vehicle to the lessor under [MCL 257.625n] is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both." MCL 257.625n(10).

1.48 Registration Denial

Registration denial is required for multiple violations of MCL 257.625, MCL 257.625m, and MCL 257.904. MCL 257.219(1)(d) provides:

> "The secretary of state shall refuse issuance of a registration or a transfer of registration [if] . . . (d) [a]t the time of the application, the operator's or chauffeur's license of the owner or co-owner or lessee or co-lessee is suspended, revoked, or denied, except for an applicant who has been issued a license under [MCL 257.304], or the operator has never been licensed by this state for a third or subsequent violation of [MCL 257.625] or [MCL 257.625m], a local ordinance substantially corresponding to [MCL 257.625 or MCL 257.625m], or a law of another state substantially corresponding to [MCL 257.625 or MCL 257.625m], or for a fourth or subsequent suspension or revocation under [MCL 257.904]."

1.49 Basic Driver Improvement Course

"[T]he secretary of state shall not enter the points corresponding to a moving violation committed in [Michigan] by an individual the secretary of state determines to be eligible under [MCL 257.320d] on the individual's driving record or make information concerning that violation available to any insurance company if the individual attends and successfully completes a basic driver improvement course under [MCL 257.320d] and an approved sponsor provides a certificate of successful completion of that course to the secretary of state not more than 60 days after the date on which the secretary of state notified the individual that he or she was eligible to take a basic driver improvement course." MCL 257.320d(1).

A. Secretary of State Responsibilities

1. Receiving an Abstract

"The secretary of state shall determine if an individual is eligible under [MCL 257.320d(3)] to attend a basic driver improvement course upon receipt of an abstract of a moving violation." MCL 257.320d(2).

"If the secretary of state determines that an individual is eligible to attend a basic driver improvement course, the secretary of state shall do all of the following:

> (a) Notify the individual of his or her eligibility by first-class mail at the individual's last known address as indicated on the individual's operator's . . . license and inform the individual of the manner and time within which the individual is required to attend and complete a basic driver improvement course.
>
> (b) Provide all eligible participants with information on how to access a list of approved sponsors and basic driver improvement course locations, including the secretary of state's website address and telephone number to call for more information." MCL 257.320d(2).

2. Enter Points

"If an approved sponsor does not provide notice of successful completion of the course by the individual within the time prescribed in [MCL 257.320d(1)], the secretary of state shall enter the points required under [MCL 257.320a]." MCL 257.320d(2)(c).

3. Database

"The secretary of state shall maintain a computerized database of the following:

> (a) Individuals who have attended a basic driver improvement course.
>
> (b) Individuals who have successfully completed a basic driver improvement course." MCL 257.320d(5).

"The database maintained under [MCL 257.320d(5)] shall only be used for determining eligibility under [MCL 257.320d(3) and MCL 257.320d(4)]." MCL 257.320d(6). "The secretary of state shall only make the information contained in the database available to approved sponsors under [MCL 257.320d(10)]." MCL 257.320d(6). "Information in this database concerning an individual shall be maintained for the life of that individual." *Id*.

B. Eligibility Requirements

"An individual is ineligible to take a basic driver improvement course if any of the following apply:

> (a) The violation occurred while the individual was operating a commercial motor vehicle or was licensed as a commercial driver while operating a noncommercial motor vehicle.
>
> (b) The violation is a criminal offense.
>
> (c) The violation is a violation for which 4 or more points may be assessed under [MCL 257.320a].
>
> (d) The violation is a violation of [MCL 257.626b (careless or negligent operation of a motor vehicle), MCL 257.627(9) (speeding in construction, survey, or work area), MCL 257.627a (speeding in school zone), or MCL 257.682 (failing to stop for school bus displaying flashing red lights)].
>
> (e) The individual was cited for more than 1 moving violation arising from the same incident.
>
> (f) The individual's license was suspended under [MCL 257.321a(2)] in connection with the violation.
>
> (g) The individual previously successfully completed a basic driver improvement course.

> (h) The individual has 3 or more points on his or her driving record.
>
> (*i*) The individual's operator's . . . license is restricted, suspended, or revoked, or the individual was not issued an operator's . . . license." MCL 257.320d(3).

"The individual is not eligible to take a driver improvement course for a second or subsequent violation an individual receives within the time allowed under [MCL 257.320d(1)]." MCL 257.320d(4).

C. Cost of Course and Allocation of Cost

"An individual shall be charged a fee of not more than $100.00 by an approved sponsor to participate in a basic driver improvement course and, if applicable, to obtain a certificate in a form as approved by the secretary of state demonstrating that he or she successfully completed the course." MCL 257.320d(7). "An approved sponsor shall remit a portion of the fee, as determined annually by the secretary of state, to cover the costs of implementing and administering this course program." *Id*.

"Fees remitted to the department under [MCL 257.320d(7)] by an approved sponsor shall be credited to the basic driver improvement course fund created under [MCL 257.320d(9)]." MCL 257.320d(8).

Chapter 2: Juvenile Traffic Proceedings

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2.1 Scope Note

This chapter discusses special procedures and rules applicable to juveniles in traffic proceedings. Many procedures and rules apply to both juveniles and adults in the same manner; this chapter addresses only issues specific to juvenile proceedings. See Chapter 1 for more information on generally applicable procedures and rules in traffic cases. See the Michigan Judicial Institute's *Juvenile Justice Benchbook* for a comprehensive discussion of juvenile proceedings.

2.2 Jurisdiction Over Juveniles Accused of Committing a Criminal Traffic Violation

The family division of the circuit court has "[e]xclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under 17 years of age who[,] . . . [e]xcept as provided in [MCL 712A.2(a)(1)], . . . has violated any municipal ordinance or law of the state or of the United States." MCL 712A.2(a)(1). As used in subchapter 3.900 of the Michigan Court Rules (governing practice and procedure in cases filed under the Juvenile Code), a "[d]elinquency proceeding" is "a proceeding concerning an offense by a juvenile, as defined in MCR 3.903(B)(3)." MCR 3.903(A)(5). MCR 3.903(B)(3), in turn, defines "[o]ffense by a juvenile" as "an act that violates a criminal statute, a criminal ordinance, a *traffic law*, or a provision of MCL 712A.2(a) [(governing violations of law or ordinance, civil infractions, and status offenses)] or [MCL 712A.2(d) (governing wayward minors)]." (Emphasis supplied.)

District court or municipal court judges may be assigned to sit as family division judges to hear matters involving juveniles. See MCL 600.1517; MCL 600.225; MCR 8.110(C)(3)(g).

A. Continued Jurisdiction

"If the juvenile attains his or her seventeenth birthday after the filing of the petition, the court's jurisdiction shall continue beyond the juvenile's seventeenth birthday and the court may hear and dispose of the petition under [the Juvenile Code]." MCL 712A.11(4).

B. Age Calculation

The "birthday rule" applies in Michigan for purposes of age calculation. *People v Woolfolk*, 304 Mich App 450, 504 (2014), aff'd 497 Mich 23 (2014). Under the birthday rule, "a person attains a given age on the anniversary date of his or her birth." *Id.* at 464 (quotation and citation omitted).

2.3 Jurisdiction Over Juveniles Accused of Committing a Civil Infraction

MCL 257.741(5) specifically identifies district and municipal courts as the courts with jurisdiction over juvenile traffic civil infraction actions: "If the person cited [for a civil infraction] is a minor, that individual shall be permitted to appear in court or to admit responsibility for a civil infraction without the necessity of appointment of a guardian or next friend. The courts listed in [MCL 257.741(2)[1]] shall have jurisdiction over the minor and may proceed in the same manner and in all respects as if that individual were an adult." See also MCL 600.8301(2); MCL 600.8703(2).

See Chapter 1 for more information on civil infraction proceedings.

2.4 Venue and Transfer of Case

Under the Juvenile Code and the Michigan Court Rules, venue is proper in the county where the offense occurred or where the juvenile is physically present. See MCL 712A.2(a); MCL 712A.2(d); MCR 3.926(A).

However, if a juvenile is brought before the family division in a county other than the county in which he or she resides, the court may, before a hearing and with the consent of the court in the juvenile's county of residence, enter an order transferring jurisdiction over the matter to the court of the county of residence.[2] MCL 712A.2(d); MCR 3.926(B). In addition, a change of venue to a different county may be properly ordered in certain circumstances. MCR 3.926(D).

2.5 Court Rules Applicable to Cases Under the Juvenile Code

MCR 3.901(A) states as follows:

> "(1) The rules in . . . subchapter [3.900], in subchapter 1.100, in MCR 5.113, and in subchapter 8.100 govern practice and procedure in the family division of the circuit court in all cases filed under the Juvenile Code.

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[1] MCL 257.741(2) states that "[t]he following courts shall have jurisdiction over civil infraction actions: (a) [t]he district court[,] (b) [a]ny municipal court."

[2] For a more detailed discussion of venue and transfer in juvenile proceedings, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 2.

> (2) Other Michigan Court Rules apply to juvenile cases in the family division of the circuit court only when . . . subchapter [3.900] specifically provides.
>
> (3) The Michigan Rules of Evidence, except with regard to privileges, do not apply to proceedings under . . . subchapter [3.900], except where a rule in . . . subchapter [3.900] specifically so provides. . . ."

As it relates to juvenile traffic offenses, MCR 3.901–MCR 3.950 and MCR 3.991–MCR 3.993 apply. MCR 3.901(B)(1)-(2).

MCR 3.902(A) states, in part, that these applicable court rules "are to be construed to secure fairness, flexibility, and simplicity. The court shall proceed in a manner that safeguards the rights and proper interests of the parties."

2.6 Investigative Stops

The federal and Michigan constitutions grant all persons the right to be secure against unreasonable searches and seizures. US Const, Am IV, and Const 1963, art 1, §11. The search and seizure protections of the Fourth Amendment to the federal constitution have been extended to minors. *New Jersey v TLO*, 469 US 325, 333 (1985). For a detailed discussion of investigative stops, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 9.

2.7 Taking a Juvenile Into Custody

"Any local police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child who is found violating any law or ordinance[.]" MCL 712A.14(1). The officer must "immediately attempt to notify the [juvenile's] parent or parents, guardian, or custodian[,]" and "[u]nless the [juvenile] requires immediate detention as provided for in [the Juvenile Code], the officer shall accept the written promise of the parent or parents, guardian, or custodian, to bring the child to the court at a fixed time[, and t]he [juvenile] shall then be released to the custody of the parent or parents, guardian, or custodian." *Id.* If the juvenile is not released under MCL 712A.14(1), the court must hold a preliminary hearing. See MCL 712A.14(2); MCR 3.935.

However, "if a child less than 17 years of age is arrested, with or without a warrant, the child shall be taken immediately before the family division of circuit court of the county where the offense is alleged to have been committed, and the officer making the arrest shall immediately make and

file, or cause to be made and filed, a petition against the child as provided in [the Juvenile Code, MCL 712A.1 *et seq.*]" MCL 764.27. See also MCL 257.727.

For more information about detaining a juvenile pending a preliminary hearing or taking a juvenile into custody upon arrest, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 3.

2.8 Required Procedures for Traffic-Related Offenses Contained in the Michigan Penal Code

Unless a case has been designated or waived to a court of general criminal jurisdiction, when a traffic violation contained in the Michigan Penal Code (MPC), MCL 750.1 *et seq.*, is alleged, the court should use the same procedures it would use in any delinquency case. See MCL 712A.2(a)(1) (jurisdiction of the court); MCL 712A.2d(2) (designated cases); MCL 712A.4 (traditional waiver); MCL 764.1f (automatic waiver) MCR 3.903(A)(5) (defining delinquency proceeding); MCR 3.903(B)(3) (defining offense by a juvenile). For a detailed discussion of the required procedures in cases involving juveniles, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*.

2.9 Special Procedures Applicable in Juvenile Traffic Cases

The Juvenile Code provides special procedures that apply when a juvenile is charged with a violation of the MVC or a substantially corresponding local ordinance. MCL 712A.2b states:

> "When a juvenile is accused of an act that constitutes a violation of [the MVC], . . . or a provision of an ordinance substantially corresponding to any provision of [the MVC], the following procedure applies, any other provision of [the Juvenile Code] notwithstanding:
>
> > (a) No petition shall be required, but the court may act upon a copy of the written notice to appear given the accused juvenile as required by . . . [MCL 257.728].[3]
> >
> > (b) The juvenile's parent or parents, guardian, or custodian may be required to attend a hearing conducted under this section when notified by the court, without additional service of process or delay.

[3] Section 1.25 for a discussion of MCL 257.728.

> However, the court may extend the time for that appearance.
>
> (c) If after hearing the case the court finds the accusation to be true, the court may dispose of the case under [MCL 712A.18].[4]
>
> (d) Within 14 days after entry of a court order of disposition for a juvenile found to be within [the Juvenile Code], the court shall prepare and forward an abstract of the record of the court for the case in accordance with . . . [MCL 257.732].[5]
>
> (e) This section does not limit the court's discretion to restrict the driving privileges of a juvenile as a term or condition of probation."

Several procedural protections afforded by the Juvenile Code are omitted from the procedures applicable to juveniles charged with violations of the MVC or substantially corresponding ordinances. For example, no provision is made for the appointment of counsel as required by MCL 712A.17c(1)-(3), and formal notice is not required as it is in MCL 712A.12 and MCL 712A.13 and related court rules.

However, the consent and formal calendars, which are procedural mechanisms provided by MCR 3.932(C)-(D), may be used in cases in which the juvenile is charged with a criminal traffic offense. Although some consent calendar procedures are discussed in this chapter as they specifically relate to cases involving MVC violations, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 4, for more information about consent calendar and formal calendar procedures.

A. Commencing Proceedings

"Any request for court action against a juvenile must be by written petition." MCR 3.931(A). However, an officer may issue a citation or appearance ticket to initiate delinquency proceedings in misdemeanor traffic cases. See MCR 3.931(C). Although the citation or appearance ticket must be treated as a petition by the court, "it may not serve as a basis for pretrial detention." MCR 3.931(C)(2). Accordingly, a petition should be filed for any felony traffic cases or if court-ordered pretrial detention is requested. See MCR 3.931(C)(2); MCR 3.933(B).For more information on petition requirements see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 6.

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[4] MCL 712A.18 sets forth several possible orders of disposition available to the court. See the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 10, for a discussion of MCL 712A.18.

[5] See Section 1.38 for more information on abstracting procedures.

B. Notice

If the court wants a parent, guardian, or custodian to appear for a hearing in a juvenile's traffic case, that individual must be notified. See MCL 712A.2b(b). However, the procedures outlined in MCL 712A.12 (examination of child; hearing; summons), MCL 712A.13 (summons), MCR 3.920 (service of process), and MCR 3.921 (persons entitled to notice) regarding summonses and notices of hearing do not apply when the juvenile is charged with a violation of the MVC. See MCL 712A.2b(b). Thus, it appears that the court may inform the juvenile's parent, guardian, or custodian of a hearing in any reasonable manner.

Additional notice requirements may exist under the Crime Victim's Rights Act, MCL 780.781 *et seq*.

C. Required Notice When a Juvenile is Charged With a Felony in Which a Motor Vehicle Was Used

MCR 3.931(B)(7) requires a petition to contain the notice provision contained in MCL 257.732(8), if applicable. MCL 257.732(8) provides:

> "If a juvenile is accused of an act, the nature of which constitutes a felony in which a motor vehicle was used, other than a felony specified in [MCL 257.732(4)][6] or [MCL 257.319],[7] the prosecuting attorney or family division of circuit court shall include the following statement on the petition filed in the court:
>
> > 'You are accused of an act the nature of which constitutes a felony in which a motor vehicle was used. If the accusation is found to be true and the judge or referee finds that the nature of the act constitutes a felony in which a motor vehicle was used, as defined in . . . MCL 257.319, your driver's license shall be suspended by the secretary of state.'"

[6] MCL 257.732(4) requires the court clerk to forward an abstract of the court record upon a person's conviction of any of several enumerated offenses. See Section 1.38 for more information on abstracting procedures.

[7] MCL 257.319 requires the secretary of state to suspend a person's driver's license upon receipt of a record of the person's conviction of any of several enumerated offenses. See Section 1.43 for more information on license suspension.

D. Plea in Consent Calendar Case

In a consent calendar proceeding, generally the court cannot accept a formal plea. See MCR 3.932(C)(2). However, if "the case is based on an alleged violation of the [MVC], . . . the court shall enter a plea." *Id.* See the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 4, for more information about consent calendar procedures.

E. Preliminary Inquiries and Preliminary Hearings

1. Preliminary Inquiries

A "[p]reliminary inquiry" is an "informal review by the court to determine appropriate action on a petition." MCR 3.903(A)(23). "When a petition is not accompanied by a request for detention of the juvenile, the court may conduct a preliminary inquiry." MCR 3.932(A); see also *In re Hatcher*, 443 Mich 426, 434 (1993). For more information about preliminary inquires, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 6.

2. Preliminary Hearings

If a juvenile has been taken into custody, a preliminary hearing pursuant to MCR 3.935 is required. See MCR 3.933(B); MCR 3.934(A); *In re Hatcher*, 443 Mich at 434. "A preliminary hearing is the formal review of the petition when the judge or referee considers authorizing the petition and placing the case on the formal calendar." *In re Hatcher*, 443 Mich at 434. A preliminary hearing in a juvenile delinquency case is functionally similar to an arraignment in a criminal case. *In re Wilson*, 113 Mich App 113, 122 (1982). A preliminary hearing "must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays, as defined by MCR 8.110(D)(2), or the juvenile must be released." MCR 3.935(A)(1).

For more information about preliminary hearings, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 6.

3. Referees

"[T]he court may assign a referee to conduct a preliminary inquiry or to preside at a hearing other than those specified in MCR 3.912(A)[8] and to make recommended findings and

[8] MCR 3.912(A) provides that "[a] judge must preside at: (1) a jury trial; (2) a waiver proceeding under MCR 3.950; (3) the preliminary examination, trial, and sentencing in a designated case; (4) a proceeding on the issuance, modification or termination of a minor personal protection order."

conclusions." MCR 3.913(A)(1). For further discussion of the procedures required at a delinquency trial, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 9.

2.10 Required Procedures Following a Juvenile's Failure to Respond to a Motor Vehicle Violation

MCR 3.931(D) sets out the procedures to follow when a juvenile fails to respond to a motor vehicle violation citation. MCR 3.931(D) provides:

> "If the juvenile is a Michigan resident and fails to appear or otherwise to respond to any matter pending relative to a motor vehicle violation, the court
>
> (1) must initiate the procedure required by MCL 257.321a[9] for the failure to answer a citation, and
>
> (2) may issue an order to apprehend the juvenile after a petition is filed with the court." See also MCL 712A.2c.

A. Dispositions[10]

When a juvenile is accused of violating the MVC, the hearing procedures in MCL 712A.2b apply, "any other provision of [the Juvenile Code] notwithstanding[.]" MCL 712A.2b. "If after hearing the case the court finds the accusation to be true, the court may dispose of the case under [MCL 712A.18]." MCL 712A.2b(c).

MCL 712A.18(1) provides that if the court finds the juvenile does not come within the jurisdiction of the court, the court must dismiss the petition (or citation). However, if the court finds that the juvenile is within the jurisdiction of the court, the court may order any of several types of disposition "appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained." MCL 712A.18(1)(a)-(m). Some common dispositional orders imposed in traffic cases include warning the juvenile (MCL 712A.18(1)(a)), in-

[9] MCL 257.321a(1) provides that "[a] person who fails to answer a citation, or a notice to appear in court for a violation reportable to the secretary of state under [MCL 257.732] or a local ordinance substantially corresponding to a violation of a law of this state reportable to the secretary of state under [MCL 257.732], or for any matter pending, or who fails to comply with an order or judgment of the court, including but not limited to, paying all fines, costs, fees, and assessments, is guilty of a misdemeanor[.]" See Section 1.43(B) for more information on the procedures required by MCL 257.321a.

[10] MCR 3.943 governs the required procedures at dispositional hearings. For a detailed discussion of these procedures, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 10.

home probation[11] (MCL 712A.18(1)(b)), community service (MCL 712A.18(1)(i)), and imposing a civil fine (MCL 712A.18(1)(j)).

For a discussion of all of the dispositional options open to a court, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 10.

B. Required Reporting to the Secretary of State

"Within 14 days after entry of a court order of disposition for a juvenile found to be within [the Juvenile Code], the court shall prepare and forward an abstract of the record of the court for the case in accordance with . . . [MCL 257.732]." MCL 712A.2b(d). See also MCR 3.932(C)(9) (requiring an abstract in consent calendar cases); MCR 3.943(E)(6) (requiring an abstract after the dispositional hearing in a formal case). MCL 257.732(1) requires "each clerk of a court of record"[12] to keep a "full record" of every case in which a person is charged with or cited for violating the MVC or a local ordinance substantially corresponding to a provision of the MVC. MCL 257.732(1). For certain traffic-related offenses, the clerk of the court must send an abstract of the court record to the secretary of state. *Id*. For more information on abstracting requirements, see Section 1.38.

2.11 Restitution, Crime Victim's Rights Assessment, and Costs

If the juvenile's offense has resulted in financial damages to any victim, then the court must order the juvenile or the juvenile's parent to pay restitution as provided in MCL 712A.30, MCL 712A.31, MCL 780.794, and MCL 780.795. MCL 712A.18(7); MCL 712A.30(2). See the Michigan Judicial Institute's *Crime Victim's Rights Benchbook*, Chapter 8, for a discussion of restitution requirements.

When a juvenile offender is found responsible for "an offense committed by [the] juvenile under the jurisdiction of the [family division] under . . . [MCL 712A.2(a)(1)], that if committed by an adult would be a felony, misdemeanor, or ordinance violation, if the juvenile's case is not designated as a case in which the juvenile is to be tried in the same manner as an adult[,]" the court must order the juvenile to pay a crime victim's rights fund assessment. MCL 780.901(f); MCL 712A.18(12). Each juvenile for whom an order of disposition is entered for a juvenile offense must pay an assessment of $25.00. MCL 780.905(3). For a complete list of

[11] MCL 712A.2b(e) provides that the court retains discretion to restrict the juvenile's driving privileges as a term or condition of probation.

[12] The county clerk is the clerk of the court for the family division and keeps its records and indexes of actions. MCL 600.1007; MCR 8.119.

crime victim assessments, visit http://courts.michigan.gov/scao/resources/other/CrimeVictimAssessment.pdf. See the Michigan Judicial Institute's *Crime Victim's Rights Benchbook*, for a discussion of the crime victim's rights fund assessment.

An order of disposition placing a juvenile on probation in the juvenile's own home may contain a provision for the reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of service. MCL 712A.18(3). If an order is entered under MCL 712A.18(3), an amount due shall be determined and treated in the same manner provided for an order under MCL 712A.18(2), dealing with reimbursement for cost of care outside the juvenile's own home. MCL 712A.18(3). See the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 18, for further discussion.

~~2.12 Juvenile Traffic Violation Records~~

~~MCR 3.925(E) "governs the retention and destruction of court case files and other court records, as defined by MCR 8.119(D)." Generally, "[t]he court may destroy its case files and other court records only as prescribed by [MCR 3.925] and the approved General Records Retention and Disposal Schedule #16—Michigan Trial Courts. Destruction of a file does not negate, rescind, or set aside an adjudication." MCR 3.925(E)(1). However, certain items must be maintained permanently. See MCR 3.925(E)(2).~~

~~MCR 3.925(E)(3) specifically addresses delinquency and MVC case files. MCR 3.925(E)(3)(c) states that, except for diversion and consent calendar records (discussed below) and those items that must be permanently maintained under MCR 3.932(E)(2), "the court may destroy the legal records in the case files pertaining to a person's juvenile offenses when the person becomes 30 years of age. The social records in the case files pertaining to a person's juvenile offenses may be destroyed three years after entry of the order terminating jurisdiction of that person or when the person becomes 18 years old, whichever is later. The social records are the confidential files defined in MCR 3.903(A)(3). The court must destroy the records in traffic and local ordinance case files opened by issuance of a citation pursuant to the [MVC] or a local corresponding ordinance when the person becomes 30 years of age."~~

~~**Diversion records.** MCR 3.925(E)(3)(a) provides that, except for those items that mus be permanently maintained under MCR 3.925(E)(2), the court may destroy a juvenile's diversion case file after the juvenile's 17th birthday.~~

~~**Consent calendar records.** MCR 3.925(E)(3)(b) states that except for those items that must be maintained permanently under MCR 3.925(E)(2), "the~~

~~court may destroy all case files of matters heard on the consent calendar after the juvenile becomes 17 years of age or after dismissal from court supervision, whichever is later, unless the juvenile subsequently comes within the jurisdiction of the court on the formal calendar. If the case is transferred to the consent calendar and a register of actions exists, the register of actions must be maintained permanently as a nonpublic record." See also MCR 3.932(C)(7).~~

2.13 Setting Aside Adjudications

Criminal traffic adjudications for violations of the MVC cannot be set aside. MCR 3.925(F)(1) states that "[t]he setting aside of juvenile adjudications is governed by MCL 712A.18e." MCL 712A.18e(1) contains the general provision allowing certain juvenile adjudications to be set aside.[13] However, MCL 712A.18e(2)(b) provides that "[a] person shall not apply under [MCL 712A.18e] to have set aside, and a judge shall not under [MCL 712A.18e] set aside. . . [a]n adjudication for a traffic offense under [the MVC], or a local ordinance substantially corresponding to that act, that involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor." See also MCL 257.732(22), which states that "notwithstanding any other provision of law, a court shall not order expunction of any violation reportable to the secretary of state under [MCL 257.732]."

However, the offense of unlawfully driving away an automobile (UDAA) or attempted UDAA, MCL 750.413, an adjudication *must* be set aside if the applicant "files an application with the court and otherwise meets the requirements of [MCL 712A.18e]." MCL 712A.18e(10).

2.14 Holmes Youthful Trainee Act

A juvenile charged with a traffic offense cannot be assigned to youthful trainee status under the Holmes Youthful Trainee Act (HYTA), MCL 762.11 *et seq*. MCL 762.11(2)(c); *People v Martinez*, 211 Mich App 147, 149 (1995). For more information about HYTA, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 3.

[13] For more information on setting aside juvenile adjudications, see the Michigan Judicial Institute's *Juvenile Justice Benchbook*, Chapter 21.

Chapter 3: Civil Infraction Nonmoving Violations

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3.1 Introduction and Scope Note

The Michigan Vehicle Code (MVC) contains hundreds of traffic offenses. This chapter includes discussion of the most commonly-cited nonmoving civil infractions. The discussion of each civil infraction includes:

- the name of the offense;
- quotations of the actual statute, or significant parts thereof;
- penalties;
- sanctions; and
- issues of importance regarding that offense.

This chapter does not discuss motor carrier or commercial violations or civil infractions that may be committed only by operation of a motorcycle.

Part A—License and Permit Violations

3.2 Failing to Change Address on Driver's License

A. Statutory Authority

"An operator . . . who changes his or her residence before the expiration of a license granted under this chapter shall immediately notify the secretary of state of his or her new residence address." MCL 257.315(1).

B. Penalties

The general rules for assessing a civil fine and costs apply to failing to change address on driver's license violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan

Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf.

- Discretionary license suspension or revocation under certain circumstances. See MCL 257.315(3). See Sections 1.43 and 1.42 for more information on license suspension and revocation.

D. Issues

"Under the [MVC], [a] defendant has a duty to show a correct address on his [or her] operator's license." *Hamilton v Gordon*, 135 Mich App 289, 294 (1984). "This duty exists even though the time may not have arrived when the license itself needs to be renewed." *Id*.

3.3 Operating a Vehicle in Violation of Graduated Licensing Requirements

A. Statutory Authority

"Except as otherwise provided in [the MVC], an operator's . . . license issued to a person who is 17 years of age or less shall be in a form as prescribed in [MCL 257.310], and valid only upon the issuance of a graduated driver license." MCL 257.310e(1).

1. Level 1 Graduated License

"Except as otherwise provided in [MCL 257.303[1]], a person who is not less than 14 years and 9 months of age may be issued a level 1 graduated licensing status to operate a motor vehicle if the person has satisfied all of the following conditions:

> (a) Passed a vision test and met health standards as prescribed by the secretary of state.
>
> (b) Successfully completed segment 1 of a driver education course as that term is defined in . . . MCL 256.627, including a minimum of 6 hours of on-the-road driving time with the instructor.

[1] MCL 257.303 provides limitations on issuing a license.

> (c) Received written approval or a parent or legal guardian." MCL 257.310e(3).

"A person issued a level 1 graduated licensing status may operate a motor vehicle only when accompanied either by a licensed parent or legal guardian or, with the permission of the parent or legal guardian, a licensed driver 21 years of age or older." MCL 257.310e(4).

"Except as otherwise provided in [MCL 257.310e[2]], a person is restricted to operating a motor vehicle with a level 1 graduated licensing status for not less than 6 months." MCL 257.310e(4).

2. Level 2 Graduated License

"A person may be issued a level 2 graduated licensing status to operate a motor vehicle if the person has satisfied all of the following conditions:

> (a) Had a level 1 graduated licensing status for not less than 6 months.
>
> (b) Successfully completed segment 2 of a driver education course as that term is defined in . . . MCL 256.627.
>
> (c) Not incurred a moving violation resulting in a conviction or civil infraction determination or been involved in an accident for which the official police report indicates a moving violation on the part of the person during the 90-day period immediately preceding application.
>
> (d) Presented a certification by the parent or guardian that the person, accompanied by his or her licensed parent or legal guardian or, with the permission of the parent or legal guardian, any licensed driver 21 years of age or older, has accumulated a total of not less than 50 hours of behind-the-wheel experience including not less than 10 nighttime hours.
>
> (e) Successfully completed a secretary of state approved driving skills test. . . . This subdivision applies to a person 16 years of age or over only if

[2] See MCL 257.310e(7), providing for an extended graduated licensing period or expanded provisions if certain conditions exist.

> the person has satisfied [MCL 257.310e(5)(a)-(d)]." MCL 257.310e(5).

"A person issued a level 2 graduated licensing status under [MCL 257.310e(5)] shall remain at level 2 for not less than 6 months." MCL 257.310e(6). However, this time period may be expanded or extended under MCL 257.310e(7) if certain conditions exist.

"A person issued a level 2 graduated licensing status under [MCL 257.310e(5)] shall not operate a vehicle under the following circumstances:

> (a) Between the hours of 10 p.m. and 5 a.m. This subdivision does not apply if either of the following applies:
>
> > (*i*) The person is accompanied by a parent or legal guardian or a licensed driver 21 years of age or older designated by the parent or legal guardian.
> >
> > (*ii*) The person is operating the vehicle in the course of his or her employment or while going to or from employment or while going to or from an authorized activity.
>
> (b) With more than 1 passenger in the vehicle who is less than 21 years of age. This subdivision does not apply if any of the following apply:
>
> > (*i*) The person is accompanied by a parent or legal guardian or a licensed driver 21 years of age or older designated by the parent or legal guardian.
> >
> > (*ii*) Any additional passengers who are less than 21 years of age are members of his or her immediate family.
> >
> > (*iii*) The person is operating the vehicle in the course of his or her employment or while going to or from employment or while going to or from an authorized activity." MCL 257.310e(6).

However, these provisions may be expanded or extended under MCL 257.310e(7) if certain conditions exist. See Section 3.3(A)(3) for more information.

3. Extended Graduated Licensing Periods

"The provisions and provisional period described in [MCL 257.310e(4) or MCL 257.310e(6)] shall be expanded or extended, or both, beyond the period described in [MCL 257.310e(4) or MCL 257.310e(6)] if any of the following occur and are recorded on the licensee's driving record during the provisional periods described in [MCL 257.310e(4) or MCL 257.310e(6)] or any additional periods imposed under [MCL 257.310e(7)]:

> (a) A moving violation resulting in a conviction, civil infraction determination, or probate court disposition.
>
> (b) An accident for which the official police report indicates a moving violation on the part of the licensee.
>
> (c) A license suspension for a reason other than a mental or physical disability.
>
> (d) A violation of [MCL 257.310e(4) or MCL 257.310e(6)]." MCL 257.310e(7).

"The provisional period described in [MCL 257.310e(4)] shall be extended under [MCL 257.310e(7)] until the licensee completes 90 consecutive days without a moving violation, an accident in which a moving violation resulted, suspension, or provisional period violation listed in [MCL 257.310e(7)], or until age 18, whichever occurs first." MCL 257.310e(8).

"The provisional period described in [MCL 257.310e(6)] shall be extended under [MCL 257.310e(7)] until the licensee completes 12 consecutive months without a moving violation, suspension, or restricted period violation listed in [MCL 257.310e(7)] or until age 18, whichever occurs first." MCL 257.310e(8).

In the event that the provisions in MCL 257.310e(4) or MCL 257.310e(6) are expanded or extended as permitted in MCL 257.310e(7), "[n]otice shall be given by first-class mail to the last known address of [the] licensee[.]" MCL 257.310e(10).

4. Level 3 Graduated License

"A person who is not less than 17 years of age may be issued a level 3 graduated licensing status under [MCL 257.310e(9)] if the person has completed 12 consecutive months without a moving violation, an accident in which a moving violation

resulted, accident, suspension, or restricted period violation listed in [MCL 257.310e(7)] while the person was issued a level 2 graduated licensing status under [MCL 257.310e(5)]." MCL 257.310e(9).

5. Operating Without a Graduated License in Possession

"A person shall have his or her graduated licensing status in his or her immediate possession at all times when operating a motor vehicle, and shall display the card upon demand of a police officer." MCL 257.310e(14).

B. Penalties

The general rules for assessing a civil fine and costs apply to graduated licensing violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf.

- Two points for a violation of MCL 257.310e(4) or MCL 257.310e(6) or a substantially corresponding law or ordinance. MCL 257.320a(1)(s). See Section 1.39 for more information on points.

- No points for a violation of MCL 257.710e(14). MCL 257.320a(2). See Section 1.39 for more information on points.

Part B—Title, Plate, Registration, and Insurance Violations

3.4 Failing to Change Address on Registration or Title

A. Statutory Authority

"If a person, after making application for or obtaining the registration of a vehicle or a certificate of title, moves from the address named in the application as shown upon a registration certificate or certificate of title, the person within 10 days after moving shall notify the secretary of state in writing of the old and new addresses." MCL 257.228(1).

B. Penalties

The general rules for assessing a civil fine and costs apply to failure to change address violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs.

3.5 Failing to Assure Title Transfer When Vehicle Is Sold

A. Statutory Authority

"The owner of a motor vehicle who has made a bona fide sale by transfer of his or her title or interest and who has delivered possession of the vehicle and the certificate of title to that vehicle properly endorsed to the purchaser or transferee is not liable for any damages or a violation of law that subsequently results from the use or ownership of the vehicle by another, if the owner, other than a licensed dealer, satisfies the conditions prescribed under [MCL 257.240(2)]." MCL 257.240(1).

"The owner of a motor vehicle, other than a licensed dealer, shall satisfy 1 of the following conditions:

> (a) Accompany the purchaser of the vehicle to a secretary of state branch office to assure that the title of the vehicle being sold is transferred.
>
> (b) Maintain a record of the sale for not less than 18 months. As used in this subdivision, 'record of the sale' means either a photocopy of the reassigned title or a form or document that includes the name, address, driver license number, and signature of the person to whom the vehicle is sold and the purchase price and date of sale of the vehicle." MCL 257.240(2).

B. Penalties

The general rules for assessing costs apply to violations of MCL 257.240(2). See Section 1.19 for a discussion of the general rules governing the assessment of costs; see also the Michigan Judicial Institute's table for a quick reference guide.

"A person who violates [MCL 257.240(2)] is responsible for a civil infraction and shall be ordered to pay a civil fine of $15.00." MCL 257.240(3). See also MCL 257.907(2).

C. Issues

"A person who violates [MCL 257.240(2)] is presumed to be the last titled owner and to be liable for towing fees and daily storage fees for an abandoned motor vehicle." MCL 257.240(4).

3.6 Invalid or No Registration Plate

A. Statutory Authority

"Except as otherwise provided in [MCL 257.201–MCL 257.259[3]], a person shall not operate, nor shall an owner knowingly permit to be operated, upon any highway, a vehicle required to be registered under the [MVC] unless there is attached to and displayed on the vehicle, as required by [MCL 257.201–MCL 257.259], a valid registration plate issued for the vehicle by the department for the current registration year." MCL 257.255(1).

"A registration plate shall not be required upon any wrecked or disabled vehicle, or vehicle destined for repair or junking, which is being transported or drawn upon a highway by a wrecker or a registered motor vehicle." MCL 257.255(1).

B. Penalties

The general rules for assessing a civil fine and costs apply to invalid or no registration plate violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs.

[3] See e.g., MCL 257.216.

3.7 No Proof of Insurance

A. Statutory Authority

"The owner of a motor vehicle who operates or permits the operation of the motor vehicle upon the highways of [Michigan] or the operator of the motor vehicle shall produce, under [MCL 257.328(2)], upon the request of a police officer, evidence that the motor vehicle is insured under [MCL 500.3101 *et seq.*]." MCL 257.328(1).

"Subject to [MCL 257.907(15)[4]], an owner or operator of a motor vehicle who fails to produce evidence of insurance upon request under [MCL 257.328(1)] or who fails to have motor vehicle insurance for the vehicle as required under [MCL 500.3101 *et seq.*], is responsible for a civil infraction." MCL 257.328(1).

Electronic copy of certificate of insurance. "If a person displays an electronic copy of his or her certificate of insurance using an electronic device, the police officer shall only view the electronic copy of the certificate of insurance and shall not manipulate the electronic device to view any other information on the electronic device. A person who displays an electronic copy of his or her certificate of insurance using an electronic device as provided in this subsection shall not be presumed to have consented to a search of the electronic device. A police officer may require the person to electronically forward the electronic copy of the certificate of insurance to a specified location provided by the police officer. The police officer may then view the electronic copy of the certificate of insurance in a setting in which it is safe for the officer to verify that the information contained in the electronic copy of the certificate of insurance is valid and accurate. [Michigan], a law enforcement agency, or an employee of [Michigan] or a law enforcement agency is not liable for damage to or loss of an electronic device that occurs as a result of a police officer's viewing an electronic copy of a certificate of insurance in the manner provided in [MCL 257.328], regardless of whether the police officer or the owner or operator of the vehicle was in possession of the electronic device at the time the damage or loss occurred." MCL 257.328(1).

B. Penalties

For a violation of MCL 257.328, the court may order the person to pay a civil fine and costs. MCL 257.907(2). However, "[f]or a

[4] See Section 1.20(A) for more information on MCL 257.907(15).

violation of [MCL 257.328], the civil fine ordered under [MCL 257.907(2)] shall be not more than $50.00." MCL 257.907(2).

The general rules for assessing costs apply to no proof of insurance violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

"If, before the appearance date on a citation issued under [MCL 257.328(1)], the defendant submits proof to the court that the motor vehicle had insurance meeting the requirements of [MCL 500.3101 and MCL 500.3102], at the time the violation of [MCL 257.328(1)] occurred, all of the following apply:

> (a) The court shall not assess a fine or costs.
>
> (b) The court shall not forward an abstract of the court record to the secretary of state.
>
> (c) The court may assess a fee of not more than $25.00, which shall be paid to the court funding unit." MCL 257.328(3).

"If a person has received a citation for a violation of [MCL 257.328(1)] for failing to produce a certificate of insurance under [MCL 257.328(2)], the court may waive the fee described in [MCL 257.328(3)(c)] and shall waive any fine, costs, and any other fee or assessment otherwise authorized under [the Michigan Vehicle Code] upon receipt of verification by the court that the person, before the appearance date on the citation, produced valid proof of insurance that was in effect at the time the violation of [MCL 257.328(1)] occurred." MCL 257.907(15). "Insurance obtained subsequent to the time of the violation does not make the person eligible for a waiver under [MCL 257.907(15)]." MCL 257.907(15).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf.

- Discretionary license surrender/suspension under certain circumstances. See MCL 257.328(4).[5]

3.8 No Proof of Registration

A. Statutory Authority

"A registration certificate shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of the vehicle, who shall display the registration certificate upon demand of a police officer." MCL 257.223(1).

B. Penalties

The general rules for assessing a civil fine and costs apply to no proof of registration violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs.

However, "[i]f a person has received a citation for a violation of [MCL 257.223], the court shall waive any civil fine, costs, and assessment, upon receipt of certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid registration certificate that was valid on the date the violation of [MCL 257.223] occurred." MCL 257.907(14).

3.9 Registration Plate Violations

A. Statutory Authority

"A registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which the plate is issued so as to prevent the plate from swinging. The plate shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, in a place and position that is clearly visible. The plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." MCL 257.225(2).

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[5] MCL 257.328(4) provides: "If an owner or operator of a motor vehicle is determined to be responsible for a violation of [MCL 257.328(1)], the court in which the civil infraction determination is entered may require the person to surrender his or her operator's or chauffeur's license unless proof that the vehicle has insurance meeting the requirements of . . . MCL 500.3101 and 500.3102, is submitted to the court. If the court requires the license to be surrendered, the court shall order the secretary of state to suspend the person's license. The court shall immediately destroy the license and shall forward an abstract of the court record to the secretary of state as required by [MCL 257.732]. Upon receipt of the abstract, the secretary of state shall suspend the person's license beginning with the date on which the person is determined to be responsible for the civil infraction for a period of 30 days or until proof of insurance meeting the requirements of . . . MCL 500.3101 and 500.3102, is submitted to the secretary of state, whichever occurs later. A person who submits proof of insurance to the secretary of state under this subsection shall pay a service fee of $25.00 to the secretary of state. The person shall not be required to be examined under [MCL 257.320c] and shall not be required to pay a replacement license fee."

B. Penalties

"A person who violates [MCL 257.225] is responsible for a civil infraction." MCL 257.225(7).

The general rules for assessing a civil fine and costs apply to failure to change address violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs.

C. Issues

MCL 257.225(2) was violated where a vehicle's registration plate was partially obstructed by a bumper-mounted towing ball. *People v Dunbar*, 499 Mich 60, 73 (2016). MCL 257.225(2) "simply requires that the registration plate be attached where it can be seen without obstruction." *Dunbar*, 499 Mich at 68. "[T]he second sentence of MCL 257.225(2) requires a vehicle's registration plate and surrounding attachments to be configured in such a manner that the plate is not partially or fully obstructed[; t]he statute therefore prohibits a registration plate from being obstructed by an object attached to a vehicle." *Dunbar*, 499 Mich at 73. "[The] defendant violated MCL 257.225(2) because the towing ball attached to his truck partially obstructed the truck's registration plate from the view of police officers following him." *Dunbar*, 499 Mich at 73. However, the Court noted that "nothing in MCL 257.225(2) evinces the Legislature's intention to impose liability on a person on the basis of conduct or circumstances outside his or her control." *Dunbar*, 499 Mich at 69 (citing an obstructing object such as a building or pedestrian or a condition such as snow or fog as examples).

A traffic stop was justified "based on [the officer's] reasonable suspicion that traffic laws were being violated[]" where the defendant's temporary paper license plate "was not in a clearly visible position or in a clearly legible condition." *People v Simmons*, ___ Mich App ___, ___ (2016). The officer testified that "he could not see a plate before pulling over the vehicle[, and h]e could not read the paper in the window when he approached the vehicle from 3 or 4 feet away, and its writing was very 'dim.'" *Id.* at ___. Accordingly, the Court held that the officer "was justified in pulling over the vehicle for a violation of MCL 257.225(2)[.]" *Simmons*, ___ Mich App at ___ (rejecting the defendant's contention "that the search and seizure became unreasonable when [the officer] asked [him] for his license, registration, and insurance, rather than taking five seconds to examine the paper plate affixed to the rear window of the vehicle and determine its validity[]") (citations omitted). The officer's "actions were reasonably related in scope to the circumstances of the stop[, and e]ven [if the officer had] taken the time to examine the

paper plate more closely to determine whether it appeared to be a valid temporary registration plate, the plate would still have been in violation of MCL 257.225(2)." *Simmons*, ___ Mich App at ___.

Part C—Other Nonmoving Violation Civil Infractions Found in the Michigan Vehicle Code

3.10 Abandoning a Vehicle and Failing to Redeem It Before Disposition

A. Statutory Authority

"A person shall not abandon a vehicle in [Michigan]." MCL 257.252a(1).

"It is presumed that the last titled owner of the vehicle is responsible for abandoning the vehicle unless the person provides a record of the sale as that term is defined in [MCL 257.240]." MCL 257.252a(1).

B. Penalties

"A person who violates [MCL 257.252a(1)] and who fails to redeem the vehicle before disposition of the vehicle under [MCL 257.252g] is responsible for a civil infraction and shall be ordered to pay a civil fine of $50.00." MCL 257.252a(1). See also MCL 257.907(2).

The general rules for assessing costs apply to violations of MCL 257.252a(1). See Section 1.19 for a discussion of the general rules governing the assessment of costs; see also the Michigan Judicial Institute's table for a quick reference guide.

3.11 Child Restraint System and Safety Belt System Violations

A. Statutory Authority

1. Child Restraint System Violations

"Except as provided in [MCL 257.710d], or as otherwise provided by law, a rule promulgated under . . . MCL 24.201 to [MCL] 24.328, or federal regulation, each driver transporting a

child less than 4 years of age in a motor vehicle shall properly secure that child in a child restraint system that meets the standards prescribed in 49 CFR 571.213[6]."

"A driver transporting a child as required under [MCL 257.710d(1)] shall position the child in the child restraint system in a rear seat, if the vehicle is equipped with a rear seat." MCL 257.710d(2). "If all available rear seats are occupied by children less than 4 years of age, then a child less than 4 years of age may be positioned in the child restraint system in the front seat." *Id*. However, "[a] child in a rear-facing child restraint system may be placed in the front seat only if the front passenger air bag is deactivated." *Id*.

"[MCL 257.710d] does not apply if the motor vehicle being driven is a bus, school bus, taxicab, moped, motorcycle, or other motor vehicle not required to be equipped with safety belts under federal law or regulations." MCL 257.710d(3).

"The secretary of state may exempt by rules promulgated under [MCL 24.201–MCL 24.328], a class of children from the requirements of [MCL 257.710d], if the secretary of state determines that the use of the child restraint system required under [MCL 257.710d(1)] is impractical because of physical unfitness, a medical problem, or body size." MCL 257.710d(6). "The secretary of state may specify alternate means of protection for children exempted under [MCL 257.710d(6)]." MCL 257.710d(6).

2. Safety Belt Violations

"Each operator and front seat passenger of a motor vehicle operated on a street or highway in [Michigan] shall wear a properly adjusted and fastened safety belt except as follows:

> (a) A child who is less than 4 years of age shall be protected as required in [MCL 257.710d].
>
> (b) A child who is 4 years of age or older but less than 8 years of age and who is less than 4 feet 9 inches in height shall be properly secured in a child restraint system in accordance with the child restraint manufacturer's and vehicle manufacturer's instructions and the standards prescribed in 49 CFR 571.213[7]." MCL 257.710e(3).

[6] 49 CFR 571.213 "specifies requirements for child restraint systems used in motor vehicles" and "applies to passenger cars, multipurpose passenger vehicles, trucks and buses, and to child restraint systems for use in motor vehicles[.]"

"Except as otherwise provided in [MCL 257.710e(3)(b)], each operator of a motor vehicle transporting a child 4 years of age or older but less than 16 years of age in a motor vehicle shall secure the child in a properly adjusted and fastened safety belt and seated as required under [MCL 257.710e]." MCL 257.710e(5). "If the motor vehicle is transporting more children than there are safety belts available for use, all safety belts available in the motor vehicle are being utilized in compliance with [MCL 257.710e], and the operator and all front seat passengers comply with [MCL 257.710e(3)], the operator of a motor vehicle transporting a child 8 years of age or older but less than 16 years of age for which there is not an available safety belt is in compliance with [MCL 257.710e(5)] if that child is seated in other than the front seat of the motor vehicle." MCL 257.710e(5). "However, if that motor vehicle is a pickup truck without an extended cab or jump seats, and all safety belts in the front seat are being used, the operator may transport the child in the front seat without a safety belt." *Id*.

"[MCL 257.710e] does not apply to an operator or passenger of any of the following:

> (a) A motor vehicle manufactured before January 1, 1965.
>
> (b) A bus.
>
> (c) A motorcycle.
>
> (d) A moped.
>
> (e) A motor vehicle if the operator or passenger possesses a written verification from a physician that the operator or passenger is unable to wear a safety belt for physical or medical reasons.
>
> (f) A motor vehicle that is not required to be equipped with safety belts under federal law.
>
> (g) A commercial or United States postal service vehicle that makes frequent stops for the purpose of pickup or delivery of goods or services.
>
> (h) A motor vehicle operated by a rural carrier of the United States postal service while serving his or her rural postal route." MCL 257.710e(1).

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[7] 49 CFR 571.213 "specifies requirements for child restraint systems used in motor vehicles" and "applies to passenger cars, multipurpose passenger vehicles, trucks and buses, and to child restraint systems for use in motor vehicles[.]"

"[MCL 257.710e] does not apply to the passenger of a school bus." MCL 257.710e(2).

B. Penalties

The general rules for assessing a civil fine and costs apply to child restraint system and safety belt violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

1. Special Penalties for Child Restraint System Violations

For a violation of MCL 257.710d, the court may order the person to pay a civil fine and costs. MCL 257.907(2). However, "the civil fine ordered under [MCL 257.907(2)] shall not exceed $10.00, subject to [MCL 257.907(12)]." MCL 257.907(2).

Under MCL 257.907(12), "[t]he court may waive any civil fine, cost, or assessment against a person who received a civil infraction citation for a violation of [MCL 257.710d] if the person, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the requirements of [MCL 257.710d]."

2. Special Penalties for Safety Belt Violations

For a violation of MCL 257.710e, the court may order the person to pay a civil fine and costs. MCL 257.907(2). However, "the civil fine and court costs ordered under [MCL 257.907(2)] shall be $25.00." MCL 257.907(2).

3.12 Equipment Violations

A. Statutory Authority

"Except as otherwise provided in [MCL 257.698 or MCL 257.707d[8]], a person who violates a provision of [MCL 257.683-MCL 257.711] with respect to equipment on vehicles is responsible for a civil infraction." MCL 257.683(6).

[8] MCL 257.698 contains a misdemeanor offense for misuse of police or emergency lights, and MCL 257.707d contains noise restrictions, some of which are misdemeanor offenses.

"A person shall not drive or move or the owner shall not cause or knowingly permit to be driven or moved on a highway a vehicle or combination of vehicles that is in such an unsafe condition as to endanger a person, or that does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in [MCL 257.683-MCL 257.711], or that is equipped in a manner in violation of [MCL 257.683-MCL 257.711]." MCL 257.683(1).

"A person shall not do an act forbidden or fail to perform an act required under [MCL 257.683-MCL 257.711]." MCL 257.683(1).

"A police officer on reasonable grounds shown may stop a motor vehicle and inspect the motor vehicle, and if a defect in equipment is found, the officer may issue the driver a citation for a violation of a provision of [MCL 257.683-MCL 257.711]." MCL 257.683(2).

"[MCL 257.683-MCL 257.711] shall not prohibit the use of additional parts and accessories on a vehicle that are not inconsistent with [MCL 257.683-MCL 257.711]." MCL 257.683(4).

"The provisions of [MCL 257.683-MCL 257.711] with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors, except as specifically provided in [MCL 257.683-MCL 257.711]." MCL 257.683(5).

B. Equipment Violations

Common equipment violations include:

- Backing, cowl, fender, or running board lamps—MCL 257.698;
- Brakes—MCL 257.705;
- Brake lights—MCL 257.697;
- Bumpers—MCL 257.710c;
- Device causing emission of flame or smoke—MCL 257.682a;
- Failing to maintain equipment—MCL 257.683;
- Head lamps, rear lamps, spot lamps, fog lamps—MCL 257.684, MCL 257.685, MCL 257.686, MCL 257.695, MCL 257.696, MCL 257.700, MCL 257.701, MCL 257.702, MCL 257.704;
- Horn, siren—MCL 257.706;

- Lamp or flag on projecting load—MCL 257.693;
- Mirror and window obstruction of view—MCL 257.708 and MCL 257.709;
- Muffler or exhaust system—MCL 257.707;
- Parking lights—MCL 257.694;
- Plates (lighting and visibility)—MCL 257.686;
- Reflectors and clearance markers—MCL 257.687, MCL 257.688, MCL 257.689, MCL 257.690, MCL 257.691;
- Safety chains (towing)—MCL 257.721(3);
- Safety glass—MCL 257.711;
- Slow moving vehicles, lights and reflectors—MCL 257.688(1)(g) and MCL 257.703;
- Television or other electronic device that displays video images—MCL 257.708b;
- Tires—MCL 257.710;
- Tinted windows—MCL 257.709;
- Trailer, trailer hitch, towing equipment—MCL 257.721;
- Turn signals—MCL 257.697 and 257.697a; and
- Windshield, windows, wipers/washers—MCL 257.708a and MCL 257.709.

C. Penalties

The general rules for assessing a civil fine and costs apply to equipment violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs.

However, "[i]f a person has received a civil infraction citation for defective safety equipment on a vehicle under [MCL 257.683], the court shall waive a civil fine, costs, and assessments upon receipt of certification by a law enforcement agency that repair of the defective equipment was made before the appearance date on the citation." MCL 257.907(9).

D. Issues

- **Tinted windows, MCL 257.709**

"Tinted windows [MCL 257.709] are equipment violations for which no points may be assessed." *People v Pitts*, 222 Mich App 260, 270 (1997). In *Pitts*, 222 Mich App at 271, the Court of Appeals determined that "holding [the] defendant responsible for a moving violation and assessing him two points for having nonreflective window tint upon his windows was improper." Further, "not allowing tinted window film to be applied [to vehicle windows] is rationally related to a legitimate governmental purpose and [a] defendant's right to equal protection of the law is not violated by [MCL 257.709] of the Michigan Vehicle Code." *Pitts*, 222 Mich App at 274-275.

- **Tail lamps, MCL 257.686**

"The plain language of [MCL 257.686(1)] states that all motor vehicles must be 'equipped with' at least one 'rear lamp.'" *People v Williams (Matthew)*, 236 Mich App 610, 613 (1999). MCL 257.686(2) should be read to provide that "a tail lamp must be wired so as to be lighted as specified in order to comply with the Vehicle Code-the implication being that an automobile with a tail lamp not wired so as to be lighted as specified would be in violation of the Vehicle Code." *Williams (Matthew)*, 236 Mich App at 614. Stated another way, "all tail lamps intended for use on an automobile . . . have to be operative in order for the automobile to be in compliance with the Vehicle Code." *Id*. at 615. Thus, "a motor vehicle equipped with multiple tail lamps is in violation of [MCL 257.686(2)] if one or more of its tail lamps is inoperative." *Williams (Matthew)*, 236 Mich App at 615.

3.13 Parking, Stopping, or Standing

A. Statutory Authority

1. Parking on Traveled Part of Highway

"Outside of the limits of a city or village, a vehicle shall not be stopped, parked, or left standing, attended or unattended, upon the paved or main traveled part of a highway when it is possible to stop, park, or to leave the vehicle off the paved or main traveled part of the highway." MCL 257.672(1). "Inside or outside of the limits of a city or village, a vehicle shall not be stopped, parked, or left standing, attended or unattended, upon the paved or unpaved part of a limited access highway, except in an emergency or mechanical difficulty." *Id*.

2. Prohibited Parking Areas under MCL 257.674

"A vehicle shall not be parked, except if necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic-control device, in any of the following places:

(a) On a sidewalk.

(b) In front of a public or private driveway.

(c) Within an intersection.

(d) Within 15 feet of a fire hydrant.

(e) On a crosswalk.

(f) Within 20 feet of a crosswalk, or if there is not a crosswalk, then within 15 feet of the intersection of property lines at an intersection of highways.

(g) Within 30 feet of the approach to a flashing beacon, stop sign, or traffic-control signal located at the side of a highway.

(h) Between a safety zone and the adjacent curb or within 30 feet of a point on the curb immediately opposite the end of a safety zone, unless a different length is indicated by an official sign or marking.

(i) Within 50 feet of the nearest rail of a railroad crossing.

(j) Within 20 feet of the driveway entrance to a fire station and on the side of a street opposite the entrance to a fire station within 75 feet of the entrance if properly marked by an official sign.

(k) Alongside or opposite a street excavation or obstruction, if the stopping, standing, or parking would obstruct traffic.

(*l*) On the roadway side of a vehicle stopped or parked at the edge or curb of a street.

(m) Upon a bridge or other elevated highway structure or within a highway tunnel.

(n) At a place where an official sign prohibits stopping or parking.

(o) Within 500 feet of an accident at which a police officer is in attendance, if the scene of the accident is outside of a city or village.

(p) In front of a theater.

(q) In a place or in a manner that blocks immediate egress from an emergency exit conspicuously marked as an emergency exit of a building.

(r) In a place or in a manner that blocks or hampers the immediate use of an immediate egress from a fire escape conspicuously marked as a fire escape providing an emergency means of egress from a building.

* * *

(v) Within 500 feet of a fire at which fire apparatus is in attendance, if the scene of the fire is outside a city or village. However, volunteer fire fighters responding to the fire may park within 500 feet of the fire in a manner not to interfere with fire apparatus at the scene. A vehicle parked legally previous to the fire is exempt from [MCL 257.674(1)(v)].

(w) In violation of an official sign restricting the period of time for or manner of parking.

(x) In a space controlled or regulated by a meter on a public highway or in a publicly owned parking area or structure, if the allowable time for parking indicated on the meter has expired, unless the vehicle properly displays 1 or more of the items listed in [MCL 257.675(8)[9]].

(y) On a street or highway in such a way as to obstruct the delivery of mail to a rural mailbox by a carrier of the United States postal service.

(z) In a place or in a manner that blocks the use of an alley.

[9] "To be entitled to free parking in a metered space or in a publicly owned parking structure or area, a vehicle must properly display 1 of the following: (a) [a] windshield placard bearing a free parking sticker issued under [the MVC][;] (b) [a] valid windshield placard issued by another state[;] (c) [a] certificate of identification issued by another state[;] (d) [a] license plate for persons with disabilities issued by another state[;] [or] (e) [a] special registration plate with a tab for persons with disabilities attached issued by another state." MCL 257.675(8).

> (aa) In a place or in a manner that blocks access to a space clearly designated as a fire lane." MCL 257.674(1).

3. Clear Vision Areas

"A vehicle shall not be parked in an area purchased, acquired, or used as a clear vision area adjacent to or on a highway right of way." MCL 257.674a(1).

4. Disabled Person Parking

"A disabled person with a certificate of identification, windshield placard, special registration plates issued under [MCL 257.803d], a special registration plate issued under [MCL 257.803f] that has a tab for persons with disabilities attached, a certificate of identification or windshield placard from another state, or special registration plates from another state issued for persons with disabilities is entitled to courtesy in the parking of a vehicle." MCL 257.675(6). "The courtesy shall relieve the disabled person or the person transporting the disabled person from liability for a violation with respect to parking, other than in violation of [the MVC]." *Id.* [10]

"A vehicle shall not be parked, except if necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic-control device, in any of the following places:

* * *

> (s) In a parking space clearly identified by an official sign as being reserved for use by disabled persons that is on public property or private property available for public use, unless the individual is a disabled person as described in [MCL 257.19a] or unless the individual is parking the vehicle for the benefit of a disabled person. In order for the vehicle to be parked in the parking space the vehicle shall display 1 of the following:
>
> > (*i*) A certificate of identification or windshield placard issued under [MCL 257.675] to a disabled person.

[10] There are several other disabled person parking offenses designated as misdemeanors. See MCL 257.675(15)-(17).

(*ii*) A special registration plate issued under [MCL 257.803d] to a disabled person.

(*iii*) A similar certificate of identification or windshield placard issued by another state to a disabled person.

(*iv*) A similar special registration plate issued by another state to a disabled person.

(*v*) A special registration plate to which a tab for persons with disabilities is attached issued under [the MVC].

(t) In a clearly identified access aisle or access lane immediately adjacent to a space designated for parking by persons with disabilities.

(u) On a street or other area open to the parking of vehicles that results in the vehicle interfering with the use of a curb-cut or ramp by persons with disabilities." MCL 257.674(1).

In addition, a local ordinance may be enacted that "prohibit[s] parking on a street or highway to create a fire lane or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extending to . . . physically disabled persons under [MCL 257.675(6)] do not supersede that ordinance." MCL 257.675(6).

"MCL 257.675(6) precludes liability by . . . a disabled person [who is] cited. . . for violating a local time-restriction parking ordinance not contemplated in MCL 257.675(6) as constituting an exception to the liability exemption for disabled persons." *City of Monroe v Jones*, 259 Mich App 443, 453 (2003).

5. Unattended Vehicle

"A person shall not allow a motor vehicle to stand on a highway unattended without engaging the parking brake or placing the vehicle in park and stopping the motor of the vehicle." MCL 257.676(1). "If the vehicle is standing upon a grade, the front wheels of the vehicle shall be turned to the curb or side of the highway." *Id*.

6. Parking Within 500 Feet of Fire Apparatus Stopped in Answer to a Fire Alarm

"The driver of a vehicle other than a vehicle on official business shall not . . . park the vehicle within 500 feet where fire

apparatus has stopped in answer to a fire alarm."[11] MCL 257.679(1).

B. Parking, Standing, and Stopping Violations

Common parking violations include:

- Disabled person parking[12] violations—disregarding sign; improper use of handicap identification, plate, or tab; blocking access aisle or curb-cut, MCL 257.674(1)(s)-257.674(1)(u) and MCL 257.675(5);
- Meter violations, MCL 257.674(1)(x);
- Parking in clear vision areas, MCL 257.674a;
- Parking on a highway or limited-access highway, MCL 257.672;
- Prohibited parking areas, MCL 257.674; and
- Unattended vehicle, MCL 257.676(1).

C. Exceptions to Parking, Stopping, and Standing Violations

A vehicle may be parked in a prohibited place "if necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic-control device[.]" MCL 257.674(1).

"The [jury] instruction on sudden emergency is unnecessary when a violation of the no parking statute is alleged, MCL 257.674(n)." *Mason v Wurth*, 181 Mich App 129, 131 (1989). This is because "[t]he statute expressly excepts otherwise prohibited parking when necessary to comply with the law." *Id*. "The exception includes compliance with the law requiring an individual to stop at the scene of an accident and exchange certain information." *Id*.

D. Parking, Standing, and Stopping Violation Proceedings

"[I]n a proceeding for a violation of a local ordinance or state statute relating to a standing or parked vehicle, proof that the particular vehicle described in the citation, complaint, or warrant was parked in violation of the ordinance or state statute, together with proof

[11] MCL 257.679(1) also prohibits the following of a fire truck too closely. See Section 4.5 for more information on this civil infraction.

[12] See Section 3.12(A)(4) for a detailed discussion of disabled person parking violations.

from the secretary of state that the defendant named in the citation, complaint, or warrant was at the time of the violation the vehicle's registered owner, creates in evidence a presumption that the vehicle's registered owner was the person who parked or placed the vehicle at the point where and at the time that the violation occurred." MCL 257.675a.

E. Liability for Parking, Standing, and Stopping Violations

1. Prima Facie Case of Vehicle Owner Liability

Although a police officer may issue a parking, standing, or stopping violation citation to the operator of the vehicle if he or she is present, MCL 257.675c(4), the registered owner is generally liable for the violation, MCL 257.675c(1). "Instead of requiring the local governmental unit issuing the ticket to identify and pursue the particular driver who violated the parking law, the Legislature has created a rebuttable prima facie case based on vehicle registration." *Ford Motor Credit Co v Detroit*, 254 Mich App 626, 629 (2003). MCL 257.675c(1) states:

> "[I]f a vehicle is stopped, standing, or parked in violation of [MCL 257.672, MCL 257.674, MCL 257.674a, MCL 257.675, or MCL 257.676], or other state statute, or a local ordinance prohibiting or restricting the stopping, standing, or parking of a vehicle and the violation is a civil infraction, the person in whose name that vehicle is registered in [Michigan] or another state at the time of the violation is prima facie responsible for that violation and subject to [MCL 257.907]." MCL 257.675c(1).

"The owner of a vehicle cited for a stopping, standing, or parking violation pursuant to [MCL 257.675c(1)] may assert as an affirmative defense that the vehicle in question, at the time of the violation, was in the possession of a person whom the owner had not knowingly permitted to operate the vehicle." MCL 257.675c(2). A vehicle's owner may also rebut a prima facie case established under MCL 257.675c(1) with "evidence that someone else is responsible for the violation." *Ford Motor Co*, 254 Mich App at 630 n 3 (the affirmative defense specified in MCL 257.675c(2) is not the only method of rebutting a prima facie case).

2. Exception: Violations Involving Leased or Rented Vehicles

Where the violation involves a leased or rented vehicle, the owner may not be responsible. MCL 257.675b(1). "The lessee or renter of a motor vehicle and not the leased vehicle owner is liable for a violation of a local ordinance or state statute relating to a standing or parked vehicle involving the motor vehicle if the leased vehicle owner furnishes proof that the vehicle described in the citation, complaint, warrant, or notice was in the possession of, custody of, or was being operated or used by the lessee or renter of the vehicle at the time of the violation." MCL 257.675b(1).

"If a leased vehicle is leased or rented for 30 days or less, the leased vehicle owner may avoid liability for a violation described in [MCL 257.675b(1)] if the leased vehicle owner provides all of the following information to the clerk of the court or parking violations bureau issuing the violation not later than 30 days after the leased vehicle owner has received notice of the violation:

> (a) The lessee's or renter's name, address, and operator's . . . license number.
>
> (b) A copy of the signed rental or lease agreement or an expedited rental agreement without signature as part of a master rental agreement, including proof of the date and time the possession of the vehicle was given to the lessee or renter and the date and time the vehicle was returned to the leased vehicle owner or the leased vehicle owner's authorized agent under the agreement." MCL 257.675b(2).

"If a leased vehicle is leased or rented for 30 days or less, the leased vehicle owner is liable for a violation of a local ordinance or state statute relating to a standing or parked vehicle if 1 or more of the following occur:

> (a) The leased vehicle owner does not provide the information described in [MCL 257.675b(2)] within the 30-day period specified in [MCL 257.675b(2)].
>
> (b) The court or parking violations bureau issuing the violation proceeds against the lessee or renter of the vehicle and the lessee or renter of the vehicle is not convicted of or found responsible for the violation." MCL 257.675b(3).

3. Civil Action by Vehicle Owner Against Violator

"The registered owner of a vehicle who is found to be responsible for a civil infraction as the result of [MCL 257.675c(1)] or a leased vehicle owner as defined in [MCL 257.675b] that is found to be responsible for a civil infraction described in [MCL 257.675b] has the right to recover in a civil action against the person who parked, stopped, or left standing the vehicle in question damages including, but not limited to, the amount of any civil fine or costs, or both, imposed pursuant to [MCL 257.907]." MCL 257.675c(3). "The registered owner of a vehicle or the leased vehicle owner may provide in a written agreement that the person who parked, stopped, or left standing the vehicle in violation of a state statute or local ordinance, when the violation is a civil infraction, shall indemnify the registered owner or the leased vehicle owner for the damages incurred including, but not limited to, any civil fine and costs imposed upon the registered owner for that civil infraction." *Id*. "With regard to a leased vehicle, [MCL 257.675c(3)] does not apply if the court or parking violations bureau issuing the violation finds that the lessee or renter of the vehicle is not responsible for the violation and it is determined that the lessee or renter did not violate the terms of the rental contract or lease agreement." MCL 275.675c(3).

F. Penalties

"For a violation of [MCL 257.674(1)(s)] or a local ordinance substantially corresponding to [MCL 257.674(1)(s)], the person shall be ordered to pay costs as provided in [MCL 257.907(4)] and a civil fine of not less than $100.00 or more than $250.00." MCL 257.907(2).

For all other parking, stopping, or standing civil infraction violations, the general rules for assessing a civil fine and costs apply. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

3.14 Soliciting Business at the Scene of a Motor Vehicle Accident or Disabled Vehicle

A. Statutory Authority

MCL 257.676c provides in relevant part,

> "(1) Except as provided in subsection (2), a person shall not travel to the scene of a motor vehicle accident or a

> disabled vehicle located on public property, property open to the public, or a state trunk line highway and solicit business for a wrecker, recovery, or towing service. . . . .
>
> (2) Subsection (1) does not apply if any of the following conditions apply:
>
> > (a) A law enforcement agency having jurisdiction over the scene of the accident or disabled vehicle, or an individual involved in that accident or disabled vehicle, requests the owner or operator of a wrecker or towing service to come to the scene.
> >
> > (b) A wrecker, recovery truck, or tow truck operator, who does not travel to the scene of a motor vehicle accident or disabled vehicle as described in subsection (1) for the purpose of soliciting business for a wrecker, recovery, or towing service, offers assistance to a stranded motorist without creating a nuisance or interfering with management of a motor vehicle accident by law enforcement.
>
> (3) Subject to [MCL 257.252d], the law enforcement agency at the scene shall permit an owner or operator of a motor vehicle to request the towing, wrecker, or recovery service or roadside assistance service of his or her choice unless the vehicle is involved in a suspected criminal activity, fatality, or law enforcement investigation, if the vehicle is being impounded, or if the requested preference wrecker service is unavailable or cannot respond within a timely manner and the vehicle is creating a road or safety hazard as determined by law enforcement at the scene."

B. Penalties

"A person who violates [MCL 257.676c] is responsible for a civil infraction and shall be ordered to pay a civil fine of $1,000.00." MCL 257.676c(1). See also MCL 257.907(2).

Costs must be ordered as provided by MCL 257.907(4). See Section 1.19(B) for a discussion of the general rules governing the assessment of costs; see also the Michigan Judicial Institute's table for a quick reference guide.

Chapter 4: Civil Infraction Moving Violations

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4.1 Introduction and Scope Note

The Michigan Vehicle Code (MVC) contains hundreds of traffic offenses. This chapter includes discussion of the most commonly-cited moving civil infractions. The discussion of each civil infraction includes:

- the name of the offense;
- quotations of the actual statute, or significant parts thereof;
- penalties;
- sanctions; and
- issues of importance regarding that offense.

This chapter does not discuss motor carrier or commercial violations or civil infractions that may be committed only by operation of a motorcycle.

4.2 Careless or Negligent Driving

A. Statutory Authority

"A person who operates a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public including an area designated for the parking of vehicles in a careless or negligent manner likely to endanger any person or property, but without wantonness or recklessness, is responsible for a civil infraction." MCL 257.626b.

B. Penalties

The general rules for assessing a civil fine and costs apply to careless driving. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/

documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.

- Three points are assessed for "careless driving in violation of [MCL 257.626b] or a law or ordinance substantially corresponding to [MCL 257.626b;]" MCL 257.320a(1)(n). See Section 1.39 for more information on points.

- Two points are assessed for "[a]ll other moving violations pertaining to the operation of motor vehicle reports under [MCL 257.320a.]" MCL 257.320a(1)(t). See Section 1.39 for more information on points.

D. Issues

- **Reckless Driving, MCL 257.626 vs. Careless Driving, MCL 257.626b**

The difference between reckless driving (MCL 257.626),[1] a misdemeanor, and careless or negligent driving (MCL 257.626b), a civil infraction, is the degree of negligence. Reckless driving requires driving in "willful or wanton disregard for the safety of persons or property." MCL 257.626(2). Careless driving requires ordinary negligence, which is defined as operating a motor vehicle in a "careless or negligent manner likely to endanger any person or property, but without wantonness or recklessness[.]" MCL 257.626b.

Committee Tip: *If the prosecuting attorney, in a plea bargain, decides to reduce the charge from reckless driving to careless or negligent driving, it is necessary to dismiss the misdemeanor charge and to have another citation issued for a civil infraction to which the defendant will then plead responsible.*

---

[1] See Section 6.20.

4.3 Failing to Remove a Motor Vehicle From Roadway After an Accident

A. Statutory Authority

"Unless the operator of a motor vehicle involved in an accident knows or reasonably should know that serious impairment of a bodily function or death has resulted from the accident, the operator or any other occupant of the motor vehicle who possesses a valid driver license shall remove the motor vehicle from the main traveled portion of the roadway into a safe refuge on the shoulder, emergency lane, or median or to a place otherwise removed from the roadway if both of the following apply:

(a) Moving the motor vehicle may be done safely.

(b) The motor vehicle is capable of being normally and safely operated and can be operated under its own power in its customary manner without further damage or hazard to the traffic elements or to the roadway." MCL 257.618a(1).

B. Penalties

"A person who violates [MCL 257.618a(1)] is responsible for a civil infraction." MCL 257.618a(2).

The general rules for assessing a civil fine and costs apply to failing to remove a vehicle from the roadway after being involved in an accident. See MCL 257.907. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs. See also the Michigan Judicial Institute's table for a quick reference guide.

C. Issues

"The operator or any other person who removes a motor vehicle from the main traveled portion of the roadway as provided in [MCL 257.618a] before the arrival or a police officer is not prima facie at fault regarding the cause of the traffic accident solely by reason of moving the motor vehicle as provided in [MCL 257.618a]." MCL 257.618a(3).

"The decision of the operator or any other person to remove or not to remove a motor vehicle from the main traveled portion of the roadway as provided in [MCL 257.618a] is not admissible in a civil action as evidence that a serious impairment of bodily function has or has not resulted from the accident." MCL 257.618a(4).

"A law enforcement agency may, without the consent of the owner or operator and with the assistance of the state transportation department, other road agencies, fire department, emergency management, other local public safety agencies, or towing or recovery companies under the direction of any of those entities remove and dispose of motor vehicles and cargoes of vehicles involved in accidents, including any personal property, from the main traveled portion of a roadway and the right-of-way if the vehicle, cargo, or personal property is blocking the roadway or right-of-way or may otherwise endanger public safety." MCL 257.618a(5).

"Except as otherwise provided in this subsection, a public agency or department that moves a motor vehicle, cargo, or personal property as described in subsection (5), and any of their officers, employees, or agents, or anyone acting in good faith under, and within the scope of, the authority conferred under subsection (5), is not liable for any damages or claims that may arise from the exercise or the failure to exercise any authority granted under subsection (5). This subsection does not apply to the transport of a motor vehicle from the scene of an accident, or if the conduct of the individual acting under the authority conferred under subsection (5) constitutes gross negligence." MCL 257.618a(6).

"The owner or carrier, if any, of a motor vehicle, cargo, or personal property removed or disposed of under subsection (5) shall reimburse the public agency, departments, and towing companies, if any, for all documented reasonable costs incurred in that removal and disposal." MCL 257.618a(7).

4.4 Failing to Stop for School Bus

A. Statutory Authority

"The operator of a vehicle overtaking or meeting a school bus that has stopped and is displaying 2 alternately flashing red lights located at the same level shall bring the vehicle to a full stop not less than 20 feet from the school bus and shall not proceed until the school bus resumes motion or the visual signs are no longer actuated." MCL 257.682(1).

"The operator of a vehicle who fails to stop for a school bus as required by [MCL 257.682(1)], who passes a school bus in violation of [MCL 257.682(1)], or who fails to stop for a school bus in violation of an ordinance that is substantially similar to [MCL 257.682(1)], is responsible for a civil infraction." MCL 257.682(1).

"In a proceeding for a violation of [MCL 257.682(1)], proof that the particular vehicle described in the citation was in violation of [MCL 257.682(1)], together with proof that the defendant named in the citation was, at the time of the violation, the registered owner of the vehicle, constitutes a rebuttable presumption that the registered owner of the vehicle was the driver of the vehicle at the time of the violation." MCL 257.682(3).

B. Exception

"The operator of a vehicle upon a highway that has been divided into 2 roadways by leaving an intervening space, or by a physical barrier, or clearly indicated dividing sections so constructed as to impede vehicular traffic, is not required to stop upon meeting a school bus that has stopped across the dividing space, barrier, or section." MCL 257.682(2).

C. Penalties

"For a violation of [MCL 257.682] or a local ordinance substantially corresponding to [MCL 257.682], the person shall be ordered to pay costs as provided in [MCL 257.907(4)] and a civil fine of not less than $100.00 or more than $500.00." MCL 257.907(2). The general rules for assessing costs apply to failing to stop for a school bus violations. See Section 1.19 for a discussion of the general rules governing the assessment of costs; see also the Michigan Judicial Institute's table for a quick reference guide.

"In addition to the civil fine and costs provided for a civil infraction under [MCL 257.907], the judge, district court referee, or district court magistrate may order a person who violates [MCL 257.682] to perform not more than 100 hours of community service at a school." MCL 257.682(4).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or

any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.

- Three points are assessed for "[d]isobeying a traffic signal[.]" MCL 257.320a(1)(q). See Section 1.39 for more information on points.

4.5 Following a Fire Truck Too Closely

A. Statutory Authority

"The driver of a vehicle other than a vehicle on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive[] into . . . within 500 feet where fire apparatus has stopped in answer to a fire alarm." MCL 257.679(1).

B. Penalties

The general rules for assessing a civil fine and costs apply to following a fire truck too closely violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39for more information on points.

- Two points are assessed for "[a]ll other moving violations pertaining to the operation of motor vehicles reported under [MCL 257.320a]." MCL 257.320a(1)(t). See Section 1.39 for more information on points.

4.6 Interference With View, Control, or Operation of Vehicle

A. Statutory Authority

"A person shall not drive a vehicle when it is loaded, or when there are in the front seat a number of persons, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle." MCL 257.677(1).

"A passenger in a vehicle or streetcar shall not ride in a position as to interfere with the driver's or operator's view ahead or to the sides, or to interfere with the driver's or operator's control over the driving mechanism of the vehicle or streetcar." MCL 257.677(2).

B. Penalties

The general rules for assessing a civil fine and costs apply to interference with view, control, or operation of vehicle violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.

- Two points are assessed for "[a]ll other moving violations pertaining to the operation of motor vehicles reported under [MCL 257.320a]." MCL 257.320a(1)(t). See Section 1.39 for more information on points.

~~4.7 Operating an Automated Motor Vehicle in Automatic Mode~~

~~A. Statutory Authority~~

~~"Except as otherwise provided in [MCL 257.665], a person shall not operate an automated motor vehicle upon a highway or street in automatic mode." MCL 257.663.~~

~~"[MCL 257.663 *et seq.*,] does not prohibit a person from being charged with, convicted of or being found responsible for, ordered to pay a fine or costs, or punished for any other violation of law arising out of the same transaction as the violation of [MCL 257.663 *et seq.*]" MCL 257.666(2).~~

~~B. Penalties~~

~~The general rules for assessing a civil fine and costs apply to operating an automated motor vehicle in automatic mode. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.~~

~~C. Sanctions~~

~~Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.~~

- ~~Four points are assessed for "a moving violation resulting in an at fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.~~

- ~~Two points are assessed for "[a]ll other moving violations pertaining to the operation of motor vehicles reported under [MCL 257.320a]." MCL 257.320a(1)(t). See Section 1.39 for more information on points.~~

~~D. Issues~~

- ~~**Civil immunity, MCL 257.817; MCL 600.2949b**~~

~~"A manufacturer of automated technology is immune from civil liability for damages that arise out of any modification made by another person to a motor vehicle or an automated motor vehicle, or to any automated technology, as provided in . . . MCL 600.2949b." MCL 257.817.~~

~~"The manufacturer of a vehicle is not liable and shall be dismissed from any action for alleged damages resulting from any of the following unless the defect from which the damages resulted was present in the vehicle when it was manufactured:~~

> ~~(a) The conversion or attempted conversion of the vehicle into an automated motor vehicle by another person.~~
>
> ~~(b) The installation of equipment in the vehicle by another person to convert it into an automated motor vehicle.~~
>
> ~~(c) The modification by another person of equipment that was installed by the manufacturer in an automated motor vehicle specifically for using the vehicle in automatic mode." MCL 600.2949b(1).~~

~~"A subcomponent system producer recognized as described in . . . MCL 257.244, is not liable in a product liability action for damages resulting from the modification of equipment installed by the subcomponent system producer to convert a vehicle to an automated motor vehicle unless the defect from which the damages resulted was present in the equipment when it was installed by the subcomponent system producer." MCL 600.2949b(2).~~

4.8 Overtaking and Passing

A. Statutory Authority

"The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules stated in [MCL 257.637–MCL 257.643a]:

> (a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass at a safe distance to the left of that vehicle, and when safely clear of the overtaken vehicle shall take up a position as near the right-hand edge of the main traveled portion of the highway as is practicable.

> (b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle." MCL 257.636(1).

"A person who violates [MCL 257.636] is responsible for a civil infraction." MCL 257.636(2).

"The driver of a vehicle may overtake and pass upon the right of another vehicle only if 1 or more of the following conditions exist:

> (a) When the vehicle overtaken is making or about to make a left turn.
>
> (b) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for 2 or more lines of moving vehicles in each direction and when the vehicles are moving in substantially continuous lanes of traffic.
>
> (c) Upon a 1-way street, or upon a roadway on which traffic is restricted to 1 direction of movement, where the roadway is free from obstructions and of sufficient width for 2 or more lines of moving vehicles and when the vehicles are moving in substantially continuous lanes of traffic." MCL 257.637(1).

"The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting the overtaking and passing in safety." MCL 257.637(2). "The driver of a vehicle shall not overtake and pass another vehicle upon the right by driving off the pavement or main-traveled portion of the roadway." *Id*.

"A person who violates [MCL 257.637] is responsible for a civil infraction." MCL 257.637(3).

B. Overtaking and Passing Violations:

Common overtaking and passing violations include:

- Disobeying no-passing zones, MCL 257.640;
- Failing to give way when overtaken, MCL 257.636(1)(b);
- Following too closely, MCL 257.643;
- Improper lane use (multiple lane highway), MCL 257.642;

- Improper passing on hill or curve, MCL 257.639(1)(a);
- Improper passing on right, MCL 257.637;
- Improper passing within 100 feet of bridge, viaduct, or tunnel with obstructed view, MCL 257.639(1)(b)

C. Penalties

The general rules for assessing a civil fine and costs apply to overtaking and passing violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

1. Improper Passing

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.
- Three points are assessed for improper passing. MCL 257.320a(1)(q). See Section 1.39 for more information on points.

2. Following Too Closely, Tailgating, Improper Lane Use

- Two points are assessed for following too closely, tailgating, and improper lane use. MCL 257.320a(1)(t). See Section 1.39 for more information on points.

4.9 Permitting Minor to Ride in Pickup Truck Bed

A. Statutory Authority

"Except as provided in [MCL 257.682b], an operator shall not permit a person less than 18 years of age to ride in the open bed of a pickup truck on a highway, road, or street in a city, village, or township at a speed greater than 15 miles per hour." MCL. 257.682b(1).

B. Exceptions

"[MCL 257.682b(1)] does not apply to the operator of any of the following:

> (a) A motor vehicle operated as part of a parade pursuant to a permit issued by the governmental unit with jurisdiction over the highway or street.
>
> (b) A military motor vehicle.
>
> (c) An authorized emergency vehicle.
>
> (d) A motor vehicle controlled or operated by an employer or an employee of a farm operation, construction business, or similar enterprise during the course of work activities.
>
> (e) A motor vehicle used to transport a search and rescue team to and from the site of an emergency." MCL 257.682b(2).

C. Penalties

The general rules for assessing a civil fine and costs apply to permitting a minor to ride in a pickup truck bed. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/

documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.

- Two points are assessed for "[a]ll other moving violations pertaining to the operation of motor vehicle reports under [MCL 257.320a.]"MCL 257.320a(1)(t). See Section 1.39 for more information on points.

4.10 Railroad Crossings

A. Statutory Authority

"When a person driving a vehicle approaches a railroad grade crossing under any of the following circumstances, the driver shall stop the vehicle not more than 50 feet but not less than 15 feet from the nearest rail of the railroad, and shall not proceed until the driver can do so safely:

> (a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train.
>
> (b) A crossing gate is lowered or a flagman gives or continues to give a signal of the approach or passage of a railroad train.
>
> (c) A railroad train approaching within approximately 1,500 feet of the highway crossing gives a signal audible from that distance, and the train by reason of its speed or nearness to the crossing is an immediate hazard.
>
> (d) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing." MCL 257.667(1).[2]

"A person shall not drive a vehicle through, around, or under a crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed or against the direction of a police officer." MCL 257.667(2).

[2] MCL 257.1857 addresses railroad crossing requirement for school buses. However, that provision is outside the scope of this benchbook.

Certain grade crossings may be designated as "stop" crossings and "yield" crossings; if so designated, appropriate signs are to be erected to notify drivers. A driver's duties depend on the designation. MCL 257.668.

Stop crossings—"[T]he driver of a vehicle shall stop not more than 50 feet but not less than 15 feet from the railway tracks. The driver shall then traverse the crossing when it may be done in safety." MCL 257.668(1).

Yield crossings—"Drivers of vehicles approaching a yield sign at the grade crossing of a railway shall maintain a reasonable speed based upon existing conditions and shall yield the right-of-way." MCL 257.668(2).

B. Penalties

The general rules for assessing a civil fine and costs apply to railroad crossing violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.19 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.

- Three points are assessed for "[d]isobeying a traffic signal or stop sign." MCL 257.320a(1)(q). See Section 1.39 for more information on points.

- Two points are assessed for "[a]ll other moving violations pertaining to the operation of motor vehicle reports under [MCL 257.320a.]" MCL 257.320a(1)(t). Section 1.39 for more information on points.

4.11 Right-of-Way or Failure to Yield

A. Statutory Authority

MCL 257.649 contains several provisions for yielding the right-of-way to another vehicle. However, "[t]he driver of a vehicle traveling at an unlawful speed shall forfeit a right of way which the driver might otherwise have under [MCL 257.649]." MCL 257.649(5).

1. Entering Intersection from Different Highways

"The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway." MCL 257.649(1).

"When 2 vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right." MCL 257.649(2).

"The right of way rules declared in [MCL 257.649(1) and MCL 257.649(2)] are modified at through highways and otherwise as stated in [MCL 257.649–MCL 257.655]." MCL 257.649(3).

2. Approaching a Yield Sign

"The driver of a vehicle approaching a yield sign, in obedience to the sign, shall slow down to a speed reasonable for the existing conditions and shall yield the right of way to a vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the driver would be moving across or within the intersection." MCL 257.649(4). "However, if required for safety to stop, the driver shall stop before entering the crosswalk on the near side of the intersection or, if there is not a crosswalk, at a clearly marked stop line; but if there is not a crosswalk or a clearly marked stop line, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway." *Id*.

3. Traveling at an Unlawful Speed

"The driver of a vehicle traveling at an unlawful speed shall forfeit a right of way which the driver might otherwise have under [MCL 257.649]." MCL 257.649(5).

4. Approaching a Stop Sign[3]

"Except when directed to proceed by a police officer, the driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection, or if there is not a crosswalk shall stop at a clearly marked stop line; or if there is not a crosswalk or a clearly marked stop line, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway." MCL 257.649(6). "After having stopped, the driver shall yield the right of way to a vehicle which has entered the intersection from another highway or which is approaching so closely on the highway as to constitute an immediate hazard during the time when the driver would be moving across or within the intersection." *Id*.

5. Merging

"When a vehicle approaches the intersection of a highway from an intersecting highway or street which is intended to be, and is constructed as, a merging highway or street, and is plainly marked at the intersection with appropriate merge signs, the vehicle shall yield right of way to a vehicle so close as to constitute an immediate hazard on the highway about to be entered and shall adjust its speed so as to enable it to merge safely with the through traffic." MCL 257.649(7).

B. Right-of-Way or Failure to Yield Violations

Common right-of-way or failure to yield violations include:

- Failing to obey stop, yield, or merge signs on through highways, MCL 257.671(3);
- Failing to stop at stop sign, MCL 257.649(6);
- Failing to yield at yield sign, MCL 257.649(4);
- Failing to yield from alley, private road, or driveway, MCL 257.652(1);
- Failing to yield to emergency vehicles, MCL 257.653[4];

[3] For more information on stop and go, signs and signal violations, see Section 4.13.

[4] MCL 257.653 (failure to yield to emergency vehicles) is a civil infraction which is similar to MCL 257.653a (duty to exhibit due care and caution to stationary emergency vehicle giving visual signal), a misdemeanor. See Section 6.10 for more information on MCL 257.653a.

- Failing to yield to funeral procession, MCL 257.654;
- Failing to yield to oncoming traffic when merging onto highway, MCL 257.649(7);
- Failing to yield to pedestrians or bicyclists, MCL 257.612;
- Failing to yield to vehicle on the right at an uncontrolled intersection, MCL 257.649(2);
- Failing to yield to vehicle that has already entered an intersection, MCL 257.649(1); and
- Turning left at intersection into oncoming traffic, MCL 257.650.

C. Penalties

The general rules for assessing a civil fine and costs apply to right-of-way and failure to yield violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.
- Three points are assessed for "[d]isobeying a . . . stop sign." MCL 257.320a(1)(q). See Section 1.39 for more information on points.
- Two points are assessed for "[a]ll other moving violations pertaining to the operation of motor vehicle reports under [MCL 257.320a.]" MCL 257.320a(1)(t). See Section 1.39 for more information on points.

E. Issues

"[T]he standard of care to which the . . . driver with the right of way . . . must adhere is a standard of reasonable care or due care under the circumstances." *Placek v Sterling Hts*, 405 Mich 638, 669 (1979).

- **Failing to yield to emergency vehicles, MCL 257.653**

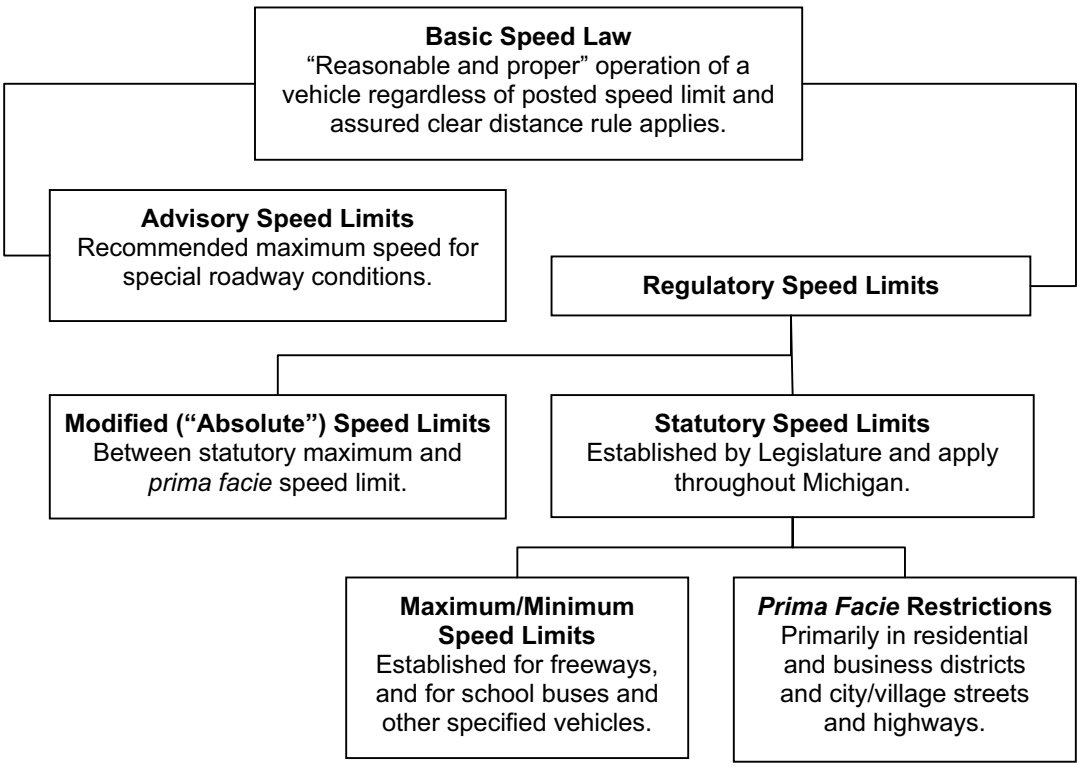
"[A] driver traveling on a through street, as against an emergency vehicle, has a right to cross the intersection unless, by the reasonable exercise of the senses of sight and hearing, he or she should have noticed or heard warning to the contrary." *Placek*, 405 Mich at 671-672.

- **Turning left at intersection into oncoming traffic, MCL 257.650**

"[T]he law [does not] require [a driver], after entering [an] intersection under a favorable green light, to stop and wait for a change in the traffic light before completing [a] left turn." *Neander v Clampett*, 344 Mich 292, 295 (1955).

4.12 Speed Violations

The following flowchart illustrates the organization of speed limits governing traffic in Michigan:



A. Statutory Authority: Basic Speed Laws

"A person operating a vehicle on a highway shall operate that vehicle at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and of any other condition then existing." MCL 257.627(1). "A person shall not operate a vehicle upon a highway at a speed greater than that which will permit a stop within the assured, clear distance ahead." *Id*.

MCL 257.627(1) identifies two concepts: *careful and prudent speed* and *assured, clear distance ahead*. Underlying the concept of *careful and prudent speed* is the premise of ordinary care, e.g., the rate of speed that the average person would conclude to be proper, considering all conditions. Some conditions to consider include:

- weather (rain, wind, snow, etc.);
- time of day (day or night);
- road surface (rough, wet, icy, etc.);
- sight limitations (hills, curves, parked cars, etc.);
- traffic volume (pedestrians, other types of vehicles); and
- vehicle type (stopping distance or braking capacity).

The concept of *assured clear distance ahead* is typically applied to accident cases because the collision itself is evidence of the inability to stop within an assured, clear distance ahead. The ability to stop as a measurement of speed is contingent on several factors, including:

- driver's perception and reaction time;
- road surface conditions; and
- the vehicle's braking capacity.

B. Statutory Authority: Select Prima Facie Speed Laws[5]

1. Business Districts, Public Parks, Land Platted Under the Land Division Act or the Condominium Act, and

[5] "The maximum rates of speeds allowed under [MCL 257.627] are subject to the maximum rate established under [MCL 257.629b]." MCL 257.627(8). MCL 257.629b(1) provides that "[t]he governor may reduce the maximum speed limit on a street, highway, or freeway pursuant to an executive order issued during a state of energy emergency as provided by law."

Highway Segments With Specified Vehicular Access Points

"Except in those instances where a lower speed is specified in [MCL 257.601 *et seq*.] or the speed is unsafe under [MCL 257.627(1)], it is prima facie lawful for the operator of a vehicle to operate that vehicle at a speed not exceeding the following, except when this speed would be unsafe:

> (a) 25 miles per hour on all highways in a business district.
>
> (b) 25 miles per hour in public parks unless a different speed is fixed and duly posted.
>
> (c) 25 miles per hour on all highways or parts of highways within the boundaries of land platted under the land division act, [MCL 560.101–MCL 560.293], or the condominium act, [MCL 559.101–MCL 559.276], unless a different speed is fixed and posted.
>
> (d) 25 miles per hour on a highway segment with 60 or more vehicular access points within 1/2 mile.
>
> (e) 35 miles per hour on a highway segment with not less than 45 vehicular access points but no more than 59 vehicular access points within 1/2 mile.
>
> (f) 45 miles per hour on a highway segment with not less than 30 vehicular access points but no more than 44 vehicular access points within 1/2 mile." MCL 257.627(2).

"It is prima facie unlawful for a person to exceed the speed limits prescribed in [MCL 257.627(2)], except as provided in [MCL 257.629[6]]." MCL 257.627(3).

2. Mobile Home Parks

"A person operating a vehicle in a mobile home park as defined in [MCL 125.2302], shall operate that vehicle at a careful and prudent speed, not greater than a speed that is reasonable and proper, having due regard for the traffic, surface, width of the roadway, and all other conditions

[6] MCL 257.629 authorizes local authorities to establish, increase, or decrease prima facie speed limits in certain situations.

existing, and not greater than a speed that permits a stop within the assured clear distance ahead." MCL 257.627(4). "It is prima facie unlawful for the operator of a vehicle to operate that vehicle at a speed exceeding 15 miles an hour in a mobile home park as defined in [MCL 125.2302]." MCL 257.627(4).

3. Vehicle Towing Another Vehicle or Trailer

"A person operating a passenger vehicle drawing another vehicle or trailer shall not exceed the posted speed limit." MCL 257.627(5).

4. Work Zones

"A person operating a vehicle on a highway, when entering and passing through a work zone described in [MCL 257.79d(a)] where a normal lane or part of the lane of traffic has been closed due to highway construction, maintenance, or surveying activities, shall not exceed a speed of 45 miles per hour unless a different speed limit is determined for that work zone by the state transportation department, a county road commission, or a local authority, based on accepted engineering practice." MCL 257.627(9). "The state transportation department, a county road commission, or a local authority shall post speed limit signs in each work zone described in [MCL 257.79d(a)] that indicate the speed limit in that work zone and shall identify that work zone with any other traffic control devices necessary to conform to the Michigan manual of uniform traffic control devices." MCL 257.627(9). "A person shall not exceed a speed limit established under [MCL 257.627] or a speed limit established under [MCL 257.628 or MCL 257.629[7]]." MCL 257.627(9).

5. School Zones

"Except as provided in [MCL 257.627a(4)[8]], the prima facie speed limit in a school zone, which shall be in force not less than 30 minutes but not more than 1 hour before the first regularly scheduled school session until school commences and from dismissal until not less than 30 minutes but not more than 1 hour after the last regularly scheduled school session, and during a lunch period when students are permitted to

[7] MCL 257.628 establishes the general speed limit and authorizes other entities to establish reasonable and safe maximum or minimum speed limits on certain roads and highways; MCL 257.629 authorizes local authorities to establish, increase, or decrease prima facie speed limits in certain situations.

[8] MCL 257.627a(4) provides that "[l]ocal authorities may increase or decrease the prima facie speed limit within a school zone under their jurisdiction pursuant to [MCL 257.629]." MCL 257.627a(4).

leave the school, shall be 25 miles an hour, if permanent signs designating the school zone and the speed limit in the school zone are posted at the request of the school superintendent. The signs shall conform to the Michigan manual of uniform traffic control devices." MCL 257.627a(2).

C. Statutory Authority: General Speed Limit

"If the state transportation department and the department of state police jointly determine upon the basis of an engineering and traffic investigation that the speed of vehicular traffic on a state trunk line highway is greater or less than is reasonable or safe under the conditions found to exist at an intersection or other place or upon a part of the highway, the departments acting jointly may determine and declare a reasonable and safe maximum or minimum speed limit on that state trunk line highway or intersection that shall be effective at the times determined when appropriate signs giving notice of the speed limit are erected at the intersection or other place or part of the highway." MCL 257.628(1).

"The maximum speed limit on all highways or parts of highways upon which a maximum speed limit is not otherwise fixed under [the Michigan Vehicle Code] is 55 miles per hour, which shall be known and may be referred to as the 'general speed limit.'" MCL 257.628(1).

D. Statutory Authority: Absolute Speed Limits

"Except for the general speed limit described in [MCL 257.628(1)], speed limits established pursuant to [MCL 257.628] shall be known as absolute speed limits." MCL 257.628(10).

"Except as otherwise provided in [MCL 257.628], the maximum speed limit on all freeways shall be 70 miles per hour except that if the state transportation department and the department of state police jointly determine upon the basis of an engineering and traffic investigation that the speed of vehicular traffic on a freeway is greater or less than is reasonable or safe under the conditions found to exist upon a part of the freeway, the departments acting jointly may determine and declare a reasonable and safe maximum or minimum speed limit on that freeway that is not more than 70 miles per hour but not less than 55 miles per hour and that shall be effective when appropriate signs giving notice of the speed limit are erected." MCL 257.628(8).

"The minimum speed limit on all freeways is 55 miles per hour except if reduced speed is necessary for safe operation or in

compliance with law or in compliance with a special permit issued by an appropriate authority." MCL 257.628(8).

"The maximum rates of speed allowed under [MCL 257.628] are subject to the maximum rates established under [MCL 257.629b[9]], [MCL 257.627(5)–MCL 257.627(7)] for certain vehicles and vehicle combinations, and [MCL 257.629(4)[10]]." MCL 257.628(9).

E. Statutory Authority: Modified Speed Limits[11]

"Local authorities may establish or increase the prima facie speed limits on highways under their jurisdiction subject to the following limitations:

> (a) A highway within a business district on which the prima facie speed limit is increased shall be designated a through highway at the entrance to which vehicles shall be required to stop before entering, except that where 2 of these through highways intersect, local authorities may require traffic on only 1 highway to stop before entering the intersection.
>
> (b) The local authorities shall place and maintain, upon all through highways in which permissible speed is increased, adequate signs giving notice of the special regulations and shall also place and maintain upon each highway intersecting a through highway, appropriate signs which shall be reflectorized or illuminated at night.
>
> (c) Local authorities may establish prima facie lawful speed limits on highways outside of business districts that are consistent with the limits established in [MCL 257.627(2)]." MCL 257.629(1).

"The state transportation department shall establish the speed upon all trunk line highways located within cities and villages as [specified in MCL 257.629(2)(a)-(b)]." MCL 257.629(2).

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[9] Authorizing the governor to issue an executive order reducing the maximum speed limit during state of energy emergency.

[10] Authorizing local authorities to reduce prima facie speed limits on streets or highways adjacent to a public park or playground.

[11] "The maximum rates of speed allowed under [MCL 257.629] are subject to the maximum rate established under [MCL 257.629b]." MCL 257.629(5). MCL 257.629b(1) provides that "[t]he governor may reduce the maximum speed limit on a street, highway, or freeway pursuant to an executive order issued during a state of energy emergency as provided by law."

"Local authorities are authorized to decrease the prima facie speed limits to not less than 15 miles per hour in public parks under their jurisdiction." MCL 257.629(3). "A decrease in the prima facie speed limits is binding when adequate signs are duly posted giving notice of the reduced speeds." *Id.*

"Local authorities are authorized to decrease the prima facie speed limits to not less than 25 miles an hour on each street or highway under their jurisdiction that is adjacent to a publicly owned park or playground." MCL 257.629(4). "A decrease in the prima facie speed limits is binding when adequate signs are duly posted giving notice of the reduced speeds." *Id.*

F. Special Citation Requirements

In addition to the requirements discussed in Section 1.11, "[i]n every charge of a violation of a speed regulation in [MCL 257.627–MCL 257.633] the complaint or citation and the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven and the speed applicable within the district or at the location." MCL 257.633(1).

G. Evidence in a Speed Case

Evidence in a speed case may be presented by testimony of the defendant, complaining police officer, or a witness, or by physical evidence. In general, the court must determine the admissibility of evidence based on principles of relevancy. See MRE 401–MRE 403. However, a district court magistrate conducting an informal hearing in a civil infraction case is not bound by the rules of evidence. See MCL 257.746(1).

"[A]dmissions made by a driver to a police officer are admissible in any court proceeding." *People v Chandler*, 75 Mich App 585, 590 (1976).

1. Speed Evidence Based on Witness Observation

"One need not qualify as an expert in order to testify as to matters one learns through ordinary observation, such as the rate of speed at which a vehicle is going, provided a witness is fully interrogated as to the knowledge upon which his [or her] judgment is based, so that a jury can determine what weight should be given to his [or her] statements." *Hicks v Bacon*, 26 Mich App 487, 493 (1970). "With respect to testimony regarding the speed of a vehicle, the admissibility of this testimony is not contingent upon specific times and distances, and the testimony should be admitted where the jury is made

aware of the witness' opportunity to observe." *Cole v Eckstein*, 202 Mich App 111, 114 (1993).

2. Speed Evidence Based on Radar, Vascar, or Laser Devices

- **Radar**

Radar (Radio Detection and Ranging) detects the presence of a moving object and determines its speed. According to *People v Ferency*, 133 Mich App 526, 542-544 (1984),"a speeding case involving 'moving' radar, the following seven guidelines must be met in order to allow into evidence speed readings from a radar speedmeter [thus satisfying due process requirements]:

> 1. The officer operating the device has adequate training and experience in its operation.
>
> 2. That the radar device was in proper working condition and properly installed in the patrol vehicle at the time of the issuance of the citation.
>
> 3. That the device was used in an area where road conditions are such that there is a minimum possibility of distortion.
>
> 4. That the input speed of the patrol vehicle was verified. This also means that the speedometer of the patrol vehicle was independently calibrated.
>
> 5. That the speedmeter be retested at the end of the shift in the same manner that it was tested prior to the shift and that the speedmeter be serviced by the manufacturer or other professional as recommended.[12]
>
> 6. That the radar operator be able to establish that the target vehicle was within the operational area of the beam at the time the reading was displayed.
>
> 7. That the particular unit has been certified for use by an agency with some demonstrable expertise in the area."

[12]This "requirement . . . does not mandate any specific actions." *City of Adrian v Strawcutter*, 259 Mich App 142, 144 (2003). "The requirement . . . only mandates service *as recommended*." *Id*. "This does not preclude the possibility that *no* service may be recommended." *Id*. at 144-145 (officer complied with relevant servicing requirements under [*People v Ferency*, 133 Mich App 526 (1984)] where the Michigan Speed Measurement Task Force did not recommend any servicing for the speedmeter unit, and no servicing was performed).

The Michigan Commission on Law Enforcement Standards (MCOLES) has adopted Michigan Speed Measurement Standards applicable to individuals certified as speed measurement operators on or after January 1, 2010. The standards also contain specifications for speedmeter calibration. See http://www.michigan.gov/documents/mcoles/Web_Language_304054_7.pdf.

The Michigan Speed Measurement Task Force set out *Guidelines for the Adjudication of Radar Speeding Cases* in 2000 to "provide recommendations to members of the Michigan judicial system regarding the adjudication of radar speeding cases." See http://www.michigan.gov/documents/ADJUDICATIONOFRADARSPEEDING_CASES_11138_7.pdf. The recommendations are as follows:

> "1. The Michigan Speed Measurement Task Force recommends that the guidelines listed in [*People v Ferency*, 133 Mich App 526 (1984)] be considered valid for both stationary-mode and moving-mode radar citations.
>
> 2. The Michigan Speed Measurement Task Force recommends that speed-measuring radar evidence be admissible in court only if the radar device used was certified, as determined by the Michigan Speed Measurement Task Force.
>
> 3. The Michigan Speed Measurement Task Force recommends that it is not necessary to have radar devices periodically recertified because a properly trained radar operator will be able to determine when a specific device is malfunctioning.
>
> 4. The Michigan Speed Measurement Task Force recommends that speed measuring radar device evidence be admissible in court only if the radar operator was certified [by] the Michigan Commission On Law Enforcement Standards at the time the radar speed reading was made.
>
> 5. Only if the radar device and radar operator were each properly certified should issues related to this particular case be addressed in order to determine if the specific facts warrant that the defendant be held responsible. Specific points that should be covered, once the certification issues have been dispensed with, include:

a. Was the radar device in proper working order? And when was this verification done?

b. Was the patrol vehicle's speedometer independently calibrated? And, if so, when was it last calibrated?

c. What mode of operation was used (e.g., stationary or moving)?

d. Was the radar device being used in an area where road conditions or environmental conditions might have led to spurious display readings?

e. What was the nature of the roadway (i.e., type of roadway, general visibility, terrain, visual obstructions, and volume of traffic flow)?

f. What was the target-tracking history (i.e., visual observations of the target, operational area of the radar beam, characteristics of the Doppler-audio signal, display readings, and correlation between the patrol speed display window reading and the reading from the patrol vehicle's speedometer—the latter only being needed during moving-mode operation). *Guidelines for the Adjudication of Radar Speeding Cases, supra*.

In summary, the Michigan Speed Measurement Task Force recommends that the defendant be held responsible for the speeding infraction if the following three conditions are met: first, the radar device was certified as determined by the Michigan Speed Measurement Task Force; second, the radar operator was certified by the Michigan Commission On Law Enforcement Standards; and, third, the preponderance of the forensic evidence related to this specific case indicates that the speeding infraction did occur as stated by the radar operator."

- **Laser (Lidar)**

Laser emits an invisible infrared light beam that measures both speed and distance.

"Although the Michigan Court of Appeals ruling in [*People v Ferency*, 133 Mich App 526 (1984)] deals with the adjudication of a case involving traffic radar, the Michigan Speed Measurement Task Force is of the opinion that the ruling can be applied to cases involving laser speed measurement devices." See http://www.michigan.gov/msp/0,4643,7-123-1593_30536_25802-16134--,00.html. "The interim guidelines for adjudicating speeding cases involving laser speed measurement devices that have been developed by the Michigan Speed Measurement Task Force reflect this opinion:

> 1. The officer operating the laser speed measurement device must have adequate training and experience.
>
> 2. The particular laser device must have been certified for use in Michigan by the Michigan Speed Measurement Task Force.
>
> 3. The laser device must be verified in the same manner at the beginning and end of the shift to ensure that it is in proper working condition, and the device must be serviced by the manufacturer or other professional as recommended.
>
> 4. The officer using the laser device must be able to testify that a down-the-road speed reading was obtained at a distance that was within the operational range of the device.
>
> 5. The target vehicle must be properly identified.
>
> 6. The laser device must be in proper working condition at the time the speed measurement reading is obtained. Additionally, across-the-road laser devices must be properly positioned and aligned." *Id*.

- **VASCAR**

VASCAR (Visual Average Speed Computer and Recorder) is a computer device that allows a police officer to enter a precisely measured distance and the time it took the target vehicle to travel that same distance. The computer then calculates the average speed of the target vehicle.

A proper foundation must be laid for the admission of evidence from a VASCAR unit. *People v Blondia*, 69 Mich App 554, 559 (1976). In *Blondia*, 69 Mich App at 558, "[t]he trooper testified that he calibrated the VASCAR unit before each shift

on a premeasured half-mile course . . . [and] that he had not participated in the measuring of the course but that other troopers had used it and had marked it and he thought it was accurate." The trooper "also used a stop watch to test the VASCAR unit but he did not have anything to offer on the accuracy of the stop watch except that it was not a certified stop watch as prescribed in the manufacturer's instructions on the use of the VASCAR unit." *Id*. The Court of Appeals stated that "[i]f the outcome of th[e] appeal depended on the VASCAR speed evidence alone, [it] would hold that there was an insufficient showing of the accuracy of the unit because a proper foundation was not laid." *Id*. at 559.

H. Penalties

The general rules for assessing a civil fine and costs apply to speed violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

"Notwithstanding [MCL 257.320a and MCL 257.907], a person who is determined responsible or responsible 'with explanation' for a civil infraction for violating the maximum speed limit on a limited access freeway or part of a limited access freeway upon which the maximum speed limit is 55 miles per hour or more shall be ordered by the court to pay a minimum fine . . . only according to the . . . schedule [established in MCL 257.629c], except as otherwise provided in [MCL 257.629c(2) and MCL 257.629c(3).]" MCL 257.629c(1). The schedule is as follows:

- 1-5 mph over speed limit—$10
- 6-10 mph over speed limit—$20
- 11-15 mph over speed limit—$30
- 16-25 mph over speed limit—$40
- 26+ mph over speed limit—$50

"[MCL 257.629c(1)] does not apply to a person operating a vehicle or a vehicle combination for which the maximum rate of speed is established pursuant to [MCL 257.627(5)-(7)]." MCL 257.629c(2).

"For a violation of a maximum speed limit on a limited access freeway by a person operating a vehicle or vehicle combination described in [MCL 257.629c(2)], . . . fines shall be assessed under [MCL 257.907]." MCL 257.629c(3).

I. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

"Within 5 days after receipt of a properly prepared abstract from a court of [Michigan] or another state, the secretary of state shall record the . . . civil infraction determination . . . and the number of points for each, based on the following formula, except as otherwise provided in [MCL 257.320a and MCL 257.629c]:

* * *

> (g) A violation of [MCL 257.627(9)] pertaining to speed in a work zone described in [MCL 257.627] by exceeding the lawful maximum by more than 15 miles per hour . . . . 5 points
>
> (h) A violation of any law other than the law described in [MCL 257.320a(1)(g)] or ordinance pertaining to speed by exceeding the lawful maximum by more than 15 miles per hour . . . . 4 points
>
> * * *
>
> (*l*) A violation of [MCL 257.627(9)] pertaining to speed in a work zone described in [MCL 257.627] by exceeding the lawful maximum by more than 10 but not more than 15 miles per hour . . . . 4 points
>
> (m) Beginning October 31, 2010, a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object . . . . 4 points
>
> (n) A violation of any law other than the law described in [MCL 257.320a(1)(*l*)] or ordinance pertaining to speed by exceeding the lawful maximum by more than 10 but not more than 15 miles per hour . . . . 3 points
>
> (o) A violation of [MCL 257.627(9)] pertaining to speed in a work zone described in [MCL 257.627] by exceeding the lawful maximum by 10 miles per hour or less . . . . 3 points

> (p) A violation of any other law other than the law described in [MCL 257.320a(1)(o)] or ordinance pertaining to speed by exceeding the lawful maximum by 10 miles per hour or less . . . . 2 points
>
> * * *
>
> (t) All other moving violations pertaining to the operation of motor vehicles reported under [MCL 257.320a] . . . . 2 points[.]" MCL 257.320a(1). See Section 1.39 for more information on points.

"Notwithstanding [MCL 257.320a and MCL 257.907], a person who is determined responsible or responsible 'with explanation' for a civil infraction for violating the maximum speed limit on a limited access freeway or part of a limited access freeway upon which the maximum speed limit is 55 miles per hour or more . . . shall have points entered on his or her driving record by the secretary of state only according to the . . . schedule [established in MCL 257.629c], except as otherwise provided in [MCL 257.629c(2) and MCL 257.629c(3).]" MCL 257.629c(1). The schedule is as follows:

- 1-5 mph over speed limit—0 points
- 6-10 mph over speed limit—1 point
- 11-15 mph over speed limit—2 points
- 16-25 mph over speed limit—3 points
- 26+ mph over speed limit—4 points

"[MCL 257.629c(1)] does not apply to a person operating a vehicle or vehicle combination for which the maximum rate of speed is established pursuant to [MCL 257.627(5)-257.627(7)]." MCL 257.629c(2).

"For a violation of a maximum speed limit on a limited access freeway by a person operating a vehicle or vehicle combination described in [MCL 257.629c(2)], points shall be assessed under [MCL 257.320a.]" MCL 257.629c(3).

4.13 Stop and Go, Signs and Signals

"The state highway commissioner and commissioner of state police shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of [MCL 257.1 *et seq.,*] for use upon highways within [Michigan]." MCL 257.608. "Such uniform system shall correlate with and so far as possible conform to the system then current

as approved by the American Association of State Highway Officials and such manual may be revised whenever necessary to carry out the provisions of [the MVC]." *Id*. "It is hereby declared to be the policy of the state of Michigan to achieve, insofar as is practicable, uniformity in the design, and shape and color scheme of traffic signs, signals and guide posts erected and maintained upon the streets and highways within the state with other states." *Id*.

See the Michigan Manual of Uniform Traffic Control Devices for more information: http://mdotcf.state.mi.us/public/tands/plans.cfm.

A. Statutory Authority: Stop Signs

"Except when directed to proceed by a police officer, the driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection, or if there is not a crosswalk shall stop at a clearly marked stop line; or if there is not a crosswalk or a clearly marked stop line, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway." MCL 257.649(6). "After having stopped, the driver shall yield the right of way to a vehicle which has entered the intersection from another highway or which is approaching so closely on the highway as to constitute an immediate hazard during the time when the driver would be moving across or within the intersection." *Id*.

"[I]t is a general rule that a person entering an intersection must exercise that degree of care and caution that an ordinarily prudent and careful driver would exercise under the same or similar circumstances." *Stabler v Copeland*, 304 Mich 1, 7 (1942).

"A stop sign on the highway is a warning of possible danger." *Shoniker v English*, 254 Mich 76, 80 (1931). However, it is also "a direction, not merely a caution, to drivers entering a through street, to stop." *Rife v Colestock*, 297 Mich 194, 197 (1941). "It imposes the duty not only to stop the vehicle but also to make reasonable observation of the intersecting highway at a place where the view is clear and to keep the car under such control as will enable the driver to stop at once, if observation discloses approaching vehicles." *Shoniker*, 254 Mich at 80-81.

"Where . . . a stop sign is placed a considerable distance from the stop intersection, it is generally recognized that the sign serves only to notify motorists of the approaching highway intersection." *People v McIntosh*, 23 Mich App 412, 415 (1970). "It does not signify the exact spot at which vehicles are required to stop." *Id*. "Placement of the sign some distance from the intersection of a servient and

dominant highway gives the motorist ample time to slow down and stop before entering the intersection." *Id*. at 416. "It provides a necessary warning of impending danger." *Id*.

B. Statutory Authority: Traffic Lights or Signals

"When traffic is controlled by traffic control signals, not fewer than 1 signal shall be located over the traveled portion of the roadway so as to give vehicle operators a clear indication of the right-of-way assignment from their normal positions approaching the intersection." MCL 257.612(1). "The vehicle signals shall exhibit different colored lights successively, 1 at a time, or with arrows." *Id*.

1. Solid Green

"If the signal exhibits a green indication, vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at that place prohibits either turn." MCL 257.612(1)(a). "Vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians and bicyclists lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited." *Id*.

2. Solid Yellow

"If the signal exhibits a steady yellow indication, vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection or at a limit line when marked, but if the stop cannot be made in safety, a vehicle may be driven cautiously through the intersection." MCL 257.612(1)(b).

3. Solid Red

"If the signal exhibits a steady red indication, the following apply:

> (*i*) Vehicular traffic facing a steady red signal alone shall stop before entering the crosswalk on the near side of the intersection or at a limit line when marked or, if there is no crosswalk or limit line, before entering the intersection and shall remain standing until a green indication is shown, except as provided in [MCL 257.612(1)(c)(*ii*)].
>
> (*ii*) Vehicular traffic facing a steady red signal, after stopping before entering the crosswalk on the near side of the intersection or at a limit line when

marked or, if there is no crosswalk or limit line, before entering the intersection, may make a right turn from a 1-way or 2-way street into a 2-way street or into a 1-way street carrying traffic in the direction of the right turn or may make a left turn from a 1-way or 2-way street into a 1-way roadway carrying traffic in the direction of the left turn, unless prohibited by sign, signal, marking, light, or other traffic control device. The vehicular traffic shall yield the right of way to pedestrians and bicyclists lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection." MCL 257.612(1)(c).

4. Green Arrows

"If the signal exhibits a steady green arrow indication, vehicular traffic facing the green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by the arrow or other movement permitted by other indications shown at the same time." MCL 257.612(1)(d). "The vehicular traffic shall yield the right-of-way to pedestrians or bicyclists lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection." *Id*.

5. Red and Yellow Arrows

"Red arrow and yellow arrow indications have the same meaning as the corresponding circular indications, except that they apply only to vehicle operators intending to make the movement indicated by the arrow." MCL 257.612(1).

6. Flashing Red (Stop Signal)

"When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign." MCL 257.614(1)(a).

7. Flashing Yellow (Caution Signal)

"When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past the signal only with caution." MCL 257.614(1)(b).

C. Stop and Go, Sign and Signal Violations

Stop and go, sign and signal violations include:

- Avoiding traffic control device, MCL 257.611;
- Disregarding stop sign, MCL 257.649;
- Disregarding flashing red or flashing yellow signal, MCL 257.614;
- Disregarding yellow signal, MCL 257.612;
- Disregarding stop and go light, MCL 257.612; and
- Right turn on red light without stopping, MCL 257.612.

D. Penalties

The general rules for assessing a civil fine and costs apply to stop and go, and sign and signal violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

E. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.
- Three points are assessed for "[d]isobeying a traffic signal or stop sign." MCL 257.320a(1)(q). See Section 1.39 for more information on points.
- Two points are assessed for "[a]ll other moving violations pertaining to the operation of motor vehicle reports under [MCL 257.320a.]" MCL 257.320a(1)(t). See Section 1.39 for more information on points.

4.14 Texting While Driving

A. Statutory Authority

"Except as otherwise provided in [MCL 257.602b], a person shall not read, manually type, or send a text message on a wireless 2-way communication device that is located in the person's hand or in the person's lap, including a wireless telephone used in cellular telephone service or personal communication service, while operating a motor vehicle that is moving on a highway or street in [Michigan]." MCL 257.602b(1).

For purposes of MCL 257.602b(1), "a wireless 2-way communication device does not include a global positioning or navigation system that is affixed to the motor vehicle." MCL 257.602b(1).

"[MCL 257.602b] supersedes all local ordinances regulating the use of a communications device while operating a motor vehicle in motion on a highway or street, except that a unit of local government may adopt an ordinance or enforce an existing ordinance substantially corresponding to [MCL 257.602b]." ~~MCL 257.602b(6)~~MCL 257.602b(7).

B. Exceptions

"[MCL 257.602b(1)] do[es] not apply to an individual who is using a device described in [MCL 257.602b(1)] to do any of the following:

> (a) Report a traffic accident, medical emergency, or serious road hazard.
>
> (b) Report a situation in which the person believes his or her personal safety is in jeopardy.
>
> (c) Report or avert the perpetration or potential perpetration of a criminal act against the individual or another person.
>
> (d) Carry out official duties as a police officer, law enforcement official, member of a paid or volunteer fire department, or operator of an emergency vehicle.
>
> (e) Operate or program the operation of an automated motor vehicle while testing or operating the automated motor vehicle without a human operator~~in compliance with [MCL 257.665], if that automated motor vehicle displays a special plate issued under [MCL 257.224(3)] in the matter required under [MCL 257.225]~~." MCL 257.602b(4).[13]

MCL 257.602b(1) "does not apply to a person operating a commercial vehicle[,]"[14] MCL 257.602b(1), nor does it "apply to a person using an on-demand automated motor vehicle network[,]" MCL 257.602b(5).

C. Penalties

"An individual who violates [MCL 257.602b] is responsible for a civil infraction and shall be ordered to pay a civil fine as follows:

(a) For a first violation, $100.00.

(b) For a second or subsequent violation, $200.00." ~~MCL 257.602b(5)~~MCL 257.602b(6). See also MCL 257.907(2).

The general rules for assessing costs apply to texting while driving. See Section 1.19 for a discussion of the general rules governing the assessment of costs; see also the Michigan Judicial Institute's table for a quick reference guide.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.

- "Points shall not be entered for a violation of [MCL 257.602b(1)]." MCL 257.320a(2). See Section 1.39 for more information on points.

~~[13] Beginning October 28, 2013, MCL 257.602b(1) also does not apply to individuals operating a commercial vehicle. MCL 257.602b(1). Discussion of this statute as it relates to commercial vehicles is outside the scope of this benchbook.~~

[14] Discussion of this statute as it relates to commercial vehicles is outside the scope of this benchbook

4.15 Turning and Signaling

A. Statutory Authority: Turning at Intersection

1. Right turn

"Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway." MCL 257.647(1)(a).

However, where local authorities have placed pavement markers, signs, or signals "direct[ing] that a different course from that specified in [MCL 257.647] be traveled by vehicles turning at an intersection[,]" the "driver of a vehicle shall not turn a vehicle at an intersection other than as directed and required by those markers, signs, or signals." MCL 257.647(1)(e).

2. Left turn

"Approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line in a manner as not to interfere with the progress of any streetcar, and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered." MCL 257.647(1)(b).

"Approach for a left turn from a 2-way roadway into a 1-way roadway shall be made in that portion of the right half of the roadway nearest the center line and clear of existing car tracks in use, and by passing to the right of the center line where it enters the intersection." MCL 257.647(1)(c).

"Approach for a left turn from a 1-way roadway into a 2-way roadway shall be made as close as practicable to the left curb or edge of the roadway and by passing to the right of the center line of the roadway being entered." MCL 257.647(1)(c).

"Where both streets or roadways are 1-way, both the approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway." MCL 257.647(1)(d).

However, where local authorities have placed pavement markers, signs, or signals "direct[ing] that a different course from that specified in [MCL 257.647] be traveled by vehicles turning at an intersection[,]" the "driver of a vehicle shall not turn a vehicle at an intersection other than as directed and

required by those markers, signs, or signals." MCL 257.647(1)(e).

B. Statutory Authority: Signals for Stopping or Turning

"The operator of a vehicle . . . upon a highway, before stopping or turning from a direct line, shall first determine that the stopping or turning can be made in safety and shall give a signal as required in [MCL 257.648]." MCL 257.648(1).

"Except as provided in [MCL 257.648(5)[15]], a signal required under [MCL 257.648] shall be given either by means of the hand and arm in the manner specified in [MCL 257.648], or by a mechanical or electrical signal device that conveys an intelligible signal or warning to other highway traffic." MCL 257.648(2).

"When a person is operating a vehicle and signal is given by means of the hand and arm, the operator shall signal as follows:

> (a) For a left turn, the operator shall extend his or her left hand and arm horizontally.
>
> (b) For a right turn, the operator shall extend his or her left hand and arm upward.
>
> (c) To stop or decrease speed, the operator shall extend his or her left hand and arm downward." MCL 257.648(3).

C. Turning and Signaling Violations

Turning and signaling violations include:

- Failing to signal or improper signal, MCL 257.648;
- Improper or prohibited right or left turn, MCL 257.647 and MCL 257.648; and
- Improper turn from wrong lane, MCL 257.647.

D. Penalties

The general rules for assessing a civil fine and costs apply to turning and signal violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

[15] MCL 257.648(5) concerns commercial motor vehicles.

E. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.

- Two points are assessed for "[a]ll other moving violations pertaining to the operation of motor vehicle reports under [MCL 257.320a.]" MCL 257.320a(1)(t). See Section 1.39 for more information on points.

F. Issues

- **Using turn signal on highway, MCL 257.648**

"MCL 257.648 requires drivers to use a turn signal when changing lanes on a highway[.]" *People v Hrlic*, 277 Mich App 260, 266 (2007).

4.16 Using a Cellular Telephone While Operating a Motor Vehicle (Kelsey's Law)[16]

A. Statutory Authority

"Except as provided in [MCL 257.602c], an individual issued a level 1 or level 2 graduated license under [MCL 257.310e[17]] shall not use a cellular telephone while operating a motor vehicle upon a highway or street." MCL 257.602c(1).

"[MCL 257.602c(1)] does not apply to an individual using a voice-operated system that is integrated into the motor vehicle." MCL 257.602c(3).

[16] MCL 257.602c "shall be known and may be cited as 'Kelsey's Law.'" MCL 257.602c(6).

[17] See Section 3.3 for more information on graduated licenses.

"[MCL 257.602c] supersedes all local ordinances regulating the use of a cellular telephone by an individual issued a level 1 or level 2 graduated license while operating a motor vehicle in motion on a highway or street, except that a unit of local government may adopt an ordinance or enforce an existing ordinance substantially corresponding to [MCL 257.602c]." MCL 257.602c(5).

B. Exceptions

"[MCL 257.602c(1)] does not apply to an individual who is using a cellular telephone to do any of the following:

> (a) Report a traffic accident, medical emergency, or serious road hazard.
>
> (b) Report a situation in which the person believes his or her personal safety is in jeopardy.
>
> (c) Report or avert the perpetration or potential perpetration of a criminal act against the individual or another person." MCL 257.602c(2).

C. Penalties

The general rules for assessing a civil fine and costs apply to using a cellular telephone while operating a motor vehicle. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.

- "Points shall not be entered for a violation of [MCL 257.602c]." MCL 257.320a(2). See Section 1.39 for more information on points.

4.17 Wrong Side or Wrong Way

A. Statutory Authority: "Keep to the Right" Rule

"Upon each roadway of sufficient width, the driver of a vehicle shall drive the vehicle upon the right half of the roadway, except as follows:

> (a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing that movement.
>
> (b) When the right half of a roadway is closed to traffic while under construction or repair or when an obstruction exists making it necessary to drive to the left of the center of the highway. A driver who is driving on the left half of a roadway under [MCL 257.634(1)(b)] shall yield the right-of-way to an oncoming vehicle traveling in the proper direction upon the unobstructed portion of the roadway.
>
> (c) When a vehicle operated by a state agency or local authority or an agent of a state agency or local authority is engaged in work on the roadway.
>
> (d) Upon a roadway divided into 3 marked lanes for traffic under the rules applicable on the roadway." MCL 257.634(1).

"Upon a roadway having 2 or more lanes for travel in 1 direction, the driver of a vehicle shall drive the vehicle in the extreme right-hand lane available for travel except as otherwise provided in [MCL 257.634]." MCL 257.634(2). "However, the driver of a vehicle may drive the vehicle in any lane lawfully available to traffic moving in the same direction of travel when the lanes are occupied by vehicles moving in substantially continuous lanes of traffic and in any left-hand lane lawfully available to traffic moving in the same direction of travel for a reasonable distance before making a left turn." *Id*.

"Upon a roadway with 4 or more lanes that provides for 2-way movement of traffic, a vehicle shall be operated within the extreme right-hand lane except when overtaking and passing, but shall not cross the center line of the roadway except where making a left turn." MCL 257.642(1)(a).

B. Exceptions to the "Keep to the Right" Rule

"While [a] defendant driver may have been on that portion of the road normally used by traffic in the opposite direction, he [or she] was justifiably there, [if he or she was] directed to use it because of construction and resurfacing operations." *Smith v Whitehead*, 342 Mich 542, 546 (1955). "Under such circumstances he was not violating the statutes or rules of the road." *Id*.

A driver may drive on the wrong side of the road, around parked cars, provided he or she exercises reasonable care in doing so. *Rosen v Beh*, 272 Mich 487, 492 (1935).

"[T]he evidence that [the] defendant, while recognizing that the highway was icy, hit a patch of ice that caused a skid was sufficient evidence of a sudden emergency that has been recognized by Michigan courts as an excuse for violation of the statutes requiring drivers to keep to the right." *Young v Flood*, 182 Mich App 538, 544 (1990).

A driver is not liable for driving on the wrong side of the highway if he or she faints or becomes unconscious immediately before an accident, such that the passing of his or her vehicle to the wrong side of the highway is not a voluntary act. *Soule v Grimshaw*, 266 Mich 117, 119 (1934). However, if a driver continues to drive while feeling dizzy or sleepy, he or she may be considered negligent. *Id*. at 120.

C. Statutory Authority: One-Way and Two-Way Traffic

"Upon a roadway designated and signposted for 1-way traffic a vehicle shall be driven only in the direction designated." MCL 257.641(2).

"Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other not less than 1/2 of the main traveled portion of the roadway as nearly as possible." MCL 257.635(1).

D. Wrong Side or Wrong Way Violations

Wrong side or wrong way violations include:

- Driving on the wrong side of divided highway, MCL 257.644;
- Driving on wrong side of undivided highway, MCL 257.642(1);

- Driving the wrong way on a one-way road, MCL 257.641;
- Entering freeway improperly, MCL 257.645;
- Failing to keep to the right, MCL 257.634; and
- Failing to keep to the right half of the roadway when passing vehicle going in opposite direction, MCL 257.635.

E. Penalties

The general rules for assessing a civil fine and costs apply to wrong side or wrong way violations. See Section 1.19 for a discussion of the general rules governing the assessment of a civil fine and costs; see also the Michigan Judicial Institute's table for a quick reference guide.

F. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan/gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points are assessed for "a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object." MCL 257.320a(1)(m). See Section 1.39 for more information on points.
- Two points are assessed for "[a]ll other moving violations pertaining to the operation of motor vehicle reports under [MCL 257.320a.]" MCL 257.320a(1)(t). See Section 1.39 for more information on points.

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5.1 Introduction and Scope Note

The principal source of Michigan traffic law is the Michigan Vehicle Code (MVC). The MVC clearly distinguishes the misdemeanor traffic offense from the felony and civil infraction. "It is a misdemeanor for a person to violate [the MVC], unless that violation is by [the MVC] or other law of this state declared to be a felony or a civil infraction." MCL 257.901(1).[1]

Part A—Failing to Report or Leaving the Scene of an Accident

5.2 Failing to Give Information and Aid at the Scene of an Accident[2]

A. Statutory Authority

"The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident with an individual or with another vehicle that is operated or attended by another individual shall do all of the following:

> (a) Give his or her name and address, and the registration number of the vehicle he or she is operating, including the name and address of the owner, to a police officer, the individual struck, or the driver or occupants of the vehicle with which he or she has collided.
>
> (b) Exhibit his or her operator's . . . license to a police officer, individual struck, or the driver or occupants of the vehicle with which he or she has collided.
>
> (c) Render to any individual injured in the accident reasonable assistance in securing medical aid or arrange for or provide transportation to any injured individual." MCL 257.619.

[1] A detailed table including traffic misdemeanors and related sanctions is available at http://www.michigan.gov/documents/OffenseCode_73877_7.pdf.

[2] This offense is often tied to the felony hit-and-run offense found in MCL 257.617. See Section 8.4 for more information on MCL 257.617.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

C. Issues

- **Purpose of MCL 257.619**

MCL 257.619 "reflect[s] the legislative intent to curb hit-and-run accidents and encourage drivers involved in accidents to assume responsibility for identifying themselves and offering assistance, thus promoting public safety." *People v Sartor*, 235 Mich App 614, 623 (1999).

- **Self-Incrimination**

"MCL 257.619 requires the driver involved in an accident to give his [or her] name, address, registration number of the vehicle driven, name and address of the vehicle's owner, and to display his [or her] driver's license, and further requires him [or her] to render injured persons reasonable assistance in securing medical aid or transportation." *People v Goodin*, 257 Mich App 425, 429 (2003). "[T]he disclosure[] of one's name, address, vehicle-registration number, and driver's license required by . . . MCL 257.619 [is] neutral and do[es] not implicate a driver in criminal conduct." *Goodin*, 257 Mich App at 430. "Thus, the disclosure[] mandated under . . . MCL 257.619 do[es] not create a substantial risk of self-incrimination." *Goodin*, 257 Mich App at 431.

- **Constitutionality of MCL 257.619**

"MCL 257.619 is not unconstitutionally vague on its face" because "[t]he standard [for what constitutes reasonable assistance] clearly anticipates a determination of reasonableness under the circumstances of a particular case." *People v Noble*, 238 Mich App 647, 655 (1999).

5.3 Failing to Report Accident Involving Death, Personal Injury, or Property Damage of $1,000 or More

A. Statutory Authority

"The driver of a motor vehicle involved in an accident that injures or kills any person, or that damages property to an apparent extent totaling $1,000.00 or more, shall immediately report that accident at the nearest or most convenient police station, or to the nearest or most convenient police officer." MCL 257.622.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

C. Issues

- **Purpose of MCL 257.622**

"The purpose of the accident-report statute [MCL 257.622] is to apprise the police that an accident has occurred and provide them with statistical information concerning the number and causes of accidents." *People v Schmidt*, 196 Mich App 104, 107 (1992).

- **Property Damage Threshold**

To satisfy the $1,000[3] property damage threshold under MCL 257.622, "the prosecutor ha[s] the burden of introducing some evidence of value, either the opinion of a qualified expert or the testimony of a person with knowledge, under the applicable rules of evidence." *Schmidt*, 196 Mich App at 107.

[3] The *Schmidt* case was decided when the threshold was $200.

5.4 Garage or Repair Shop Failing to Report Evidence of Accident or Bullet

A. Statutory Authority

"The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident or having been struck by any bullet shall report the same to the nearest police station or sheriff's office immediately after such motor vehicle is received, giving the engine number, registration number and the name and address of the owner, and/or operator of such vehicle." MCL 257.623.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

5.5 Leaving the Scene of an Accident Resulting in Damage to Fixtures That Are Upon or Adjacent to a Highway

A. Statutory Authority

"The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such accident and of his [or her] name and address and of the registration number of the vehicle he [or she] is driving and shall upon request exhibit his [or her] operator's . . . license and, if such owner cannot be found, shall forthwith report such accident to the nearest or most convenient police officer." MCL 257.621(a).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

5.6 Leaving the Scene of or Failing to Report an Accident Resulting in Personal Injury

A. Statutory Authority

"The driver of a vehicle who knows or who has reason to believe that he [or she] has been involved in an accident upon public or private property that is open to travel by the public shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of [MCL 257.619] are fulfilled or immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of [MCL 257.619(a) and MCL 257.619(b)] if there is a reasonable and honest belief that remaining at the scene will result in further harm. The stop shall be made without obstructing traffic more than is necessary." MCL 257.617a(1).

B. Relevant Jury Instruction

- M Crim JI 15.14 addresses the elements of leaving the scene of an accident causing personal injury.

C. Penalties

For an accident that results in injury to any individual,[4] MCL 257.617a(2) provides for:

- imprisonment for not more than one year; or
- fine of not more than $1,000; or
- both.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

[4] If the accident does not result in injury to any individual, MCL 257.901(2) applies.

- Six points. See MCL 257.320a(1)(d); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- $1,000 driver responsibility fee. See MCL 257.732a(2)(a)(*iv*). See Section 1.40 for more information on driver responsibility fees.
- License suspension for 90 days. See MCL 257.319(3)(a). See Section 1.43 for more information on license suspension.

5.7 Leaving the Scene of or Failing to Report an Accident Resulting in Vehicle Damage Only

A. Statutory Authority

"The driver of a vehicle who knows or who has reason to believe that he [or she] has been involved in an accident upon public or private property that is open to travel by the public shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of [MCL 257.619] are fulfilled or immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of [MCL 257.619(a) and MCL 257.619(b)] if there is a reasonable and honest belief that remaining at the scene will result in further harm. The stop shall be made without obstructing more traffic than is necessary." MCL 257.618.

B. Relevant Jury Instruction

- M Crim JI 15.14 addresses the elements of leaving the scene of an accident causing damage to a vehicle.

C. Penalties

For an accident that results in "damage to a vehicle operated by or attended by any individual,"[5] MCL 257.618(2) provides for the following penalties:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

[5] If the accident does not result in damage to a vehicle, MCL 257.901(2) applies.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(d); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- $1,000 driver responsibility fee. See MCL 257.732a(2)(a)(*iv*). See Section 1.40 for more information on driver responsibility fees.

5.8 Leaving the Scene of or Failing to Report an Accident With an Attended or Unattended Vehicle

A. Statutory Authority

"The driver of any vehicle which collides upon either public or private property with any vehicle which is attended or unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the vehicle or, if such owner cannot be located, shall forthwith report it to the nearest or most convenient police officer." MCL 257.620.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by

the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(d); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- $1,000 driver responsibility fee. See MCL 257.732a(2)(a)(*iv*). See Section 1.40 for more information on driver responsibility fees.

Part B—License and Permit Violations

5.9 Allowing Another to Operate in Violation of the Michigan Vehicle Code

A. Statutory Authority

"No person shall knowingly authorize or permit a motor vehicle owned by him [or her] or under his [or her] control to be driven by any person in violation of the provisions of [the MVC]." MCL 257.326.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment not more than 90 days; or
- fine of not more than $100; or
- both.

C. Issues

Allowing a person without a driver's license to "take possession and control" of a motor vehicle does not violate MCL 257.326; however, granting a person without a driver's license permission to *drive* a motor vehicle implicates MCL 257.326 and may subject the person granting permission to prosecution under MCL 257.326. *Monaco v Home-Owners Ins Co,* ___ Mich App ___, ___ (2016) (discussing the authorization to drive a vehicle in relation to unlawful taking for no-fault insurance purposes).

5.10 Allowing Another Person to Operate a Motor Vehicle With a Suspended/Revoked License[6]

A. Statutory Authority

"A person shall not knowingly permit a motor vehicle owned by the person to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within [Michigan] by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never applied for a license, except as permitted under [the MVC]." MCL 257.904(2).

B. Penalties

MCL 257.904(3) provides for the following penalties:

- **First Violation:**
  - imprisonment for not more than 93 days; or
  - fine of not more than $500; or
  - both.
- **Violation Occurring After Prior Conviction:**
  - imprisonment for not more than one year; or
  - fine of not more than $1,000; or
  - both.

"A prior conviction under [MCL 257.904] shall be established at or before sentencing by 1 or more of the following:

(a) A copy of a judgment of conviction.

(b) An abstract of conviction.

(c) A transcript of a prior trial, plea, or sentencing.

(d) A copy of a court register of action.

(e) A copy of the defendant's driving record.

(f) Information contained in a presentence report.

[6] The felony offenses contemplated by MCL 257.904 are discussed in Chapter .

(g) An admission by the defendant." MCL 257.904(9).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf.

- $500 driver responsibility fee. See MCL 257.732a(2)(b)(*iii*). See Section 1.40 for more information on driver responsibility fees.
- Vehicle immobilization authorized. See MCL 257.904d(4)(b). See Section 1.45 for more information on vehicle immobilization.
- Registration plate cancellation required.[7] See MCL 257.904(3).

D. Issues

- **Scope of MCL 257.904.**

MCL 257.904 "does not apply to a person who operates a vehicle solely for the purpose of protecting human life or property if the life or property is endangered and summoning prompt aid is essential." MCL 257.904(15).

"For purposes of [MCL 257.904], a person who never applied for a license includes a person who applied for a license, was denied, and never applied again." MCL 257.904(19).

[7] Upon a first violation of MCL 257.904(1) or MCL 257.904(2), "[u]nless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be canceled by the secretary of state upon notification by a peace officer." MCL 257.904(3)(a). For any violation of MCL 257.904(1) or MCL 257.904(2) that occurs after a prior conviction, the registration plates of the vehicle must be canceled unless the vehicle was stolen. MCL 257.904(3)(b).

5.11 Causing or Permitting an Unlicensed Minor to Drive

A. Statutory Authority

"It shall be unlawful for any person to cause or knowingly permit any minor to drive a motor vehicle upon a highway as an operator, unless the minor has first obtained a license to drive a motor vehicle under the provisions of [MCL 257.301 *et seq*.]." MCL 257.325.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

5.12 Possessing a Reproduced, Altered, Counterfeit, Forged, or Duplicate License

A. Statutory Authority

"[A] person who is in possession of a reproduced, altered, counterfeited, forged, or duplicated license photograph, negative of the photograph, image, license, or electronic data contained on a license or part of a license is guilty of a misdemeanor[.]" MCL 257.310(10).[8]

B. Penalties

MCL 257.310(10) provides the following penalties:

- imprisonment for not more than one year; or
- fine of not more than $2,000; or

both.

[8] "[MCL 257.310(10)] do[es] not apply to a person who is in possession of 1 or more photocopies, reproductions, or duplications of a license to document the identity of the licensee for a legitimate business purpose." MCL 257.310(16).

5.13 Reporting a False Address Change to the Secretary of State

A. Statutory Authority

"A person shall not knowingly report a change of address to the secretary of state for himself or herself that is not his or her residence address." MCL 257.315(4).

"A person shall not knowingly report a change of address to the secretary of state for another person without the consent of the other person." MCL 257.315(4).

B. Penalties

MCL 257.315 provides for the following penalties:

- **First Offense:**
  - imprisonment for not more than 93 days; or
  - fine of $1,000; or
  - both. MCL 257.315(4).
- **Second or Subsequent Offense:**
  - imprisonment for not more than 93 days; or
  - fine of $5,000; or
  - both. MCL 257.315(5).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- License suspension for six months authorized for first offense; license revocation required for second or subsequent offense. See MCL 257.315(4); MCL 257.315(5). See Section 1.43 for more information on

license suspension and see Section 1.42 for more information on license revocation.

5.14 Reproducing, Altering, Counterfeiting, Forging, or Duplicating a License, or Using Such License, With Intent to Commit a Misdemeanor

A. Statutory Authority

"[A] person who intentionally reproduces, alters, counterfeits, forges, or duplicates a license photograph, the negative of the photograph, image, license, or electronic data contained on a license or a part of a license or who uses a license, image, or photograph that has been reproduced, altered, counterfeited, forged, or duplicated" with the intent "to commit or aid in the commission of an offense that is a misdemeanor punishable by imprisonment for less than 6 months, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor[.]" MCL 257.310(7)(c).

B. Penalties

MCL 257.310(7)(c) provides the following penalties:

- imprisonment for not more than one year; or
- fine of not more than $2,000; or
- both.

5.15 Unlawful Use or Display of License

A. Statutory Authority

"A person shall not do any of the following:

> (a) Display, or cause or permit to be displayed, or have in possession an operator's . . . license knowing the operator's . . . license to be fictitious or to have been canceled, revoked, suspended, or altered.
>
> (b) Lend to or knowingly permit use of, by one not entitled to its use, the operator's . . . license issued to the person lending or permitting the use of the operator's . . . license.

> (c) Display or to represent as one's own any operator's . . . license not issued to the person displaying the operator's . . . license.
>
> (d) Fail or refuse to surrender to the department upon demand, any operator's . . . license which has been suspended, canceled, or revoked as provided by law.
>
> (e) Use a false or fictitious name or give a false or fictitious address in an application for an operator's . . . license, or any renewal or duplicate of an operator's . . . license, or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in making an application.
>
> (f) Alter or otherwise cause to be altered any operator's . . . license so as to knowingly make a false statement or knowingly conceal a material fact in order to misrepresent as one's own the operator's . . . license.
>
> (g) Use or have in possession in committing a crime an operator's . . . license that has been altered or that is used to knowingly make a false statement or to knowingly conceal a material fact in order to misrepresent as one's own the operator's . . . license.
>
> (h) Furnish to a peace officer false, forged, fictitious, or misleading verbal or written information identifying the person as another person, if the person is detained for a violation of [the MVC] or of a local ordinance substantially corresponding to a provision of [the MVC]. . . ."[9] MCL 257.324(1).

"An operator's . . . license issued to a person under [MCL 257.301 *et seq*.] upon an application that is untrue, or that contains false statements as to any material matters, or that was obtained by fraud in the testing for or issuance of the license, is void from the date of issuance." MCL 257.324(2). "The operator . . . who was issued the license is considered unlicensed and the license issued shall be returned upon request or order of the department." *Id*.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or

[9] MCL 257.324(1)(i)-(j) were omitted from this quotation because they contain prohibitions outside the scope of this benchbook.

- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- License denial required for unlicensed violation; license suspension for 90 days required for first offense; license suspension for one year required for offense committed with prior conviction within seven years. See MCL 257.303(1)(j); MCL 257.319(5). See Section 1.41 for more information on license denial and Section 1.43 for more information on license suspension.

Part C—Title, Plate, Registration, and Insurance Violations

5.16 Allowing Another to Drive or Move an Unregistered Vehicle

A. Statutory Authority

"Every motor vehicle . . . when driven or moved on a street or highway, is subject to the registration and certificate of title provisions of [the MVC] except [as provided in MCL 257.216][.]" MCL 257.216.

"It is a misdemeanor for . . . an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of title has not been applied for or for which the appropriate fee has not been paid when and as required hereunder[.]" MCL 257.215.

B. Penalties

MCL 257.901(2) provides the following penalties:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

5.17 Failing to Apply for Registration and Certificate of Title

A. Statutory Authority

"An owner of a vehicle that is subject to registration under [the MVC] shall apply to the secretary of state, upon an appropriate form furnished by the secretary of state, for the registration of the vehicle and issuance of a certificate of title for the vehicle." MCL 257.217(1). "The application shall be accompanied by the required fee." *Id*. "An application for a certificate of title shall bear the signature or verification and certification of the owner." *Id*.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- License suspension for 90 days required for first offense; license suspension for one year required for second

offense within seven years. See MCL 257.319(5). See Section 1.43 for more information on license suspension.

5.18 Failing to Transfer Title

A. Statutory Authority

"The purchaser or transferee, unless the person is a licensed dealer, shall present or cause to be presented the certificate of title and registration certificate if plates are being transferred to another vehicle, assigned as provided in [the Michigan Vehicle Code], to the secretary of state accompanied by the fees as provided by law, whereupon a new certificate of title and registration certificate shall be issued to the assignee." MCL 257.234(1). "The certificate of title shall be mailed or delivered to the owner or another person the owner may direct in a separate instrument in a form the secretary of state shall prescribe." *Id*.

"Unless the transfer is made and the fee paid within 15 days, the vehicle is considered to be without registration, the secretary of state may repossess the license plates, and transfer of the vehicle ownership may be effected and a valid registration acquired thereafter only upon payment of a transfer fee of $15.00 in addition to the fee provided for in [MCL 257.806[10]]." MCL 257.234(3).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

[10] "Until October 1, 2019, an applicant for a certificate of title required by [the Michigan Vehicle Code] or an applicant for a duplicate of a certificate of title shall accompany the application with a fee of $10.00." MCL 257.806(1). "The secretary of state shall collect a $3.00 service fee . . . for each title issued[.]" *Id*. "In addition to paying the fees required by [MCL 257.806(1)], until December 31, 2019, each person who applies for a certificate of title . . . under [the Michigan Vehicle Code] shall pay a tire disposal surcharge of $1.50 for each certificate of title or duplicate of a certificate of title that person receives." MCL 257.806(3).

5.19 Forging Proof of Insurance

A. Statutory Authority

"Any person who shall forge, or without authority, sign any evidence of ability to respond in damages as required by the secretary of state in the administration of [MCL 257.501 *et seq.*] . . . shall be guilty of a misdemeanor[.]" MCL 257.905.

B. Penalties

MCL 257.905 provides for:

- imprisonment for not more than 90 days; or
- fine of not less than $100 or more than $1,000; or
- both.

5.20 Producing False Evidence of Motor Vehicle Insurance

A. Statutory Authority

"An owner or operator of a motor vehicle who knowingly produces false evidence under [MCL 257.328] is guilty of a misdemeanor[.]" MCL 257.328(6).

B. Penalties

MCL 257.328(6) provides for:

- imprisonment for not more than one year; or
- fine of not more than $1,000; or
- both.

5.21 Reproducing, Altering, Counterfeiting, Forging, or Duplicating Certificate of Title, or Using Such Certificate of Title, With Intent to Commit a Crime

A. Statutory Authority

"A person who intentionally reproduces, alters, counterfeits, forges, or duplicates a certificate of title or a document releasing a security interest or who uses a reproduced, altered, counterfeited, forged, or

duplicated certificate of title or document releasing a security interest shall be punished [as set out in MCL 257.222(6).]" MCL 257.222(6).

B. Penalties

MCL 257.222(6) provides the following penalties, which depend upon the length of imprisonment for the intended crime:

- **If the intent of the act was to commit or aid in committing a crime punishable by imprisonment for one year or more:**
  - imprisonment for a period equal to that which could be imposed for the commission of the crime; and
  - fine of not more than $10,000.
- **If the intent of the act was to commit or aid in committing a crime punishable by imprisonment for not more than one year:**
  - imprisonment for not more than one year; or
  - fine of not more than $1,000; or
  - both.

5.22 Temporary Registration Violations

A. Statutory Authority

"A temporary registration may be issued to an owner of a vehicle." MCL 257.226b(1). "The registration shall be valid for either 30 days or 60 days from the date of issue, at the discretion of the owner, and shall be in a form as determined by the secretary of state." *Id.*

"A vehicle which has a temporary registration shall not be used for the transportation of passengers for hire or for the transportation of goods, wares, or merchandise or draw other vehicles transporting goods, wares, or merchandise." MCL 257.226b(2).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or

- both.

5.23 Unlawful Lending or Use of Title, Registration Certificate, Plate, or Permit

A. Statutory Authority

"A person shall not lend to another person, or knowingly permit the use of, any certificate of title, registration certificate, registration plate, special plate, or permit issued to him or her if the person receiving or using the certificate of title, registration certificate, registration plate, special plate, or permit would not be entitled to the use thereof." MCL 257.256(1).

"A person shall not carry or display upon a vehicle any registration certificate or registration plate not issued for the vehicle or not otherwise lawfully used under [the MVC]." MCL 257.256(1).

B. Penalties

MCL 257.256(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

Part D—Other Nonmoving Violation Misdemeanors Found in the MVC

5.24 Failing to Answer Citation, Appear in Court, or Comply With an Order or Judgment

A. Statutory Authority

"A person who fails to answer a citation, or a notice to appear in court for a violation reportable to the secretary of state under [MCL 257.732] or a local ordinance substantially corresponding to a violation of a law of [Michigan] reportable to the secretary of state under [MCL 257.732], or for any matter pending, or who fails to comply with an order or judgment of the court, including, but not

limited to, paying all fines, costs, fees, and assessments, is guilty of a misdemeanor[.]" MCL 257.321a(1).

B. Penalties

MCL 257.321a(1) provides for:

- imprisonment for not more than 93 days; or
- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- License suspension required under certain circumstances. See MCL 257.321a-MCL 257.321b. See Section 1.43 for more information on license suspension.

5.25 Failing to Disclose Odometer Mileage[11]

A. Statutory Authority

"When the owner of a registered motor vehicle transfers his or her title or interest in that vehicle, the transferor shall present to the transferee before delivery of the vehicle, written disclosure of odometer mileage by means of the certificate of title or a written statement signed by the transferor . . . ." MCL 257.233a(1).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or

[11]Odometer tampering is a separate felony offense. See MCL 257.233a(6)-(7). For more information on that crime, see Section 7.7.

- fine of not more than $100; or
- both.

C. Issues

- **Voidable Transaction**

"[F]ailure to comply with the odometer statute requirements merely renders the transaction voidable by the purchaser." *Whitcraft v Wolfe*, 148 Mich App 40, 54 (1985).

- **Civil Liability**

"A person who, with intent to defraud, violates any requirement under [MCL 257.233a(1)] . . . is liable in an amount equal to 3 times the amount of actual damages sustained or $1,500.00 whichever is greater, and in the case of a successful recovery of damages, the costs of the action together with reasonable attorney's fees." MCL 257.233a(15).

5.26 Falsifying or Improperly Disposing of a Citation

A. Statutory Authority

It is a misdemeanor to "knowingly falsif[y] a citation or copies thereof or a record of the issuance of same, or dispose[] of such citation, copy or record, in a manner other than as required in [the Michigan Vehicle Code], or attempt[] so to falsify or dispose, or attempt[] to incite or procure another so to falsify or dispose[.]" MCL 257.728d.

B. Penalties

MCL 257.728d provides for:

- imprisonment not to exceed one year; or
- fine of not more than $500; or
- both.

5.27 Improper Use of Disabled Person Identification

A. Statutory Authority

- "A person who intentionally makes a false statement of material fact or commits or attempts to commit a

deception or fraud on a medical statement attesting to a disability, submitted in support of an application for a windshield placard, free parking sticker, special registration plate, or tab for persons with disabilities under [MCL 257.675], [MCL 257.803d], or [MCL 257.803f], is guilty of a misdemeanor[.]" MCL 257.675(14).

- "A person who commits or attempts to commit a deception or fraud by 1 or more of the following methods is guilty of a misdemeanor[:]

  (a) Using a windshield placard or free parking sticker issued under [MCL 257.675] or by another state to provide transportation to a disabled person, if the person is not providing transportation to a disabled person.

  (b) Altering, modifying, or selling a windshield placard or free parking sticker issued under [MCL 257.675] or by another state.

  (c) Copying or forging a windshield placard or free parking sticker described in [MCL 257.675] or selling a copied or forged placard or sticker described in [MCL 257.675]. . . .

  (d) Using a copied or forged windshield placard or free parking sticker described in [MCL 257.675].

  (e) Making a false statement of material fact to obtain or assist an individual in obtaining a placard or sticker described in [MCL 257.675], a special registration plate under [MCL 257.803d], or a tab for persons with disabilities under [MCL 257.803f].

  (f) Knowingly using or displaying a placard or sticker described in [MCL 257.675] that has been canceled by the secretary of state." MCL 257.675(15).

B. Penalties

MCL 257.675(14) and MCL 257.675(15) provide for:

- imprisonment for not more than 30 days; or
- fine of not more than $500; or
- both.

However, "[i]n the case of a violation of [MCL 257.675(15)(c)], the fine described in [MCL 257.675(15)] shall be not less than $250.00." MCL 257.675(15)(c).

C. Issues

- **Confiscating Windshield Placard/Parking Sticker by Court**

"Upon conviction of an offense involving a violation of the special privileges conferred upon a holder of a windshield placard or free parking sticker, a magistrate or judge trying the case, as a part of any penalty imposed, may confiscate the windshield placard or free parking sticker and return the confiscated item or items to the secretary of state together with a certified copy of the sentence imposed." MCL 257.675(13).

"Upon receipt of a windshield placard or free parking sticker from a judge or magistrate, the secretary of state shall cancel and destroy the placard or sticker, and the disabled person to whom it was issued shall not receive another placard or sticker until he or she submits a completed application and presents a current medical statement attesting to his or her condition." MCL 257.675(13).

- **Confiscating Windshield Placard/Parking Sticker by Law Enforcement Officer**

"A law enforcement officer who observes a misuse of a windshield placard or free parking sticker may immediately confiscate the placard or sticker and forward it with a copy of his or her report to the secretary of state." MCL 257.675(13).

5.28 Traffic Control Device Violations

A. Statutory Authority

"A person who willfully and maliciously damages, destroys, injures, defaces, dismantles, tampers with, or removes a traffic control device is guilty of a crime[.]" MCL 750.377d(1). Violation of MCL 750.377d is a misdemeanor. MCL 750.377d(1)(a)-(c).

MCL 750.377d "does not prohibit the person from being charged with, convicted of, or sentenced for any other violation of law arising out of the same transaction as the violation of [MCL 750.377d] in addition to being charged with, convicted of, or sentenced for the violation of [MCL 750.377d]." MCL 750.377d(2).

B. Penalties

MCL 750.377d provides for:

- **First Violation:**
  - imprisonment for not more than 93 days; or
  - fine of not more than $500; or
  - both. MCL 750.377d(1)(a).
- **Second Violation:**
  - imprisonment for not more than 180 days; or
  - fine of not more than $1,000; or
  - both. MCL 750.377d(1)(b).
- **Third of Subsequent Violation:**
  - imprisonment for not more than one year; or
  - fine of not more than $10,000; or
  - both. MCL 750.377d(1)(c).

5.29 Transporting or Possessing Alcohol in a Motor Vehicle by a Person Less Than 21 Years of Age

A. Statutory Authority

"A person less than 21 years of age shall not knowingly transport or possess alcoholic liquor in a motor vehicle as an operator or occupant unless the person is employed by a licensee under [MCL 436.1101 to MCL 436.2303], a common carrier designated by the liquor control commission under [MCL 436.1101 to MCL 436.2303], the liquor control commission, or an agent of the liquor control commission and is transporting or having the alcoholic liquor in a motor vehicle under the person's control during regular working hours and in the course of the person's employment." MCL 257.624b(1).

"[MCL 257.624b] does not prevent a person less than 21 years of age from knowingly transporting alcoholic liquor in a motor vehicle if a person at least 21 years of age is present inside the motor vehicle." MCL 257.624b(1).[12]

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

"As part of the sentence, the person may be ordered to perform community service and undergo substance abuse screening and assessment at his or her own expense as described in [MCL 436.1703(1)]." MCL 257.624b(1).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Two points. See MCL 257.320a(1)(r); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- License denial mandatory for unlicensed violation; license suspension for 90 days required for prior conviction; license suspension for one year required for two or more prior convictions. See MCL 257.303(1)(*l*); MCL 257.319(7). See Section 1.43 for more information on license suspension and Section 1.41 for more information on license denial.
- Vehicle impoundment authorized. See MCL 257.624b(2)-(3). See Section 9.12(B) for more information on impoundment.

D. Issues

- **Related Misdemeanor**

[12]MCL 436.1703(1) provides that it is a misdemeanor for a minor to "purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in [MCL 436.1703]." For a discussion of this offense, see Section 5.30(A)

"A person who knowingly transfers title to a motor vehicle for the purpose of avoiding [MCL 257.624b] is guilty of a misdemeanor." MCL 257.624b(4).

- **Required Notice When Offender is a Juvenile**

If the person who allegedly violated MCL 257.624b(1) is less than 18 years old, the law enforcement agency must notify the minor's parent(s), guardian, or custodian if the name of the parent, guardian, or custodian is reasonably ascertainable. MCL 257.624b(5). This notice must be given within 48 hours after the agency determines that the person is less than 18 years old and may be given person, by telephone, or by first-class mail. *Id*.

5.30 Minor Purchasing, Consuming, or Possessing Alcohol, or Having Any Bodily Alcohol Content/Furnishing Fraudulent Identification to a Minor, or Minor Using Fraudulent Identification to Purchase Alcoholic Liquor

A. Statutory Authority

- "A minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in [MCL 436.1703]." MCL 436.1703(1).[13]

- "An individual who furnishes fraudulent identification to a minor, or notwithstanding [MCL 436.1703(1)] a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor[.]" MCL 436.1703(2).

B. Penalties

For a violation of MCL 436.1703(1),[14] the penalties are:

---

[13] A juvenile who pleads guilty to or offers a plea of admission for violating MCL 436.1703(1) and who has not previously been convicted of or received a juvenile adjudication for violating MCL 436.1703(1), may have proceedings against him or her deferred. See MCL 436.1703(3). See Section 5.30(D) for more information on deferring proceedings under MCL 436.1703(3).

[14] In addition to the penalties provided in MCL 436.1703(1), the court may order the minor "to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in [MCL 333.6107], and designated by the administrator of the office of substance abuse services, and may order that minor to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in [MCL 436.1703(5)]." MCL 436.1703(1)(a). See also MCL 436.1703(1)(b)-(c).

- **First Offense:**
  - fine of not more than $100.
- **Second Offense:**
  - imprisonment for not more than 30 days, but only if the court finds that the minor violated an order or probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication; or
  - fine of not more than $200; or
  - both.
- **Third or Subsequent Offense:**
  - imprisonment for not more than 60 days, but only if the court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication; or
  - fine of not more than $500; or
  - both.

For a violation of MCL 436.1703(2), the penalties are:

- imprisonment for not more than 93 days; or
- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- License denial mandatory for unlicensed violation; license suspension for 90 days required for prior conviction; license suspension for one year required for two or more prior convictions. See MCL 257.303(1)(*l*); MCL 257.319(3)(d); MCL 257.319(7); MCL 436.1703(6). See Section 1.41 for more information on license denial and Section 1.43 for more information on license suspension.

D. Issues

- **Custody**

An officer or an inspector of the liquor control commission who witnesses a violation of MCL 436.1703 "may stop and detain a person and obtain satisfactory identification, seize illegally possessed alcoholic liquor, and issue an appearance ticket under . . . MCL 764.9c."[15] MCL 436.1705.

If a police officer has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content, the officer may require the minor to submit to a preliminary chemical breath test (PBT). MCL 436.1703(7). The police officer may arrest a minor based on the results of the PBT. Refusal of a minor to submit to a PBT constitutes a civil infraction. *Id*.

> **Note:** Although not binding precedent,[16] a federal district court in Michigan has found that MCL 436.1703(7)[17] is unconstitutional on its face because it violates the Fourth Amendment to the U.S. Constitution by "authoriz[ing] police officers to perform a search of minors without a warrant or a legal excuse for not obtaining one." *Platte v Thomas Twp*, 504 F Supp 2d 227, 239 (ED Mich, 2007). Consequently, the district court issued an injunction against "enforcing or imposing sanctions under [MCL] 436.1703(6), and [against] enforcing any policy or rule enacted under the authority of said statute." *Platte*, 504 F Supp 2d at 247. See also *Spencer v Bay City*, 292 F Supp 2d 932 (ED Mich, 2003) (local ordinance substantially similar to former MCL 436.1703(6) was found unconstitutional).

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[15] See Section 2.9(A) for a discussion of appearance tickets.

[16] State courts are not bound by the decisions of lower federal courts construing federal law, and Michigan courts are free to follow or reject their authority. *People v Gillam*, 479 Mich 253, 261 (2007).

[17] Formerly MCL 436.1703(6). See 2012 PA 125.

- **Deferred Proceedings**

MCL 436.1703(3) allows the court to defer proceedings and impose probation, without a judgment of guilt or adjudication of responsibility, for individuals with no prior convictions or adjudications under MCL 436.1703(1) who consent to the deferral and offer a plea of guilty (criminal proceedings), or a plea of admission (delinquency proceedings), to a violation of that subsection. "If an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings." MCL 436.1703(3). "An individual may only obtain 1 discharge and dismissal under [MCL 436.1703(3)]." *Id.* MCL 436.1703(3) further provides:

> "The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under [MCL 436.1703(3)]. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under [MCL 436.1703(3)]. These records shall be furnished to any of the following:
>
> > (a) To a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized [MCL 436.1703(3)].
> >
> > (b) To the department of corrections, a prosecutor, or a law enforcement agency, upon the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:
> >
> > > (*i*) At the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency.
> > >
> > > (*ii*) The record is used by the department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment."

MCL 257.732(5) likewise provides that "[t]he clerk of the court shall . . . forward an abstract of the court record to the secretary of state if a person has pled guilty to, or offered a plea of admission in a juvenile proceeding for, a violation of . . . MCL 436.1703, or a local ordinance substantially corresponding to [MCL 436.1703], and has had further proceedings deferred under that section. If the person is sentenced to a term of probation and terms and conditions of probation are fulfilled and the court discharges the individual and dismisses the proceedings, the court shall also report the dismissal to the secretary of state."

- **Required Notice When Offender is a Juvenile**

If the person who allegedly violated MCL 436.1703(1) is less than 18 years old, the law enforcement agency must notify the minor's parent(s), guardian, or custodian if the name of the parent, guardian, or custodian is reasonably ascertainable. MCL 436.1703(8). This notice must be given within 48 hours after the agency determines that the person is less than 18 years old and may be by any means reasonably calculated to give prompt actual notice of the offense, including notice in person, by telephone, or by first-class mail. *Id.* If the minor less than 17 years old and incarcerated for a violation of MCL 436.1703(1), the minor's parents or legal guardian must be notified immediately. MCL 436.1703(8).

- **Statutory Exemptions**

MCL 436.1703 includes several provisions setting forth individuals who are not considered to be in violation of MCL 436.1703(1):

- "A minor who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency[18] for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections . . . MCL 750.520b to [MCL 750.520g], committed against a minor." MCL 436.1703(10)(a).

- "A minor who accompanies an individual who . . . [h]as consumed alcoholic liquor[and who] [v]oluntarily presents himself or herself to a health facility or agency[19] for treatment or for observation

[18] The health facility or agency must notify the minor's parent(s), guardian, or custodian as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable. MCL 436.1703(11).

[19] The health facility or agency must notify the minor's parent(s), guardian, or custodian as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable. MCL 436.1703(11).

including, but not limited to, medical examination and treatment for any condition arising from a violation of . . . MCL 750.520b to [MCL 750.520g], committed against a minor." MCL 436.1703(10)(b).

- "A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern." MCL 436.1703(10)(c).

- "The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited postsecondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this act if the purpose of the consumption is solely educational and is a requirement of the course." MCL 436.1703(13).

- "The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this act." MCL 436.1703(14).

- Minors involved in undercover operations. MCL 436.1703(15)

5.31 Transporting or Possessing Open Alcohol in a Vehicle

A. Statutory Authority

"[A] person who is an operator or occupant shall not transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger area of a vehicle upon a highway, or within the passenger area of a moving vehicle in any place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in [Michigan]." MCL 257.624a(1).

However, "[a] person may transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger area of a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles in [Michigan], if the vehicle does not have a trunk or compartment separate from the passenger area, and the container is in a locked glove compartment, behind the last upright seat, or in an area not normally occupied by the operator or a passenger." MCL 257.624a(2).

Further, "[e]xcept as otherwise provided in MCL 257.624a, unless prohibited by local ordinance, [MCL 257.624a(1)-(2)] do not apply to a passenger in a commercial quadricycle. A passenger in a commercial quadricycle shall not transport or possess alcoholic liquor other than beer, wine, spirits, or a mixed spirits drink." MCL 257.624a(5).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

"As part of the sentence, the person may be ordered to perform community service and undergo substance abuse screening and assessment at his or her own expense as described in [MCL 436.1703(1)]." MCL 257.624a(3).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Two points. See MCL 257.320a(1)(r); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- License denial mandatory for unlicensed violation; license suspension for 90 days required for prior conviction; license suspension for one year required for two or more prior convictions. See MCL 257.303(1)(*l*); MCL 257.319(7). See Section 1.41 for more information on license denial and Section 1.43 for more information on license suspension.

D. Issues

- **Guilty/Nolo Contendere Pleas**

"A court shall not accept a plea of guilty or nolo contendere for a violation of [MCL 257.624a] from a person charged solely with a violation of [MCL 257.625(6)[20]]." MCL 257.624a(3).

- **Definition of** *Vehicle*

A personal electric scooter qualifies as a vehicle under MCL 257.624a because the scooter is "a device upon which a person [is] transported upon a highway." *People v Lyon (William)*, 310 Mich App 515, 516-517, 520 (2015) (the defendant was driving the scooter "along the paved portion of the 'curb lane'" and "weaving into the traffic lane" on a public highway while "holding an open can of beer[]"). The Court noted that "the definition of 'vehicle,' the term actually used in MCL 257.624a . . ., is much more inclusive than the definition of 'motor vehicle[.]'" *Lyon (William)*, 310 Mich App at 519. "[T]he MVC govern[s a] defendant's conduct when he [or she] use[s a] scooter as a vehicle upon a highway[]" and thereby undertakes "the duties of a vehicle driver, which include refraining from driving . . . with an open container." *Id.* at 521.

[20] MCL 257.625(6) prohibits a person who is less than 21 years of age from operating a vehicle with "any bodily alcohol content."

Chapter 6: Misdemeanor Moving Violations

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6.1 Introduction and Scope Note

The principal source of Michigan traffic law is the Michigan Vehicle Code (MVC). The MVC clearly distinguishes the misdemeanor traffic offense from the felony and civil infraction. "It is a misdemeanor for a person to violate [the MVC], unless that violation is by [the MVC] or other law of this state declared to be a felony or a civil infraction." MCL 257.901(1).[1]

6.2 Disobeying the Direction of a Police Officer Who Is Regulating Traffic[2]

A. Statutory Authority

"A person shall not refuse to comply with a lawful order or direction of a police officer when that officer, for public interest and safety, is guiding, directing, controlling, or regulating traffic on the highways of [Michigan]." MCL 257.602.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Two points. See MCL 257.320a(1)(t); MCL 257.732(1)(a). See Section 1.39 for more information on points.

[1] A detailed index of traffic violations, including traffic misdemeanors and related sanctions, is available at http://www.michigan.gov/documents/OffenseCode_73877_7.pdf.

[2] Failure to obey some directions by a police officer may constitute a felony. See e.g., MCL 257.602a. For a discussion of felonies found in the MVC, see Chapters 7 and 8.

6.3 Drag Racing

A. Statutory Authority

"It shall be unlawful for any person to operate any vehicle upon any highway, or any other place open to the general public, including any area designated for the parking of motor vehicles, within [Michigan], in a speed or acceleration contest or for the purpose of making a speed record, whether from a standing start or otherwise over a measured or unmeasured distance, or in a drag race[.]" MCL 257.626a.

"Persons rendering assistance in any manner to [the drag racing] of vehicles shall be equally charged as participants." MCL 257.626a.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points. See MCL 257.320a(1)(j); MCL 257.732(1)(a). See Section 1.39 for more information on points.

D. Issues

- **Prima Facie Evidence of** *Drag Racing*

"The operation of 2 or more vehicles either at speeds in excess of prima facie lawfully established speeds or rapidly accelerating from a common starting point to a speed in excess of such prima facie lawful

speed is prima facie evidence of drag racing and is unlawful." MCL 257.626a.

6.4 Driving in Violation of a Restricted License

A. Statutory Authority

"Upon proper showing of extenuating circumstances and special reasons, or need by an applicant who meets the age qualifications and when accompanied by the fee as provided in [the MVC], the secretary of state may recommend a restricted operator's . . . license containing conditions and restrictions applicable to the licensee, the type of special mechanical control devices required in a motor vehicle operated by the licensee, and the area, time, or other condition that the secretary of state considers necessary to assure the safe operation of a vehicle by the licensee and under which the licensee may operate a motor vehicle." MCL 257.312(1).

"A license issued to a person who is at least 14 years of age and under 16 years of age shall contain only the conditions determining the hours during which the licensee may drive a motor vehicle and the purpose for which it is to be driven." MCL 257.312(1). "A license issued to a minor who is at least 14 years of age and under 16 years of age shall be revoked by the secretary of state on the written request of a parent, guardian, or person standing in loco parentis." MCL 257.312(1).

"A person who violates a restriction imposed in a restricted license issued to that person is guilty of a misdemeanor." MCL 257.312(4). "[MCL 257.312(4)] does not apply to a person who is at least 14 years of age and under 16 years of age." *Id*.

"If a motor vehicle is being driven by a person who is at least 14 years of age and under 16 years of age, and that person is accompanied by a parent, guardian, or person standing in loco parentis, the conditions, limitations, and restrictions set forth in [MCL 257.312] do not apply." MCL 257.312(5).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Two points. See MCL 257.320a(1)(t); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- License suspension or revocation authorized. See MCL 257.312(3). See Section 1.43 for more information on license suspension and Section 1.42 for more information on license revocation.

6.5 Driving or Moving an Unregistered Vehicle

A. Statutory Authority

"Every motor vehicle . . . when driven or moved on a street or highway, is subject to the registration and certificate of title provisions of [the MVC] except [as provided in MCL 257.216][.]" MCL 257.216.

"It is a misdemeanor for any person to drive or move . . . upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of title has not been applied for or for which the appropriate fee has not been paid when and as required hereunder[.]" MCL 257.215.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

6.6 Driving With an Invalid License

A. Statutory Authority

"Except as provided in this act, a person shall not drive a motor vehicle upon a highway in [Michigan] unless that person has a valid operator's . . . license with the appropriate group designation and indorsements for the type or class of vehicle being driven[.]" MCL 257.301(1).

"A person shall not have more than 1 valid driver's license." MCL 257.301(3). Thus, "[a] person shall not receive a license to operate a motor vehicle until that person surrenders to the secretary of state all valid licenses to operate a motor vehicle issued to that person by [Michigan] or any state or certifies that he or she does not possess a valid license." MCL 257.301(2).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Two points. See MCL 257.320a(1)(t); MCL 257.732(1)(a). See Section 1.39 for more information on points.

6.7 Failing to Stop for School Crossing Guard

A. Statutory Authority

"A driver of a motor vehicle who fails to stop when a school crossing guard is in a school crossing and is holding a stop sign in an upright position visible to approaching vehicular traffic is guilty of a misdemeanor." MCL 257.613d(1).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Three points. See MCL 257.320a(1)(q); MCL 257.732(1)(a). See Section 1.39 for more information on points.

D. Issues

"In a proceeding for a violation of [MCL 257.613d], proof that the particular vehicle described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation complaint or warrant was the registered owner of the vehicle at the time of the violation, constitutes in evidence a presumption that the registered owner of the vehicle was the driver of the vehicle at the time of the violation." MCL 257.613d(2).

6.8 Failing to Yield to Handicapped Individual

A. Statutory Authority

"A vehicle operator who approaches a person using a wheelchair or a device to aid the person to walk at a crosswalk or any other pedestrian crossing shall take necessary precautions to avoid accident or injury to the person using the wheelchair or device. A person who violates this subsection is guilty of a misdemeanor." MCL 257.612(4).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Two points. See MCL 257.320a(1)(t); MCL 257.732(1)(a). See Section 1.39 for more information on points.

6.9 Improper Operation of a Golf Cart

A. Statutory Authority

Where operation of a golf cart on the streets of a village, city, or township is allowed under MCL 257.657a(1), the following apply:

> "(5) A person shall not operate a golf cart on any street unless he or she is at least 16 years old and is licensed to operate a motor vehicle.

(6) The operator of a golf cart shall comply with the signal requirements of [MCL 257.648[3]] that apply to the operation of a vehicle.

(7) A person operating a golf cart upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(8) A person shall not operate a golf cart on a state trunk line highway. This subsection does not prohibit a person from crossing a state trunk line highway when operating a golf cart on a street of a village, city, or township, using the most direct line of crossing.

(9) Where a usable and designated path for golf carts is provided adjacent to a highway or street, a person operating a golf cart may, by local ordinance, be required to use that path.

(10) A person operating a golf cart shall not pass between lines of traffic, but may pass on the left of traffic moving in his or her direction in the case of a 2-way street or on the left or right of traffic in the case of a 1-way street, in an unoccupied lane.

(11) A golf cart shall not be operated on a sidewalk constructed for the use of pedestrians.

(12) A golf cart shall be operated at a speed not to exceed 15 miles per hour and shall not be operated on a highway or street with a speed limit of more than 30 miles per hour except to cross that highway or street. A village, city, or township may, by resolution, designate roads or classifications of roads for use by golf carts under this subsection.

(13) A golf cart shall not be operated on the streets of a city, village, or township during the time period from 1/2 hour before sunset to 1/2 hour after sunrise." MCL 257.657a(5)-(13).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or

[3]For more information on MCL 257.648, see Section 4.15.

- fine of not more than $100; or
- both.

C. Issues

Golf cart operators and passengers are not required to wear a crash helmet. MCL 257.657a(14).

MCL 257.657a "does not apply to a police officer in the performance of his or her official duties." MCL 257.657a(15).

Golf carts operated under MCL 257.657a are not required to be registered under the MVC for purposes of MCL 500.3101. MCL 257.657a(16)

"A golf cart is not required to meet the vehicle safety requirements of a low-speed vehicle for approval under [MCL 257.657a]." MCL 257.657a(17).

6.10 Improper Passing of a Stationary Emergency Vehicle

A. Statutory Authority

"Upon approaching and passing a stationary authorized emergency vehicle that is giving a visual signal by means of flashing, rotating, or oscillating red, blue, or white lights as permitted by [MCL 275.698], the driver of an approaching vehicle shall exhibit due care and caution, as required under the following:

> (a) On any public roadway with at least 2 adjacent lanes proceeding in the same direction of the stationary authorized emergency vehicle, the driver of the approaching vehicle shall proceed with caution and yield the right-of-way by moving into a lane at least 1 moving lane or 2 vehicle widths apart from the stationary authorized emergency vehicle, unless directed otherwise by a police officer. If movement to an adjacent lane or 2 vehicle widths apart is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic in parallel moving lanes, the driver of the approaching vehicle shall proceed as required in [MCL 257.653a(1)(b)].
>
> (b) On any public roadway that does not have at least 2 adjacent lanes proceeding in the same direction as the stationary authorized emergency vehicle, or if the movement by the driver of the vehicle into an adjacent

lane or 2 vehicle widths apart is not possible as described in [MCL 257.653a(1)(a)], the approaching vehicle shall reduce and maintain a safe speed for weather, road conditions, and vehicular or pedestrian traffic and proceed with due care and caution, or as directed by a police officer." MCL 257.653a(1).

B. Penalties

MCL 257.653a(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $500; or
- both.

Note: Different penalties apply if the violation of MCL 257.653a(1) causes injury or death to a police officer, firefighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle. MCL 257.653a(3); MCL 257.653a(4). See Section 8.3 for a discussion of these felony offenses.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points. See MCL 257.320a(1)(k); MCL 257.732(1)(a). See Section 1.39 for more information on points.

6.11 Improper Use of Emergency Lights

A. Statutory Authority

"The use or possession of flashing, oscillating, or rotating lights of any color is prohibited except as otherwise provided by law, or under the following circumstances:

(a) A police vehicle shall be equipped with flashing, rotating, or oscillating red or blue lights, for use in the performance of police duties.

(b) A fire vehicle or ambulance available for public use or for use of the United States, the state, or any unit of the state, whether publicly or privately owned, shall be equipped with flashing, rotating, or oscillating red lights and used as required for safety.

(c) An authorized emergency vehicle may be equipped with flashing, rotating, or oscillating red lights for use when responding to an emergency call if when in use the flashing, rotating, or oscillating red lights are mounted on the roof section of the vehicle, either as a permanent installation or by means of suction cups or magnets and are clearly visible in a 360-degree arc from a distance of 500 feet when in use. . . .[4]

(d) Flashing, rotating, or oscillating amber or green lights, placed in a position as to be visible throughout an arc of 360 degrees, shall be used by a state, county, or municipal vehicle engaged in the removal of ice, snow, or other material from the highway and in other operations designed to control ice and snow, or engaged in other non-winter operations. This subdivision does not prohibit the use of a flashing, rotating, or oscillating green light by a fire service.

(e) A vehicle used for the cleanup of spills or a necessary emergency response action taken pursuant to state or federal law or a vehicle operated by an employee of the department of natural resources or the department of environmental quality that responds to a spill, emergency response action, complaint, or compliance activity may be equipped with flashing, rotating, or oscillating amber or green lights. ~~Such~~The lights described in this subdivision shall not be activated unless the vehicle is at the scene of a spill, emergency response action, complaint, or compliance activity. This subdivision does not prohibit the use of a flashing, rotating, or oscillating green light by a fire service.

(f) A vehicle to perform public utility service, a vehicle owned or leased by and licensed as a business for use in the collection and hauling of refuse, an automobile

[4] "A person operating lights under [MCL 257.698(5)(c)] at any time other than when responding to an emergency call is guilty of a misdemeanor." MCL 257.698(5)(c).

service car or wrecker, a vehicle engaged in authorized highway repair or maintenance, a vehicle of a peace officer, a vehicle operated by a rural letter carrier or a person under contract to deliver newspapers or other publications by motor route, a vehicle utilized for snow or ice removal under [MCL 257.682c], a private security guard vehicle as authorized in [MCL 257.698(7)], a motor vehicle while engaged in escorting or transporting an oversize load that has been issued a permit by the state transportation department or a local authority with respect to highways under its jurisdiction, a vehicle owned by the national guard or a United States military vehicle while traveling under the appropriate recognized military authority, a motor vehicle while towing an implement of husbandry, or an implement of husbandry may be equipped with flashing, rotating, or oscillating amber lights. However, a wrecker may be equipped with flashing, rotating, or oscillating red lights that shall be activated only when the wrecker is engaged in removing or assisting a vehicle at the scene of a traffic accident or disablement. The flashing, rotating, or oscillating amber lights shall not be activated except when the warning produced by the lights is required for public safety.

(g) A vehicle engaged in leading or escorting a funeral procession or any vehicle that is part of a funeral procession may be equipped with flashing, rotating, or oscillating purple or amber lights that shall not be activated except during a funeral procession.

(h) An authorized emergency vehicle may display flashing, rotating, or oscillating white lights in conjunction with an authorized emergency light as prescribed in [MCL 257.698].

(i) A private motor vehicle of a physician responding to an emergency call may be equipped with and the physician may use flashing, rotating, or oscillating red lights mounted on the roof section of the vehicle either as a permanent installation or by means of magnets or suction cups and clearly visible in a 360-degree arc from a distance of 500 feet when in use. The physician shall first obtain written authorization from the county sheriff.

(j) A public transit vehicle may be equipped with a flashing, oscillating, or rotating light mounted on the roof of the vehicle approximately 6 feet from the rear of

> the vehicle that displays a white light to the front, side, and rear of the vehicle, which light may be actuated by the driver for use only in inclement weather such as fog, rain, or snow, when boarding or discharging passengers, from 1/2 hour before sunset until 1/2 hour after sunrise, or when conditions hinder the visibility of the public transit vehicle. . . .
>
> (k) A person engaged in the manufacture, sale, or repair of flashing, rotating, or oscillating lights governed by [MCL 257.698(5)] may possess the lights for the purpose of employment, but shall not activate the lights upon the highway unless authorized to do so under [MCL 257.698(6)]." MCL 257.698(5).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Two points. See MCL 257.320a(1)(t); MCL 257.732(1)(a). See Section 1.39 for more information on points.

6.12 Improper Use of Emergency Vehicle

A. Statutory Authority

"The driver of an authorized emergency vehicle when responding to an emergency call, but not while returning from an emergency call, or when pursuing or apprehending a person who has violated or is violating the law or is charged with or suspected of violating the law

may exercise the privileges set forth in [MCL 257.603], subject to the conditions of [MCL 257.603]." MCL 257.603(2).

"The driver of an authorized emergency vehicle may do any of the following:

> (a) Park or stand, irrespective of [the MVC].
>
> (b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
>
> (c) Exceed the prima facie speed limits so long as he or she does not endanger life or property.[5]
>
> (d) Disregard regulations governing direction of movement or turning in a specified direction." MCL 257.603(3).

"The exemptions granted in [MCL 257.603] to an authorized emergency vehicle apply only when the driver of the vehicle while in motion sounds an audible signal by bell, siren, air horn, or exhaust whistle as may be reasonably necessary, except as provided in [MCL 257.603(5)[6]], and when the vehicle is equipped with at least 1 lighted lamp displaying a flashing, oscillating, or rotating red or blue light visible under normal atmospheric conditions from a distance of 500 feet in a 360 degree arc unless it is not advisable to equip a police vehicle operating as an authorized emergency vehicle with a flashing, oscillating or rotating light visible in a 360 degree arc. In those cases, a police vehicle shall display a flashing, oscillating, or rotating red or blue light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle. Only police vehicles that are publicly owned shall be equipped with a flashing, oscillating, or rotating blue light that when activated is visible under normal atmospheric conditions from a distance of 500 feet in a 360 degree arc." MCL 257.603(4).

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or

---

[5] See also MCL 257.632.

[6] "A police vehicle shall retain the exemptions granted in [MCL 257.603] to an authorized emergency vehicle without sounding an audible signal if the police vehicle is engaged in an emergency run in which silence is required." MCL 257.603(5).

- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Two points. See MCL 257.320a(1)(t); MCL 257.732(1)(a). See Section 1.39 for more information on points.

D. Issues

- **Operating with Due Regard for Others' Safety**

"While authorized emergency vehicles are excused by statute from obeying most of the rules of the road, MCL 257.603, MCL 257.632, they must be driven with due regard for the safety of others." *Terry v Detroit*, 226 Mich App 418, 429 (1997).

6.13 Moving Violation Causing Injury to Person in Work Zone or School Bus Zone

A. Statutory Authority

"A person who commits a moving violation in a work zone or a school bus zone for which not fewer than 3 points are assigned under [MCL 257.320a] and as a result causes injury to another person in the work zone or school bus zone is guilty of a misdemeanor[.]" MCL 257.601b(2).

B. Penalties

MCL 257.601b(2) provides for:

- imprisonment for not more than one year; or
- fine of not more than $1,000; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(b); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- $1,000 driver responsibility fee. See MCL 257.732a(2)(a)(*ii*). See Section 1.40 for more information on driver responsibility fees.
- Mandatory 90 day license suspension; license revocation or denial authorized under certain circumstances. See MCL 257.303(2)(b); MCL 257.319(3)(b). See Section 1.43 for more information on license suspension, Section 1.42 for more information on license revocation, and Section 1.41 for more information on license denial.

6.14 Moving Violation Causing Injury to Person Operating Farm Equipment

A. Statutory Authority

"A person who commits a moving violation that has criminal penalties and as a result causes injury to a person operating an implement of husbandry on a highway in compliance with [the MVC] is guilty of a misdemeanor[.]" MCL 257.601c(1).

B. Penalties

MCL 257.601c(1) provides for:

- imprisonment for not more than one year; or
- fine of not more than $1,000; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(b); MCL 257.732(1)(a). See Section 1.39 for more information on points.

- $1,000 driver responsibility fee. See MCL 257.732a(2)(a)(*ii*). See Section 1.40 for more information on driver responsibility fees.

- Mandatory 90 day license suspension; license revocation or denial authorized under certain circumstances. See MCL 257.303(2)(b); MCL 257.319(3)(b). See Section 1.43 for more information on license suspension, Section 1.42 for more information on license revocation, and Section 1.41 for more information on license denial.

6.15 Moving Violation Causing Serious Impairment of a Body Function

A. Statutory Authority

"A person who commits a moving violation while operating a vehicle upon a highway or other place open to the general public, including, but not limited to, an area designated for the parking of motor vehicles, that causes serious impairment of a body function to another person is guilty of a misdemeanor[.]" MCL 257.601d(2).

MCL 257.601d "does not prohibit the person from being charged with, convicted of, or punished for any other violation of law." MCL 257.601d(3).

B. Relevant Jury Instruction

- M Crim JI 15.19 addresses the elements of a moving violation causing serious impairment of a body function.[7]

[7]The instruction should only be used for act committed on or after October 31, 2010.

C. Penalties

MCL 257.601d(2) provides for:

- imprisonment for not more than 93 days; or
- fine of not more than $500; or
- both.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(b); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- $1,000 driver responsibility fee. See MCL 257.732a(2)(a)(*ii*). See Section 1.40 for more information on driver responsibility fees.
- Mandatory one year license suspension; license denial authorized under certain circumstances. See MCL 257.303; MCL 257.319(2)(f). See Section 1.43 for more information on license suspension, and Section 1.41 for more information on license denial.

E. Issues

- **Due Process**

"[I]mposing strict liability for the offense of committing a moving violation causing serious impairment of a body function[, MCL 257.601d,] does not offend due process." *People v Pace*, 311 Mich App 1, 12 (2015) (noting that "the offense is a misdemeanor[and despite the severe harm that such an offense inflicts upon the victim,] . . . [t]he penalty is . . . relatively small[,]" and that "because the crime is a misdemeanor only, it is far less likely to 'besmirch' the defendant[]") (citations omitted).

- **Elements**

"MCL 257.601d imposes strict liability upon a motorist who commits a moving violation causing serious impairment of a body function to another person[.]" *Pace*, 311 Mich App at 12. "[T]he prosecution is required to prove solely (1) the commission of a moving violation; (2) another person suffered a serious impairment of a body function; and (3) a causal link between the bodily injury and the moving violation, i.e., factual and proximate causation. The prosecution is not required to also prove that [the] defendant operated his [or her] vehicle in a negligent manner[.]" *Id.*

6.16 Moving Violation Causing Death

A. Statutory Authority

"A person who commits a moving violation while operating a vehicle upon a highway or other place open to the general public, including, but not limited to, an area designated for the parking of motor vehicles, that causes the death of another person is guilty of a misdemeanor[.]" MCL 257.601d(1).

MCL 257.601d "does not prohibit the person from being charged with, convicted of, or punished for any other violation of law." MCL 257.601d(3).

B. Relevant Jury Instruction

- M Crim JI 15.18 addresses the elements of a moving violation causing death.[8]

C. Penalties

MCL 257.601d(1) provides for:

- imprisonment for not more than 1 year; or
- fine of not more than $2,000; or
- both.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by

[8]The instruction should be used only for acts committed on or after October 31, 2010.

the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(b); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- $1,000 driver responsibility fee. See MCL 257.732a(2)(a)(*ii*). See Section 1.40 for more information on driver responsibility fees.
- Mandatory one year license suspension; license denial authorized under certain circumstances. See MCL 257.303; MCL 257.319(2)(f). See Section 1.43 for more information on license suspension and Section 1.41 for more information on license denial.

6.17 Operating Motor Vehicle While License Is Suspended or Revoked[9]

A. Statutory Authority

"A person whose operator's . . . license or registration certificate has been suspended or revoked and who has been notified as provided in [MCL 257.212[10]] of that suspension or revocation, whose application for license has been denied, or who has never applied for a license, shall not operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within [Michigan]." MCL 257.904(1).

B. Relevant Jury Instruction

- M Crim JI 15.20 addresses the elements of driving while license is suspended or revoked.

C. Penalties

MCL 257.904(3) provides for:

- **First Violation:**

[9] The felony offenses contemplated by MCL 257.904 are discussed in Chapter Chapter 8.

[10] MCL 257.212 concerns methods by which the secretary of state may give notice.

- imprisonment for not more than 93 days; or
- fine of not more than $500; or
- both.

- **Violation Occurring After Prior Conviction:**
  - imprisonment for not more than one year; or
  - fine of not more than $1,000; or
  - both.

"A prior conviction under [MCL 257.904] shall be established at or before sentencing by 1 or more of the following:

(a) A copy of a judgment of conviction.

(b) An abstract of conviction.

(c) A transcript of a prior trial, plea, or sentencing.

(d) A copy of a court register of action.

(e) A copy of the defendant's driving record.

(f) Information contained in a presentence report.

(g) An admission by the defendant." MCL 257.904(9).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points (at-fault collision) or two points (any other moving violation). See MCL 257.320a(1)(m); MCL 257.320a(1)(t); MCL 257.732(1)(a). See Section 1.39 for more information on points.

- $500 driver responsibility fee. See MCL 257.732a(2)(b)(*iii*). See Section 1.40 for more information on driver responsibility fees.

- License suspension and/or revocation required, depending on the circumstances. See MCL 257.904(10)-(12). See Section 1.43 for more information on license suspension and Section 1.42 for more information on license revocation.

- Registration plate cancellation required.[11] See MCL 257.904(3).

- Vehicle impoundment required. See MCL 257.904b(1).[12] See Section 1.46 and Section 9.12(B) for more information on vehicle impoundment.

- Registration denial is required under certain circumstances. See MCL 257.219(1)(c)-(d). See Section 1.48 for more information on registration denial.

E. Issues

- **Scope of MCL 257.904**

MCL 257.904 "does not apply to a person who operates a vehicle solely for the purpose of protecting human life or property if the life or property is endangered and summoning prompt aid is essential." MCL 257.904(15).

"For purposes of [MCL 257.904], a person who never applied for a license includes a person who applied for a license, was denied, and never applied again." MCL 257.904(19).

- **Individuals With Expired License**

"The plain language of [MCL 257.904(1)] applies to persons who never apply for a license or who obtain one but subsequently have the license suspended or revoked because of improper driving." *People v Acosta-Baustista*, 296 Mich App 404, 408 (2012). "In the first instance, the person has never been adjudged fit to drive." *Id*. "In the second instance, the person has specifically been adjudged unfit to drive." *Id*. MCL 257.904(1) does not apply to "a person driving on a valid but recently expired license[.]" *Acosta-Bautista*, 296 Mich App at 409. "[A] person with a valid license who has simply let it lapse is a person

[11] Upon a first violation of MCL 257.904(1) or MCL 257.904(2), "[u]nless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be canceled by the secretary of state upon notification by a peace officer." MCL 257.904(3)(a). For any violation of MCL 257.904(1) or MCL 257.904(2) that occurs after a prior conviction, the registration plates of the vehicle must be canceled unless the vehicle was stolen. MCL 257.904(3)(b).

[12] Note that MCL 257.904b references subdivisions of MCL 257.904 that are not longer current. For further explanation, see Section 1.46.

adjudged fit to drive who has merely failed to keep up the related paperwork." *Id*. at 408.

- **Immigration Status**

"[T]he plain language of [MCL 257.904] and [the Convention on the Regulation of Inter-American Automotive Traffic 1943] support a finding that the reasoning underlying MCL 257.904(1) . . . is not affected by the motor vehicle operator's immigration status and will remain the same regardless of whether the motor vehicle operator is driving pursuant to a license from Michigan, a foreign country that is a signatory to the convention, or one of the other 49 states." *Acosta-Baustista*, 296 Mich App at 411.

6.18 Operating a Motor Vehicle While Unlicensed

A. Statutory Authority

"Any person, not exempt from license under [the MVC], who shall operate a motor vehicle upon the highways of [Michigan] and who is unable to show that he or she has been issued a license to operate a motor vehicle by any state or foreign country valid within the 3 years preceding is guilty of a misdemeanor[.]" MCL 257.904a.

B. Penalties

MCL 257.904a provides for:

- **First Offense:**
  - imprisonment for not more than 90 days; or
  - fine of $50 to $100; or
  - both.
- **Second Offense:**
  - imprisonment for not less than two days or more than 90 days; or
  - fine of $100; or
  - both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Two points. See MCL 257.320a(1)(t); MCL 257.732(1)(a). See Section 1.39 for more information on points.

6.19 Operating a Motor Vehicle Without a License in Possession

A. Statutory Authority

"The licensee shall have his or her operator's . . . license, or the receipt described in [MCL 257.311a[13]], in his or her immediate possession at all times when operating a motor vehicle, and shall display the same upon demand of any police officer, who shall identify himself or herself as such." MCL 257.311.

B. Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than $100; or
- both.

"If a person has received a citation for a violation of [MCL 257.311], the court shall waive any fine and costs, upon receipt of certification by a law enforcement agency that the person, before the appearance date on the citation, has produced his or her operator's . . . license and that the license was valid on the date the violation of [MCL 257.311] occurred." MCL 257.901a.

[13] "If the court requires a person who is accused of a misdemeanor or ordinance violation to surrender his or her operator's . . . license pursuant to [MCL 765.6 or MCL 780.64], and if the license is not expired, suspended, revoked, or canceled, the court shall issue to the licensee a receipt for the license." MCL 257.311a. "The receipt shall have the effect of granting driving privileges identical to the operator's . . . license surrendered to the court[.]" *Id.*

C. Issues

- **Establishing Police Officer's Identity**

"Under MCL 257.311, . . . not only can identification of [a police] officer occur by observation of the officer's uniform and fully marked vehicle, in the case of a non-uniformed police officer, identification can occur by use of a badge or oral or other identification." *People v McKinley*, 255 Mich App 20, 30 (2003). In *McKinley*, 255 Mich App at 29, the police officer "had activated the emergency equipment in his fully marked sheriff's department vehicle and approached [the] defendant while he was fully uniformed as a . . . sheriff's deputy." The Court of Appeals held that "such indicia are sufficient to satisfy the statutory requirement [in MCL 257.311] that an officer identify himself [or herself] as an officer when requesting a driver's license from a person who was operating a motor vehicle." *McKinley*, 255 Mich App at 29.

6.20 Reckless Driving

A. Statutory Authority

"A person who violates [MCL 257.626] is guilty of reckless driving as provided in [MCL 257.626]." MCL 257.626(1).

"Except as otherwise provided in [MCL 257.626], a person who operates a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public, including, but not limited to, an area designated for the parking of motor vehicles, in willful or wanton disregard for the safety of persons or property is guilty of a misdemeanor[.]" MCL 257.626(2).

B. Relevant Jury Instruction

- M Crim JI 15.15 addresses the elements of reckless driving.

C. Penalties

MCL 257.626(2) provides for:

- imprisonment for not more than 93 days; or
- fine of not more than $500; or
- both.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(e); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- $500 driver responsibility fee. See MCL 257.732a(2)(b)(*ii*). See Section 1.40 for more information on driver responsibility fees.
- Mandatory 90 day license suspension; license revocation/denial required under certain circumstances. See MCL 257.303(2)(a); MCL 257.319(3)(b). See Section 1.43 for more information on license suspension, Section 1.42 for more information on license revocation, and Section 1.41 for more information on license denial.

6.21 Reckless Driving Causing Miscarriage, Stillbirth, or Death

A. Statutory Authority

"If a person operates a motor vehicle in a careless or reckless manner, but not willfully or wantonly, that is the proximate cause of an accident involving a pregnant individual and the accident results in a miscarriage or stillbirth by that individual or death to the embryo or fetus, the person is guilty of a misdemeanor[.]"[14] MCL 750.90e.

B. Penalties

MCL 750.90e provides for:

- imprisonment for not more than 2 years; or

[14] MCL 750.8 provides that "[w]hen any act or omission, not a felony, is punishable according to law, by a fine, penalty or forfeiture, and imprisonment, or by such fine, penalty or forfeiture, or imprisonment, in the discretion of the court, such act or omission shall be deemed a misdemeanor." Accordingly, although MCL 750.90e is specifically designated as a "misdemeanor," it is treated as a felony for purposes of licensing sanctions under the Michigan Vehicle Code.

- fine of not more than $2,000; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(a); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- $1,000 driver responsibility fee. See MCL 257.732a(2)(a)(*i*). See Section 1.40 for more information on driver responsibility fees.
- License revocation/denial required under certain circumstances. See MCL 257.303(2)(b)(*iii*); MCL 257.303(2)(e). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

6.22 Unlawful Use of an Automobile Without Intent to Steal (Joyriding)

A. Statutory Authority

"Any person who takes or uses without authority any motor vehicle without intent to steal the same, or who is a party to such unauthorized taking or using, is guilty of a misdemeanor[.]" MCL 750.414.

"[MCL 750.414] does not apply to any person or persons employed by the owner of said motor vehicle or anyone else, who, by the nature of his or her employment, has the charge of or the authority to drive said motor vehicle if said motor vehicle is driven or used without the owner's knowledge or consent." MCL 750.414.

B. Relevant Jury Instructions

- M Crim JI 24.2 addresses the elements of use of an automobile without authority and without intent to steal.
- M Crim JI 24.4 addresses the distinction between joyriding and the felony offense of unlawfully driving away an automobile, which is addressed in Section 8.12.

C. Penalties

MCL 750.414 provides for:

- imprisonment for not more than 2 years; or
- fine of not more than $1,500.

However, if it is a first offense, "the court may reduce to punishment to imprisonment for not more than 3 months or a fine of not more than $500.00." MCL 750.414.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Two points. See MCL 257.320a(1)(t); MCL 257.732(1)(a). See Section 1.39 for more information on points.
- Mandatory 90 day license suspension for no prior conviction; mandatory one year license suspension for one or more prior convictions. See MCL 257.319(6). See Section 1.43 for more information on license suspension.

E. Issues

- **General Intent Crime**

"'To be convicted of [MCL 750.414], a defendant must have intended to take or use the vehicle, knowing that he [or she] had no authority to do so.'" *Landon v Titan Ins Co*, 251 Mich App 633, 644 (2002), quoting *People v Laur*, 128 Mich App 453, 455 (1983). "Because no intent is

required beyond that of doing the act itself, this is a general intent crime." *Landon*, 251 Mich App at 644.

- **Distinguished From Crime of Unlawfully Driving Away an Automobile**

The difference between the felony offense of unlawfully driving away an automobile (UDAA), MCL 750.413, and the misdemeanor offense of using a motor vehicle without authority but without intent to steal, MCL 750.414, is that "'UDAA (joyriding) requires the defendant to *take possession* of the motor vehicle without the owner's permission, while the misdemeanor offense of unlawful use of a motor vehicle is committed when an individual, who has been given lawful possession[15] of a motor vehicle, *uses* it beyond the authority which has been granted to him [or her] by the owner.'" *Landon*, 251 Mich App at 644-645, quoting *People v Hayward*, 127 Mich App 50, 61 (1983) (emphasis in original). See also M Crim JI 24.4 for more information on the distinction between unlawfully driving away an automobile and unlawful use of an automobile without intent to steal (joyriding).

[15]"'Lawful possession' is not an element of the offense of unlawful use of an automobile." *People v Crosby*, 82 Mich App 1, 3 (1978). "It is just that 'unlawful possession' does not have to be shown to support a conviction for unlawful use of an automobile." *Id*.

Chapter 7: Felony Nonmoving Violations

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7.1 Introduction and Scope Note

This chapter contains an overview of nonmoving felony traffic offenses found in the Michigan Vehicle Code (MVC). Each section discusses the statutory authority for the offense, criminal penalties, and any applicable licensing sanctions.

7.2 Allowing A Person Who is Unlicensed or Whose License is Suspended or Revoked to Operate a Motor Vehicle[1]

A. Statutory Authority

"A person shall not knowingly permit a motor vehicle owned by the person to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state, by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never been licensed except as permitted by this act." MCL 257.904(7).

B. Criminal Penalties

If the operation of the motor vehicle results in serious impairment of a body function, the crime of allowing a person who is unlicensed or whose license is suspended or revoked to operate a motor vehicle is punishable by:

- imprisonment for not more than 2 years,
- a fine of not less than $1,000.00 or more than $5,000.00,
- or both. MCL 257.904(7).

If the operation of the motor vehicle results in the death of another person, the crime of allowing a person whose license is suspended or revoked to operate a motor vehicle is punishable by:

- imprisonment for not more than 5 years,
- a fine of not less than $1,000.00 or more than $5,000.00,
- or both. MCL 257.904(7).

[1]The moving felony offenses contemplated by MCL 257.904 are discussed in Chapter .

C. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- It is unclear whether 6 points may be assessed for this violation. See MCL 257.320a(1)(a), which requires imposition of six points where "[m]anslaughter, negligent homicide, or a felony result[s] from the operation of a motor vehicle[.]" See Section 1.39 for more information on points.

- Driver responsibility fee of $500 each year for two consecutive years.[2] MCL 257.732a(2)(b)(*iii*). See Section 1.40 for more information on driver responsibility fees.

D. Issues

MCL 257.904 "does not apply to a person who operates a vehicle solely for the purpose of protecting human life or property if the life or property is endangered and summoning prompt aid is essential." MCL 257.905(15).

For purposes of MCL 257.904, "a person who never applied for a license includes a person who applied for a license, was denied, and never applied again." MCL 257.904(19).

E. Related Misdemeanor

It is a misdemeanor to "knowingly permit a motor vehicle owned by the person to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never applied for a license, except as permitted

[2]Beginning in 2015, the amount of the driver responsibility fee imposed is reduced until it is completely phased out. See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

under [the MVC]." MCL 257.904(2)-(3). See Section 5.10 for a discussion of this misdemeanor offense.

7.3 Altering, Forging, or Falsifying Documents

A. Statutory Authority

"A person who commits any of the following acts is guilty of a felony:

> (a) Alters with fraudulent intent any certificate of title, registration certificate, or registration plate issued by the department.
>
> (b) Forges or counterfeits a certificate of title, registration certificate, or registration plate purporting to have been issued by the department.
>
> (c) Alters or falsifies with fraudulent intent or forges an assignment upon a certificate of title.
>
> (d) Holds or uses a certificate of title, registration certificate, or registration plate knowing that it has been altered, forged, or falsified.
>
> (e) Knowingly possesses, sells, or offers for sale a stolen, false, or counterfeit certificate of title, registration certificate, registration plate, registration decal, or registration tab.
>
> (f) Fraudulently indicates on a certificate of title that there is no security interest on record for the vehicle.
>
> (g) Forges or counterfeits a letter from the holder of a security interest in a vehicle stating that the security interest has been released." MCL 257.257(1).

B. Criminal Penalties

For a **first conviction** of this offense, the following penalties apply pursuant to MCL 257.902:

- imprisonment for not less than one year or more than five years; or
- fine of not less than $500 or more than $5,000; or
- both.

For a **second conviction** of this offense, the following penalties apply pursuant to MCL 257.257(2):

- imprisonment for not less than two or more than seven years; or
- fine of not less than $1,500 or more than $7,000; or
- both.

For a **third or subsequent conviction** of this offense, the following penalties apply pursuant to MCL 257.257(3):

- imprisonment for not less than five years or more than 15 years; or
- fine of not less than $5,000 or more than $15,000; or
- both.

"A person who is convicted of a violation of subsection (1)(f) or (g), in addition to any other penalty, shall pay restitution to the holder of a security interest in the vehicle in the amount of the outstanding lien on the vehicle." MCL 257.257(4).

C. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- Suspension of the defendant's license is mandatory for a period of one year. MCL 257.319(2)(a). See Section 1.43 for more information on license suspension.

7.4 Buying, Selling, or Using a Portable Signal Preemption Device

A. Statutory Authority

"(1) Except as provided in subsection[] (3) . . . , a person shall not do any of the following:

* * *

(b) Use a portable signal preemption device.

(c) Sell a portable signal preemption device to a person other than a person described in subsection (3).

(d) Purchase a portable signal preemption device for use other than a duty as described in subsections (3) and (4).

* * *

(3) This section does not apply to any of the following:

(a) A law enforcement agency in the course of providing law enforcement services.

(b) A fire station or a firefighter in the course of providing fire prevention or fire extinguishing services.

(c) An emergency medical service or ambulance in the course of providing emergency medical transportation or ambulance services.

(d) An operator, passenger, or owner of an authorized emergency vehicle in the course of his or her emergency duties." MCL 257.616a.

B. Criminal Penalties

Unless the violation results in a traffic accident, serious impairment of a body function, or death, improper use of a portable signal preemption device is punishable by:

- imprisonment for not more than two years; or
- fine of not more than $10,000; or
- both. MCL 257.616a(2)(b).

The improper sale or purchase of a portable signal preemption device is punishable by:

- imprisonment for not more than two years; or
- fine of not more than $10,000; or
- both. MCL 257.616a(2)(f).

When the improper use of a portable signal preemption device results in a traffic accident, the penalties are as follows:

- imprisonment for not more than five years; or
- fine of not more than $15,000; or
- both. MCL 257.616a(2)(c).

When the improper use of a portable signal preemption device results in serious impairment of a body function, the penalties are increased as follows:

- imprisonment for not more than 10 years; or
- fine of not more than $20,000; or
- both. MCL 257.616a(2)(d).

When the improper use of a portable signal preemption device results in the death of another person, the penalties are increased as follows:

- imprisonment for not more than 15 years; or
- fine of not more than $25,000; or
- both. MCL 257.616a(2)(e).

C. Sanctions

Generally, buying, selling, or using a portable signal preemption device in violation of MCL 257.616a is not a reportable offense under the secretary of state's guidelines; thus, there are no licensing sanctions associated with it. However, licensing sanctions will apply if the manner in which the crime is committed satisfies the definition of a *felony in which a motor vehicle was used*. MCL 257.732(6); MCL 257.319(2)(d); MCL 257.303(8).

The MVC mandates license suspension for one year upon conviction of any offense categorized as a *felony in which a motor vehicle was used*. MCL 257.319(2)(d). The MVC further includes a *felony in which a motor vehicle was used* in the list of specified offenses for which a combination of two or more convictions within 7 years requires license revocation and denial. MCL 257.303(2)(b). Further, a $1,000.00 driver responsibility fee for two consecutive years is imposed if the violation constitutes "a felony resulting from the operation of a motor vehicle," MCL 257.732a(2)(a)(*i*),[3] and MCL 257.320a(1)(a) imposes 6 points for a felony resulting from the operation of a motor vehicle.

D. Related Misdemeanor

Possession of a signal preemption device by anyone other than one of the authorized emergency response services or a delivery service in the course of shipping or delivering the device is a misdemeanor. MCL 257.616a(1)(a).

7.5 False Certification

A. Statutory Authority

"A person who makes a false certification to a matter or thing required by the terms of this act to be certified, including but not limited to an application for any type of driver license, dealer license, vehicle certificate of title, vehicle registration, vehicle inspection, self-insurance, personal information, or commercial driver training school, is guilty of a felony . . . ." MCL 257.903(1).

B. Criminal Penalties

For a **first conviction** of this offense, the following penalties apply pursuant to MCL 257.902:

- imprisonment for not less than one year or more than five years; or
- fine of not less than $500 or more than $5,000; or
- both.

For a **second conviction** of this offense, the following penalties apply pursuant to MCL 257.903(2):

- imprisonment for not less than two years or more than seven years; or
- fine of not less than $1,500 or more than $7,000; or
- both.

For a **third or subsequent conviction** of this offense, the following penalties apply pursuant to MCL 257.903(3):

[3]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

- imprisonment for not less than five years or more than 15 years; or
- fine of not less than $5,000 or more than $15,000; or
- both.

C. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- License suspension for 90 days if the person has no prior conviction within seven years; if the person has one or more prior convictions within seven years, the suspension period is one year. MCL 257.319(5). See Section 1.43 for more information on license suspension.

7.6 False Statement in Application for Certificate of Title or in Assignment of Title; Possession of Stolen Vehicle

A. Statutory Authority

"Any person who shall knowingly make any false statement of a material fact, either in his or her application for the certificate of title required by this act, or in any assignment of that title, or who, with intent to procure or pass title to a motor vehicle which he or she knows or has reason to believe has been stolen, shall receive or transfer possession of the same from or to another, or who shall have in his or her possession any vehicle which he or she knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his or her duty as such officer, is guilty of a felony[.]" MCL 257.254.

B. Relevant Jury Instructions

- M Crim JI 24.6 addresses the elements of possession of a stolen automobile with intent to pass title.

- M Crim JI 24.7 addresses the elements of the offense of false statement about title to a motor vehicle.

C. Criminal Penalties

MCL 257.254 provides the following criminal penalties for this offense:

- imprisonment for not more than ten years; or
- fine of not more than $5,000; or
- both.

These criminal sanctions are not exclusive of any other penalties prescribed by any law for larceny or the unauthorized taking of a vehicle. MCL 257.254.

D. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this offense. See Section 1.38 for information on abstracting procedures.

- License suspension for 90 days if the person has no prior conviction within seven years; if the person has one or more prior convictions within seven years, the suspension period is one year. MCL 257.319(5). See Section 1.43 for more information on license suspension.

E. Issues

- **Required elements**

In view of the original title of this chapter, "'The Motor Vehicle Title Act',[4] and its stated purpose—'to protect titles of motor vehicles'—all parts of the act must be read to be germane only to conduct affecting titles or their fraudulent transfer." *People v Morton*, 384 Mich 38, 40 (1970). See also Const 1963, art 4, § 24.

Conviction for possession of a stolen vehicle is unauthorized in the absence of a showing of possession with knowledge that the vehicle was stolen coupled with intent to fraudulently transfer title. *Morton*, 384 Mich at 40. A defendant must transfer or intend to transfer the right of ownership of a stolen vehicle; transfer or intent to transfer the vehicle's certificate of title is not an element of the offense. *People*

[4]Now titled the Michigan Vehicle Code, see 1949 PA 300; MCL 257.1 *et seq.*

v Ross, 204 Mich App 310, 312-313 (1994); *People v Harbour*, 76 Mich App 552, 558-559 (1977).

Specific intent to fraudulently pass title is not an element of making a false application for a certificate of title; intent "can be inferred from the other necessary elements." *People v Jensen*, 162 Mich App 171, 181 (1987). This criminal offense is distinguishable from MCL 257.222(6), a misdemeanor offense that involves reproducing, altering, counterfeiting, forging, or duplicating certificate of title. *Jensen*, 162 Mich App at 184-185.

- **Meaning of** *motor vehicle*

To constitute a "stolen *motor vehicle*" within the meaning of MCL 257.254, "the vehicle does not have to be immediately operable to be a motor vehicle under the normal definition of a motor vehicle [(see MCL 257.33)], [but] it must be constituted in such a way that it contains the major essential parts of a self-propelled vehicle. Therefore, the obvious meaning of a *stolen* motor vehicle is a vehicle the essential major elements of which have been stolen." *People v Boscaglia*, 419 Mich 556, 564 (1984) (rejecting the prosecution's argument that a truck with a stolen cab was a stolen motor vehicle for purposes of MCL 257.254, noting that "[t]he truck certainly is a vehicle which includes a stolen part, but it is not a stolen motor vehicle").

- **The "false statement of a material fact" requirement**

Whether a false statement was of *material* fact is an issue for the jury to decide. See *United States v Gaudin*, 515 US 506, 511 (1995) (holding that the defendant had a right to have a jury decide the question of materiality when it was an element of the charged offense).

7.7 Odometer Tampering

A. Statutory Authority

> "(6) A person shall not alter, set back, or disconnect an odometer; cause or allow an odometer to be altered, set back, or disconnected; or advertise for sale, sell, use, install, or cause or allow to be installed a device which causes an odometer to register other than the actual mileage driven. This subsection does not prohibit the service, repair, or replacement of an odometer if the mileage indicated on the odometer remains the same as before the service, repair, or replacement. If the odometer is incapable of registering the same mileage as before the service, repair, or replacement, the odometer

> shall be adjusted to read zero and a notice in writing shall be attached to the left door frame of the vehicle by the owner or his or her agent specifying the mileage prior to service, repair, or replacement of the odometer and the date on which it was serviced, repaired or replaced. A person shall not remove, deface, or alter any notice affixed to a motor vehicle pursuant to this subsection.
>
> (7) A person who violates subsection (6) is guilty of a felony." MCL 257.233a(6)–(7).

B. Criminal Penalties

MCL 257.902 provides the following penalties:

- imprisonment for not less than one year or more than five years; or
- fine of not less than $500 or more than $5,000; or
- both.

C. Issues

- **Applicability**

The odometer statute also applies to a new or used vehicle dealer, a lessor of a leased vehicle, and an auction dealer or vehicle salvage pool operator. See MCL 257.233a(11)-(13).

- **Required intent**

"[T]he odometer statute in Michigan does not require the intent to defraud . . . . The main purpose behind the odometer statute is to protect a buyer from being defrauded by a seller who fraudulently turns back the odometer." *People v Houseman*, 128 Mich App 17, 22 (1983) (footnote and citations omitted).

- **Civil liability**

MCL 257.233a(15) governs the civil liability of a person who, with intent to defraud, violates MCL 257.233a(6). The person is liable in an amount equal to three times the amount of actual damages sustained or $1,500, whichever is greater, plus costs and reasonable attorney fees in the case of a successful recovery of damages.

7.8 Police Officer Knowingly Making Materially False Statement in Citation as Perjury

A. Statutory Authority

"A police officer who, knowing the statement is false, makes a materially false statement in a citation issued under [MCL 257.742[5]] is guilty of perjury, a felony[.]" MCL 257.744a.

B. Criminal Penalties

MCL 257.744a provides for the following penalties:

- imprisonment for not more than 15 years; and
- contempt of court.

C. Issues

The materiality of the defendant's false statement is an issue for the jury to decide. See *United States v Gaudin*, 515 US 506, 511 (1995).

7.9 Possessing, Selling, or Offering for Sale a Stolen, False, or Counterfeit Certificate of Insurance

A. Statutory Authority

"A person who knowingly possesses, sells, or offers for sale a stolen, false, or counterfeit certificate of insurance is guilty of a felony." MCL 257.329(1).

B. Criminal Penalties

For a **first conviction** of this offense, the following penalties apply pursuant to MCL 257.902:

- imprisonment for not less than one year or more than five years; or
- fine of not less than $500 or more than $5,000; or
- both.

[5] Citations issued under MCL 257.742 are for civil infractions only. Citations for misdemeanors are issued under MCL 257.728.

For a **second conviction** of this offense, the following penalties apply pursuant to MCL 257.329(2):

- imprisonment for not less than two or more than seven years; or
- fine of not less than $1,500 or more than $7,000; or
- both.

For a **third or subsequent conviction** of this offense, the following penalties apply pursuant to MCL 257.329(3):

- imprisonment for not less than five years or more than 15 years; or
- fine of not less than $5,000 or more than $15,000; or
- both.

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8.1 Introduction and Scope Note

This chapter contains an overview of moving felony traffic offenses found in the Michigan Vehicle Code (MVC) and the Michigan Penal Code (MPC). This chapter does not discuss violations of MCL 257.625, which are the subject of Chapter .

Part A—MVC Offenses

8.2 Failure to Stop at Signal of Police Officer ("Fleeing and Eluding")

A substantially similar statute appears in both the MVC and the Michigan Penal Code. MCL 257.602a and MCL 750.479a. Differences in the two statutes are noted below.

MCL 257.602a applies only to the operation of vehicles on the highways. See MCL 257.601, which states that provisions of the MVC apply "exclusively to the operation of vehicles upon highways except where a different place is specifically referred to . . . ."

A. Statutory Authority

"(1) A driver of a motor vehicle who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful performance of his or her duty, directing the driver to bring his or her motor vehicle to a stop shall not willfully fail to obey that direction by increasing the speed of the motor vehicle, extinguishing the lights of the motor vehicle, or otherwise attempting to flee or elude the officer. This subsection does not apply unless the police or conservation officer giving the signal is in uniform and the officer's vehicle is identified as an official police or department of natural resources vehicle."

(2) Except as provided in subsection (3), (4), or (5), an individual who violates subsection (1) is guilty of fourth-degree fleeing and eluding, a felony[,] . . . .

(3) Except as provided in subsection (4) or (5), an individual who violates subsection (1) is guilty of third-degree fleeing and eluding, a felony[,] . . . if 1 or more of the following circumstances apply:

(a) The violation results in a collision or accident.

(b) A portion of the violation occurred in an area where the speed limit is 35 miles an hour or less, whether that speed limit is posted or imposed as a matter of law.

(c) The individual has a prior conviction for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

(4) Except as provided in subsection (5), an individual who violates subsection (1) is guilty of second-degree fleeing and eluding, a felony[,] . . . if 1 or more of the following circumstances apply:

(a) The violation results in serious injury[[1]] to an individual.

(b) The individual has 1 or more prior convictions for first-, second-, or third-degree fleeing and eluding, attempted first-, second-, or third-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

(c) The individual has any combination of 2 or more prior convictions for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

(5) If the violation results in the death of another individual, an individual who violates subsection (1) is guilty of first-degree fleeing and eluding, a felony[.]" MCL 257.602a(1)-(5). See also MCL 750.479a(1)-(5).[2]

B. Relevant Jury Instructions

- M Crim JI 13.6d addresses the elements of fourth-degree fleeing and eluding.
- M Crim JI 13.6c addresses the elements of third-degree fleeing and eluding.

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[1] MCL 750.479a(4)(a) requires the violation to result in serious impairment of a body function.

[2] Effective November 1, 2012, 2012 PA 60 amended MCL 750.479a to include vessels as well as motor vehicles in the fleeing and eluding statute. See the Michigan Judicial Institute's *Recreational Vehicles Benchbook* for information on fleeing and eluding as it relates to vessels.

- M Crim JI 13.6b addresses the elements of second-degree fleeing and eluding.
- M Crim JI 13.6a addresses the elements of first-degree fleeing and eluding.

C. Criminal Penalties

For **fourth-degree fleeing and eluding**, the penalties are as follows:

- imprisonment for not more than two years; or
- fine of not more than $500;[3] or
- both. MCL 257.602a(2).

For **third-degree fleeing and eluding**, the penalties are as follows:

- imprisonment for not more than five years; or
- fine of not more than $1,000;[4] or
- both. MCL 257.602a(3).

For **second-degree fleeing and eluding**, the penalties are as follows:

- imprisonment for not more than 10 years; or
- fine of not more than $5,000;[5] or
- both. MCL 257.602a(4).

For **first-degree fleeing and eluding**, the penalties are as follows:

- imprisonment for not more than 15 years; or
- fine of not more than $10,000;[6] or
- both. MCL 257.602a(5).

D. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this

[3] MCL 750.479a(2) provides for a fine of not more than $2,000.

[4] MCL 750.479a(3) provides for a fine of not more than $5,000.

[5] MCL 750.479a(4) provides for a fine of not more than $10,000.

[6] MCL 750.479a(5) provides for a fine of not more than $15,000.

offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- Six points. MCL 257.320a(1)(f). See Section 1.39 for more information on points.

- $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*v*).[7] See Section 1.40 for more information on driver responsibility fees.

- Following convictions of third- or fourth-degree fleeing and eluding, possible denial of license. See MCL 257.303(1)(c) (requiring license denial if a person's license is suspended, revoked, denied or canceled in any state); MCL 257.303(1)(g) (requiring license denial if a person has been convicted of, received a juvenile disposition for, or has been determined responsible for two or more moving violations). Following convictions of second- or first-degree fleeing and eluding, denial of license for at least one year. MCL 257.303(2)(d); MCL 257.303(4)(a)(*i*)-(*ii*). See Section 1.41 for more information on license denial.

- Following convictions of second- or first-degree fleeing and eluding, license revocation for at least one year. MCL 257.303(2)(d); MCL 257.303(2)(f); MCL 257.303(4)(a)(*i*)-(*ii*); MCL 750.479a(7)(a). See Section 1.42 for more information on license revocation.

- License revocation and denial also occur when a defendant has any combination of two or more convictions within seven years for fleeing and eluding and any of the motor vehicle felonies listed in MCL 257.303(2)(b). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

- Following convictions of fourth- or third-degree fleeing and eluding, license suspension for a period of one year. MCL 257.319(2)(e); MCL 750.479a(6)(a). See Section 1.43 for more information on license suspension.

[7]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

E. Issues

• Aiding and abetting

A passenger may be convicted of fleeing and eluding under an aiding and abetting theory. *People v Branch*, 202 Mich App 550, 551–552 (1993). In *Branch*, during a high-speed chase, the defendant threw full beer cans at a police car giving chase and instructed the driver. *Id.* at 551. The Court of Appeals held that the aiding and abetting statute, MCL 767.39, may be applied to passengers, and that the jury was properly instructed that a defendant must have intentionally assisted the driver to commit fleeing and eluding. *Branch*, 202 Mich App at 552.

• Causation

The statutory language, "results in," that appears in MCL 257.602a(5), requires only that a defendant's conduct was a factual cause of death; MCL 257.602a(5) does not require that a defendant's conduct be the proximate cause of death. *People v Wood*, 276 Mich App 669, 676 (2007). The Court explained that "[f]actual causation means just that: was defendant's criminal conduct a factual cause of the officer's death; or, but for defendant's fleeing and eluding, would the officer's death have occurred?" *Id.* In *Wood*, "[b]ecause the officer's death would not have occurred absent [the] defendant's fleeing and eluding, i.e., the police officer would not have lost control of his vehicle during the pursuit of the fleeing defendant, factual causation exist[ed]." *Id.*

• Conduct arising out of the same transaction

A person may be convicted under either MCL 257.602a(2)-(5) or MCL 750.479a(2)-(5) but not both, for conduct arising out of the same transaction. MCL 257.602a(6); MCL 750.479a(8). A person may be charged with and convicted of MCL 257.602a(5) or MCL 750.479a(5), for each death arising out of the same criminal transaction, and a court may impose consecutive sentences upon conviction. MCL 769.36(1)(a)-(b).

• Nature of the defendant's fleeing or eluding

The fleeing and eluding statutes are not limited to prohibiting only high-speed or long-distance "police chases." The Court of Appeals found sufficient evidence to bind over the defendant for trial where, after the police officer signaled for the defendant to stop, the defendant sped up slightly, made two turns, stopped the car, and attempted to flee on foot. *People v Grayer*, 235 Mich App 737, 742-744 (1999).[8] A defendant's intent to flee or elude a police officer may be inferred from his or her acceleration, turning off the vehicle's

headlights, or other similar actions after the officer signals the defendant to stop. *Id.* at 743-744. See also *People v Grayer (After Remand)*, 252 Mich App 349, 355–356 (2002) (holding that the evidence in this case was sufficient to support the defendant's conviction).

- **Required evidence of the officer's signal to stop**

Whether sufficient evidence exists to bind over a defendant for fleeing and eluding depends on "the type of signal given and the context in which it occurs[.]" *People v Green*, 260 Mich App 710, 718 (2004).[9] In *Green*, the Michigan Court of Appeals explained that the plain language of the fleeing and eluding statute requires a driver to stop when given a visual or audible signal by a police officer. *Id.* at 717. The officer's signal may be given by hand, voice, emergency light, or siren, but the Court emphasized that MCL 750.479a "does not require that this signal to the driver of a motor vehicle be given from within the officer's officially identified police vehicle." *Green*, 260 Mich App at 717. The Court further explained that the "fair and natural import" of the statutory language indicates that if the signal to stop is given by an officer away from that officer's vehicle, the statute requires that the officer be in uniform. *Id.* at 718. Similarly, "if the signal occurs by emergency light or siren, that signal must come from an officially identified police vehicle in order to hold a driver accountable for the offense of fleeing and eluding." *Id.*

F. Related Misdemeanor

Refusing to comply with a lawful order or direction of a police officer under MCL 257.602 is a separate misdemeanor offense. See MCL 257.901(1).

8.3 Failure to Use Due Care and Caution Causing Injury or Death to Emergency Response Personnel

A. Statutory Authority

"(1) Upon approaching and passing a stationary authorized emergency vehicle that is giving a visual signal by means of flashing, rotating, or oscillating red, blue, or white lights as permitted by [MCL 257.698], the driver of an approaching vehicle shall exhibit due care and caution, as required under the following:

[8] *Grayer* interpreted MCL 750.479a; however, this statute is substantially similar to MCL 257.602a.

[9] *Green* interpreted MCL 750.479a; however, this statute is substantially similar to MCL 257.602a.

> (a) On any public roadway with at least 2 adjacent lanes proceeding in the same direction of the stationary authorized emergency vehicle, the driver of the approaching vehicle shall proceed with caution and yield the right-of-way by moving into a lane at least 1 moving lane or 2 vehicle widths apart from the stationary authorized emergency vehicle, unless directed otherwise by a police officer. If movement to an adjacent lane or 2 vehicle widths apart is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic in parallel moving lanes, the driver of the approaching vehicle shall proceed as required in subdivision (b).
>
> (b) On any public roadway that does not have at least 2 adjacent lanes proceeding in the same direction as the stationary authorized emergency vehicle, or if the movement by the driver of the vehicle into an adjacent lane or 2 vehicle widths apart is not possible as described in subdivision (a), the approaching vehicle shall reduce and maintain a safe speed for weather, road conditions, and vehicular or pedestrian traffic and proceed with due care and caution, or as directed by a police officer.
>
> * * *

(3) A person who violates this section and causes injury to a police officer, firefighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle is guilty of a felony . . . .

(4) A person who violates this section and causes death to a police officer, firefighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle is guilty of a felony[.]" MCL 257.653a(1); MCL 257.653a(3)-(4).

B. Criminal Penalties

For causing injury to emergency response personnel, the penalties are as follows:

- imprisonment for not more than two years; or
- fine of not more than $1,000; or
- both. MCL 257.653a(3).

For causing death to emergency response personnel, the penalties are as follows:

- imprisonment for not more than 15 years; or
- fine of not more than $7,500; or
- both. MCL 257.653a(4).

C. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- Six points. MCL 257.320a(1)(b). See Section 1.39 for more information on points.
- $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*ii*).[10] See Section 1.40 for more information on driver responsibility fees.
- License revocation and denial for at least one year. MCL 257.303(2)(d); MCL 257.303(4)(a)(*i*)-(*ii*). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.
- License revocation and denial also occur when a defendant has any combination of two or more convictions within seven years for violation of MCL 257.653a(3)-(4) and any of the motor vehicle felonies listed at MCL 257.303(2)(b). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

D. Related Misdemeanor

A violation of MCL 257.653a that does not result in injury or death to emergency response personnel is a misdemeanor. MCL 257.653a(2).[11]

[10]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

8.4 Leaving the Scene of an Accident Resulting in Serious Impairment of a Body Function or Death

A. Statutory Authority

"(1) The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident upon public or private property that is open to travel by the public shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of [MCL 257.619 (providing required information and rendering reasonable assistance)] are fulfilled or immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of MCL 257.619(a)-(b)] if there is a reasonable and honest belief that remaining at the scene will result in further harm. The stop shall be made without obstructing traffic more than is necessary.

(2) Except as provided in subsection (3), if the individual violates subsection (1) and the accident results in serious impairment of a body function or death, the individual is guilty of a felony . . . .

(3) If the individual violates subsection (1) following an accident caused by that individual and the accident results in the death of another individual, the individual is guilty of a felony . . . ." MCL 257.617.

MCL 257.619[12] requires:

> "The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident with an individual or with another vehicle that is operated or attended by another individual shall do all of the following:
>
> > (a) Give his or her name and address, and the registration number of the vehicle he or she is operating, including the name and address of the owner, to a police officer, the individual struck, or the driver or occupants of the vehicle with which he or she has collided.
> >
> > (b) Exhibit his or her operator's or chauffeur's license to a police officer, individual struck, or the

[11] See Section 6.10 for more information on this offense.

[12] Violation of MCL 257.619 constitutes a misdemeanor offense. See MCL 257.901. See Section 5.2 for more information on this offense.

driver or occupants of the vehicle with which he or she has collided.

(c) Render to any individual injured in the accident reasonable assistance in securing medical aid or arrange for or provide transportation to any injured individual."

B. Relevant Jury Instructions

- M Crim JI 15.14 addresses the elements of leaving the scene of an accident resulting in serious impairment of a body function.
- M Crim JI 15.14a addresses the elements of leaving the scene of an accident causing death.

C. Criminal Penalties

If a defendant driver violates MCL 257.617(1) and the accident results in serious impairment of a body function or death, MCL 257.617(2) provides for the following penalties:

- imprisonment for not more than 5 years; or
- fine of not more than $5,000; or
- both.

If, after an accident caused by the defendant, the defendant driver violates MCL 257.617(1) and the accident results in another individual's death, MCL 257.617(3) provides for the following penalties:

- imprisonment for not more than 15 years; or
- fine of not more than $10,000; or
- both.

D. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/

OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- Six points. MCL 257.320a(1)(d). See Section 1.39 for more information on points.

- $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*iv*).[13] See Section 1.40 for more information on driver responsibility fees.

- License revocation and denial for at least one year. MCL 257.303(2)(d); MCL 257.303(4)(a)(*i*)-(*ii*). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

- License revocation and denial also occur when a defendant has any combination of two or more convictions within seven years for violation of MCL 257.617 and any of the motor vehicle felonies listed at MCL 257.303(2)(b). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

E. Issues

- **Aiding and abetting**

The Michigan Court of Appeals has recognized that "a passenger may be charged with aiding and abetting a driving offense." *People v Branch*, 202 Mich App 550, 552 (1993), citing *People v Hoaglin*, 262 Mich 162, 172-173 (1933). In *Branch*, the defendant was charged with aiding and abetting the principal in fleeing and eluding. *Branch*, 202 Mich App at 551. In *Hoaglin*, the defendant was charged with aiding and abetting the principal in failing to render assistance after an accident. *Hoaglin*, 262 Mich at 170. *Hoaglin* was decided on the basis of the former versions of MCL 257.617 and MCL 257.619. Further, the defendant in *Hoaglin* argued that because the principal was only found guilty of a misdemeanor, he could not be convicted of aiding and abetting. *Hoaglin*, 262 Mich at 172. The *Hoaglin* Court rejected that contention, and upheld the defendant's conviction. *Id.* at 172-173. Thus, while not directly on point, *Hoaglin* suggests that it is proper to convict a defendant of aiding and abetting in violation of MCL 257.617 and MCL 257.619.

- **Causation**

[13]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely phased out. See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

MCL 257.617(3) "requires the prosecution to establish that the accident was 'caused' by the accused[.]" *People v Feezel*, 486 Mich 184, 194 (2010). In order to show causation, the prosecution must prove both factual and proximate causation. *Id*. "Factual causation exists if a finder of fact determines that 'but for' defendant's conduct the result would not have occurred. . . . Proximate causation 'is a legal construct designed to prevent criminal liability from attaching when the result of the defendant's conduct is viewed as too remote or unnatural.'" *Id*. at 194-195, quoting *People v Schaefer*, 473 Mich 418, 436 (2005). Proximate cause is not established if there is an intervening cause that supersedes the defendant's conduct "'such that the causal link between the defendant's conduct and the victim's injury was broken[.]'" *Feezel*, 486 Mich at 195, quoting *Schaefer*, 473 Mich at 436-437. "Whether an intervening cause supersedes a defendant's conduct is a question of reasonable foreseeability." *Feezel*, 486 Mich at 195. A victim's ordinary negligence is not a superseding cause that severs proximate causation because ordinary negligence is reasonably foreseeable. *Id*. However, a victim's gross negligence or intentional misconduct is not reasonably foreseeable and is sufficient to sever proximate causation. *Id*. The fact that an accident victim was driving with a blood alcohol concentration of 0.054 grams per 100 milliliters of blood and had tetrahydrocannabinol (THC) in his blood stream was not an intervening cause that superseded the defendant's conduct such that the causal link between the defendant's conduct and the victim's injury was broken where "[t]here was no evidence that [the victim] was not properly driving within his marked lane, or that [the victim's] vehicle would not have safely passed [the] defendant if [the] defendant had not crossed the center line in front of [the victim], presenting a serious and unexpected hazard." *People v Bergman*, 312 Mich App 471, 486 (2015). "Thus, there was no evidence that [the victim] did anything that contributed to the accident in a way that would establish that he was negligent or grossly negligent and by his conduct was an intervening cause of the accident." *Id*. at 486 (holding that the trial court properly excluded evidence of the victim's intoxication during the defendant's trial for second-degree murder, OUIL causing death, and operating a vehicle with a suspended license causing death because the evidence was not relevant to causation under the facts of the case).

- Consecutive sentencing

A person may be charged with and convicted of MCL 257.617 for each death arising out of the same criminal transaction, and a court may impose consecutive sentences upon conviction. MCL 769.36(1)(a).

- **Intent to injure and knowledge not required**

Intent to injure is not a necessary element of failing to stop and identify at the scene of a personal injury accident. *People v Strickland (Ronald)*, 79 Mich App 454, 456 (1977). Moreover, the driver need not know or have reason to believe that an accident resulted in physical injury, death, or property damage. See 2005 PA 3 (amending MCL 257.617, MCL 257.617a, MCL 257.618, and MCL 257.619 to remove the requirement that a driver know or have reason to believe that an accident resulted in physical injury, death, or property damage).

- **Meaning of** *accident*

Where the term *accident* appears in criminal statutes that forbid leaving the scene of a personal injury accident, it includes intentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

- **Right against self-incrimination**

A defendant's Fifth Amendment right against self-incrimination is not implicated by requiring the defendant to comply with a statutory mandate to stop and disclose neutral information at the scene of a serious accident. *People v Goodin*, 257 Mich App 425, 432 (2003). The Michigan Court of Appeals held that the disclosures required of drivers involved in serious accidents do not create a significant risk of self-incrimination. *Id.* at 431. According to the *Goodin* Court:

> "[T]he disclosures of one's name, address, vehicle-registration number, and driver's license required by MCL 257.617 and MCL 257.619 are neutral and do not implicate a driver in criminal conduct. Moreover, MCL 257.617 is not directed at a 'highly selective group' or a group 'inherently suspect of criminal activities,' but rather is aimed at any driver involved in an accident that results in serious personal injuries or death." *Goodin*, 257 Mich App at 430, citing *California v Byers*, 402 US 424 (1971).

- **Single-vehicle accidents**

The requirements of MCL 257.617 apply to single-vehicle accidents. *People v Noble*, 238 Mich App 647, 659 (1999) (stating that "[b]ecause the statutory language does not specifically limit the provisions of [MCL 257.617] to accidents involving two vehicles or a vehicle and a pedestrian, we conclude that the Legislature did not intend to so limit those provisions.")

- **Statutory meaning of** *involved in*

To be *involved in* an accident means to be implicated in an accident or connected with an accident in a logical or substantial manner, and the defendant need not have caused the accident in order to have been *involved in* the accident. *People v Oliver*, 242 Mich App 92, 97-98 (2000).

F. Related Misdemeanors

Leaving the scene of an accident resulting in personal injury, but not serious or aggravated personal injury, is a separate misdemeanor offense. MCL 257.617a.[14]

Leaving the scene of an accident resulting in damage to an attended vehicle is also a separate misdemeanor offense. MCL 257.618.[15]

8.5 Moving Violation Causing Death in Work Zone or School Bus Zone

A. Statutory Authority

"A person who commits a moving violation in a work zone or school bus zone for which not fewer than 3 points are assigned under [MCL 257.320a] and as a result causes death to another person in the work zone or school bus zone is guilty of a felony . . . ." MCL 257.601b(3).

B. Criminal Penalties

MCL 257.601b(3) provides for the following penalties:

- imprisonment for not more than 15 years; or
- fine of not more than $7,500; or
- both.

C. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this offense. The Offense Code Index for Traffic Violations published by

[14] See Section 5.6 for more information on this offense.

[15] See Section 5.6 for more information on this offense.

the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- Six points. MCL 257.320a(1)(b). See Section 1.39 for more information on points.

- $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*ii*).[16] See Section 1.40 for more information on driver responsibility fees.

- License revocation and denial for at least one year. MCL 257.303(2)(d); MCL 257.303(4)(a)(*i*)-(*ii*). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

- License revocation and denial also occur when a defendant has any combination of two or more convictions within seven years for violation of MCL 257.601b(3) and any of the motor vehicle felonies listed at MCL 257.303(2)(b). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

D. Related Misdemeanor

Committing a moving violation for which not fewer than three points are assigned under MCL 257.320a and which causes injury to another person in a work zone or a school bus zone is a misdemeanor. MCL 257.601b(2).[17]

8.6 Moving Violation Causing Death of Operator of Implement of Husbandry

A. Statutory Authority

"A person who commits a moving violation that has criminal penalties and as a result causes death to a person operating an implement of husbandry on a highway in compliance with this act is guilty of a felony punishable by imprisonment for not more than

[16]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

[17] See Section 6.13 for more information on this offense.

15 years or a fine of not more than $7,500.00, or both." MCL 257.601c(2).

B. Criminal Penalties

MCL 257.601c(2) provides for the following penalties:

- imprisonment for not more than 15 years; or
- fine of not more than $7,500; or
- both.

C. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- Six points. MCL 257.320a(1)(b). See Section 1.39 for more information on points.
- $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*ii*).[18] See Section 1.40 for more information on driver responsibility fees.
- License revocation and denial for at least one year. MCL 257.303(2)(d); MCL 257.303(4)(a)(*i*)-(*ii*). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.
- License revocation and denial also occur when a defendant has any combination of two or more convictions within seven years for violation of MCL 257.601c(2) and any of the motor vehicle felonies listed at MCL 257.303(2)(b). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

[18]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely phased out. See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

D. Related Misdemeanor

Committing a moving violation that has criminal penalties and causes injury to a person operating an implement of husbandry on a highway is a misdemeanor. MCL 257.601c(1).[19]

8.7 Operating a Motor Vehicle While Unlicensed or With Suspended/Revoked License[20]

A. Statutory Authority

"(1) A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified as provided in [MCL 257.212[21]] of that suspension or revocation, whose application for license has been denied, or who has never applied for a license, shall not operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state.

* * *

(4) A person who operates a motor vehicle in violation of subsection (1) and who, by operation of that motor vehicle, causes the death of another person is guilty of a felony[.] . . . This subsection does not apply to a person whose operator's or chauffeur's license was suspended because that person failed to answer a citation or comply with an order or judgment pursuant to [MCL 257.321a].

(5) A person who operates a motor vehicle in violation of subsection (1) and who, by operation of that motor vehicle, causes the serious impairment of a body function of another person is guilty of a felony[.] . . . This subsection does not apply to a person whose operator's or chauffeur's license was suspended because that person failed to answer a citation or comply with an order or judgment pursuant to [MCL 257.321a]." MCL 257.904(1); MCL 257.904(4)-(5).

B. Criminal Penalties

If the operation of the motor vehicle results in serious impairment of a body function, the crime is punishable by:

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[19] See Section 6.14 for more information on this offense.

[20] The nonmoving felony offense contemplated by MCL 257.904 is discussed in Section 7.2.

[21] MCL 257.212 covers methods by which the secretary of state may give notice.

- imprisonment for not more than 5 years,
- a fine of not less than $1,000.00 or more than $5,000.00,
- or both. MCL 257.904(5).

If the operation of the motor vehicle results in the death of another person, the crime is punishable by:

- imprisonment for not more than 15 years,
- a fine of not less than $2,500.00 or more than $10,000.00,
- or both. MCL 257.904(4).

C. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- While MCL 257.320a does not specifically mention MCL 257.904 in its list of offenses requiring an assessment of points, this offense will necessarily be committed in a fashion that constitutes "a felony resulting from the operation of a motor vehicle," for which six points are assessed. MCL 257.320a(1)(a). See Section 1.39 for more information on points.
- $500 driver responsibility fee each year for two consecutive years.[22] MCL 257.732a(2)(b)(*iii*).
- License revocation and denial for at least one year. MCL 257.303(2)(d); MCL 257.303(4)(a)(*i*)-(*ii*). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.
- License revocation and denial also occur when a defendant has any combination of two or more convictions within seven years for violation of MCL 257.904(4)-(5) and any of

[22]Beginning in 2015, the amount of the driver responsibility fee imposed is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

the motor vehicle felonies listed at MCL 257.303(2)(b). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

- Registration denial is required under certain circumstances. See MCL 257.219(1)(c)-(d). See Section 1.48 for more information on registration denial.

D. Issues

- **Applicability of MCL 257.904**

MCL 257.904 "does not apply to a person who operates a vehicle solely for the purpose of protecting human life or property if the life or property is endangered and summoning prompt aid is essential." MCL 257.905(15).

"For purposes of [MCL 257.904], a person who never applied for a license includes a person who applied for a license, was denied, and never applied again." MCL 257.904(19). See also *People v Acosta-Baustista*, 296 Mich App 404, 408 (2012) (holding that MCL 257.904(1) "applies to persons who never apply for a license or who obtain one but subsequently have the license suspended or revoked because of improper driving[]").

MCL 257.904(1) does not apply to "a person driving on a valid but recently expired license[.]" *Acosta-Baustista*, 296 Mich App at 409. "[A] person with a valid license who has simply let it lapse is a person adjudged fit to drive who has merely failed to keep up the related paperwork." *Id.* at 408.

MCL 257.904 does not prohibit attempts. *People v Burton*, 252 Mich App 130, 138 (2002). In *Burton*, the Court noted that if "the Legislature intended to include the attempt to commit DWLS within the conduct proscribed by the version of MCL 257.904 applicable to the case at hand, it could have written subsection 1 of the statute to read, 'A person whose operator's . . . license . . . has been suspended . . . and who has been notified . . . of that suspension . . . shall not operate [or attempt to operate] a motor vehicle upon a highway or other place open to the general public . . . .' That it chose not to do so will be considered to be a purposeful, not an inadvertent, act."[23] *Burton*, 252 Mich App at 138.

- **Causation**

The causation element of MCL 257.625(4), a provision that is worded similarly to MCL 257.904(4)-(5), requires only that a

[23]For more information on attempts, see Section 1.2.

defendant's operation of a motor vehicle—not a defendant's operation of a vehicle as affected by the defendant's state of intoxication—be a factual and proximate cause of the harm resulting from the statutory violation. *People v Schaefer*, 473 Mich 418, 446 (2005). The language of MCL 257.625(4) is almost identical[24] to the language of MCL 257.904(4)-(5). Both statutes require a finding that the operator "by operation of that motor vehicle, causes the death [or 'the serious impairment of a body function[,]' in the case of MCL 257.904(5),] of another person" in order for the operator to be guilty of the specified felony. MCL 257.625(4); MCL 257.904(4)-(5). Thus, it seems clear that the prosecution need not demonstrate any causal link between a defendant's revoked or suspended license and the subsequent serious impairment of a body function or death in order to prove a violation of MCL 257.904(4) or (5).

The *Schaefer* Court explained:

> "[MCL 257.625(4)] plainly requires that the victim's death be caused by the defendant's *operation* of the vehicle, not the defendant's *intoxicated* operation. Thus, the manner in which the defendant's intoxication affected his or her operation of the vehicle is unrelated to the causation element of the crime. The defendant's status as 'intoxicated' is a separate element of the offense used to identify the class of persons subject to liability under §625(4)." *Schaefer*, 473 Mich at 433.

- **Double Jeopardy**

A defendant's multiple convictions of second-degree murder, OUIL causing death, and driving with a suspended license causing death do not violate the double jeopardy clauses of the United States and Michigan constitutions. *People v Bergman*, 312 Mich App 471, 492 (2015). "The statutes governing second-degree murder and driving with a suspended license causing death enforce distinct societal norms, and their respective elements of malice and lack of a valid operator's license are distinctive to each[;] . . . [s]imilarly, the OUIL and suspended license statutes enforce distinct societal norms, and their respective elements of intoxication while driving and lack of a

[24] MCL 257.625(4) provides in pertinent part: "A person, whether licensed or not, who operates a motor vehicle in violation of subsection (1), (3), or (8) and by the operation of that motor vehicle causes the death of another person is guilty of a crime[.]" MCL 257.904(4) provides in pertinent part: "A person who operates a motor vehicle in violation of subsection (1) and who, by operation of that motor vehicle, causes the death of another person is guilty of a felony[.]" MCL 257.904(5) provides in pertinent part: "A person who operates a motor vehicle in violation of subsection (1) and who, by operation of that motor vehicle, causes the serious impairment of a body function of another person is guilty of a felony[.]"

valid operator's license are distinctive to each." *Id.* at 492 (citations omitted).

- **Immigration Status of the Defendant**

"[T]he plain language of [MCL 257.904] and [the Convention on the Regulation of Inter-American Automotive Traffic 1943] support a finding that the reasoning underlying MCL 257.904(1) . . . is not affected by the motor vehicle operator's immigration status and will remain the same regardless of whether the motor vehicle operator is driving pursuant to a license from Michigan, a foreign country that is a signatory to the convention, or one of the other 49 states." *Acosta-Baustista*, 296 Mich App at 411.

- **Proof of Notice**

Admission of a secretary of state certificate of mailing to prove that the defendant was notified of the revocation or suspension of his or her license does not violate the defendant's constitutional right of confrontation because the certificate of mailing is not testimonial in nature. *People v Nunley*, 491 Mich 686, 689 (2012). The certificate of mailing is not testimonial because it "is necessarily generated before the commission of any crime, [and thus,] is a function of the legislatively authorized administrative role of the [secretary of state] independent from any investigatory or prosecutorial purpose." *Id.* at 689-690. Thus, a "certificate of mailing may be admitted into evidence absent accompanying witness testimony without violating the Confrontation Clause." *Id.* at 690.

E. Related Misdemeanor

"A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified as provided in [MCL 257.212[25]] of that suspension or revocation, whose application for license has been denied, or who has never applied for a license, shall not operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state." MCL 257.904(1). Violation of MCL 257.904(1), without causing serious impairment of a body function or death, is a misdemeanor. MCL 257.904(3).[26]

[25] MCL 257.212 covers methods by which the secretary of state may give notice.

[26] See Section 6.17 for more information on this misdemeanor offense.

8.8 Reckless Driving Causing Death

A. Statutory Authority

"(1) A person who violates this section is guilty of reckless driving punishable as provided in this section.

(2) Except as otherwise provided in this section, a person who operates a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public, including, but not limited to, an area designated for the parking of motor vehicles, in willful or wanton disregard for the safety of persons or property is guilty of a misdemeanor[27] . . . .

* * *

(4) Beginning October 31, 2010, a person who operates a vehicle in violation of [MCL 257.626](2) and by the operation of that vehicle causes the death of another person is guilty of a felony[.]" MCL 257.626.

B. Relevant Jury Instruction

- M Crim JI 15.16 addresses the elements of reckless driving causing death.[28]

C. Criminal Penalties

For a violation of reckless driving causing death, the following penalties apply:

- imprisonment for not more than 15 years; or
- fine of not less than $2,500 or more than $10,000; or
- both. MCL 257.626(4).

D. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and

[27] See Section 6.20 for a discussion of this misdemeanor offense.

[28] The instruction should be used only for acts committed on or after October 31, 2010.

applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- Six points. See MCL 257.320a(1)(e). See Section 1.39 for more information on points.

- $1,000 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*ii*).[29] See Section 1.40 for more information on driver responsibility fees.

- License revocation and denial for at least one year. MCL 257.303(2)(d); MCL 257.303(4)(a)(*i*)-(*ii*). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

- Possible vehicle immobilization for not more than 180 days. MCL 257.904d(1)(a). Vehicle immobilization must be ordered if the vehicle is not ordered forfeited. MCL 257.626(4). See Section 1.45 for more information on vehicle immobilization.

- Possible forfeiture of the vehicle. MCL 257.625n(1); MCL 257.626(4). See Section 1.47 for more information on forfeiture.

E. Issues

MCL 257.626(5) provides that "[i]n a prosecution under [MCL 257.626(4)], the jury shall not be instructed regarding the crime of moving violation causing death." While "MCL 768.32(1) sets forth the general rule that a defendant is entitled to have the jury instructed on necessarily included lesser offenses[,] MCL 257.626(5) . . . sets forth a clear exception to this general rule[.]" *People v Jones (Thabo)*, 497 Mich 155, 168 (2014).[30] The Court found that "MCL 257.626(5) is not a matter of practice and procedure, and, consequently [is not a] violation of separation of powers[.]" *Jones (Thabo)*, 497 Mich at 169. (concluding that creation of a substantive exception to the rule generally allowing instruction on necessarily

[29]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

[30] The *Jones (Thabo)* Court "[a]ssum[ed], based on the record concession, that moving violation causing death . . . constitutes a necessarily included lesser offense of reckless driving causing death," and noted that even if it is a cognate lesser offense, the result would be the same because "MCL 768.32(1) does not permit cognate lesser offense instructions." *Jones (Thabo)*, 497 Mich at 161-162 n 16, 167-168. For more information on jury instructions, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 10.

included lesser offenses was a permissible exercise of legislative authority).

8.9 Reckless Driving Causing Serious Impairment of a Body Function

A. Statutory Authority

"(1) A person who violates this section is guilty of reckless driving punishable as provided in this section.

(2) Except as otherwise provided in this section, a person who operates a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public, including, but not limited to, an area designated for the parking of motor vehicles, in willful or wanton disregard for the safety of persons or property is guilty of a misdemeanor[31] . . . .

(3) Beginning October 31, 2010, a person who operates a vehicle in violation of [MCL 257.626](2) and by the operation of that vehicle causes serious impairment of a body function to another person is guilty of a felony[.]" MCL 257.626(1)-(3).

B. Relevant Jury Instruction

- M Crim JI 15.17 addresses the elements of reckless driving causing serious impairment of a body function.[32]

C. Criminal Penalties

For a violation of reckless driving causing serious impairment of a body function, the following penalties apply:

- imprisonment for not more than 5 years; or
- fine of not less than $1,000 or more than $5,000; or
- both. MCL 257.626(3).

D. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this

[31] See Section 6.20 for a discussion of this misdemeanor offense.

[32] The instruction should be used only for acts committed on or after October 31, 2010.

offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- Six points. MCL 257.320a(1)(e). See Section 1.39 for more information on points.

- $1,000 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*ii*).[33] See Section 1.40 for more information on driver responsibility fees.

- License revocation and denial for at least one year. MCL 257.303(2)(d); MCL 257.303(4)(a)(*i*)-(*ii*). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

- Possible vehicle immobilization for not more than 180 days. MCL 257.904d(1)(a). Vehicle immobilization must be ordered if the vehicle is not ordered forfeited. MCL 257.626(3). See Section 1.45 for more information on vehicle immobilization.

- Possible forfeiture of the vehicle. MCL 257.625n(1); MCL 257.626(3). See Section 1.47 for more information on forfeiture.

E. Related Misdemeanor

Violation of MCL 257.626(2) (reckless driving that does not cause serious impairment of a body function) is a misdemeanor.[34]

Part B—MPC Offenses

[33]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

[34] See Section 6.20 for a discussion of this misdemeanor offense.

8.10 Malicious Destruction of Trees, Shrubs, Plants, or Soil with a Motor Vehicle

A. Statutory Authority

"A person who willfully and maliciously, or wantonly and without cause, cuts down, destroys, or injures any tree, shrub, grass, turf, plants, crops, or soil of another that is standing, growing, or located on the land of another is guilty of a crime as follows:

* * *

(c) If any of the following apply, the person is guilty of a felony[:]

(*i*) The value of the trees, shrubs, grass, turf, plants, crops, or soil cut down, destroyed, or injured is $1,000.00 or more but less than $20,000.00.

(*ii*) The person violates [MCL 750.382(1)(b)(*i*) (value of property is $200 or more but less than $1,000)] and has 1 or more prior convictions for committing or attempting to commit an offense under [MCL 750.382]. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of [MCL 750.382(1)(a) (value of property is less than $200) or MCL 750.382(1)(b)(*ii*) (violation of MCL 750.382(1)(a) with one prior conviction)].

(d) If any of the following apply, the person is guilty of a felony[:]

(*i*) The value of the trees, shrubs, grass, turf, plants, crops, or soil cut down, destroyed, or injured is $20,000.00 or more.

(*ii*) The person violates [MCL 750.382(1)(c)(*i*) (value of property is $1,000 or more but less than $20,000)] and has 2 or more prior convictions for committing or attempting to commit an offense under [MCL 750.382]. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of [MCL 750.382(1)(a) (value of property is less than $200) or MCL 750.382(1)(b)(*ii*) (violation of MCL 750.382(1)(a) with one prior conviction)]." MCL 750.382(1).

B. Criminal Penalties

A violation of MCL 750.382(1)(c) is a felony punishable as follows:

- imprisonment for not more than 5 years;
- fine of not more than $10,000 or three times the value of the trees, shrubs, grass, turf, plants, crops, or soil, whichever is greater; or
- both.

A violation of MCL 750.382(1)(d) is a felony punishable as follows:

- imprisonment for not more than 10 years;
- fine of not more than $15,000 or three times the value of the trees, shrubs, grass, turf, plants, crops, or soil, whichever is greater; or
- both.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf.[35] See Section 1.38 for information on abstracting procedures.

- While points are not assessed on the basis of this offense alone, it is likely the offense will be committed in a fashion that constitutes "a felony resulting from the operation of a motor vehicle," for which six points are assessed. MCL 257.320a(1)(a). See Section 1.39 for more information on points.
- While a driver responsibility fee is not imposed on the basis of this offense alone, it is likely the offense will be committed in a fashion that constitutes "a felony resulting from the operation of a motor vehicle," for which a $1,000 driver responsibility fee is assessed for two consecutive

[35] Please note that this offense may not yet appear in the Offense Code Index for Traffic Violations. The Department of State is in the process of adding it.

years. MCL 257.732a(2)(a)(*i*).[36] See Section 1.40 for more information on driver responsibility fees.

- Possible denial of license. See MCL 257.303(1)(c) (requiring license denial if a person's license is suspended, revoked, denied or canceled in any state); MCL 257.303(1)(g) (requiring license denial if a person has been convicted of, received a juvenile disposition for, or has been determined responsible for two or more moving violations). See Section 1.41 for more information on license denial.

- License suspension for 90 days. MCL 257.319(3)(c). See Section 1.43 for more information on license suspension.

- License revocation and denial also occur when a defendant has any combination of two or more convictions within seven years for violation of MCL 257.904(4)-(5) and any of the motor vehicle felonies listed at MCL 257.303(2)(b). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

8.11 Manslaughter with a Motor Vehicle

A. Statutory Authority

"Manslaughter—Any person who shall commit the crime of manslaughter shall be guilty of a felony[.]" MCL 750.321.

B. Relevant Jury Instructions

- M Crim JI 16.8 addresses the elements of voluntary manslaughter.

- M Crim JI 16.10 addresses the elements of involuntary manslaughter.

C. Criminal Penalties

A violation of MCL 750.321 is a felony punishable by:

- imprisonment for not more than 15 years;

- fine of not more than $7,500; or

[36] Beginning in 2015, the amount of the driver responsibility fee imposed is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

- both. MCL 750.321.

"A person may be charged with and convicted of [MCL 750.321, where death results from the operation of a vehicle,] for each death arising out of the same criminal transaction, and the court may order the terms of imprisonment to be served consecutively to each other[.]" MCL 769.36(1)(b).

D. Sanctions

Only applicable sanctions are discussed; accordingly, if a particular sanction is omitted from this section it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- Six points. MCL 257.320a(1)(a). See Section 1.39 for more information on points.

- $1,000 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*i*).[37] See Section 1.40 for more information on driver responsibility fees.

- License revocation and denial for at least one year. MCL 257.303(2)(e); MCL 257.303(4)(a)(*i*)-(*ii*). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

- License revocation and denial also occur when a defendant has any combination of two or more convictions within seven years for manslaughter and any of the motor vehicle felonies listed in MCL 257.303(2)(b). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

E. Issues

"The manslaughter statute, MCL 750.321, encompasses two types of common-law manslaughter: voluntary and involuntary." *In re Nale Estate*, 290 Mich App 704, 708 (2010). "Although the punishment for

[37] Beginning in 2015, the amount of the driver responsibility fee imposed is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C)for more specific information related to the phase out of driver responsibility fees.

manslaughter is defined by statute, the common law defines the elements of voluntary and involuntary manslaughter." *Id*.

- "[V]oluntary manslaughter [is] an intentional killing committed under the influence of passion or hot blood produced by adequate provocation and before a reasonable time has passed for the blood to cool." *In re Nale Estate*, 290 Mich App at 708, citing *People v Mendoza*, 468 Mich 527, 534-535 (2003). Accordingly, voluntary manslaughter is "specifically designated [as] an 'intentional' killing." *In re Nale Estate*, 290 Mich App at 709.

- "[I]nvoluntary manslaughter [is] the killing of another without malice and unintentionally, but in doing some unlawful act not amounting to a felony nor naturally tending to cause death or great bodily harm, or in negligently doing some act lawful in itself, or by the negligent omission to perform a legal duty." *In re Nale Estate*, 290 Mich App at 709 (citations and quotations omitted).

A defendant may be convicted of involuntary manslaughter, MCL 750.321, if his or her conduct was "a" cause of death (not "the" cause of death). *People v Tims*, 449 Mich 83, 96 (1995).

8.12 Unlawfully Driving Away an Automobile

A. Statutory Authority

"Taking possession of and driving away a motor vehicle—Any person who shall, wilfully and without authority, take possession of and drive or take away, and any person who shall assist in or be a party to such taking possession, driving or taking away of any motor vehicle, belonging to another, shall be guilty of a felony[.]" MCL 750.413.

B. Relevant Jury Instructions

- M Crim JI 24.1 addresses the elements of unlawfully driving away an automobile.

- M Crim JI 24.4 addresses the distinction between unlawfully driving away an automobile and the misdemeanor offense of joyriding, which is addressed in Section 6.22.

C. Criminal Penalties

A person guilty of unlawfully driving away an automobile is punishable as follows:

- imprisonment for not more than 5 years. MCL 750.413.

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing certain snowmobile offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for information on abstracting procedures.

- While MCL 257.320a does not specifically mention MCL 750.413 in its list of offenses requiring an assessment of points, it is likely the offense will be committed in a fashion that constitutes "a felony resulting from the operation of a motor vehicle," for which six points are assessed. MCL 257.320a(1)(a). See Section 1.39 for more information on points.

- While a driver responsibility fee is not imposed on the basis of this offense alone, it is likely that the offense will be committed in a fashion that constitutes "a felony resulting from the operation of a motor vehicle," for which a $1,000 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*i*).[38] See Section 1.40 for more information on driver responsibility fees.

- Possible denial of license. See MCL 257.303(1)(c) (requiring license denial if a person's license is suspended, revoked, denied or canceled in any state); MCL 257.303(1)(g) (requiring license denial if a person has been convicted of, received a juvenile disposition for, or has been determined responsible for two or more moving violations). See Section 1.41 for more information on license denial.

- License suspension for a period of one year. MCL 257.319(2)(b). See Section 1.43 for more information on license suspension.

[38] Beginning in 2015, the amount of the driver responsibility fee imposed is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

- License revocation and denial also occur when a defendant has any combination of two or more convictions within seven years for violation of MCL 257.904(4)-(5) and any of the motor vehicle felonies listed at MCL 257.303(2)(b). See Section 1.42 for more information on license revocation and Section 1.41 for more information on license denial.

E. Issues

- **Related Crime of Unlawful Use of an Automobile Without Intent to Steal (Joyriding)**

The difference between the felony offense of unlawfully driving away an automobile (UDAA), MCL 750.413, and the misdemeanor offense of using a motor vehicle without authority but without intent to steal, MCL 750.414, is that "'UDAA (joyriding) requires the defendant to take possession of the motor vehicle without the owner's permission, while the misdemeanor offense of unlawful use of a motor vehicle is committed when an individual, who has been given lawful possession[[39]] of a motor vehicle, uses it beyond the authority which has been granted to him [or her] by the owner.'" *Landon v Titan Ins Co*, 251 Mich App 633, 644-645 (2002), quoting *People v Hayward*, 127 Mich App 50, 61 (1983) (emphasis added in original). See also M Crim JI 24.4 for more information on the distinction between unlawfully driving away an automobile and unlawful use of an automobile without intent to steal (joyriding).

- **UDAA Elements**

A defendant must take possession of the motor vehicle without the owner's permission in order to be guilty of UDAA. *Landon*, 251 Mich App at 644. However, [t]he unlawful taking and driving away of a motor vehicle does not require an intent to steal, that is, to permanently deprive the owner of his [or her] property." *Id.* at 640. "While the offense requires the specific intent to take possession of the vehicle unlawfully, it does not require an intent to steal the vehicle; the offense punishes conduct that does not rise to the level of larceny because an intent to permanently deprive the owner of the property is lacking." *Id.* A completed larceny is not an element of UDAA. *People v Sherman (Shaquille)*, 497 Mich 1025, 1025 (2015). See also *People v Cain*, 495 Mich 874, 874 (2013) (holding that "[a] completed larceny is not an element of UDAA because the offense does not require felonious intent, only movement of the vehicle without the owner's consent[]") (internal quotations omitted).

[39] "'Lawful possession' is not an element of the offense of unlawful use of an automobile." *People v Crosby*, 82 Mich App 1, 3 (1978). "It is just that 'unlawful possession' does not have to be shown to support a conviction for unlawful use of an automobile." *Id.*

"UDAA merely requires driving or taking away a motor vehicle without the owner's consent." *Id.*

Chapter 9: Section 625 Offenses

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9.1 Scope Note

This chapter outlines the various criminal offenses listed in MCL 257.625 of the Michigan Vehicle Code (MVC), as well as other related offenses. The penalties and sanctions for each offense are included in the text below where applicable, and a table summarizing the information presented can be found at http://www.michigan.gov/documents/CRIMINAL_20020_7.pdf.

9.2 Special Procedures for Section 625 Offenses

A. Warrantless Arrest

"A peace officer may arrest a person without a warrant under either of the following circumstances:

> (a) The peace officer has reasonable cause to believe the person was, at the time of an accident in [Michigan], the operator of a vehicle involved in the accident and was operating the vehicle in violation of [MCL 257.625] or a local ordinance substantially corresponding to [MCL 257.625].
>
> (b) The person is found in the driver's seat of a vehicle parked or stopped on a highway or street within [Michigan] if any part of the vehicle intrudes into the roadway and the peace officer has reasonable cause to believe the person was operating the vehicle in violation of [MCL 257.625] or a local ordinance substantially corresponding to [MCL 257.625]." MCL 257.625a(1).

B. Arraignment

"A person arrested for a misdemeanor violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), MCL 257.625(7), or MCL 257.625(8)] or [MCL 257.625m] or a local ordinance substantially corresponding to [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), or MCL 257.625(8)] or [MCL 257.625m] shall be arraigned on the citation, complaint, or warrant not more than 14 days after the arrest for the violation or, if an arrest warrant is issued or reissued, not more than 14 days after the issued or reissued arrest warrant is served, whichever is later." MCL 257.625b(1). "The court shall not dismiss a case or impose any other sanction for a failure to comply with this time limit." *Id*. "The time limit does not apply to a violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(7), or MCL 257.625(8)] or [MCL 257.625m] punishable as a felony or a violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), MCL 257.625(7), or MCL

257.625(8)] or [MCL 257.625m] joined with a felony charge." MCL 257.625b(1).

C. Pretrial Conference

"The court shall schedule a pretrial conference between the prosecuting attorney, the defendant, and the defendant's attorney in each case in which the defendant is charged with a misdemeanor violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), MCL 257.625(7), or MCL 257.625(8)] or [MCL 257.625m] or a local ordinance substantially corresponding to [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), or MCL 257.625(8)] or [MCL 257.625m]." MCL 257.625b(2).

"The pretrial conference shall be held not more than 35 days after the person's arrest for the violation or, if an arrest warrant is issued or reissued, not more than 35 days after the issued or reissued arrest warrant is served, whichever is later." MCL 257.625b(2).

"If the court has only 1 judge who sits in more than 1 location in that district, the pretrial conference shall be held not more than 42 days after the person's arrest for the violation or, if an arrest warrant is issued or reissued, not more than 42 days after the date the issued or reissued arrest warrant is served, whichever is later." MCL 257.625b(2).

"The court shall not dismiss a case or impose any other sanction for a failure to comply with the applicable time limit." MCL 257.625b(2).

"The 35- and 42-day limits do not apply to a violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(7), or MCL 257.625(8)] or [MCL 257.625m] punishable as a felony or a violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), MCL 257.625(7), MCL 257.625(8)] or [MCL 257.625m] joined with a felony charge."[1] MCL 257.625b(2).

"The court shall order the defendant to attend the pretrial conference and may accept a plea by the defendant at the conclusion of the pretrial conference." MCL 257.625b(2).

"The court may adjourn the pretrial conference upon the motion of a party for good cause shown." MCL 257.625b(2). However, "[n]ot more than 1 adjournment shall be granted to a party, and the length of an adjournment shall not exceed 14 days." MCL 257.625b(2).

[1] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 8, for information on felony pretrial conferences.

D. Plea Provision in Section 625(16)

"If a person is charged with a violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(4), MCL 257.625(5), MCL 257.625(7), or MCL 257.625(8)] or [MCL 257.625m], the court shall not permit the defendant to enter a plea of guilty or nolo contendere to a charge of violating [MCL 257.625(6)[2]] in exchange for dismissal of the original charge. This subsection does not prohibit the court from dismissing the charge upon the prosecuting attorney's motion." MCL 257.625(16). See also *People v Bulger*, 291 Mich App 1, 6 (2010), which states that "the Legislature differentiated the zero-tolerance provision from the crimes of operating while intoxicated or operating while visibly impaired by prohibiting a plea of guilty or nolo contendere to a zero-tolerance charge in exchange for dropping either of the more serious charges."

E. Advice to the Accused Before Accepting Plea

"Before accepting a plea of guilty or nolo contendere under [MCL 257.625] or a local ordinance substantially corresponding to [MCL 257.625(1), MCL 257.625(2), MCL 257.625(3), MCL 257.625(6), or MCL 257.625(8)], the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation and shall advise the defendant that the maximum possible license sanctions that may be imposed will be based upon the master driving record maintained by the secretary of state under [MCL 257.204a]." MCL 257.625b(4).

F. Final Adjudication

"Except for delay attributable to the unavailability of the defendant, a witness, or material evidence or due to an interlocutory appeal or exceptional circumstances, but not a delay caused by docket congestion, the court shall finally adjudicate, by a plea of guilty or nolo contendere, entry of a verdict, or other final disposition, a case in which the defendant is charged with a misdemeanor violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), MCL 257.625(7), or MCL 257.625(8)] or [MCL 257.625m] or a local ordinance substantially corresponding to [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), or MCL 257.625(8)] or [MCL 257.625m], within 77 days after the person is arrested for the violation or, if an arrest warrant is issued or reissued, not more than 77 days after the date the issued or reissued arrest warrant is served, whichever is later." MCL

[2] MCL 257.625(6) is a "zero-tolerance provision," which prohibits a person who is under 21 years of age from operating a motor vehicle with any bodily alcohol content. See Section 9.9 for more information on this offense.

257.625b(3)."The court shall not dismiss a case or impose any other sanction for a failure to comply with this time limit." *Id*.

"The 77-day time limit does not apply to a violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(7), or MCL 257.625(8)] or [MCL 257.625m] punishable as a felony or a violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), MCL 257.625(7), or MCL 257.625(8)] or [MCL 257.625m] joined with a felony charge." MCL 257.625b(3).

G. Order Screening and Assessment for Rehabilitative Services Before Imposing Sentence

"Before imposing sentence for a violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(4), MCL 257.625(5), MCL 257.625(6), MCL 257.625(7), or MCL 257.625(8)] or a local ordinance substantially corresponding to [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), or MCL 257.625(8)], the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs." MCL 257.625b(5).

"Except as otherwise provided in [MCL 257.625b(5)], the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs as part of the sentence." MCL 257.625b(5).

"If the person was convicted under [MCL 257.625(1)(c)] or has 1 or more prior convictions, the court shall order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs as part of the sentence, including, but not limited to, an alcohol treatment program or a self-help program for a period of not less than 1 year." MCL 257.625b(5).

"The treatment plan shall be devised from an assessment performed by an appropriately licensed alcohol assessor and approved by the court." MCL 257.625b(5).

"The person shall pay for the costs of screening, assessment, and rehabilitative services." MCL 257.625b(5).

"[MCL 257.625b(5)] does not require the person to successfully complete an ordered rehabilitative program before driving a vehicle with an ignition interlock device on a restricted license." MCL 257.625b(5).

H. Issuance of a Restricted License

Unless a person is ineligible under MCL 257.304(3), the secretary of state must issue a person a restricted license if the person's license "was suspended or restricted under [MCL 257.319] or revoked or denied under [MCL 257.303] based on either of the following:

> (a) Two or more convictions for violating [MCL 257.625(1) or MCL 257.625(3)] or a local ordinance of this state substantially corresponding to [MCL 257.625(1) or MCL 257.625(3)].
>
> (b) One conviction for violating [MCL 257.625(1) or MCL 257.625(3)] or a local ordinance of this state substantially corresponding to [MCL 257.625(1) or MCL 257.625(3)], preceded by 1 or more convictions for violating a local ordinance or law of another state substantially corresponding to [MCL 257.625(1) or MCL 257.625(3), or MCL 257.625(6)], or a law of the United States substantially corresponding to [MCL 257.625(1), MCL 257.625(3), or MCL 257.625(6)]." MCL 257.304(1).

1. Requirements for Issuance

A restricted license under MCL 257.304(1) must not be issued until:

- the person's license has been suspended or revoked for 45 days, MCL 257.303(2), and
- the judge assigned to a DWI/sobriety court certifies to the secretary of state both of the following:
  - the person has been admitted into a DWI/sobriety court program,[3] and
  - an approved and certified ignition interlock device has been properly installed on each motor vehicle owned, operated, or both, by the individual. MCL 257.304(2)(a)-(b).

Under MCL 257.304(3), a restricted license must not be issued under MCL 257.304(1) if the person is ineligible for a license under the MVC, unless the person's ineligibility is based on 1 or more of the following:

[3] See Section 9.3 for discussion of DWI/sobriety courts.

- License denied under MCL 257.303(1)(i) or MCL 257.303(1)(*l*);
- License revoked and denied under MCL 257.303(2)(c)(*i*) or MCL 257.303(2)(c)(*iii*);
- License revoked and denied under MCL 257.303(2)(g)(*i*) or MCL 257.303(2)(g)(*iii*);
- License suspended under MCL 257.319(4)-(7), MCL 257.319(8)(a)-(e), or MCL 257.319(9);
- License suspended under MCL 257.319e(2)(a) or MCL 257.319e(2)(b);
- Under investigation or reexamination by the secretary of state under MCL 257.320(1)(d);
- License suspended for violating MCL 257.321a(1), MCL 257.321a(2), or MCL 257.321a(3);
- Issued a court-ordered restricted license under MCL 257.323c;
- License suspended or denied under MCL 257.625f;
- License suspended under MCL 257.732a(5);
- An additional like period of suspension or revocation was issued under MCL 257.904(10);
- License suspended under MCL 324.82105a(2);
- License suspended or revoked under MCL 500.3177;
- License suspended under MCL 257.1110.

2. Privileges of a Restricted License

A person issued a restricted license under MCL 257.304 may operate only the vehicle equipped with a proper ignition interlock device, take any driving test required by the secretary of state, and drive to and from any combination of the following places:

- in the course of the person's employment/occupation as long as no commercial driver license is required;
- the person's residence;
- the person's workplace;

- an alcohol, drug, or mental health education and treatment program as ordered by the court;
- Alcoholics Anonymous, narcotics anonymous, or other court-ordered self-help programs;
- court hearings and probation appointments;
- court-ordered community service;
- an educational institution at which the person is enrolled as a student;
- a place of regularly occurring medical treatment for a serious condition or medical emergency for the person or a member of the person's household or immediate family;
- alcohol or drug testing as ordered by the court;
- ignition interlock service provider as required. MCL 257.304(4).

"While driving with a restricted license, the person shall carry proof of his or her destination and the hours of any employment, class, or other reason for traveling and shall display that proof upon a peace officer's request." MCL 257.304(5).

3. Removing Restriction From License

"Except as otherwise provided in [MCL 257.304], a restricted license under [MCL 257.304(1)] is effective until a hearing officer orders an unrestricted license under [MCL 257.322]. Subject to [MCL 257.304(7)], the hearing officer shall not order an unrestricted license until the later of the following events occur:

> (a) The court notifies the secretary of state that the person has successfully completed the DWI/sobriety court program.
>
> (b) The minimum period of license sanction that would have been imposed under [MCL 257.303 or MCL 257.319] but for this section has been completed.
>
> (c) The person demonstrates that he or she has operated with an ignition interlock device for not less than 1 year.

> (d) The person satisfies the requirements of [MCL 257.303] and R 257.313 of the Michigan administrative code." MCL 257.304(6).

"A hearing officer shall not issue an unrestricted license for at least 1 year if either of the following applies:

> (a) The hearing officer determines that the person consumed any alcohol during the period that his or her license was restricted under [MCL 257.304], as determined by breath, blood, urine, or transdermal testing unless a second test, administered within 5 minutes after administering the first test, showed an absence of alcohol.
>
> (b) The hearing officer determines that the person consumed or otherwise used any controlled substance during the period that his or her license was restricted under [MCL 257.304], except as lawfully prescribed." MCL 257.304(7).

"In determining whether to order an unrestricted license under [MCL 257.304(6)], the successful completion of the DWI/sobriety court program and a certificate from the DWI/sobriety court judge shall be considered positive evidence of the petitioner's abstinence while the petitioner participated in the DWI/sobriety court program. This subsection does not apply to a determination made under [MCL 257.304(7)]." MCL 257.304(8). *Certificate* "includes, but is not limited to, a statement that the participant has maintained a period of abstinence from alcohol for not less than 6 months at the time the participant completed the DWI/sobriety court program." *Id.*

4. Violating the Terms of the Restricted License Before Completion of DWI/Sobriety Court Program

The secretary of state must summarily impose the following sanctions if it receives notice from the DWI/sobriety court that the person (1) has been removed from the DWI/sobriety court program; (2) operated a motor vehicle that was not equipped with an ignition interlock device; (3) tampered with, circumvented, or removed a court-ordered ignition interlock device without court approval; or (4) has been charged with a new violation of MCL 257.625:

- License suspension for the full length of time provided in MCL 257.319(8), except that a restricted license cannot be issued under MCL 257.319(8). This sanction only applies if the underlying conviction(s)

would have been punishable under MCL 257.319(8) if MCL 257.304 did not apply.

- License revocation and denial for the full length of time provided in MCL 257.303. The minimum length of license revocation and denial must be imposed as if MCL 257.304 did not apply. This sanction only applies if the underlying conviction(s) would have been punishable under MCL 257.303 if MCL 257.304 did not apply. MCL 257.304(9). See also MCL 600.1084(6) (setting forth circumstances under which a DWI/sobriety court judge must notify the secretary of state).[4]

5. Violating the Terms of the Restricted License After Completion of the DWI/Sobriety Court Program

"After the person completes the DWI/sobriety court program, the following apply:

> (a) The secretary of state shall postpone considering the issuance of an unrestricted license under [MCL 257.322] for a period of 3 months for each act that would be a minor violation if the person's license had been issued under [MCL 257.322(6)]. As used in this subdivision, 'minor violation' means that term as defined in R 257.301a of the Michigan administrative code.
>
> (b) The restricted license issued under this section shall be suspended or revoked or denied as provided in [MCL 257.304(9)], unless set aside under [MCL 257.322(5)], if any of the following events occur:
>
> > (*i*) The person operates a motor vehicle without an ignition interlock device that meets the criteria under [MCL 257.304(2)(b)].
> >
> > (*ii*) The person removes, or causes to be removed, an ignition interlock device from a vehicle he or she owns or operates unless the secretary of state has authorized its removal under [MCL 257.322a].
> >
> > (*iii*) The person commits any other act that would be a major violation if the person's

[4]See Section 9.3 for discussion of DWI/sobriety courts.

license had been issued under [MCL 257.322(6)]. As used in this subparagraph, 'major violation' means that term as defined in R 257.301a of the Michigan administrative code.

(*iv*) The person is arrested for a violation of any of the following:

(A) [MCL 257.625].

(B) A local ordinance of this state or another state substantially corresponding to [MCL 257.625].

(C) A law of the United States substantially corresponding to [MCL 257.625.]

(c) If the person is convicted of or found responsible for any offense that requires the suspension, revocation, denial, or cancellation of the person's operator's or chauffeur's license, the restricted license issued under this section shall be suspended until the requisite period of license suspension, revocation, denial, or cancellation, as appropriate, has elapsed.

(d) If the person has failed to pay any court-ordered fines or costs that resulted from the operation of a vehicle, the restricted license issued under this section shall be suspended pending payment of those fines and costs." MCL 257.304(10).

6. Driver Responsibility Fees[5] and Restricted Licenses

"All driver responsibility fees required to be assessed by the secretary of state under [MCL 257.732a] for the conviction or convictions that led to the restricted license under [MCL 257.304] shall be held in abeyance as follows:

(a) The fees shall be held in abeyance during the time the person has a restricted license under this section and is participating in the DWI/sobriety court program.

[5] For more general information on driver responsibility fees, see Section 1.40.

> (b) At the end of the person's participation in the DWI/sobriety court program, the driver responsibility fees shall be assessed and paid under the payment schedule described in [MCL 257.732a]." MCL 257.304(11).

7. Vehicle Immobilization/Forfeiture[6] and Restricted Licenses

"The vehicle of an individual admitted to the DWI/sobriety court program whose vehicle would otherwise be subject to immobilization or forfeiture under this act is exempt from both immobilization and forfeiture under [MCL 257.625n] and [MCL 257.904d] if both of the following apply:

> (a) The person is a DWI/sobriety court program participant in good standing or the person successfully satisfactorily completes the DWI/sobriety court program.
>
> (b) The person does not subsequently violate a law of this state for which vehicle immobilization or forfeiture is a sanction."MCL 257.304(12).

I. Appeals to Circuit Court[7]

"If the judgment and sentence are appealed to circuit court, the court may ex parte order the secretary of state to stay the suspension, revocation, or restricted license issued by the secretary of state pending the outcome of the appeal." MCL 257.625b(6).

9.3 DWI/Sobriety Court Interlock Program

MCL 600.1084 created a DWI/sobriety court interlock pilot project utilizing the DWI/sobriety courts in Michigan. MCL 600.1084(1). The pilot project a sunset provision, but the pilot project was replaced with the DWI/sobriety court interlock program indefinitely by 2013 PA 227, effective January 1, 2015.

In cooperation with the State Court Administrative Office, all DWI/sobriety courts that participate in the pilot project or program must provide the legislature, the secretary or state, and the Michigan Supreme

[6] For more general information on vehicle immobilization, see Section 1.45; for more general information on forfeiture, see Section 1.47.

[7] For more information on circuit court appeals, see the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Chapter 2.

Court with documentation regarding the participants' compliance with court-ordered conditions. MCL 600.1084(4).

A. Guiding Principles

"All DWI/sobriety courts that participate in the pilot project or program shall comply with the 10 guiding principles of DWI courts as promulgated by the national center for DWI courts." MCL 600.1084(2).

The 10 guiding principles are:

- determine the population;
- perform a clinical assessment;
- develop the treatment plan;
- supervise the offender;
- forge agency, organization, and community partnerships;
- take a judicial leadership role;
- develop case management strategies;
- address transportation issues;
- evaluate the program; and
- ensure a sustainable program.[8]

B. Requirements for Placement

"In order to be considered for placement in the pilot project or program, an individual must have been convicted of either of the following:

> (a) Two or more convictions for violating [MCL 257.625(1)[9]] or [MCL 257.625(3)[10]], or a local ordinance of this state substantially corresponding to [MCL 257.625(1)] or [MCL 257.625(3).]

[8]Source: the National Center for DWI Courts.

[9] Operating motor vehicle while intoxicated.

[10] Operating motor vehicle while visibly impaired.

> (b) One conviction for violating [MCL 257.625(1)] or [MCL 257.625(3),] . . . or a local ordinance of this state substantially corresponding to [MCL 257.625(1)], or [MCL 257.625(3),] . . . preceded by 1 or more convictions for violating a local ordinance or law of another state substantially corresponding to [MCL 257.625(1), MCL 257.625(3), or MCL 257.625(6),[11]] . . . or a law of the United States substantially corresponding to [MCL 257.625(1), MCL 257.625(3), or MCL 257.625(6).]" MCL 600.1084(3).

C. Restricted Licensing for Pilot Project or Program Participants

"Before the secretary of state issues a restricted license to a pilot project or program participant under . . . MCL 257.304, the DWI/sobriety court judge shall certify to the secretary of state that the individual seeking the restricted license has been admitted into the pilot project or program and that an interlock device has been placed on each motor vehicle owned or operated, or both, by the individual." MCL 600.1084(5).

"If any of the following occur, the DWI/sobriety court judge shall immediately inform the secretary of state of that occurrence:

> (a) The court orders that a pilot project or program participant be removed from the DWI/sobriety court pilot project or program before he or she successfully completes it.
>
> (b) The court becomes aware that a participant operates a motor vehicle that is not equipped with an interlock device or that a participant tampers with, circumvents, or removes a court-ordered interlock device without prior court approval.
>
> (c) A participant is charged with a new violation of . . . MCL 257.625." MCL 600.1084(6).

"The receipt of notification by the secretary of state under subsection (6) shall result in summary revocation or suspension of the restricted license under . . . MCL 257.304." MCL 600.1084(7).

[11] Person under 21 years of age operating motor vehicle with any bodily alcohol content.

9.4 Operating While Intoxicated (OWI)—Section 625(1)

A. Statutory Authority

"A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within [Michigan] if the person is operating while intoxicated." MCL 257.625(1).

"As used in [MCL 257.625], 'operating while intoxicated' means any of the following:

> (a) The person is under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.
>
> (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2018, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
>
> (c) The person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine." MCL 257.625(1).

B. Relevant Jury Instructions

- M Crim JI 15.1 addresses the different types of operating while intoxicated offenses that a jury may consider.
- M Crim JI 15.1a addresses the elements of operating with high bodily alcohol content under MCL 257.625(1)(c).
- M Crim JI 15.2 addresses the common elements of operating while intoxicated under MCL 257.625(1) and operating while visibly impaired under MCL 257.625(3), discussed in Section 9.6.
- M Crim JI 15.3 addresses the elements of operating while intoxicated under MCL 257.625(1).
- M Crim JI 15.5 addresses factors for the jury to consider when the defendant is charged with operating while intoxicated and/or operating while visibly impaired, which is discussed in Section 9.6.

- M Crim JI 15.6 addresses possible verdicts where operating with a high bodily alcohol content under MCL 257.625(1)(c) is *not* charged.
- M Crim JI 15.6a addresses possible verdicts where operating with a high bodily alcohol content under MCL 257.625(1)(c) *is* charged.
- M Crim JI 15.7 provides a verdict form for use where operating with a high bodily alcohol content under MCL 257.625(1)(c) is *not* charged.
- M Crim JI 15.7a provides a verdict form for use where operating with a hight bodily alcohol content under MCL 257.625(1)(c) *is* charged.

C. Penalties

"If a person is convicted of violating [MCL 257.625(1)], all of the following apply:

> (a) Except as otherwise provided in [MCL 257.625(9)(b) and MCL 257.625(9)(c)[12]], the person is guilty of a misdemeanor punishable by 1 or more of the following:
>
> > (*i*) Community service for not more than 360 hours.
> >
> > (*ii*) Imprisonment for not more than 93 days, or, if the person is convicted of violating [MCL 257.625(1)(c)], imprisonment for not more than 180 days.
> >
> > (*iii*) A fine of not less than $100.00 or more than $500.00, or, if the person is guilty of violating [MCL 257.625(1)(c)], a fine of not less than $200.00 or more than $700.00.
>
> (b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00 and 1 or more of the following:
>
> > (*i*) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

[12]Stating that violations of MCL 257.625(1) constitute a felony when certain circumstances involving prior convictions exist.

(*ii*) Community service for not less than 30 days or more than 90 days.

(c) If the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony and shall be sentenced to pay a fine of not less than $500.00 or more than $5,000.00 and to either of the following:

(*i*) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(*ii*) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(d) A term of imprisonment imposed under [MCL 257.625(9)(b) or MCL 257.625(9)(c)] shall not be suspended." MCL 257.625(9).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(c). See Section 1.39 for more information on points.
- $1,000 driver responsibility fee for two consecutive years. See MCL 257.732a(2)(a)(*iii*).[13]
- License suspension/revocation (length dependent on specific conviction and criminal history). See MCL

[13]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

257.319(8)(a); MCL 257.319(16). See Section 1.43 for more information on license suspension and Section 1.42 for more information on license revocation.

- Violation of MCL 257.625(1)(a) or MCL 257.625(1)(b) and no prior convictions within seven years: mandatory 180-day suspension; possible restricted license after 30 days under certain circumstances. See MCL 257.319(8)(a); MCL 257.319(16).

- Violation of MCL 257.625(1)(c) and no prior convictions within seven years or no more than two convictions within 10 years: mandatory one year suspension; possible restricted license after 45 days under certain circumstances. See MCL 257.319(8)(g); MCL 257.319(16).

- Any combination of two convictions within seven years for offenses listed in MCL 257.303(2)(c)(*i*)-(*iii*): mandatory revocation of at least one year (length dependent on various factors). See MCL 257.303(2)(c); MCL 257.303(4)(a).

- Any combination of three convictions within 10 years for offenses listed in MCL 257.303(2)(g)(*i*)-(*iii*): mandatory revocation of at least one year (length dependent on various factors). See MCL 257.303(2)(g); MCL 257.303(4)(a).

- Vehicle immobilization (length dependent on specific conviction and criminal history). See MCL 257.625(9)(e); MCL 257.904d(1). See Section 1.45 for more information on vehicle immobilization.

  - No prior convictions: immobilization may be ordered for not more than 180 days. See MCL 257.625(9)(e); MCL 257.904d(1)(a).

  - Conviction under MCL 257.625(1) within seven years after a prior conviction: mandatory immobilization for not less than 90 days or more than 180 days, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(9)(e); MCL 257.904d(1)(c).

  - Conviction under MCL 257.625(1) after two or more prior convictions: mandatory immobilization for not less than one year or more than three years, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(9)(e); MCL 257.904d(1)(d).

- Vehicle forfeiture may be imposed for a violation of MCL 257.625(9)(b) or MCL 257.625(9)(c). See MCL

257.625(9)(f); MCL 257.625n. See Section 1.47 for more information on vehicle forfeiture.

- Ignition interlock device may be ordered as a condition of probation. See MCL 257.625(24); MCL 257.625k; MCL 257.625*l*. Ignition interlock device must be ordered if offender is issued a restricted license under MCL 257.319(8)(g). See MCL 257.319(8)(h)-(i). See Section 9.12 for more information on ignition interlock devices.

- Registration denial is required under certain circumstances. See MCL 257.219(1)(c)-(d). See Section 1.48 for more information on registration denial.

E. Issues[14]

1. Definition of *Place Open to the General Public or Generally Accessible to Motor Vehicles*

The trial court properly dismissed the defendant's OWI charge where the defendant backed his vehicle out of his detached garage about 25 feet into his private driveway to a point in line with his house and then pulled his car back into the garage. *People v Rea*, 315 Mich App 151, ___ (2016). The Court explained that the "portion of a private driveway immediately next to a private residence[] . . . is . . . not a 'place . . . generally accessible to motor vehicles[]" within the meaning of MCL 257.625(1). *Rea*, 315 Mich App at ___. The Court rejected the prosecution's argument that because the driveway was accessible to any visitor or delivery driver, a trier of fact should decide whether the specific area in which the defendant drove was "generally accessible to motor vehicles." *Id.* at ___. The Court held that "[p]hysical ability is not the touchstone of general accessibility[,]" and the Legislature prohibited driving while intoxicated only "in places where cars are regularly, 'widely,' and 'usually' expected to travel." *Id.* at ___. Further, the Court noted that "had the Legislature wanted to criminalize driving while intoxicated in one's own driveway, it could have outlawed the operation of a motor vehicle in *any* place 'accessible to motor vehicles,' omitting the adverb 'generally.'" *Id.* at ___. However, the modifying language used in the statute demonstrates "that the Legislature meant to limit the reach of MCL 257.625(1)." *Rea*, 315 Mich App at ___.

[14] Some of the cases discussed in this subsection predate several statutory amendments to MCL 257.625, and references to the statute's provisions may be outdated. However, the amendments to the statute do not appear to affect the holdings discussed.

2. Definition of *Vehicle*

A personal electric scooter qualifies as a vehicle under MCL 257.625(1) because the scooter is "a device upon which a person [is] transported upon a highway." *People v Lyon (William)*, 310 Mich App 515, 516-517 (2015) (the defendant was driving the scooter "along the paved portion of the 'curb lane'" and "weaving into the traffic lane" on a public highway; when stopped by police he failed field sobriety tests and admitted he was intoxicated). The Court noted that "the definition of 'vehicle,' the term actually used in . . . MCL 257.625, is much more inclusive than the definition of 'motor vehicle[.]'" *Lyon (William)*, 310 Mich App at 519. "[T]he MVC govern[s a] defendant's conduct when he [or she] use[s a] scooter as a vehicle upon a highway[]" and thereby undertakes "the duties of a vehicle driver, which include refraining from driving while intoxicated[.]" *Id.* at 520-521.

3. Double Jeopardy Considerations[15]

A "defendant's convictions of both OWI[, MCL 257.625(1),] and OWI-injury[, MCL 257.625(5),] for the same intoxicated driving incident violates the multiple punishments prong of the [federal and state constitutions'] double jeopardy clauses." *People v Miller (Joseph)*, 498 Mich 13, 26 (2015). The "Court of Appeals erred by concluding that the Legislature did not 'evince a clear expression of any intent to allow . . . multiple punishments for the same offense[;]'" rather, "in light of MCL 257.625(7)(d), [which specifically authorizes multiple convictions of and punishments for OWI with a minor in the car under MCL 257.625(7) and OWI-injury or OWI causing death,] the omission of a similar clause providing explicit authority to convict a defendant of multiple operating while intoxicated offenses arising out of the same incident in either MCL 257.625(1) or [MCL 257.625](5) is a clear indication that the Legislature did not intend for defendants to be convicted of and punished for OWI and OWI-injury arising out of the same incident." *Miller (Joseph)*, 498 Mich at 25-26.

4. Elements of OWI Generally

"OWI is a hybrid version of two offenses: MCL 257.625(1)(a) prohibits operating a motor vehicle under the influence of intoxicating liquor (OUIL) and MCL 257.625b(1)(b) prohibits operating with an unlawful bodily alcohol content (UBAL).

[15]For a detailed discussion of double jeopardy, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 8.

Therefore, under MCL 257.625(1), OWI requires proof of three elements: (1) the defendant operated a motor vehicle (2) on a highway or other place open to the general public or generally accessible to motor vehicles (3) while under the influence of liquor or a controlled substance, or a combination of the two, *or* with [an unlawful bodily alcohol content]. Notably, the third element is disjunctive; that is, it can be satisfied in *either* of the two ways." *People v Hyde*, 285 Mich App 428, 447-448 (2009).

5. OWI is a Lesser Included Offense of OUIL

"With regard to the . . . 'under the influence' part of the Michigan OUIL statutory provision, the key instructive description of that offense comes from the decision in *People v Lambert*, 395 Mich 296 (1975)." *Oxendine v Secretary of State*, 237 Mich App 346, 353 (1999). In *Lambert*, 395 Mich at 305, our Supreme Court "indicated that OUIL would be committed if a defendant drove when the 'defendant's ability to drive was *substantially and materially affected* by consumption of intoxicating liquor.'" *Oxendine*, 237 Mich App at 354. "In contrast, the threshold for OWI is much lower." *Id*. "A defendant commits OWI by driving when the 'defendant's ability to drive was so weakened or reduced by consumption of intoxicating liquor that [the] defendant drove with less ability than would an ordinary, careful and prudent driver. Such weakening or reduction of ability to drive must be visible to an ordinary, observant person.'" *Id*., quoting *Lambert*, 395 Mich at 305. "Accordingly, OWI is a lesser included offense of OUIL." *Oxendine*, 237 Mich App at 354.

9.5 Permitting or Authorizing Certain Individuals to Drive—Section 625(2)

A. Statutory Authority

"The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles,[16] including an area designated for the parking of motor vehicles, within [Michigan] by a person if any of the following apply:

[16]In the context of MCL 257.625(1), the Court held that the trial court properly dismissed the defendant's OWI charge because "that portion of a private driveway immediately next to a private residence[] . . . is . . . not a 'place . . . generally accessible to motor vehicles.'" *People v Rea*, 315 Mich App 151, ___ (2016). See Section 9.4(E)(1) for further discussion of the issue.

> (a) The person is under the influence of alcoholic liquor, a controlled substance, other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.
>
> (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2018, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
>
> (c) The person's ability to operate the motor vehicle is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance." MCL 257.625(2).

B. Penalties

"A person who is convicted of violating [MCL 257.625(2)] is guilty of a crime as follows:

> (a) Except as provided in subdivisions (b) and (c), a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not less than $100.00 or more than $500.00, or both.
>
> (b) If the person operating the motor vehicle violated [MCL 257.625(4)], a felony punishable by imprisonment for not more 5 years or a fine of not less than $1,500.00 or more than $10,000.00, or both.
>
> (c) If the person operating the motor vehicle violated [MCL 257.625(5)], a felony punishable by imprisonment for not more than 2 years or a fine of not less than $1,000.00 ore more than $5,000.00, or both." MCL 257.625(10).

9.6 Operating While Visibly Impaired (OWVI)—Section 625(3)

A. Statutory Authority

"A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles,[17] including an area designated for the

parking of vehicles, within [Michigan] when, due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance, the person's ability to operate the vehicle is visibly impaired." MCL 257.625(3).

"If a person is charged with violating [MCL 257.625(1)], a finding of guilty under [MCL 257.625(3)] may be rendered." MCL 257.625(3).

B. Relevant Jury Instructions

- M Crim JI 15.2 addresses the common elements of operating while visibly impaired under MCL 257.625(3), and operating while intoxicated under MCL 257.625(1), discussed in Section 9.4.
- M Crim JI 15.4 addresses the elements of operating while visibly impaired under MCL 257.625(3).
- M Crim JI 15.5 addresses factors for the jury to consider when the defendant is charged with operating while visibly impaired and/or operating while intoxicated, which is discussed in Section 9.4.

C. Penalties

"If a person is convicted of violating [MCL 257.625(3)], all of the following apply:

> (a) Except as otherwise provided, in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:
>
> > (*i*) Community service for not more than 360 hours.
> >
> > (*ii*) Imprisonment for not more than 93 days.
> >
> > (*iii*) A fine of not more than $300.00.
>
> (b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00, and 1 or more of the following:

[17] In the context of MCL 257.625(1), the Court held that the trial court properly dismissed the defendant's OWI charge because "that portion of a private driveway immediately next to a private residence[] . . . is . . . not a 'place . . . generally accessible to motor vehicles.'" *People v Rea*, 315 Mich App 151, ___ (2016). See Section 9.4(E)(1) for further discussion of the issue.

(*i*) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

(*ii*) Community service for not less than 30 days or more than 90 days.

(c) If the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony and shall be sentenced to pay a fine of not less than $500.00 or more than $5,000.00 and either of the following:

(*i*) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(*ii*) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(d) A term of imprisonment imposed under subdivisions (b) or (c) shall not be suspended. . . ." MCL 257.625(11).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points. See MCL 257.320a(1)(i). See Section 1.39 for more information on points.
- $500 driver responsibility fee for two consecutive years. See MCL 257.732a(2)(b)(*i*).[18]
- License suspension/revocation (length dependent on specific conviction and criminal history). See MCL

257.319(8)(b); MCL 257.319(15). See Section 1.43 for more information on license suspension and Section 1.42 for more information on license revocation.

- No prior convictions within seven years: mandatory 90-day suspension; period increased to 180 days if impairment was due to controlled substance or combination of alcohol and controlled substance; restricted license discretionary during all or a specified portion of suspension. See MCL 257.319(8)(b); MCL 257.319(16).

- Any combination of two convictions within seven years for offenses listed in MCL 257.303(2)(c)(*i*)-(*iii*): mandatory revocation of at least one year (length dependent on various factors). See MCL 257.303(2)(c); MCL 257.303(4)(a).

- Any combination of three convictions within 10 years for offenses listed in MCL 257.303(2)(g)(*i*)-(*iii*): mandatory revocation of at least one year (length dependent on various factors). See MCL 257.303(2)(g); MCL 257.303(4)(a).

- Vehicle immobilization (length dependent on specific conviction and criminal history). See MCL 257.625(11)(e); MCL 257.904d(1). See Section 1.45 for more information on vehicle immobilization.

  - No prior convictions: immobilization may be ordered for not more than 180 days. See MCL 257.625(11)(e); MCL 257.904d(1)(a).

  - Conviction under MCL 257.625(3) within seven years after a prior conviction: mandatory immobilization for not less than 90 days or more than 180 days, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(11)(e); MCL 257.904d(1)(c).

  - Conviction under MCL 257.625(3) after two or more prior convictions: mandatory immobilization for not less than one year or more than three years, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(11)(e); MCL 257.904d(1)(d).

- Vehicle forfeiture may be imposed for a violation of MCL 257.625(3). See MCL 257.625(11)(f); MCL 257.625n.

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[18]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

See Section 1.47 for more information on vehicle forfeiture.

- Registration denial is required under certain circumstances. See MCL 257.219(1)(c)-(d). See Section 1.48 for more information on registration denial.

E. Issues

"A defendant commits [OWVI] by driving when the 'defendant's ability to drive was so weakened or reduced by consumption of intoxicating liquor that [the] defendant drove with less ability than would an ordinary, careful and prudent driver. Such weakening or reduction of ability to drive must be visible to an ordinary, observant person.'" *Oxendine v Secretary of State*, 237 Mich App 346, 354 (1999), quoting *People v Lambert*, 395 Mich 296, 305 (1975). "Accordingly, [OWVI] is a lesser included offense of OUIL." *Oxendine*, 237 Mich App at 354.

"[T]he offense of [OWVI] is committed when a person drives a vehicle while the person's ability to drive is 'visibly impaired.'" *People v Calvin*, 216 Mich App 403, 407 (1996), quoting MCL 257.625(3). "The degree of a person's intoxication may be established by chemical analysis tests of the person's blood, breath, or urine or by testimony of someone who observed the impaired driving." *Id*. at 407-408.

9.7 OWI or OWVI Causing Death—Section 625(4)

A. Statutory Authority

"A person, whether licensed or not, who operates a motor vehicle in violation of [MCL 257.625(1), MCL 257.625(3), or MCL 257.625(8)] and by the operation of that motor vehicle causes the death of another person is guilty of a crime[.]" MCL 257.625(4).[19]

B. Relevant Jury Instructions

- M Crim JI 15.11 addresses operating while intoxicated and operating while visibly impaired causing death.
- M Crim JI 15.11a addresses operating with any amount of a schedule 1 or 2 controlled substance in the body causing death.

[19]See *People v Schaefer*, 473 Mich 418 (2005), discussed in Section 8.4(E), which contains more information on causation.

C. Penalties

The penalties for violating MCL 257.625(4) are as follows:

> "(a) Except as provided in subdivisions (b) and (c), the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine not less than $2,500.00 or more than $10,000.00, or both[.]
>
> (b) If the violation occurs while the person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, and within 7 years of a prior conviction, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not less than $2,500.00 or more than $10,000.00, or both . . .
>
> (c) If, at the time of the violation, the person is operating a motor vehicle in a manner proscribed under [MCL 257.653a[20]] and causes the death of a police officer, firefighter, or other emergency response personnel, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not less than $2,500.00 or more than $10,000.00 or both. This subdivision applies regardless of whether the person is charged with the violation of [MCL 257.653a]." MCL 257.625(4).

"A person may be charged with and convicted of any of the [offenses listed in MCL 769.36(1), including MCL 257.625(4),] for each death arising out of the same criminal transaction, and the court may order the terms of imprisonment to be served consecutively to each other[.]" MCL 769.36(1)(a).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

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[20] Failing to give due care and caution when approaching and passing a stationary authorized emergency vehicle giving a visual signal. MCL 257.653a(1).

- Six points. See MCL 257.320a(1)(c). See Section 1.39 for more information on points.

- $1,000 driver responsibility fee for two consecutive years See MCL 257.732a(2)(a)(*iii*).[21]

- License revocation/denial (length dependent on specific conviction and criminal history). See MCL 257.303(2)(d); MCL 257.303(4)(a). See Section 1.43 for more information on license suspension and Section 1.42 for more information on license revocation.

- Vehicle immobilization (length dependent on specific conviction and criminal history), if forfeiture is not ordered. See MCL 257.625(4); MCL 257.904d(1). See Section 1.45 for more information on vehicle immobilization.

  - No prior convictions: mandatory immobilization for not more than 180 days, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(4); MCL 257.904d(1)(b).

  - Conviction under MCL 257.625(4) within seven years after a prior conviction: mandatory immobilization for not less than 90 days or more than 180 days, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(4); MCL 257.904d(1)(c).

  - Conviction under MCL 257.625(4) after two or more prior convictions: mandatory immobilization for not less than one year or more than three years, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(4); MCL 257.904d(1)(d).

- Vehicle forfeiture may be imposed for a violation of MCL 257.625(4). See MCL 257.625(4); MCL 257.625n. See Section 1.47 for more information on vehicle forfeiture.

- Registration denial is required under certain circumstances. See MCL 257.219(1)(c)-(d). See Section 1.48 for more information on registration denial.

[21]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

E. Issues[22]

1. Elements of Section 625(4)

"The plain text of [MCL 257.625(4)] does not require that the prosecution prove the defendant's intoxicated state affected his or her operation of the motor vehicle." *People v Schaefer*, 473 Mich 418, 422 (2005), overruling *People v Lardie*, 452 Mich 231 (1996), "to the extent that *Lardie* held that [MCL 257.625(4)] requires the defendant's intoxicated driving to be a substantial cause of the victim's death[.]" "Indeed, [MCL 257.625(4)] requires no causal link at all between the defendant's intoxication and the victim's death." *Schaefer*, 473 Mich at 422. "The statute requires that the defendant's *operation* of the motor vehicle, not the defendant's intoxicated manner of driving, must cause the victim's death." *Id*. "The defendant's status as 'intoxicated' is a separate element of the offense of OUIL causing death." *Schaefer*, 473 Mich at 422. "It specifies the class of persons subject to liability under [MCL 257.625(4)]: intoxicated drivers." *Schaefer*, 473 Mich at 422. "Quite simply, by enacting [MCL 257.625(4)], the Legislature intended to punish 'operating while intoxicated,' not 'operating in an intoxicated manner.'" *Schaefer*, 473 Mich at 422.

While MCL 257.625(4) does not require a defendant's intoxicated driving to be a substantial cause of the victim's death, *Schaefer*, 473 Mich at 422, "[t]he plain language of the statutes that prohibit OWI causing death, MCL 257.625(1) and [MCL 257.625(4)], and the statutes that prohibit operating a motor vehicle with the presence of a schedule 1 controlled substance in one's body, causing death, MCL 257.625(4) and [MCL 257.625(8)], requires that the defendant's operation of a motor vehicle have *caused* the death of another person." *People v Feezel*, 486 Mich 184, 193 (2010). "[W]hile the victim's intoxication is not a defense, under the facts of [*Feezel*] it should have been a factor for the jury to consider when determining whether the prosecution proved beyond a reasonable doubt that [the] defendant's conduct was a . . . proximate cause of the victim's death, under MCL 257.625(4) and [MCL 257.625(8)]." *Feezel*, 486 Mich at 201-202. But see *People v Bergman*, 312 Mich App 471, 486 (2015) (holding that evidence of the victim's intoxication was not probative of causation and was properly excluded from trial where "[t]here was no evidence that [the victim] was not properly driving within his marked lane, or that [the victim's] vehicle would not have safely passed [the] defendant if [the]

[22] Some of the cases discussed in this subsection predate several statutory amendments to MCL 257.625, and references to the statute's provisions may be outdated. However, the amendments to the statute do not appear to affect the holdings discussed.

defendant had not crossed the center line in front of [the victim], presenting a serious and unexpected hazard[;] [t]hus, there was no evidence that [the victim] did anything that contributed to the accident in a way that would establish that he was negligent or grossly negligent and by his conduct was an intervening cause of the accident[]").

"[MCL 257.625(4)] provides that a defendant may be convicted when he or she 'operates a motor vehicle' while intoxicated and 'by the operation of that motor vehicle causes the death of another person . . . .'" *People v Lechleitner*, 291 Mich App 56, 60 (2010). "[MCL 257.625(4)] does not require that the defendant's vehicle be in motion at the time of the accident, but rather that the victim's death be caused by the defendant's operation of the vehicle while intoxicated." *Lechleitner*, 291 Mich App at 60. In *Lechleitner*, 291 Mich App at 60, the "defendant was intoxicated, operated his vehicle, and crashed it, with the result that it sat in the middle of the freeway at night creating a risk of injury or death to others." The Michigan Supreme Court has "stated that 'operating' must be defined 'in terms of the danger the OUIL statute [MCL 257.625] seeks to prevent: the collision of a vehicle being operated by a person under the influence of intoxicating liquor with other persons or property.'" *Lechleitner*, 291 Mich App at 60, quoting *People v Wood*, 450 Mich 399, 404 (1995). "Accordingly, '[o]nce a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk.'" *Lechleitner*, 291 Mich App at 60, quoting *Wood*, 450 Mich at 404-405. In *Lechleitner*, the Court of Appeals affirmed the defendant's conviction, "conclud[ing] that *Wood* remains good law and that the trial court properly followed it[.]" *Lechleitner*, 291 Mich App at 61.

2. Double Jeopardy[23]

Involuntary manslaughter, MCL 750.321. "The offenses of involuntary manslaughter and OUIL causing death protect distinct societal norms, the amount of punishment for each statute does not involve a hierarchy of offenses, and each statute requires proof of an element that the other does not. Thus, pursuant to [*People v Price*, 214 Mich App 538 (1995)], [the] defendant's convictions and punishments under both statutes [did] not violate the Double Jeopardy Clauses of the United

[23]For a detailed discussion of double jeopardy, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 8.

States and Michigan Constitutions." *People v Kulpinski*, 243 Mich App 8, 23 (2000).

Second-degree murder, MCL 750.317."Th[e] reasoning [in *Kulpinski*] applies with equal force to dual convictions of second-degree murder and OUIL causing death. If the Legislature intended for the OUIL causing death statute to enforce societal norms that are distinct from the societal norms enforced by the involuntary manslaughter statute (grossly negligent conduct), it clearly also intended the OUIL statute to enforce societal norms other than those enforced by the second-degree murder statute (proscribing wanton conduct likely to cause death or great bodily harm)." *People v Werner*, 254 Mich App 528, 536 (2002), citing *Kulpinski*, 243 Mich App at 22-24 and *Price*, 214 Mich App at 543-544. "Moreover, the OUIL causing death statute and second-degree murder statute each contain an element not found in the other." *Werner*, 254 Mich App at 536. "The OUIL causing death statute includes the element of operating a motor vehicle with a specified blood alcohol level, but not the element of malice; the converse is true of the second-degree murder statute." *Id*. "Accordingly, [the] defendant's convictions of both second-degree murder and OUIL causing death [did] not violate the Double Jeopardy Clauses." *Id*. See also *People v Bergman*, 312 Mich App 471, 492 (2015) (holding the defendant's multiple convictions of OUIL causing death and second-degree murder did not violate the double jeopardy clauses).

Operating with a suspended license causing death, MCL 257.904(4). A defendant's multiple convictions of OUIL causing death and driving with a suspended license causing death do not violate the double jeopardy clauses of the United States and Michigan constitutions. *People v Bergman*, 312 Mich App 471, 492 (2015). "[T]he OUIL and suspended-license statutes enforce distinct societal norms, and their respective elements of intoxication while driving and lack of a valid operator's license are distinctive to each." *Id*. at 492 (citations omitted).

9.8 OWI or OWVI Causing Serious Impairment of a Body Function—Section 625(5)

A. Statutory Authority

"A person, whether licensed or not, who operates a motor vehicle in violation of [MCL 257.625(1), MCL 257.625(3), or MCL 257.625(8)] and by the operation of that motor vehicle causes a serious impairment of a body function of another person is guilty of a crime[.]" MCL 257.625(5).

B. Relevant Jury Instructions

- M Crim JI 15.12 addresses operating while intoxicated and operating while visibly impaired causing serious impairment of a body function.

- M Crim JI 15.12a addresses operating with any amount of a schedule 1 or 2 controlled substance in the body causing serious impairment of a body function.

C. Penalties

The penalties for violating MCL 257.625(5) are as follows:

> "(a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than $1,000.00 or more than $5,000.00, or both. . . .
>
> (b) If the violation occurs while the person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, and within 7 years of a prior conviction, the person is guilty of a felony punishable by imprisonment of not more than 10 years or a fine of not less than $1,000.00 or more than $5,000.00, or both. . . ." MCL 257.625(5)(a)-(b).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(c). See Section 1.39 for more information on points.

- $1,000 driver responsibility fee for two consecutive years See MCL 257.732a(2)(a)(*iii*).[24]

- License revocation/denial (length dependent on specific conviction and criminal history). See MCL 257.303(2)(d); MCL 257.303(4)(a). See Section 1.43 for more information

on license suspension and Section 1.42 for more information on license revocation.

- Vehicle immobilization (length dependent on specific conviction and criminal history), if forfeiture is not ordered. See MCL 257.625(5); MCL 257.904d(1). See Section 1.45 for more information on vehicle immobilization.

  - No prior convictions: mandatory immobilization for not more than 180 days, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(5); MCL 257.904d(1)(b).

  - Conviction under MCL 257.625(5) within seven years after a prior conviction: mandatory immobilization for not less than 90 days or more than 180 days, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(5); MCL 257.904d(1)(c).

  - Conviction under MCL 257.625(5) after two or more prior convictions: mandatory immobilization for not less than one year or more than three years, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(5); MCL 257.904d(1)(d).

- Vehicle forfeiture may be imposed for a violation of MCL 257.625(5). See MCL 257.625(5); MCL 257.625n. See Section 1.47 for more information on vehicle forfeiture.

- Registration denial is required under certain circumstances. See MCL 257.219(1)(c)-(d). See Section 1.48 for more information on registration denial.

E. Issues

A "defendant's convictions of both OWI[, MCL 257.625(1),] and OWI-injury[, MCL 257.625(5),] for the same intoxicated driving incident violates the multiple punishments prong of the [federal and state constitutions'] double jeopardy clauses."[25] *People v Miller (Joseph)*, 498 Mich 13, 26 (2015). The "Court of Appeals erred by concluding that the Legislature did not 'evince a clear expression of any intent to allow . . . multiple punishments for the same offense[;]'" rather, "in light of MCL 257.625(7)(d), [which specifically authorizes multiple

[24]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

[25]For a detailed discussion of double jeopardy, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 8.

convictions of and punishments for OWI with a minor in the car under MCL 257.625(7) and OWI-injury or OWI causing death,] the omission of a similar clause providing explicit authority to convict a defendant of multiple operating while intoxicated offenses arising out of the same incident in either MCL 257.625(1) or [MCL 257.625](5) is a clear indication that the Legislature did not intend for defendants to be convicted of and punished for OWI and OWI-injury arising out of the same incident." *Miller (Joseph)*, 498 Mich at 25-26.

9.9 Zero Tolerance Violations—Section 625(6)

A. Statutory Authority

"A person who is less than 21 years of age, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles,[26] including an area designated for the parking of vehicles, within [Michigan] if the person has any bodily alcohol content." MCL 257.625(6).

"In a prosecution for a violation of [MCL 257.625(6)], the defendant bears the burden of proving that the consumption of alcoholic liquor was a part of a generally recognized religious service or ceremony by a preponderance of the evidence." MCL 257.625(23).

"Except for purposes of the enhancement described in [MCL 257.625(12)(b)], only 1 violation or attempted violation of [MCL 257.625(6)], a local ordinance substantially corresponding to [MCL 257.625(6)], or a law of another state substantially corresponding to [MCL 257.625(6)] may be used as a prior conviction." MCL 257.625(26).

B. Penalties

"If a person is convicted of violating [MCL 257.625(6)], all of the following apply:

> (a) Except as otherwise provided in subdivision (b), the person is guilty of a misdemeanor punishable by 1 or both of the following:
>
> > (*i*) Community service for not more than 360 hours.

[26]In the context of MCL 257.625(1), the Court held that the trial court properly dismissed the defendant's OWI charge because "that portion of a private driveway immediately next to a private residence[] . . . is . . . not a 'place . . . generally accessible to motor vehicles.'" *People v Rea*, 315 Mich App 151, ___ (2016). See Section 9.4(E)(1) for further discussion of the issue.

(*ii*) A fine of not more than $250.00.

(b) If the violation occurs within 7 years of 1 or more prior convictions, the person may be sentenced to 1 or more of the following:

(*i*) Community service for not more than 60 days.

(*ii*) A fine of not more than $500.00.

(*iii*) Imprisonment for not more than 93 days." MCL 257.625(12).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Four points. See MCL 257.320a(1)(i). See Section 1.39 for more information on points.
- $500 driver responsibility fee. for two consecutive years See MCL 257.732a(2)(b)(*i*).[27]
- License suspension/revocation (length dependent on specific conviction and criminal history). See MCL 257.303(2)(c); MCL 257.303(4)(a); MCL 257.319(8)(c). See Section 1.43 for more information on license suspension and Section 1.42 for more information on license revocation.
  - Violation of MCL 257.625(6) with no prior convictions within seven years: mandatory 30-day suspension; discretionary restricted license for all or part of the suspension period if otherwise eligible for a license. See MCL 257.319(8)(c); MCL 257.319(16).
  - Violation of MCL 257.625(6) with one or more prior convictions for that offense within seven years:

[27]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

mandatory 90-day suspension. See MCL 257.319(8)(d).

- Any combination of two convictions within seven years for offenses listed in MCL 257.303(2)(c)(*i*)-(*iii*) or a combination of one conviction for a violation or attempted violation of MCL 257.625(6) and one conviction for any offenses listed in MCL 257.303(2)(c)(*i*)-(*iii*) within seven years: mandatory revocation of at least one year (length dependent on various factors). See MCL 257.303(2)(c); MCL 257.303(4)(a).

- Registration denial is required under certain circumstances. See MCL 257.219(1)(c)-(d). See Section 1.48 for more information on registration denial.

D. Issues

For purposes of scoring PRV 5, MCL 777.55(2)(b), a defendant's "conviction of being a minor who operated a vehicle while having any bodily alcohol content [MCL 257.625(6)] constitute[s] a misdemeanor for operating a vehicle while 'under the influence' of alcohol or 'impaired by' alcohol." *People v Bulger*, 291 Mich App 1, 5 (2010). While a defendant's "prior conviction under the zero-tolerance provision did not require proof that he [or she] was actually under the influence of alcohol or was impaired by alcohol[,]" "the Legislature specifically chose to count prior violations of the zero-tolerance provision as prior convictions for the purposes of MCL 257.625[, see MCL 257.625(25)(b)]. The only limitation is that multiple violations of the zero-tolerance provision count as a single prior conviction[, MCL 257.625(26)]." *Bulger*, 291 Mich App at 5-6 (trial court properly assessed two points for PRV 5 where the defendant had a prior conviction of operating a vehicle as a minor with any bodily alcohol content under the zero-tolerance provision, MCL 257.625(6)).

9.10 Child Endangerment—Section 625(7)

A. Statutory Authority

"A person, whether licensed or not, is subject to the following requirements:

> (a) He or she shall not operate a vehicle in violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(4), MCL 257.625(5), or MCL 257.625(8)] while another person who is less than 16 years of age is occupying the vehicle.
> . . .

> (b) He or she shall not operate a vehicle in violation of [MCL 257.625(6)] while another person who is less than 16 years of age is occupying the vehicle. . . ." MCL 257.625(7).

"[MCL 257.625(7)] does not prohibit a person from being charged with, convicted of, or punished for a violation of [MCL 257.625(4) or MCL 257.625(5)] that is committed by the person while violating [MCL 257.625(7)]." MCL 257.625(7)(d). "However, points shall not be assessed under [MCL 257.320a] for both a violation of [MCL 257.625(4) or MCL 257.625(5)] and a violation of [MCL 257.625(7)] for conduct arising out of the same transaction." MCL 257.625(7)(d).

B. Penalties

"A person who violates [MCL 257.625(7)(a)] is guilty of a crime punishable as follows:

> (*i*) Except as provided in subparagraph (*ii*), a person who violates [MCL 257.625(7)(a)] is guilty of a misdemeanor and shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00 and to 1 or more of the following:
>
> > (A) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.
> >
> > (B) Community service for not less than 30 days or more than 90 days.
>
> (*ii*) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates [MCL 257.625(7)(a)] is guilty of a felony and shall be sentenced to pay a fine of not less than $500.00 or more than $5,000.00 and to either of the following:
>
> > (A) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.
> >
> > (B) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this imprisonment shall be served consecutively. This

term of imprisonment shall not be suspended." MCL 257.625(7)(a).

"A person who violates [MCL 257.625(7)(b)] is guilty of a misdemeanor punishable as follows:

(*i*) Except as provided in subparagraph (*ii*), a person who violates [MCL 257.625(7)(b)] may be sentenced to 1 or more of the following:

(A) Community service for not more than 60 days.

(B) A fine of not more than $500.00.

(C) Imprisonment for not more than 93 days.

(*ii*) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates [MCL 257.625(7)(b)] shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00 and to 1 or more of the following:

(A) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.

(B) Community service for not less than 30 days or more than 90 days." MCL 257.625(7)(b).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(c). See Section 1.39 for more information on points. "However, points shall not be assessed under [MCL 257.320a] for both a violation of [MCL 257.625(4) or MCL 257.625(5)] and a violation of [MCL 257.625(7)] for conduct arising out of the same transaction." MCL 257.625(7)(d).

- $500 driver responsibility fee. for two consecutive years See MCL 257.732a(2)(b)(*i*).[28]

- License suspension/revocation (length dependent on specific conviction and criminal history). See MCL 257.319(8)(e). See Section 1.43 for more information on license suspension and Section 1.42 for more information on license revocation.

  - Violation of MCL 257.625(7) if no prior convictions within seven years: mandatory 180-day suspension; discretionary restricted license after first 90 days of suspension period. See MCL 257.319(8)(e).

  - Any combination of two convictions within seven years for offenses listed in MCL 257.303(2)(c)(*i*)-(*iii*): mandatory revocation of at least one year (length dependent on various factors). See MCL 257.303(2)(c).

  - Any combination of three convictions within 10 years for offenses listed in MCL 257.303(2)(g)(*i*)-(*iii*): mandatory revocation of at least one year (length dependent on various factors). See MCL 257.303(2)(g); MCL 257.303(4)(a).

- Vehicle immobilization (length dependent on specific conviction and criminal history), unless forfeiture ordered under MCL 257.625n. See MCL 257.625(7)(c); MCL 257.904d(1). See Section 1.45 for more information on vehicle immobilization.

  - No prior convictions: immobilization may be ordered for not more than 180 days. See MCL 257.625(7)(c); MCL 257.904d(1)(a).

  - Conviction under MCL 257.625(7) within seven years after a prior conviction: mandatory immobilization for not less than 90 days or more than 180 days, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(7)(c); MCL 257.904d(1)(c).

  - Conviction under MCL 257.625(7) after two or more prior convictions: mandatory immobilization for not less than one year or more than three years, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(7)(c); MCL 257.904d(1)(d).

[28]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

- Vehicle forfeiture may be imposed for a violation of MCL 257.625(7). See MCL 257.625(7)(c); MCL 257.625n. See Section 1.47 for more information on vehicle forfeiture.

- Registration denial is required under certain circumstances. See MCL 257.219(1)(c)-(d). See Section 1.48 for more information on registration denial.

9.11 Operating with the Presence of Certain Controlled Substances in Body—Section 625(8)

A. Statutory Authority

"A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles,[29] including an area designated for the parking of vehicles, within [Michigan] if the person has in his or her body any amount of a controlled substance listed in schedule 1 under [MCL 333.7212], or a rule promulgated under [MCL 333.7212], or of a controlled substance described in [MCL 333.7214(a)(*iv*)]." MCL 257.625(8).

B. Relevant Jury Instruction

- M Crim JI 15.3a addresses operating with any amount of a schedule 1 or 2 controlled substance in his or her body.

C. Penalties

"If a person is convicted of violating [MCL 257.625(8)], all of the following apply:

> (a) Except as otherwise provided in subdividsions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:
>
> > (*i*) Community service for not more than 360 hours.
> >
> > (*ii*) Imprisonment for not more than 93 days[.]

[29]In the context of MCL 257.625(1), the Court held that the trial court properly dismissed the defendant's OWI charge because "that portion of a private driveway immediately next to a private residence[] . . . is . . . not a 'place . . . generally accessible to motor vehicles.'" *People v Rea*, 315 Mich App 151, ___ (2016). See Section 9.4(E)(1) for further discussion of the issue.

(*iii*) A fine of not less than $100.00 or more than $500.00[.]

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00 and 1 or more of the following:

(*i*) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

(*ii*) Community service for not less than 30 days or more than 90 days.

(c) If the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony and shall be sentenced to pay a fine of not less than $500.00 or more than $5,000.00 and to either of the following:

(*i*) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(*ii*) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(d) A term of imprisonment imposed under subdivision(b) or (c) shall not be suspended." MCL 257.625(9).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: http://www.michigan.gov/documents/OffenseCode_73877_7.pdf. See Section 1.38 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(c). See Section 1.39 for more information on points.

- $500 driver responsibility fee. for two consecutive years See MCL 257.732a(2)(b)(*i*).[30]

- License suspension/revocation (length dependent on specific conviction and criminal history). See MCL 257.303(2)(c); MCL 257.319(8)(a). See Section 1.43 for more information on license suspension and Section 1.42 for more information on license revocation.

  - Violation of MCL 257.625(8) if no prior convictions within seven years: mandatory 180-day suspension; discretionary restricted license after first 30 days of suspension period if offender is otherwise eligible. See MCL 257.319(8)(a); MCL 257.319(16).

  - Any combination of two convictions within seven years for offenses listed in MCL 257.303(2)(c)(*i*)-(*iii*): mandatory revocation of at least one year (length dependent on various factors). See MCL 257.303(2)(c); MCL 257.303(4).

  - Any combination of three convictions within 10 years for offenses listed in MCL 257.303(2)(g)(*i*)-(*iii*): mandatory revocation of at least one year (length dependent on various factors). See MCL 257.303(2)(g); MCL 257.303(4).

- Vehicle immobilization (length dependent on specific conviction and criminal history). See MCL 257.625(9); MCL 257.904d(1). See Section 1.45 for more information on vehicle immobilization.

  - No prior convictions: immobilization may be ordered for not more than 180 days. See MCL 257.625(9)(e); MCL 257.904d(1)(a).

  - Conviction under MCL 257.625(8) within seven years after a prior conviction: mandatory immobilization for not less than 90 days or more than 180 days, unless forfeiture is ordered under MCL 257.625n. See MCL 257.625(9)(e); MCL 257.904d(1)(c).

  - Conviction under MCL 257.625(8) after two or more prior convictions: mandatory immobilization for not less than one year or more than three years, unless

[30]Beginning in 2015, the amount of the driver responsibility fee imposed on certain individuals is reduced until it is completely eliminated (October 2019). See MCL 257.732a(11). See Section 1.40(C) for more specific information related to the phase out of driver responsibility fees.

forfeiture is ordered under MCL 257.625n. See MCL 257.625(9)(e); MCL 257.904d(1)(d).

- Vehicle forfeiture may be imposed for a violation of MCL 257.625(8). See MCL 257.625(9)(e); MCL 257.625n. See Section 1.47 for more information on vehicle forfeiture.

- Registration denial is required under certain circumstances. See MCL 257.219(1)(c)-(d). See Section 1.48 for more information on registration denial.

E. Issues

"The Michigan Medical Marihuana Act (MMMA) prohibits the prosecution of registered patients who internally possess marijuana, but the act does not protect registered patients who operate a vehicle while 'under the influence' of marijuana." *People v Koon*, 494 Mich 1, 3 (2013). "The [MVC] prohibits a person from driving with any amount of a schedule 1 controlled substance, a list that includes marijuana, in his or her system." *Id*. However, "the MMMA's protection supersedes the [MVC's] prohibition and allows a registered patient to drive when he or she has indications of marijuana in his or her system but is not otherwise under the influence of marijuana." *Id*. Stated another way, "the [MVC's] zero-tolerance provision, MCL 257.625(8), which is inconsistent with the MMMA, does not apply to the medical use of marijuana." *Koon*, 494 Mich at 7. "[T]he MMMA is inconsistent with, and therefore supersedes, MCL 257.625(8) unless a registered qualifying patient loses immunity because of his or her failure to act in accordance with the MMMA." *Koon*, 494 Mich at 8-9.

For more general information on the MMMA, see the Michigan Judicial Institute's *Controlled Substances Benchbook*, Chapter 7.

9.12 Ignition Interlock Device

A. Generally

"The manufacturer of an ignition interlock device shall design a warning label, and the person who has an ignition interlock device shall promptly affix that label to each ignition interlock device upon installation. The label shall contain a warning that any person tampering with, circumventing, or otherwise misusing the device is guilty of a misdemeanor punishable as provided by law." MCL 257.625*l*(1).

"A person who is only permitted to operate a motor vehicle equipped with an ignition interlock device shall not operate a motor vehicle on

which an ignition interlock device is not properly installed." MCL 257.625*l*(2).

"A person who has an ignition interlock device installed and whose driving privilege is restricted shall not request, solicit, or allow any other person to blow into an ignition interlock device or to start a vehicle equipped with the device for the purpose of providing the person whose driving privilege is restricted with an operable vehicle." MCL 257.625*l*(3).

"A person shall not blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable vehicle to a person who has an interlock device installed and whose driving privilege is restricted." MCL 257.625*l*(4).

"A person shall not tamper with or circumvent the operation of an ignition interlock device." MCL 257.625*l*(5).

"A person who violates [MCL 257.625*l*(2), MCL 257.625*l*(3), MCL 257.625*l*(4), or MCL 257.625*l*(5)] is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $5,000.00, or both." MCL 257.625*l*(6).

B. Vehicle Impoundment

"If a law enforcement officer detains the operator of a motor vehicle for violating a law of [Michigan] or a local ordinance and the operator is a person required to only operate a motor vehicle with an ignition interlock device properly installed, but no ignition interlock device is properly installed on the motor vehicle, the law enforcement officer shall impound the motor vehicle." MCL 257.625*l*(7).

"If a motor vehicle impounded under [MCL 257.625*l*(7)] is individually or jointly owned by the operator, the law enforcement officer shall do all of the following:

> (a) Immediately confiscate the motor vehicle registration plate and destroy it.
>
> (b) Issue a temporary registration plate for the vehicle in the same manner prescribed by the secretary of state for temporary registration plates issued under [MCL 257.226a or MCL 257.226b].
>
> (c) Place the temporary registration plate issued under subdivision (b) on the motor vehicle in the manner prescribed by the secretary of state.

> (d) Notify the secretary of state through the law enforcement information network in a form prescribed by the secretary of state that the registration plate was destroyed and a temporary registration plate was issued to the motor vehicle." MCL 257.625*l*(7).

"A temporary registration plate issued under [MCL 257.625*l*] is valid until the charges for violating [MCL 257.625*l*(2)] are dismissed, the person pleads guilty or no contest to the charge, or the person is found guilty of or is acquitted of the charge." MCL 257.625*l*(8).

"If the motor vehicle impounded under [MCL 257.625*l*] is not owned individually or jointly by the operator, the law enforcement officer shall impound the motor vehicle by contacting a local towing agency." MCL 257.625*l*(9). "The motor vehicle shall only be returned to the registered owner." *Id*.

"The owner of a motor vehicle impounded under [MCL 257.625*l*] is liable for the expenses incurred in the removal and storage of the motor vehicle whether or not it is returned to him or her." MCL 257.625*l*(10). "The motor vehicle shall be returned to the owner only if the owner pays the expenses of removal and storage." *Id*. "If redemption is not made or the vehicle is not returned as described under [MCL 257.625l(10)], it shall be considered an abandoned vehicle and disposed of under [MCL 257.252a]." MCL 257.625*l*(10).

For information on vehicle impoundment generally, see Section 1.46.

9.13 Preliminary Chemical Breath Analysis (PBT) & Chemical Tests of Blood, Urine, or Breath

A. Preliminary Chemical Breath Analysis (PBT)

1. Submitting to or Refusing a Preliminary Chemical Breath Analysis Test (PBT)

"A peace officer who has reasonable cause to believe that a person was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within [Michigan] and that the person by the consumption of alcoholic liquor may have affected his or her ability to operate a vehicle . . . or reasonable cause to believe that a person who is less than 21 years of age was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within [Michigan] while

the person had any bodily alcohol content as that term is defined in [MCL 257.625(6)], may require the person to submit to a preliminary chemical breath analysis test[(PBT)]." MCL 257.625a(2).

"A person who submits to a [PBT] remains subject to the requirements of [MCL 257.625c, MCL 257.625d, MCL 257.625e, and MCL 257.625f] for purposes of chemical tests described in those sections." MCL 257.625a(2)(c).

"Except as provided in [MCL 257.625a(5)[31]], a person who refuses to submit to a [PBT] upon a lawful request by a peace officer is responsible for a civil infraction." MCL 257.625a(2)(d).

2. Arrest Authorized

"A peace officer may arrest a person based in whole or in part upon the results of a [PBT]." MCL 257.625a(2)(a).

3. Admissibility at Trial

"The results of a [PBT] are admissible in a criminal prosecution for a crime enumerated in [MCL 257.625c(1)] or in an administrative hearing for 1 or more of the following purposes:

> (*i*) To assist the court or hearing officer in determining a challenge to the validity of an arrest. This subparagraph does not limit the introduction of other competent evidence offered to establish the validity of an arrest.
>
> (*ii*) As evidence of the defendant's breath alcohol content, if offered by the defendant to rebut testimony elicited on cross-examination of a defense witness that the defendant's breath alcohol content was higher at the time of the charged offense than when a chemical test was administered under [MCL 257.625a(6)].
>
> (*iii*) As evidence of the defendant's breath alcohol content, if offered by the prosecution to rebut testimony elicited on cross-examination of a prosecution witness that the defendant's breath alcohol content was lower at the time of the charged offense than when a chemical test was

[31] "MCL 257.625a(5) concerns refusing to submit to a PBT while driving a commercial motor vehicle, which is beyond the scope of this benchbook.

administered under [MCL 257.625(6)]." MCL 257.625a(2)(b).

B. Chemical Test

1. Implied Consent Upon Arrest

"A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within [Michigan] is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or other intoxicating substance, or any combination of them, in his or her blood or urine or the amount of alcohol in his or her breath in all of the following circumstances:

> (a) If the person is arrested for a violation of [MCL 257.625(1), MCL 257.625(3), MCL 257.625(4), MCL 257.625(5), MCL 257.625(6), MCL 257.625(7), or MCL 257.625(8)], [MCL 257.625a(5)], or [MCL 257.625m] or a local ordinance substantially corresponding to [MCL 257.625(1), MCL 257.625(3), MCL 257.625(6), or MCL 257.625(8)], [MCL 257.625a(5)], or [MCL 257.625m].
>
> (b) If the person is arrested for a violation of [MCL 257.601d], [MCL 257.626(3) or MCL 257.626(4)], or manslaughter, or murder resulting from the operation of a motor vehicle, and the peace officer had reasonable grounds to believe the person was operating the vehicle in violation of [MCL 257.625]." MCL 257.625c(1).

"A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician is not considered to have given consent to the withdrawal of blood." MCL 257.625c(2).

"The tests shall be administered as provided in [MCL 257.625a(6)]." MCL 257.625c(3).

2. Advice

"A person arrested for a crime described in [MCL 257.625c(1)] shall be advised of all of the following:

(*i*) If he or she takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, he or she has the right to demand that a person of his or her own choosing administer 1 of the chemical tests.[32]

(*ii*) The results of the test are admissible in a judicial proceeding as provided under [the MVC] and will be considered with other admissible evidence in determining the defendant's innocence or guilt.

(*iii*) He or she is responsible for obtaining a chemical analysis of a test sample obtained at his or her own request.

(*iv*) If he or she refuses the request of a peace officer to take a test described in subparagraph (*i*), a test shall not be given without a court order, but the peace officer may seek to obtain a court order.

(*v*) Refusing a peace officer's request to take a test described in subparagraph (*i*) will result in the suspension of his or her operator's . . . license and vehicle group designation or operating privilege and in the addition of 6 points to his or her driver record." MCL 257.625a(6)(b).

3. Submitting to or Refusing a Chemical Test

"A chemical test described in [MCL 257.625a(6)] shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in [MCL 257.625c(1)]." MCL 257.625a(6)(d).

"A person who takes a chemical test administered at a peace officer's request as provided in [MCL 257.625a] shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in [MCL

[32]However, the defendant cannot choose a specific analyst at the Michigan State Police (MSP) laboratory to administer the chemical test. See *People v Green (Gregory)*, 310 Mich App 249, 255 (2015) (reversing the trial court's order compelling the MSP laboratory to retest evidence at the defendant's request and holding that MCL 257.625a(6), which provides the defendant with an identical right to independent testing in the context of motor vehicles, does not permit a defendant to choose a forensic scientist at the MSP laboratory to administer a chemical test because "there is no indication that the MSP laboratory . . . offers chemical testing services to private individuals or is able to bill for such services[]"). "[T]he trial court lacks authority to compel a state agency to perform services it does not offer." *Green (Gregory)*, 310 Mich App at 255. Further, "MCR 6.201(A)(6) does not provide the trial court with the authority to order the MSP to retest its own evidence. Rather, it merely provides the court with the authority to provide [the] *defendant* the opportunity to test any tangible physical evidence." *Green (Gregory)*, 310 Mich App at 256-257.

257.625a(6)(d)] within a reasonable time after his or her detention." MCL 257.625a(6)(d).[33] "The test results are admissible and shall be considered with other admissible evidence in determining the defendant's innocence or guilt." *Id.*

"If the person charged is administered a chemical test by a person of his or her own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample." MCL 257.625a(6)(d).

"If a person refuses the request of a peace officer to submit to a chemical test offered under [MCL 257.625a(6)], a test shall not be given without a court order, but the officer may seek to obtain the court order." MCL 257.625d(1).

"A written report shall immediately be forwarded to the secretary of state by the peace officer." MCL 257.625d(2). "The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in [MCL 257.625c(1)], and that the person had refused to submit to the test upon the request of the peace officer and had been advised of the consequences of the refusal." MCL 257.625d(2).

a. Requesting a Hearing

"If a person refuses to submit to a chemical test pursuant to [MCL 257.625d], the peace officer shall immediately notify the person in writing that within 14 days of the date of the notice the person may request a hearing as provided in [MCL 257.625f]." MCL 257.625e(1).

"The notice shall specifically state that failure to request a hearing within 14 days will result in the suspension of the person's license or permit to drive." MCL 257.625e(2). "The notice shall also state that there is not a requirement that the person retain counsel for the hearing, although counsel would be permitted to represent the person at the hearing." *Id.*

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[33]However, the defendant cannot choose a specific analyst at the Michigan State Police (MSP) laboratory to administer the chemical test. See *People v Green (Gregory)*, 310 Mich App 249, 255 (2015) (reversing the trial court's order compelling the MSP laboratory to retest evidence at the defendant's request and holding that MCL 257.625a(6), which provides the defendant with an identical right to independent testing in the context of motor vehicles, does not permit a defendant to choose a forensic scientist at the MSP laboratory to administer a chemical test because "there is no indication that the MSP laboratory . . . offers chemical testing services to private individuals or is able to bill for such services[]"). "[T]he trial court lacks authority to compel a state agency to perform services it does not offer." *Green (Gregory)*, 310 Mich App at 255. Further, "MCR 6.201(A)(6) does not provide the trial court with the authority to order the MSP to retest its own evidence. Rather, it merely provides the court with the authority to provide [the] *defendant* the opportunity to test any tangible physical evidence." *Green (Gregory)*, 310 Mich App at 256-257.

"If a person who refuses to submit to a chemical test pursuant to [MCL 257.625d] does not request a hearing within 14 days after the date of notice pursuant to [MCL 257.625e], the secretary of state shall impose the following license sanctions:

> (a) If the person was operating a vehicle other than a commercial motor vehicle, suspend or deny the person's operator's . . . license or permit to drive, or nonresident operating privilege, for 1 year or, for a second or subsequent refusal within 7 years, for 2 years. If the person is a resident without a license or permit to operate a vehicle in [Michigan], the secretary of state shall not issue the person a license or permit for 1 year or, for a second or subsequent refusal within 7 years, for 2 years." MCL 257.625f(1).

If the person requests a hearing, MCL 257.322 governs the procedures for that administrative hearing. MCL 257.625f(2). "If the person who requested a hearing does not prevail, the secretary of state shall impose the following license sanctions after the hearing:

> (a) If the person was operating a vehicle other than a commercial motor vehicle, suspend or deny issuance of a license or driving permit or a nonresident operating privilege of the person for 1 year or, for a second or subsequent refusal within 7 years, for 2 years. If the person is a resident without a license or permit to operate a vehicle in [Michigan], the secretary of state shall not issue the person a license or permit for 1 year or, for a second or subsequent refusal within 7 years, for 2 years." MCL 257.625f(7).

b. Circuit Court Appeal

"The person may file a petition in the circuit court of the county in which the arrest was made to review the suspension or denial as provided in [MCL 257.323]." MCL 257.625f(7)(a). "If the person who requested the hearing prevails, the peace officer who filed the report under [MCL 257.625d] may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the

determination of the hearing officer as provided in [MCL 257.323]." MCL 257.625f(8).

4. Requirements for Collecting Sample/Specimen for Chemical Test

"A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or an individual operating under the delegation of a licensed physician under [MCL 333.16215], qualified to withdraw blood and acting in a medical environment, may withdraw blood at a peace officer's request to determine the amount of alcohol or presence of a controlled substance or other intoxicating substance in the person's blood, as provided in [MCL 257.625a(6)(c)]. Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures does not attach to a licensed physician or individual operating under the delegation of a licensed physician who withdraws or analyzes blood or assists in the withdrawal or analysis in accordance with [the MVC] unless the withdrawal or analysis is performed in a negligent manner." MCL 257.625a(6)(c).

5. Disclosure

"If a chemical test described in [MCL 257.625a(6)] is administered, the test results shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The prosecution shall offer the test results as evidence in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the prosecution." MCL 257.625a(8).

Similarly, after an accident, chemical tests may be taken and must be disclosed as required by statute. See MCL 257.625a(6)(e)-(f).

Under MCL 257.625a(6)(e), if a chemical analysis of a driver's blood has been taken pursuant to that provision (taking blood after accident for medical purposes), "[t]he medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in [MCL 257.625a(6)(e)]. A medical facility or person disclosing information in compliance with [MCL 257.625a(6)(e)] is not civilly or criminally liable for making the disclosure." MCL

257.625a(6)(e). "[MCL 257.625a(6)(e)[34]] is constitutional under US Const, Am IV and Const 1963, art 1, § 11, and the Equal Protection Clauses of US Const, Am XIV and Const 1963, art 1, § 2." *People v Perlos*, 436 Mich 305, 309 (1990). Although the *Perlos* holding construed a former version of this statute, the subsequent statutory amendments do not appear to disturb this holding.

Under MCL 257.625a(6)(f), a person's blood must be withdrawn "in a manner directed by the medical examiner" following an accident where the driver dies. "The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident and that agency shall forward the results to the department of state police." *Id*.

6. Admissibility Issues

"The amount of alcohol or presence of a controlled substance or other intoxicating substance in a driver's blood or urine or the amount of alcohol in a person's breath at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding and is presumed to be the same as at the time the person operated the vehicle." MCL 257.625a(6)(a).

"The results of the test are admissible in a judicial proceeding as provided under [the MVC] and will be considered with other admissible evidence in determining the defendant's innocence or guilt." MCL 257.625a(6)(b)(*ii*).

"A person's refusal to submit to a chemical test as provided in [MCL 257.625a(6)] is admissible in a criminal prosecution for a crime described in [MCL 257.625c(1)] only to show that a test was offered to the defendant, but not as evidence in determining the defendant's innocence or guilt." MCL 257.625a(9). "The jury shall be instructed accordingly." *Id*. M Crim JI 15.9 addresses the defendant's decision to forgo chemical testing.

"The provisions of [MCL 257.625a(6)] relating to chemical testing do not limit the introduction of any other admissible evidence bearing upon any of the following questions:

> (a) Whether the person was impaired by, or under the influence of, alcoholic liquor, a controlled substance or other intoxicating substance, or a

[34] Formerly MCL 257.625a(9).

> combination of alcoholic liquor, a controlled substance, or other intoxicating substance.
>
> (b) Whether the person had an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2018, the person had an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
>
> (c) If the person is less than 21 years of age, whether the person had any bodily alcohol content within his or her body." MCL 257.625a(7).

"If a chemical test described in [MCL 257.625a(6)] is administered, the test results shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court." MCL 257.625a(8). "The prosecution shall furnish the results at least 2 days before the day of the trial." *Id*. "The prosecution shall offer the test results as evidence in that trial." *Id*. "Failure to fully comply with the request bars the admission of the results into evidence by the prosecution." *Id*.

9.14 Roadside Drug Testing

"The department of state police may establish a pilot program in 5 counties in [Michigan] for roadside drug testing to determine whether an individual is operating a vehicle while under the influence of a controlled substance in violation of [MCL 257.625]." MCL 257.625t(1).

Pilot programs will run for one calendar year. MCL 257.625t(2). Counties are eligible to participate in the pilot program if the county has a law enforcement agency that employs at least one law enforcement officer who is a certified drug recognition expert. MCL 257.625t(4). The department of state police is responsible for selecting the counties for the pilot program, developing a written policy for the implementation of the pilot program and the administration of roadside drug testing, and promulgating administrative rules to implement the pilot program. MCL 257.625t(3); MCL 257.625t(5); MCL 257.625t(6).

A. Preliminary Oral Fluid Analysis

Qualified officers participating in the roadside drug testing pilot program will use preliminary oral fluid analysis to determine whether an individual is operating a vehicle while under the influence of a controlled substance. See MCL 257.625r.[35]

1. Authority to Require Analysis

In order to require a person to submit to a preliminary oral fluid analysis, a peace officer must be:

- a certified drug recognition expert; and
- in a county participating in the roadside drug testing pilot. MCL 257.625r(1).

Before conducting a preliminary oral fluid analysis, the peace officer must have reasonable cause to believe either that

- "a person was operating a vehicle upon a highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state and that the person by the consumption of a controlled substance, may have affected his or her ability to operate a vehicle," or
- "a person had in his or her body any amount of a controlled substance listed in schedule 1 under . . . MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in [MCL 333.7214(a)(*iv*).]" MCL 257.625r(1).

2. Chemical Test Requirements Apply

"A person who submits to a preliminary oral fluid analysis remains subject to the requirements of [MCL 257.625a, MCL 257.625c, MCL 257.625d, MCL 257.625e, and MCL 257.625f] for purposes of chemical tests described in those sections." MCL 257.625r(4). See Section 9.13 for a discussion of chemical testing.

3. Civil Liability

Refusal to submit to a preliminary oral fluid analysis upon a lawful request by a peace officer is a civil infraction. MCL 257.625r(5).

[35]Note that MCL 257.625r also discusses specific procedures and rules applicable to operators of commercial motor vehicles who are subjected to preliminary oral fluid analysis as part of the roadside drug testing pilot. See MCL 257.625r(6)-(9). Discussion of commercial motor vehicles is outside the scope of this benchbook.

B. Authority to Arrest

"A peace officer who is certified drug recognition expert . . . in a county participating in the roadside drug testing pilot program under [MCL 257.625t] may arrest a person in whole or in part upon the results of a preliminary oral fluid analysis." MCL 257.625r(2).

C. Admissibility of Preliminary Oral Fluid Analysis

"The results of a preliminary oral fluid analysis are admissible in a criminal prosecution for a crime enumerated in [MCL 257.625c(1)] or in an administrative hearing for 1 or more of the following purposes:

> (a) To assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.
>
> (b) As evidence of the presence or nonpresence of a controlled substance in the defendant's oral fluid if offered by the defendant to rebut testimony elicited on cross-examination of a defense witness that a preliminary oral fluid analysis of the defendant's oral fluid showed the presence of a controlled substance that was not found to be present when a chemical test of the defendant's blood or urine was administered under [MCL 257.625a].
>
> (c) As evidence of the presence or nonpresence of a controlled substance in the defendant's oral fluid if offered by the prosecution to rebut testimony elicited on cross-examination of a prosecution witness that a preliminary oral fluid analysis of the defendant's oral fluid showed no presence of a controlled substance that was found to be present when a chemical test of the defendant's blood or urine was administered under [MCL 257.625a]." MCL 257.625r(3).

9.15 Testimony Regarding Field Sobriety Tests

"A person who is qualified by knowledge, skill, experience, training, or education, in the administration of standardized field sobriety tests, including the horizontal gaze nystagmus (HGN) test, shall be allowed to testify subject to showing of a proper foundation of qualifications. This section does not preclude the admissibility of a nonstandardized field sobriety test if it complies with the Michigan rules of evidence." MCL 257.625s.

9.16 Obtaining or Transferring a Vehicle to Circumvent Vehicle or License Sanctions

A. Unlawful Acquisition of a Vehicle

1. Unlawful Purchase or Lease of a Vehicle to Circumvent Immobilization

"A person shall not purchase or lease another vehicle or an interest in another vehicle with the intent to circumvent the restrictions created by immobilization of a vehicle under [the MVC]." MCL 257.233(2).

"A person who violates [MCL 257.233(2)] is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both." MCL 257.233(5).

2. Unlawful Acquisition of a Vehicle Following License Suspension, Revocation, or Denial

"A person whose operator's . . . license is suspended, revoked, or denied for, or who has never been licensed by [Michigan] and was convicted for, a third or subsequent violation of [MCL 257.625 or MCL 257.625m], o[r] a local ordinance substantially corresponding to [MCL 257.625 or MCL 257.625m], or a law of another state substantially corresponding to [MCL 257.625 or MCL 257.625m], or for a fourth or subsequent suspension or revocation under [MCL 257.904] shall not purchase, lease, or otherwise acquire a motor vehicle during the suspension, revocation, or denial period." MCL 257.233(6).

"A person who violates [MCL 257.233(6)] is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both." MCL 257.233(6).

3. Assigned Holder of Plates Fails to Produce Old Registration Certificate or Certificate of Title Upon Application for New Registration Certificate

"If the assigned holder of registration plates applies for a new registration certificate, the application shall be accompanied either by the old registration certificate or by a certificate of title showing the person to be the assigned holder of the registration plates for which the old registration certificate had been issued." MCL 257.233(7).

"A person who fails or neglects to fulfill the requirements of [MCL 257.233(7)] is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both." MCL 257.233(7).

B. Unlawful Transfer of a Vehicle

1. Transfer to Avoid Forfeiture

"A person shall not transfer or attempt to transfer ownership or right of possession of a vehicle subject to forfeiture or ordered forfeited under [the MVC] with the intent to avoid the forfeiture of that vehicle." MCL 257.233(3).

"A person who violates [MCL 257.233(3)] is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both." MCL 257.233(5).

2. Transfer of a Vehicle Subject to Vehicle Sanctions to a Person Exempt from Use Tax

"During the time a vehicle is subject to a temporary registration plate, vehicle forfeiture, immobilization, registration denial, or the period from adjudication to immobilization of forfeiture under [the MVC], a person shall not without a court order transfer or assign the title or an interest in the vehicle to a person who is not subject to payment of a use tax under [MCL 205.93]." MCL 257.233(4).

"The following transfers or purchases are not subject to use tax:

> (a) A transaction or a portion of a transaction if the transferee or purchaser is the spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian with a certified letter of guardianship, of the transferor.
>
> (b) A transaction or a portion of a transaction if the transfer is a gift to the beneficiary in the administration of an estate.
>
> (c) If a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft that has once been subjected to the Michigan sales or use tax is transferred in connection with the organization, reorganization, dissolution, or partial liquidation

> of an incorporated or unincorporated business and the beneficial ownership is not changed.
>
> (d) If an insurance company licensed to conduct business in [Michigan] acquires ownership of a late model distressed vehicle as defined in [MCL 257.12a], through payment of damages in response to a claim or when the person who owned the vehicle before the insurance company reacquires ownership from the company as part of the settlement of a claim." MCL 205.93(3).

"A person who violates [MCL 257.233(4)] is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both." MCL 257.233(5).

Glossary

A

Abandoned vehicle

- For purposes of MCL 257.252a, *abandoned vehicle* means "any of the following:

(a) A vehicle that has remained on private property without the consent of the owner.

(b) A vehicle that has remained on public property for a period of not less than 48 hours, or on a state trunk line highway as described in . . . MCL 247.651, as follows:

(*i*) If a valid registration plate is affixed to the vehicle, for a period of not less than 18 hours.

(*ii*) If a valid registration plate is not affixed to the vehicle.

(c) A vehicle, other than a late-model vehicle, to which all of the following apply:

(*i*) An insurance company has not acquired ownership of the vehicle under [MCL 257.217c].

(*ii*) The vehicle cannot be disposed of under [MCL 257.248c].

(*iii*) The vehicle has remained in the custody of a vehicle salvage pool or broker site without the consent of the vehicle salvage pool operator or the broker for a period of not less than 60 days." MCL 257.252a(2).

Alcoholic liquor

- For purposes of the MVC, *alcoholic liquor* means "any liquid or compound, whether or not medicated, proprietary, patented, and by whatever name called, containing any amount of alcohol including any liquid or compound described in [MCL 436.1105]." MCL 257.1d.

Any bodily alcohol content

- For purposes of MCL 257.625(6), MCL 267.625a(7)(c), and MCL 777.48, *any bodily alcohol content* means "either of the following:

(a) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2018, the person has an alcohol content of 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony." MCL 257.625(6); MCL 257.625a(7)(c).

- For purposes of the Michigan Liquor Control Code, *any bodily alcohol content* means "either of the following:

(*i*) An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(*ii*) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony." MCL 436.1703(18)(a).

Approved sponsor

- For purposes of MCL 257.320d, *approved sponsor* means "a sponsor of a basic driver improvement course that is approved by the secretary of state under [MCL 257.320d(12)] and whose approved status is not suspended or revoked under [MCL 257.320d(16)]." MCL 257.320d(17).

Authorized activity

- For purposes of MCL 257.310e, *authorized activity* "means any of the following:

(a) A school or a school-sanctioned event or activity. For purposes of this subdivision, school means a public or private school, including a home school.

(b) A sporting event or activity, or extracurricular event or activity, that is not school-sanctioned but that is part of an official sports league or association or an official extracurricular club, or that is paid for as a service offered by a business specializing in those events or activities or training for those events or activities.

(c) A class or program of vocational instruction offered by a college, community college, nonprofit association, or unit of government or by a business specializing in vocational training.

(d) An event or activity sponsored by a religious organization that is tax-exempt under federal law.

(e) Transporting an individual in need of immediate emergency care or personal protection to a health care professional, hospital, police station, domestic violence shelter, or public safety location." MCL 257.310e(15).

Authorized emergency vehicle

- For purposes of the MVC, *authorized emergency vehicle* means any one of the following:

  "(a) Vehicles of the fire department, police vehicles, ambulances, privately owned motor vehicles of volunteer or paid fire fighters, or volunteer members of an emergency rescue unit if authorized by the chief of an organized fire department, a county sheriff, or the director of the department of state police, or privately owned motor vehicles of volunteer or paid members of a life support agency licensed by the department of licensing and regulatory affairs if authorized by the life support agency.

  (b) For purposes of [MCL 257.698(5)(c)] during an emergency, a vehicle owned and operated by a federally recognized nonprofit charitable organization that is used exclusively for assistance during that emergency.

  (c) For purposes of [MCL 257.653a], a road service vehicle giving a visual signal by means of a flashing, rotating, or oscillating red or amber light. As used in this subdivision,

'road service vehicle' means a vehicle that is clearly marked and readily recognizable as a vehicle used to assist disabled vehicles." MCL 257.2(1).

Automated driving system

- For purposes of the MVC, *automated driving system* means "hardware and software that are collectively capable of performing all aspects of the dynamic driving task for a vehicle on a part-time or full-time basis without any supervision by a human operator. As used in this subsection, 'dynamic driving task' means all of the following, but does not include strategic aspects of a driving task, including, but not limited to, determining destinations or waypoints:

  (a) Operational aspects, including, but not limited to, steering, braking, accelerating, and monitoring the vehicle and the roadway.

  (b) Tactical aspects, including, but not limited to, responding to events, determining when to change lanes, turning, using signals, and other related actions." MCL 257.2b(1).

Automated motor vehicle

- For purposes of the MVC, *automated motor vehicle* means "a motor vehicle on which an ~~automated technology~~automated driving system has been installed, either by a manufacturer of automated ~~technology~~driving systems or an upfitter that enables the motor vehicle to be operated without any control or monitoring by a human operator. Automated motor vehicle does not include a motor vehicle enabled with 1 or more active safety systems or operator assistance systems, including, but not limited to, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane-keeping assistance, lane departure warning, or traffic jam and queuing assistance, unless 1 or more of these technologies alone or in combination with other systems enable the vehicle on which ~~the technology is~~any active safety systems or operator assistance systems are installed to operate without any control or monitoring by an operator." ~~MCL 257.2b(1)~~MCL 257.2b(2).

Automated technology

- For purposes of the MVC, *automated technology* "means technology installed on a motor vehicle that has the

capability to assist, make decisions for, or replace a human operator." MCL 257.2b(3).

~~Automatic mode~~

- ~~For purposes of the MVC, *automatic mode* means "the mode of operating an automated motor vehicle when automated technology is engaged to enable the motor vehicle to operate without any control or monitoring by an operator." MCL 257.2b(3).~~

C

Cancellation

- For purposes of the MVC, *cancellation* means "that a license or registration is annulled and terminated because of some error or defect or because the licensee or registrant is no longer entitled to such license or registration, but the cancellation of a license or registration is without prejudice and application for a new license or registration may be made at any time after such cancellation." MCL 257.5a.

Certified drug recognition expert

- For purposes of MCL 257.43b, MCL 257.625r, and MCL 257.625t, *certified drug recognition expert* "means a law enforcement officer trained to recognize impairment in a driver under the influence of a controlled substance rather than, or in addition to, alcohol." MCL 257.625t(9)(a). See also MCL 257.43b (defining *certified drug recognition expert* as the term is defined in MCL 257.625t); MCL 257.625r(1) (defining *certified drug recognition expert* as the term is defined in MCL 257.625t).

Chauffeur

- For purposes of the MVC, *chauffeur* "means any of the following:

  (a) A person who operates a motor vehicle as a motor common carrier of property or a motor contract carrier of property as defined in [MCL 475.1(f) and MCL 475.1(h)] . . ., or a motor carrier of passengers as defined in . . . MCL 474.103.

(b) A person who is employed for the principal purpose of operating a motor vehicle with a GVWR of 10,000 pounds or more.

(c) A person who operates a bus or school bus.

(d) A person who operates a taxi.

(e) A person who operates a limousine as defined by . . . MCL 257.1903.

(2) For purposes of subsection (1)(b), a person shall be considered to be employed for the principal purpose of operating a motor vehicle when the person's employment customarily involves the necessary use of a motor vehicle for hire or for transporting passengers for hire, or for transporting for gain or hire any merchandise for display, sale, or delivery.

(3) 'Chauffeur' does not include any of the following:

(a) A farmer or an employee of a farmer operating a vehicle exclusively in connection with the farming operations of the farmer.

(b) A fire fighter or a member of a fire department operating an ambulance.

(c) Emergency medical services personnel operating an ambulance. As used in this subdivision, 'emergency medical services personnel' means that term as defined in . . . MCL 333.20904.

(d) State transportation department employees whose work consists of operating vehicles with a gross vehicle weight rating of 10,000 pounds or more for the purpose of transporting highway and bridge maintenance materials and supplies for all aspects of state trunkline maintenance, including winter maintenance and facilities maintenance.

(e) County road commission employees and other employees of local units of government who do not drive their own vehicles and whose work consists of hauling road building materials and supplies for the road commission or for other municipal purposes.

(f) A person operating a motor vehicle for a volunteer program who only receives reimbursement for the costs of operating the motor vehicle.

(g) A person who operates a motor home for personal pleasure.

(h) A parent or parent's designee for the purpose of transporting pupils to or from school and school related events." MCL 257.6.

Citation

- For purposes of the MVC, *citation* is defined as "a complaint or notice upon which a police officer shall record an occurrence involving 1 or more vehicle law violations by the person cited." MCL 257.727c(1).

Civil Infraction

- For purposes of the MVC, *civil infraction* is defined as "an act or omission prohibited by law which is not a crime as defined in [MCL 750.5], and for which civil sanctions may be ordered." MCL 257.6a.

Civil infraction action

- For purposes of the MVC, *civil infraction action* is defined as "a civil action in which the defendant is alleged to be responsible for a civil infraction." MCL 257.741(1).

Clear vision area

- The Michigan Administrative Rules define *clear vision area* as "land acquired or used by the agency having jurisdiction over a highway, for the purpose of maintaining unobstructed vision." Michigan Administrative Rule 247.201(5).

Commercial motor vehicle

- For purposes of the MVC, *commercial motor vehicle* means "a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if 1 or more of the following apply:

  (a) It is designed to transport 16 or more passengers, including the driver.

  (b) It has a gross vehicle weight rating or gross vehicle weight, whichever is greater, of 26,001 pounds or more.

  (c) It has a gross combination weight rating or gross combination weight, whichever is greater, of 26,001

pounds or more, inclusive of towed units with a gross vehicle weight rating or gross vehicle weight, whichever is greater, of more than 10,000 pounds.

(d) A motor vehicle carrying hazardous material and on which is required to be posted a placard as defined and required under 49 CFR parts 100 to 199." MCL 257.7a(1).[1]

Commercial quadricycle

- For purposes of the MVC, *commercial quadricycle* means "a vehicle that satisfies all of the following:

  (a) The vehicle has fully operative pedals for propulsion entirely by human power.

  (b) The vehicle has at least 4 wheels and is operated in a manner similar to a bicycle.

  (c) The vehicle has at least 6 seats for passengers.

  (d) The vehicle is designed to be occupied by a driver and powered either by passengers providing pedal power to the drive train of the vehicle or by a motor capable of propelling the vehicle in the absence of human power.

  (e) The vehicle is used for commercial purposes.

  (f) The vehicle is operated by the owner of the vehicle or an employee of the owner of the vehicle." MCL 257.7b.

Controlled Substance

- For purposes of the MVC, *controlled substance* means "a controlled substance or controlled substance analogue as defined in [MCL 333.7104][.]" MCL 257.8b.

- For purposes of MCL 257.43b, MCL 257.625c, and MCL 257.625t, *controlled substance* means "that term as defined in . . . MCL 333.7104." MCL 257.43b; MCL 257.625c(4)(a); MCL 257.625t(9)(b). MCL 333.7104(2) defines *controlled substance* as "a drug, substance, or immediate precursor included in schedules 1 to 5 of part 72[of the Public Health Code]."

Conviction

[1]Note that a commercial motor vehicle "does not include a vehicle used exclusively to transport personal possessions or family members for nonbusiness purposes." MCL 257.7a(2).

- For purposes of the MVC, *conviction* means "any of the following:

  (a) A final conviction, the payment of a fine, a plea or guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication, probate court disposition, or juvenile disposition for a violation that if committed by an adult would be a crime, regardless of whether the penalty is rebated or suspended.

  (b) A conviction defined in federal law under 49 CFR 383.5, regarding the operation of a commercial motor vehicle or the operation of a noncommercial motor vehicle operated by a person licensed to operate a commercial motor vehicle." MCL 257.8a.

County jail

- For purposes of the MVC, *county jail* "shall be construed to mean the county jail of any county where the violation of any of the provisions of [the MVC] occur." MCL 257.9.

D

Delinquency proceeding

- "[A] proceeding concerning an offense by a juvenile, as defined in MCR 3.903(B)(3)." MCR 3.903(A)(5).

Department

- For purposes of the MVC, *department* means "the department of state." MCL 257.12.

Disabled person or person with disabilities

- For purposes of the MVC, *disabled person* or *person with disabilities* means "a person who is determined by a physician, a physician assistant, or an optometrist as specifically provided in [MCL 257.19a] licensed to practice in [Michigan] to have 1 or more of the following physical characteristics:

  (a) Blindness as determined by an optometrist, a physician, or a physician assistant.

  (b) Inability to walk more than 200 feet without having to stop and rest.

(c) Inability to do both of the following:

(*i*) Use 1 or both legs or feet.

(*ii*) Walk without the use of a wheelchair, walker, crutch, brace, prosthetic, or other device, or without the assistance of another person.

(d) A lung disease from which the person's forced expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or from which the person's arterial oxygen tension is less than 60 mm/hg of room air at rest.

(e) A cardiovascular condition that causes the person to measure between 3 and 4 on the New York heart classification scale, or that renders the person incapable of meeting a minimum standard for cardiovascular health that is established by the American heart association and approved by the department of public health.

(f) An arthritic, neurological, or orthopedic condition that severely limits the person's ability to walk.

(g) The persistent reliance upon an oxygen source other than ordinary air." MCL 257.19a.

Distressed vehicle

- For purposes of the MVC, *distressed vehicle* means "a vehicle that has a major component part that has been wrecked, destroyed, damaged, stolen, or missing to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor, is equal to or exceeds 75% of the actual cash value of the vehicle in its predamaged condition. The estimated costs of the repair parts shall be determined by using the current published retail cost of original manufacturer equipment parts or an estimate of the actual cost of the repair parts. The estimated labor costs shall be computed by using the hourly rate and time allocations which are reasonable and commonly assessed in the repair industry in the community where the repairs are performed. For the purposes of [MCL 257.12a], 'actual cash value' means the retail dollar value of a vehicle as determined by an objective vehicle evaluation using local market resources such as dealers or want ads or by an independent vehicle evaluation or appraisal service or by a current issue of a nationally recognized used vehicle guide

for financial institution appraisal purposes in [Michigan]." MCL 257.12a.

Drag racing

- *Drag racing* means "the operation of 2 or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other over a common selected course or where timing is involved or where timing devices are used in competitive accelerations of speeds by participating vehicles." MCL 257.626a.

Driver

- For purposes of the MVC, *driver* means "every person who drives or is in actual physical control of a vehicle." MCL 257.13.

DWI/sobriety court(s)

- For purposes of MCL 600.1084, *DWI/sobriety courts* "means the specialized court docket and programs established within judicial circuits and districts throughout this state that are designed to reduce recidivism among alcohol offenders and that comply with the 10 guiding principles of DWI courts as promulgated by the national center for DWI courts." MCL 600.1084(8)(a).

- For purposes of MCL 257.304, *DWI/sobriety court* "means that term as defined in . . . MCL 600.1084." MCL 257.304(14) (see bullet above for definition under MCL 600.1084).

DWI/sobriety court program

- For purposes of MCL 257.304, *DWI/sobriety court program* "means 'program' as that term is defined in . . . MCL 600.1084." MCL 257.304(14). MCL 600.1084(8)(d) defines *program* as "the DWI/sobriety court interlock program created on [December 26, 2013 by 2013 PA 227] and authorized to operated beginning January 1, 2015."

E

Emergency scene

- For purposes of MCL 257.601b, *emergency scene* means "a traffic accident, a serious incident caused by weather

conditions, or another occurrence along a highway or street for which a police officer, firefighter, or emergency medical personnel are summoned to aid an injured victim." MCL 257.601b(5)(a).

F

Felony

- For purposes of MCL 750.223(3)(a), *felony* is "a violation of a law of this state, or of another state, or of the United States that is punishable by imprisonment for 4 years or more." MCL 750.223(3)(a).

- For purposes of MCL 750.224f, a *felony* is "a violation of a law of this state, or of another state, or of the United States that is punishable by imprisonment for 4 years or more, or an attempt to violate such a law." MCL 750.224f(5).

- For purposes of the Code of Criminal Procedure, *felony* "means a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony." MCL 761.1(g).

Felony in which a motor vehicle was used

- For purposes of MCL 257.303, MCL 257.319, and MCL 257.732, a *felony in which a motor vehicle was used* "means a felony during the commission of which the person operated a motor vehicle and while operating the vehicle presented real or potential harm to persons or property and 1 or more of the following circumstances existed: (a) The vehicle was used as an instrument of the felony. (b) The vehicle was used to transport a victim of the felony. (c) The vehicle was used to flee the scene of the felony. (d) The

vehicle was necessary for the commission of the felony." MCL 257.303(8); MCL 257.319(2)(d);[2] MCL 257.732(6).

G

Glove compartment

- For purposes of MCL 257.624a, *glove compartment* means "a recess with a hinged and locking door in the dashboard of a motor vehicle." MCL 257.624a(6)(a).

Golf cart

- For purposes of MCL 257.657a, *golf cart* "means a vehicle designed for transportation while playing the game of golf." MCL 257.657a(17).

Gross negligence

- For purposes of MCL 257.618a(6), *gross negligence* means that term as it is defined by MCL 257.606a. MCL 257.618a(6). MCL 257.606a(2) defines *gross negligence* as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."

Guaranteed appearance certificate

- For purposes of MCL 257.749, *guaranteed appearance certificate* means "a card or certificate containing a printed statement that a surety company authorized to do business in [Michigan] guarantees the appearance of the person whose signature appears on the card or certificate, and that the company, if the person fails to appear in court at the time of a scheduled informal or formal hearing or to pay any fine or costs imposed under [MCL 257.907], will pay any fine, costs, or bond forfeiture imposed on the person in a total amount not to exceed $200.00." MCL 257.749(7).

H

Highway

[2]The definition in MCL 257.319(2)(d) is identical to the definition quoted, and set forth in MCL 257.303(8) and MCL 257.732(6), except that instead of using (a)-(d) to set forth the four circumstances, it uses (*i*)-(*iv*).

- For purposes of the MVC, *highway* means "the entire width between [] boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." MCL 257.20; MCL 257.64.

I

Ignition interlock device

- For purposes of the MVC and MCL 600.1084, *ignition interlock device* means "an alcohol concentration measuring device that prevents a motor vehicle from being started at any time without first determining through a deep lung sample the operator's alcohol level, calibrated so that the motor vehicle cannot be started if the breath alcohol level of the operator, as measured by the test, reaches a level of 0.025 grams per 210 liters of breath, and to which all of the following apply:

  (a) The device meets or exceeds the model specifications for breath alcohol ignition interlock devices (BAIID), 78 FR 26849 - 26867 (May 8, 2013) or any subsequent model specifications.

  (b) The device utilizes alcohol-specific electrochemical fuel sensor technology.

  (c) As its anticircumvention method, the device installation uses a positive-negative-positive air pressure test requirement, a midtest hum tone requirement, or any other anticircumvention method or technology that first becomes commercially available after July 31, 2007 and that is approved by the department as equally or more effective." MCL 257.20d; MCL 600.1084(8)(b).

Implement of husbandry

- For purposes of the MVC, *implement of husbandry* means "a vehicle or trailer in use for the exclusive function of serving agricultural, horticultural, or livestock operations" and "includes a farm tractor, self-propelled application-type vehicle, farm wagon, farm trailer, a vehicle or trailer adapted for lifting or carrying another implement of husbandry, or any substantially similar equipment used to

transport products necessary for agricultural production." MCL 257.21.

Intoxicating substance

- For purposes of MCL 257.625 and MCL 257.625c, *intoxicating substance* means "any substance, preparation, or a combination of substances and preparations other than alcohol or a controlled substance, that is either of the following:

(*i*) Recognized as a drug in any of the following publications or their supplements:

(A) The official United States pharmacopoeia.

(B) The official homeopathic pharmacopoeia of the United States.

(C) The official national formulary.

(*ii*) A substance, other than food, taken into a person's body, including, but not limited to, vapors or fumes, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication." MCL 257.625(25)(a). See also MCL 257.625c(4)(b).

J

Judgment

- For purposes of the MVC, *judgment* means "any judgment which shall become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages." MCL 257.23.

Juvenile

- For purposes of the Juvenile Code, MCL 712A.1 *et seq.*, a *juvenile* is "a person who is less than 17 years of age who is the subject of a delinquency petition." MCL 712A.1(1)(i).

L

Law of another state

- For purposes of the MVC, *law of another state* means "a law or ordinance enacted by another state or by a local unit of government in another state." MCL 257.24c.

Leased vehicle

- For purposes of the MVC, *leased vehicle* means "a motor vehicle for which a person is granted possession for a contracted period of time and in return for a contracted sum." MCL 257.24a.

Leased vehicle owner

- For purposes of MCL 257.675b, *leased vehicle owner* means "a person in the business of renting or leasing leased vehicles or an affiliate of the person, if the person or the affiliate is the registered owner of a standing or parked leased vehicle involved in a violation of a local ordinance or state statute." MCL 257.675b(4)(b).

License

- For purposes of the MVC, *license* means "any driving privileges, license, temporary instruction permit, commercial learner's permit, or temporary license issued under the laws of [Michigan] pertaining to the licensing of persons to operate motor vehicles." MCL 257.25.

Local authority

- For purposes of MCL 257.629, *local authority* means "the governing body of a city or village, except as provided in [MCL 257.629(4)]." MCL 257.629(7).

M

Manufacturer

- For purposes of the MVC, *manufacturer* means "a person, firm, corporation or association engaged in the manufacture of new motor vehicles, trailers or trailer coaches or semi-trailers, as a regular business." MCL 257.28.

Manufacturer of automated ~~technology~~driving systems

- For purposes of the MVC, *manufacturer of automated technology* means "a manufacturer or subcomponent system producer recognized by the secretary of state that develops or produces automated ~~technology~~driving systems or automated vehicles." ~~MCL 257.2b(4)~~MCL 257.2b(5).

Misdemeanor

- For purposes of the Code of Criminal Procedure, *misdemeanor* means "a violation of a penal law of [Michigan] that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine." MCL 761.1(h).

Mobile home park

- For purposes of MCL 257.627, *mobile home park* means "a parcel or tract of land under the control of a person upon which 3 or more mobile homes are located on a continual, nonrecreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefor, together with any building, structure, enclosure, street, equipment, or facility used or intended for use incident to the occupancy of a mobile home." MCL 125.2302(j); MCL 257.627(4).

Motor vehicle

- For purposes of the MVC, a *motor vehicle* means "every vehicle that is self-propelled, but for purposes of [MCL 257.401 *et seq*.] motor vehicle does not include industrial equipment such as a forklift, a front-end loader, or other construction equipment that is not subject to registration under [the MVC]. Motor vehicle does not include an electric patrol vehicle being operated in compliance with the electric patrol vehicle act, 1997 PA 55, MCL 257.1571 to [MCL] 257.1577. Motor vehicle does not include an electric personal assistive mobility device. Motor vehicle does not include an electric carriage. Motor vehicle does not include a commercial quadricycle." MCL 257.33.

Motor vehicle manufacturer

- For purposes of the MVC, *motor vehicle manufacturer* "means a person that has manufactured and distributed motor vehicles in the United States that are certified to comply with all applicable federal motor vehicle safety standards and that has submitted appropriate manufacturer identification information to the National Highway Traffic Safety Administration as provided in 49 CFR part 566." MCL 257.2b(7).

- As used in MCL 257.2b, MCL 257.665a, and MCL 257.665b only, *motor vehicle manufacturer* "also includes a person that satisfies all of the following:

  (a) The person has manufactured automated motor vehicles in the United States that are certified to comply with all applicable federal motor vehicle safety standards.

  (b) The person has operated automated motor vehicles using a test driver and with an automated driving system engaged on public roads in the United States for at least 1,000,000 miles.

  (c) The person has obtained an instrument of insurance, surety bond, or proof of self-insurance in the amount of at least $10,000,000.00, and has provided evidence of that insurance, surety bond, or self-insurance to the department in a form and manner required by the department." MCL 257.2b(7).

Moving violation

- For purposes of MCL 257.601b and MCL 257.601c, *moving violation* means "an act or omission prohibited under [the MVC] or a local ordinance substantially corresponding to [the Michigan Vehicle Code] that occurs while a person is operating a motor vehicle, and for which the person is subject to a fine." MCL 257.601b(5)(b); MCL 257.601c(3).

- For purposes of MCL 257.601d and MCL 257.907, *moving violation* means "an act or omission prohibited under [the MVC] or a local ordinance substantially corresponding to [the MVC] that involves the operation of a motor vehicle,

and for which a fine may be assessed." MCL 257.601d(4); MCL 257.907(17).

N

Nonresident operating privilege

- For purposes of the MVC, *nonresident operating privilege* means "the privilege conferred upon a nonresident by the laws of [Michigan] pertaining to the operation by him [or her] of a motor vehicle, or the use of a motor vehicle owned by him [or her], in [Michigan]." MCL 257.35.

O

Offense by a juvenile

- "[A]n act that violates a criminal statute, a criminal ordinance, a traffic law, or a provision of MCL 712A.2(a) or (d)." MCR 3.903(B)(3).

On-demand automated motor vehicle network

- For purposes of the MVC, *on-demand automated motor vehicle network* "means a digital network or software application used to connect passengers to automated motor vehicles, not including commercial motor vehicles, in participating fleets for transportation between points chosen by passengers, for transportation between locations chosen by the passenger when the automated motor vehicle is operated by the automated driving system." MCL 257.2b(8).

Operate

- For purposes of the MVC, *operate* or *operating* means:

"1 or more of the following:

"(a) Being in actual physical control of a vehicle. [MCL 257.35a(a)] applies regardless of whether or not the person is licensed under [the MVC] as an operator or chauffeur.

(b) Causing an automated motor vehicle to move under its own power in automatic mode upon a highway or street regardless of whether the person is physically present in that automated motor vehicle at that time. [MCL 257.35a(b)] applies regardless of whether the person is licensed under [the MVC] as an operator or chauffeur." MCL 257.35a.

Operating while intoxicated

- For purposes of MCL 257.625, *operating while intoxicated* means "any of the following:

(a) The person is under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2018, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine." MCL 257.625(1).

Operator

- For purposes of the MVC, *operator* means "a person, other than a chauffeur, who does either of the following:

(a) Operates a motor vehicle upon an highway or street.

(b) Operates an automated motor vehicle upon a highway or street." MCL 257.36.

Owner

- For purposes of the MVC, *owner* means any of the following:

"(a) Any person, firm, association, or corporation renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period that is greater than 30 days.

(b) Except as otherwise provided in [MCL 257.401a], a person who holds the legal title of a vehicle.

(c) A person who has the immediate right of possession of a vehicle under an installment sale contract." MCL 257.37.

P

Parking

- For purposes of the MVC, parking means "standing a vehicle, whether occupied or not, upon a highway, when not loading or unloading except when making necessary repairs." MCL 257.38.

Parking violation notice

- For purposes of the MVC, *parking violation notice* means "a notice, other than a citation, directing a person to appear at a parking violations bureau in the city, village, or township in which, or of the college or university for which, the notice is issued and to pay the fine and costs, if any, prescribed by ordinance for the parking or standing of a motor vehicle in violation of the ordinance." MCL 257.742(9)(a).

Participant

- For purposes of MCR 4.101(F)(5), *participant* is defined in MCR 2.407(A)(1). MCR 2.407(A)(1) states that *participants* "include, but are not limited to, parties, counsel, and subpoenaed witnesses, but do not include the general public."

Participating fleet

- For purposes of the MVC, *participating fleet* "means any of the following:

  (a) Vehicles that are equipped with automated driving systems that are operating on the public roads and highways of [Michigan] in a SAVE project as provided in [MCL 257.665b].

  (b) Vehicles that are supplied or controlled by a motor vehicle manufacturer, and that are equipped with automated driving systems that are operating on the public roads and highways of [Michigan] in an on-demand automated motor vehicle network." MCL 257.2b(9).

Passenger area

- For purposes of the MVC, *passenger area* means "the area designated to seat the operator and passengers of a motor vehicle while it is in operation and any area that is readily accessible to the operator or a passenger while in his or her seating position, including the glove compartment." MCL 257.624a(6)(b).

Person

- For purposes of the MVC, *person* means "very natural person, firm, copartnership, association, or corporation and their legal successors." MCL 257.40.

Pilot project

- For purposes of MCL 600.1084, *pilot project* "means the DWI/sobriety court interlock pilot project created under [MCL 600.1084(1)] on September 2, 2010 and authorized to operate for 4 years beginning January 1, 2011." MCL 600.1084(8)(c).

Portable signal preemption device

- For purposes of MCL 257.616a, *portable signal preemption device* "means a device that, if activated by a person, is capable of changing a traffic control signal to green out of sequence." MCL 257.616a(5)(a).

Preliminary chemical breath analysis

- For purposes of the MVC, *preliminary chemical breath analysis* "means the on-site taking of a preliminary breath test from the breath of a person for the purpose of detecting the presence of any of the following within the person's body:

  (a) Alcoholic liquor.

  (b) A controlled substance, as that term is defined in . . . MCL 333.7104.

  (c) Any other intoxicating substance, as that term is defined in [MCL 257.625].

  (d) Any combination of the substances listed in subdivisions (a) to (c)." MCL 257.43a.

Preliminary oral fluid analysis

- For purposes of the MVC, *preliminary oral fluid analysis* "means the on-site taking of a preliminary oral fluid test,

performed by a certified drug recognition expert . . . from the oral fluid of a person for the purpose of detecting the presence of a controlled substance . . . ." MCL 257.43b.

Prior conviction

- For purposes of MCL 257.625, *prior conviction* means "a conviction for any of the following, whether under a law of [Michigan], a local ordinance substantially corresponding to a law of [Michigan], a law of the United States substantially corresponding to a law of [Michigan], or a law of another state substantially corresponding to a law of [Michigan], subject to [MCL 257.625(27)[3]]:

(*i*) Except as provided in [MCL 257.625(26)[4]], a violation or attempted violation of any of the following:

(A) [MCL 257.625], except a violation of [MCL 257.625(2)], or a violation of any prior enactment of [MCL 257.625] in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.

(B) [MCL 257.625m].

(C) Former [MCL 257.625b].

(*ii*) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

(*iii*) [MCL 257.601d] or [MCL 257.626(3) or MCL 257.626(4)]." MCL 257.625(25)(b).

- For purposes of MCL 257.904d, *prior conviction* means:

(a) Subject to [MCL 257.904d(9) and MCL 257.904d(10)], 'prior conviction' means a conviction for any of the following, whether under a law of [Michigan], a local

[3]MCL 257.625(27) states that "[i]f 2 or more convictions described in [MCL 257.625(25)] are convictions for violations arising out of the same transaction, only 1 conviction shall be used to determine whether the person has a prior conviction."

[4]MCL 257.625(26) states that "[e]xcept for purposes of the enhancement described in [MCL 257.625(12)(b)], only 1 violation or attempted violation of [MCL 257.625(6)], a local ordinance substantially corresponding to [MCL 257.625(6)], or a law of another state substantially corresponding to [MCL 257.625(6)] may be used as a prior conviction."

ordinance substantially corresponding to a law of [Michigan], or a law of another state substantially corresponding to a law of [Michigan]:

(*i*) Except as otherwise provided in [MCL 257.904d(10)], a violation or attempted violation of any of the following:

(A) [MCL 257.625], except a violation of [MCL 257.625(2)], or a violation of any prior enactment of [MCL 257.625] in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.

(B) [MCL 257.625m].

(C) Former [MCL 257.625b].

(*ii*) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

(*iii*) Beginning October 31, 2010, a violation of [MCL 257.601d] or [MCL 257.626(3) or MCL 257.626(4)]." MCL 257.904d(8)(a).

"If 2 or more convictions described in [MCL 257.904d(8)(a)] are convictions for violations arising out of the same incident, only 1 conviction shall be used to determine whether the person has a prior conviction." MCL 257.904d(9).

"Only 1 violation or attempted violation of [MCL 257.625(6)], a local ordinance substantially corresponding to [MCL 257.625(6)], or a law of another state substantially corresponding to [MCL 257.625(6)] may be used as a prior conviction." MCL 257.904d(10).

Program

- For purposes of MCL 600.1084, *program* "means the DWI/sobriety court interlock program created on the effective date of the amendatory act that added this subdivision and authorized to operate beginning January 1, 2015." MCL 600.1084(8)(d).

Prosecuting attorney

- For purposes of the MVC, *prosecuting attorney*, "except as the context otherwise requires, means the attorney general, the prosecuting attorney of a county, or the attorney representing a local unit of government." MCL 257.45a.

Public transit vehicle

- For purposes of MCL 257.698(5)(j), *public transit vehicle* means "a motor vehicle, other than a station wagon or passenger van, with a gross vehicle weight rating of more than 10,000 pounds." MCL 257.698(5)(j).

R

Record of sale

- For purposes of MCL 257.252a(1), *record of sale* means "either a photocopy of the reassigned title or a form or document that includes the name, address, driver license number, and signature of the person to whom the vehicle is sold and the purchase price and date of sale of the vehicle." MCL 257.240(2)(b).

Registration

- For purposes of the MVC, *registration* means "a registration certificate, plate, adhesive tab, or other indicator of registration issued under [the MVC] for display on a vehicle." MCL 257.50.

Resident

- For purposes of the MVC, *resident* means "every person who resides in [Michigan] and establishes that he or she is legally present in the United States. This definition applies to the provisions of [the MVC] only." MCL 257.51a.

Revocation

- For purposes of the MVC, *revocation* means "that the operator's or chauffeur's license and privilege to operate a motor vehicle on the public highways are terminated and shall not be renewed or restored until the later of the following:

(a) The expiration of not less than 1 year after the license was revoked.

(b) The expiration of not less than 5 years after the date of a subsequent revocation occurring within 7 years after the date of a prior revocation." MCL 257.52(1).

Roadway

- For purposes of the MVC, *roadway* means "that portion of a highway improved, designed, or ordinarily used for vehicular travel. In the event a highway includes 2 or more separate roadways, the term 'roadway[,]'[] as used herein, shall refer to any such roadway separately, but not to all such roadways collectively." MCL 257.55.

S

SAVE project

- For purposes of the MVC, *SAVE project* "means an initiative that authorizes eligible motor vehicle manufacturers to make available to the public on-demand automated motor vehicle networks as provided in [MCL 257.665b]." MCL 257.2b(10).

School bus zone

- For purposes of MCL 257.601b, *school bus zone* means "the area lying within 20 feet of a school bus that has stopped and is displaying 2 alternately flashing red lights at the same level, except as described in [MCL 257.682(2)[5]]." MCL 257.601b(5)(c).

School zone

- For purposes of MCL 257.601b, *school zone* is "that term as defined in [MCL 257.627a]." MCL 257.601b(5)(d).

- For purposes of MCL 257.627a and MCL 257.629, *school zone* means "school property on which a school building is located and the area adjacent to the school property that is designated by the signs required under [MCL 257.627a(2)]. Except as otherwise provided in [MCL 257.627a(5)], the school zone extends not more than 1,000 feet from the property line of the school in each direction." MCL 257.627a(1)(c).

[5] MCL 257.682(2) describes certain highways where operators are not required to stop for a school bus.

Secretary of State

- For purposes of the MVC, *secretary of state* means "the secretary of state of [Michigan], acting directly or through his [or her] duly authorized deputy, investigators, agents and employees." MCL 257.58.

Security interest

- For purposes of the MVC, *security interest* means that term "as defined in the uniform commercial code . . . [MCL 440.1101 *et seq.*]." MCL 257.58b.

Segment 1

- For purposes of the Driver Education Provider and Instructor Act, *segment 1* means "a teen driver education course that meets the requirements in [MCL 257.637]." MCL 256.627(f).

Segment 2

- For purposes of the Driver Education Provider and Instructor Act, *segment 2* means "a teen driver education course that meets the requirements in [MCL 257.639]." MCL 256.627(g).

Serious impairment of a body function

- For purposes the MVC, *serious impairment of a body function* "includes, but is not limited to, one or more of the following:

(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ." MCL 257.58c.

- For purposes of MCL 750.479a, *serious impairment of a body function* "includes, but is not limited to, 1 or more of the following:

(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ." MCL 257.58c; MCL 750.479a(9)(b).

Standardized field sobriety test

- For purposes of the MVC, *standardized field sobriety test* "means 1 of the standardized tests validated by the National Highway Traffic Safety Administration. A field sobriety test is considered a standardized field sobriety test under [MCL 257.62a] if it is administered in substantial compliance with the standards prescribed by the National Highway Traffic Safety Administration." MCL 257.62a.

State

- For purposes of the MVC, *state* means "any state, territory, or possession of the United States, Indian country as defined in 18 USC 1151, the District of Columbia, the Dominion of Canada, or any province or territory of the Dominion of Canada." MCL 257.65.

Street

- For purposes of the MVC, *street* means "the entire width between . . . boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." MCL 257.20; MCL 257.64.

Suspension

- For purposes of the MVC, *suspension* means "that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of the suspension." MCL 257.66.

T

Traffic control device

- For purposes of the MVC, *traffic control device* means "all signs, signals, markings, and devices not inconsistent with [the Michigan Vehicle Code] placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic." MCL 257.70.

- For purposes of MCL 750.377d, *traffic control device* "means a sign, signal, electronic traffic control sign or signal, marking, light post, railroad sign or signal, or device not inconsistent with the [MVC], placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, maintaining highway safety, or providing information to motor vehicle operators." MCL 750.377d(3).

Traffic Offense

- For purposes of MCL 762.11, *traffic offense* "means a violation of [the MVC], or a violation of a local ordinance substantially corresponding to [the MVC], that involves the operation of a vehicle and, at the time of the violation, is a felony or a misdemeanor." MCL 762.11(6)(b).

Trailway municipal civil infraction

- For purposes of the Revised Judicature Act, *trailway municipal civil infraction* "means a civil infraction involving the operation of a vehicle on a recreational trailway at a

time, in a place, or in a manner prohibited by ordinance." MCL 600.113(1)(g).

U

Upfitter

- For purposes of the MVC, *upfitter* "means a person that modifies a motor vehicle after it was manufactured by installing an automated ~~technology~~ driving system in that motor vehicle to convert it to an automated motor vehicle. Upfitter includes a subcomponent system producer recognized by the secretary of state that develops or produces automated ~~technology~~ driving systems." ~~MCL 257.2b(5)~~ MCL 257.2b(11).

Use

- For purposes of MCL 257.602c(1), *use* means "to initiate a call; answer a call; or listen to or engage in verbal communication through the cellular telephone." MCL 257.602c(1).

V

Vehicle

- For purposes of the MVC, *vehicle* means "every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks and except, only for the purpose of titling and registration under [the MVC], a mobile home as defined in [MCL 125.2302]." MCL 257.79.

Vehicle immobilization

- For purposes of MCL 257.904d, *vehicle immobilization* means "requiring the motor vehicle involved in the violation immobilized in a manner provided in [MCL 257.904e]." MCL 257.904d(8)(b).

Vehicular access point

- For purposes of MCL 257.627, *vehicular access point* means "a driveway or intersecting roadway." MCL 257.627(13).

Videoconferencing

- For purposes of Subchapter 2.400 of the Michigan Court Rules, *videoconferencing* "means the use of an interactive technology that sends video, voice, and data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video codecs, monitors, cameras, audio microphones, and audio speakers." MCR 2.407(A)(2).

W

Work zone

- For purposes of the MVC, *work zone* means "a portion of a street or highway that meets any of the following:

(a) Is between a 'work zone begins' sign and an 'end road work' sign.

(b) For construction, maintenance, or utility work activities conducted by a work crew and more than 1 moving vehicle, is between a 'begin work convoy' sign and an 'end work convoy' sign,

(c) For construction, maintenance, surveying, or utility work activities conducted by a work crew and 1 moving or stationary vehicle exhibiting a rotating beacon or strobe light, is between the following points:

(*i*) A point that is 150 feet behind the rear of the vehicle or that is the point from which the beacon or strobe light is first visible on the street or highway behind the vehicle, whichever is closer to the vehicle.

(*ii*) A point that is 150 feet in front of the front of the vehicle or that is the point from which the beacon or strobe light is first visible on the street or highway in front of the vehicle, whichever is closer to the vehicle." MCL 257.79d.

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