

2008 CRIME LEGISLATION UPDATE

An Outline of Recently Passed Legislation From January 1 to August 1, 2008.

This outline is a summary of Public Acts passed to date in 2008 affecting the criminal justice system. Some of the public acts are short and simple, others are very complex. Because this outline is a summary, I may have occasionally used ambiguous terms, or not completely covered every aspect of the law. You should carefully review the complete text of any public act listed in this outline before taking action regarding that new law. The outline is divided into the following sections:

I. NEW CRIMES & PENALTIES

II. CRIMINAL PROCEDURE

III. CORRECTIONS

IV. VEHICLES

V. MISCELLANEOUS

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I. NEW CRIMES & PENALTIES

- A. AGRICULTURAL PESTICIDE DEALERS.** 2008 PA 18. Effective February 29, 2008. Requires a distributor of agricultural pesticides to be licensed. MCL 324.8310a. Penalty is a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$5,000. MCL 324.8333.
- B. ANATOMICAL GIFTS.** 2008 PA 37-41. Effective May 1, 2008. Enacts the *Revised Uniform Anatomical Gift Act* in Michigan. Makes it a felony, punishable by imprisonment for up to 5 years and/or a fine of up to \$50,000 to do either of the following. It is an E felony under the guidelines. MCL 777.13n.
1. To knowingly purchase or sell a body part for transplantation or therapy if removal of the body part is intended to occur after the individual's death. MCL 333.10116.
 2. For financial gain, to falsify, forge, conceal, deface, delete or obliterate a document of gift, an amendment or revocation of a document of gift, or a refusal to donate an organ. MCL 333.10117.
- C. B & E OF SHIPPING CONTAINERS.** 2008 PA 10. Effective June 1, 2008. Includes shipping containers in the statutes prohibiting breaking and entering a structure and entering without breaking a structure. MCL 750.110 & 750.111.
- D. DOGS.** 2008 PA 205-206. Effective January 1, 2009. Requires the adult owner of a dog or wolf dog that bites someone to remain on the scene and provide the following information to the victim. Violations are misdemeanors punishable by imprisonment for up to 93 days and/or a fine of up to \$500. MCL 750.66 & 750.66a.
1. The owner's name and address. MCL 750.66(1)(a).
 2. Whether the animal is current on all legally required vaccinations. MCL 750.66(1)(b).
- E. FALSE REPORT REGARDING A CHILD CARE VIOLATION.** 2008 PA 15 & 16. Effective June 1, 2008.
1. Requires a child care organization to notify parents when DHS is investigating the organization for possible abuse or neglect that resulted in serious injury or death to a child, or for sexual abuse. MCL 722.113f.
 2. Makes it a crime to make a false report to DHS regarding child care organizations.
 - a. If the false report would not constitute a crime, or would constitute a misdemeanor if the report were true, the violation is a misdemeanor punishable by imprisonment for up to 93 days and/or fine of up to \$100. MCL 722.115l(a).
 - b. If the false report would be a felony if true, the violation is a felony punishable by either the penalty for the false crime reported or by imprisonment for up to 4 years and/or a fine of not more than \$5,000, whichever is less. MCL 722.115l(b). It's an F felony under guidelines. MCL 777.15g.

F. FIREARMS. 2008 PA 194-196. Effective January 7, 2009.

1. **PISTOL SAFETY INSPECTIONS.** Repeals the pistol safety inspection statutes. MCL 750.228 & MCL 28.429.
2. **CCW IN PROHIBITED AREAS.** Deletes the prohibition on officers carrying concealed in prohibited areas, such as schools and bars when off-duty. MCL 28.425o(4)(d).

G. FUNERAL PROTESTS. 2008 PA 166. Effective June 26, 2008. Measures the 500 foot distance for protests at a funeral from the property line of the building or other location where the service is being held. MCL 123.1113.

H. LIQUOR LICENSE VIOLATIONS. 2008 PA 11. Effective February 29, 2008. Establishes the following new violations for licensees. The penalty is a misdemeanor, punishable by imprisonment for up to 6 months and/or a fine of up to \$500.

1. Allowing an intoxicated person to consume alcohol on licensed premises. MCL 436.1707(2).
2. For the licensee or employee to be intoxicated on the licensed premises. MCL 436.1707(3).
3. Allowing an intoxicated person to frequent or loiter on licensed premises. MCL 436.1707(4).
4. Allowing a minor to consume or possess alcohol on licensed premises. MCL 436.1707(5).
5. Allowing a person under 18 to sell or serve alcohol. MCL 436.1707(6).
6. Allowing a person under 18 to work or entertain on the licensed premises unless authorized by the youth employment standards act. MCL 436.1707(7).
7. Allowing unlawful gambling or gaming devices on the licensed premises. MCL 436.1901(2).
8. To sell, possess or offer for sale, or allow a customer to consume illegal alcohol. MCL 436.1901(3).
9. To sell or furnish alcohol to a person who maintains premises that are not licensed. MCL 436.1901(4).
10. To allow the sale or consumption of alcohol on the licensed premises that the licensee did not purchase from a licensed seller. There is an exception for consumption in hotel guest rooms. MCL 436.1901(5).

Proof of intoxication may only be made by direct observation and not by a chemical testing device. MCL 436.1025(4).

I. MORTGAGE LICENSE VIOLATIONS. 2008 PA 59-71. Effective April 3, 2008. Prohibits individuals with felony or certain misdemeanor convictions from being licensed as a mortgage broker, mortgage lender, mortgage servicer or loan officer. Violations are misdemeanors, punishable by imprisonment for up to 1 year and/or a fine of up to \$15,000. MCL 445.1679.

II. CRIMINAL PROCEDURE

- A. DISTRICT COURT MAGISTRATES.** 2008 PA 95. Effective April 8, 2008. Allows a district court magistrate to conduct arraignments for contempt violations or probation violations.
1. The magistrate may set bond or accept a plea, but cannot conduct a hearing.
 2. Authority is limited to offenses with a maximum penalty of 1 year. MCL 600.8511(d).
- B. GPS BAIL CONDITIONS.** 2008 PA 192. Effective July 10, 2008. Allows the court to order GPS monitoring of a domestic violence defendant as a condition of bail. MCL 765.6b(6). If GPS is ordered, the court shall also order that the defendant not purchase or possess a firearm. MCL 765.6b(3).
- C. GPS PAROLE CONDITIONS.** 2008 PA 191. Effective July 10, 2008. Requires GPS monitoring of a parolee who was serving a sentence for aggravated stalking if the victim has registered with DOC. MCL 791.236(18).

III. CORRECTIONS

A. BOOT CAMPS. 2008 PA 158. Effective June 5, 2008. Expands boot camp eligibility to prisoners serving their second prison sentence, or who previously failed boot camp. MCL 791.234a

1. The DOC must give the sentencing judge, prosecutor and victim 45 days notice of its intent to place the prisoner serving their second prison sentence to boot camp. MCL 791.234a(4)
2. Requires boot camp graduates to participate in MPRI. MCL 791.234a(12)
3. Requires a 3rd party evaluation of the boot camp program. MCL 791.234a(11).
4. Repeals the boot camp statute on September 30, 2009. MCL 791.234a(13)

IV. VEHICLES

- A. CHILD SAFETY SEATS.** 2008 PA 43. Effective July 1, 2009. Requires a child to be secured in a child safety seat until they are 8 years old or taller than 4 feet 9 inches. MCL 257.710e.
- B. ENHANCED DRIVER LICENSES.** 2008 PA 23 & 24. Effective March 13, 2008. Creates the enhanced driver license and enhanced state personal ID card for use in entering the US.
1. Making a false statement or certification in applying for either document is a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$5,000. MCL 28.308. It's an E felony under the guidelines. MCL 777.11b.
- C. HAULING LOGS.** 2008 PA 131. Effective May 21, 2008. Repeals MCL 257.720(5) which specified how logs and tubular products must be secured when transported. MCL 257.720.
- D. LEGAL ALIEN DRIVER LICENSES & STATE ID.** 2008 PA 7 & 31. PA 7 took effect on February 15, 2008. PA 31 took effect on March 13, 2008. Allows non-citizens, who are legally present in the state, to obtain an operator's or chauffeur's license, or a state personal identification card. MCL 257.307.
- E. MOTOR VEHICLE VIDEO DEVICES.** 2008 PA 19. Effective March 7, 2008. Updates MCL 257.708b, which precludes having a television or other video images in a location where a driver can see them while operating a vehicle, to exclude navigational devices and monitors that help safely drive the vehicle. MCL 257.708b.
- F. OFF ROAD VEHICLES.**
1. **OPERATION.** 2008 PA 240-241. Effective July 17, 2008. Makes the following changes to ORV operation laws:
 - a. Allows counties, townships and municipalities to authorize the operation of ORVs on the maintained portion of roads located within their jurisdiction. MCL 324.81131.
 - b. Increases the penalties for operating an ORV in a manner likely to cause an erosive condition, on another person's land or in a river, stream, bog, wetland, swamp, marsh or quagmire. It's a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of \$250 to \$1,000. MCL 324.81147.
 2. **RACES.** 2008 PA 164. Effective June 19, 2008. Allows an underage child to operate an ORV in an organized racing event. MCL 324.81129(18).
- G. PARKING VIOLATIONS.** 2008 PA 171. Effective July 2, 2008. Expands the violations for which volunteers may issue a parking citation. MCL 257.675d.
- H. PERSONAL WATERCRAFT.** 2008 PA 178. Effective approximately March 30, 2009.
1. Beginning October 1, 2011 a personal watercraft cannot be operated by a person under 14. MCL 324.80215(4).
 2. Allows a PWC to be operated until sunset. MCL 324.80205.

I. SNOWMOBILES. 2008 PA 27. Effective March 13, 2008. Makes the following snowmobile violations civil infractions. MCL 324.82126(9).

1. Operating at an unreasonable speed.
2. Operating in a forest nursery.
3. Operating within 100 feet of an ice shanty/ice skating area.
4. Excess noise levels.
5. Operating near dwellings.
6. Operating in a hunting area.
7. Operating with bow/firearm.
8. Operating on cemeteries.
9. Operating within 100 feet of a ski, slide or skating area.
10. Operating on a railroad right of way.
11. Damaging/defacing snowmobile trail signs.

V. MISCELLANEOUS

- A. BOATERS WITH A DISABILITY.** 2008 PA 119. Effective April 29, 2008. Allows a boater with a disability that prevents him or her from paddling or rowing a vessel to use an electric motor when it would otherwise be prohibited. MCL 324.80114a.
1. The boater must have a marine exemption certification from the DNR or local Sheriff's Department based upon a physician's attestation that the boater has a disability that prevents him or her from rowing or paddling. MCL 324.80114a(3).
- B. CHILDREN.**
1. **CHILD ABUSE.** 2008 PA 46. Effective March 27, 2008. Requires CPS to notify law enforcement when investigating a child's death, sexual abuse of a child or a severe physical injury of a child. MCL 722.628.
 2. **CHILD PROTECTIVE PROCEEDINGS.** Effective July 11, 2008. Makes the following changes to improve placements for children who are unlikely to be adopted if parental rights are terminated.
 - a. 2008 PA 200. Allows a court to continue a child in long term foster care, or to appoint a guardian for the child, after a permanency planning hearing. MCL 712A.19a.
 - b. 2008 PA 202. Allows DHS to develop an alternate permanency plan or to develop adoption plans concurrently with their efforts to reunify a child with his or her family. MCL 712A.19.
 - c. 2008 PA 203. Allows the court to appoint a guardian for a child who remains in a placement after termination of parental rights. MCL 712A.19c.
 3. **POST FOSTER CARE SERVICES.** 2008 PA 215. Effective July 16, 2008. Allows the state to provide services to abused children who age out of foster care.
- C. COUNTY SIGN ORDINANCES.** 2008 PA 93. Effective April 8, 2008. Allows a county to enact a sign ordinance. MCL 252.304.
- D. POLICE MEMORIALS.** 2008 PA 162. Effective June 16, 2008. Allows an income tax checkoff for the Michigan Law Enforcement Officers Memorial Monument fund. MCL 206.435(1)(g).
- E. PRIVATE DETECTIVES.** 2008 PA 146. Effective May 28, 2008. Changes the private detective licensing act to the *Professional Investigator Licensure Act*. MCL 338.821 et. seq.
- F. SMALL DISTILLERIES.** 2008 PA 218. Effective July 16, 2008. Permits a distiller who manufactures less than 60,000 gallons of liquor a year to obtain a small distiller license allowing the sampling and sale of liquor on the licensed premises. MCL 436.1534.