

2007 CRIME LEGISLATION UPDATE

An Outline of Recently Passed Legislation From January 1 to December 31, 2007.

This outline is a summary of 36 Public Acts passed in 2007 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. MISCELLANEOUS

Copies of legislation may be obtained at <http://www.michiganlegislature.gov/>

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I. NEW CRIMES & PENALTIES

A. ANIMAL CRUELTY. 2007 PA 151-152. Effective April 1, 2008. Raises the penalties for animal cruelty depending on the number of animals.

1. Cruelty to 1 animal is a misdemeanor punishable by imprisonment for up to 93 days, a fine of up to \$1,000, or up to 200 hours of community service, or any combination of the three. MCL 750.50(4)(a).
2. Cruelty to 2 or 3 animals, or cruelty resulting in the death of an animal, is a misdemeanor punishable by imprisonment for up to 1 year, a fine of up to \$2,000, or up to 300 hours of community service, or any combination of the three. MCL 750.50(4)(b).
3. Cruelty to 4-9 animals, or a second offense, is a felony punishable by imprisonment for up to 2 years, a fine of up to \$2,000, or up to 300 hours of community service, or any combination of the three. MCL 750.50(4)(c). It's a G felony under the guidelines. MCL 777.16b.
4. Cruelty to 10 or more animals, or a third offense, is a felony punishable by imprisonment for up to 4 years, a fine of up to \$5,000, or up to 500 hours of community service, or any combination of the three. MCL 750.50(4)(c). It's an F felony under the guidelines. MCL 777.16b.
5. The court has the discretion to impose consecutive sentences. MCL 750.50(6-7).
6. The sentence may also include:
 - a. Repayment of the cost of animal care. MCL 750.50(8).
 - b. An order for a psychological evaluation. MCL 750.50(6).
 - c. A prohibition on owning an animal. MCL 750.50(9).

B. CRIMINAL SEXUAL CONDUCT. 2007 PA 163. Effective July 1, 2008. Extends protections for students and special education students under the CSC statutes.

1. 1st and 2nd degree CSC against a student between the ages of 13 and 16 has been expanded to include penetration or sexual contact by:
 - a. A teacher, substitute teacher or administrator of the local school district or intermediate school district where the student is enrolled. MCL 750.520b(1)(b)(v); MCL 750.520c(1)(b)(v).
 - b. An employee, contract service provider, non-student volunteer, or governmental employee who provides services to the school, school district or intermediate school district, if the actor uses his or her status to either gain access to or to establish a relationship with the student. MCL 750.520b(1)(b)(vi); MCL 750.520c(1)(b)(vi).
2. 3rd and 4th degree CSC against a student between the ages of 16 and 18 has been expanded to include penetration or sexual contact by:
 - a. A teacher, substitute teacher or administrator of the local school district or intermediate school district where the student is enrolled. MCL 750.520d(1)(e)(i); MCL 750.520e(1)(f)(i).

- b. An employee, contract service provider, non-student volunteer, or governmental employee who provides services to the school, school district or intermediate school district, if the actor uses his or her status to either gain access to or to establish a relationship with the student. MCL 750.520d(1)(e)(ii); MCL 750.520e(1)(f)(ii).
3. 3rd and 4th degree CSC will also cover sexual penetration or sexual contact against a special education student between the ages of 16 and 26 by:
- a. A teacher, substitute teacher, administrator, employee, or contract service provider of the school, school district or intermediate school district from which the student receives services. MCL 750.520d(1)(f)(i); MCL 750.520e(1)(g)(i).
 - b. A non-student volunteer or governmental employee who provides services to the school, school district or intermediate school district, if the actor uses his or her status to either gain access to or to establish a relationship with the student. MCL 750.520d(1)(f)(ii); MCL 750.520e(1)(g)(ii).

C. FOSTER FAMILY HOMES. 2007 PA 217-220. Effective January 1, 2008. Prohibits registered sex offenders and others with certain criminal records from owning or living in a foster family home or a foster family group home.

- 1. A criminal background check must be run on everyone over the age of 18 who resides for more than 14 days in a foster family home. MCL 722.115j.
 - a. A license cannot be issued or renewed if a resident has been convicted of an SORA offense.
 - b. A licensee of a foster family home shall report to the department of human services within 3 business days after he or she, or within 3 business days after he or she knew or should have known that an adult resident of the home, has been arraigned for 1 or more of the following crimes. MCL 722.115i.
 - 1. Any felony.
 - 2. Any of the following misdemeanors:
 - i. CSC in the fourth degree or an attempt to commit CSC in the fourth degree.
 - ii. Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.
 - iii. A misdemeanor involving cruelty, torture, or indecent exposure involving a child.
 - iv. A misdemeanor violation of MCL 333.7410.
 - v. A violation of MCL 750.115, 750.141a, 750.145a, 750.335a, and 750.359, or a misdemeanor violation of MCL 750.81, 750.81a, and 750.145d.
 - vi. A misdemeanor violation of MCL 436.1701.
 - vii. Any misdemeanor that is an SORA offense.

viii. A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

- d. If the person failed to report the arraignment on a felony or an SORA offense, it's a felony, punishable by imprisonment for up to 2 years and/or a fine of up to \$2,000. MCL 722.115i(2)(a). It's a G felony under the guidelines. MCL 777.15g.
- e. If the person failed to report their arraignment on a misdemeanor, it's a misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$1,000. MCL 722.115i(2)(b).

D. LEAD BASED PRODUCTS. 2007 PA 159-162. Effective March 20, 2008. Creates civil fines for the sale or offer to sell of toys, children's jewelry and lunch boxes with lead. MCL 333.5481; 333.5485; 333.5491.

- 1. 1st offense, a fine of up to \$100 per item, with a maximum fine of \$5,000 total.
- 2. 2nd offense, a fine of up to \$500 per item, with a maximum fine of \$25,000 total.
- 3. 3rd offense, a fine of up to \$1,000 per item, with a maximum fine of \$50,000 total.

E. MARINE SAFETY VIOLATIONS. 2007 PA 8. Effective May 11, 2007. Reduces the penalty from a misdemeanor to a civil infraction for the following violations:

- 1. No certificates, decals, or number on a vessel. MCL 324.80122
- 2. Failure to avoid a collision. MCL 324.80144.
- 3. Violation of the basic speed law. MCL 324.80145.
- 4. Speeding. MCL 324.80146.
- 5. Not operating counterclockwise or violation of the 100 foot rule on the Great Lakes, Lake St. Clair or the St. Clair River. MCL 324.80149
- 6. Skiing after dark. MCL 324.80151.
- 7. No buoys on a public beach. MCL 324.80198b(1).
- 8. Swimming outside buoyed swimming area. MCL 324.80198b(2).
- 9. Personal Watercraft safety violations. MCL 324.80205.

F. TRESPASSING. 2007 PA 167. Effective March 20, 2008. Amends the trespassing statute to prohibit entering or remaining on posted or fenced farm property without permission. Increases the fine from \$50 to \$250. MCL 750.552.

G. UNLICENSED RESIDENTIAL BUILDERS. 2007 PA 155-158. Effective as noted. Creates the following new penalties effective December 21, 2007:

- 1. Practicing as a residential builder or residential maintenance and alteration contractor without a license is a misdemeanor punishable by imprisonment for up to 1 year and/or a fine of \$5,000 to \$25,000. MCL 339.601(6)(a).
- 2. On a second offense the maximum penalty increases to up to 2 years. MCL 339.601(6)(b).

3. If the violation results in death or serious injury, it's a felony punishable by imprisonment for up to 4 years and/or a fine of \$5,000 to \$25,000. MCL 339.601(6)(c). There is no guidelines bill.
 4. Upon entering a conviction, the court must notify the bureau of commercial services in the Department of Commerce by mail or electronic means. MCL 339.601(15).
 5. Effective June 1, 2008, violations are subject to the omnibus forfeiture act. MCL 600.4701.
 6. Effective June 1, 2008, the prosecutor or Attorney General may bring civil actions against the unlicensed person and shall be awarded a civil fine of \$5,000 to \$25,000. MCL 339.2412(4).
 7. Effective June 1, 2008 the Department of Commerce shall begin allocating a portion of builder licensing fees to the builder enforcement fund. Funds may be paid to prosecutors or the AG for enforcing the act. MCL 338.2239.
- H. VINE RIPENED TOMATOES.** 2007 PA 10. Effective May 24, 2007. Repeals the statute making it a crime to sell non-vine ripened tomatoes without an appropriate label. MCL 752.751.

II. CRIMINAL PROCEDURE

- A. INTERPRETERS FOR DEAF OR DEAF-BLIND PERSONS.** 2007 PA 23 & 24. Effective June 28, 2007. Places potential penalties on police, prosecutors and courts for not providing qualified interpreters for victims, witnesses, suspects and jurors who are deaf or deaf-blind.
1. A court must provide a qualified interpreter whenever a deaf or deaf-blind person is a participant as a plaintiff, defendant or witness. MCL 393.503
 2. Law enforcement must provide a qualified interpreter whenever a deaf or deaf-blind person is arrested and taken into custody. MCL 393.505 See the Communication Guide for Law Enforcement published by the Division on Deafness and Hard of Hearing, DLEG:
http://www.michigan.gov/documents/DODHH_Police_Guide_Card_166043_7.pdf
 3. A qualified interpreter must be provided whenever an accommodation is required for a deaf or deaf-blind person under state or federal law. This would include interviews in a prosecutor's office, or assistance to victims who are deaf or deaf-blind. MCL 393.503a
 4. A qualified interpreter is a person who is certified through the national Registry of Interpreters for the Deaf or certified through the state by the Division on Deaf and Hard of Hearing of the Department of Labor and Economic Growth. No longer can a relative, friend or other unqualified person serve as an interpreter. MCL 393.502.
 - a. To find a qualified interpreter in your area use the Michigan Interpreter Directory:
http://www.michigan.gov/documents/cis/2007_INTERPRETER_DIRECTORY0913_208502_7.pdf
 5. The agency required to provide the interpreter is also required to pay the interpreter, including the interpreter's actual expenses for travel, meals and lodging. MCL 393.507.
 6. The penalty for not obtaining a qualified interpreter is a civil fine of \$1,000 to \$10,000. MCL 393.508b(3).
 7. It's a misdemeanor, punishable by imprisonment for not more than 90 days and/or a fine of \$500 to \$1,000 for a person to misrepresent themselves as a qualified interpreter. This provision takes effect October 1, 2007. MCL 393.508b(1).
- B. PRELIMINARY EXAMS.** 2007 PA 89. Effective December 29, 2007. Makes the results of drug field tests admissible at preliminary exam. It applies to exams that begin on or after December 29, 2007. MCL 766.11b
- C. SENTENCING GUIDELINES.** 2007 PA 20. Effective June 19, 2007. Moves several sentencing guideline classifications from MCL 777.16z to 777.16aa and 777.16bb.

III. CORRECTIONS

A. JAILS.

1. 2007 PA 139. Effective November 13, 2007. Allows a county or judicial circuit to adopt a county jail population management plan.
 - a. The plan must be approved by the sheriff, prosecutor, chief circuit judge, and a representative of the district judges. MCL 801.59a.
 - b. The plan authorizes a judge to reduce or suspend any jail sentence, or to modify bonds. MCL 801.59b.
2. 2007 PA 140. Effective February 11, 2008. Makes the following changes to the Emergency Jail Overcrowding Act when capacity reaches 95% for 5 consecutive days.
 - a. Allows the sheriff to release non-violent prisoners and those serving contempt sentences for failure to pay child support who have served 85% of their sentence. MCL 801.51a(1)(b).
 - b. Allows the sheriff to reduce bonds to PR if the bonds are under a maximum value established by the chief circuit and district judges and the sheriff. MCL 801.51a(1)(a).

B. MENTAL HEALTH. 2007 PA 112. Effective October 1, 2007. Allows the Department of Corrections to contract with third parties, instead of just the Department of Community Health, to provide mental health services for prisoners. MCL 330.2003.

C. PRISON INDUSTRIES. 2007 PA 102. Effective October 1, 2007. Allows prison industries to sell cut and sewn textiles to anyone if the same or comparable style product is not manufactured by a private business in the state. MCL 800.326.

IV. MISCELLANEOUS

- A. BODY ART FACILITIES.** 2007 PA 149. Effective December 13, 2007. Requires licensing of Body Art Facilities on January 1, 2009. Body Art Facilities perform tattooing, branding and body piercing. MCL 333.1304.
- B. DEER HUNTING.** 2007 PA 60. Effective September 18, 2007. Creates a special firearm deer hunting season for disabled veterans. The season corresponds with youth firearm deer hunting days. MCL 324.43537.
- C. DRAIN COMMISSIONER.** 2007 PA 51. Effective August 28, 2007. Allows the County Board to change the name of the Office of Drain Commissioner to the Office of Water Resources Commissioner. Allows the Prosecutor and County Clerk to appoint a temporary Drain Commissioner if there is a vacancy in the position. MCL 280.21.
- D. MIXED MARTIAL ARTS.** 2007 PA 196-197. Effective March 27, 2008. Renames the “Michigan boxing regulatory act” the “Michigan unarmed combat regulatory act” to include mixed martial arts. MCL 338.3601 et. seq.
- E. 9-1-1 FEES.** 2007 PA 164-165. Effective December 21, 2007. Authorizes the state and counties to assess fees for 9-1-1 service on all communication services that interface with 9-1-1 including cell phones and VOIP. MCL 484.1101 et. seq.
- F. REGISTER OF DEEDS.** 2007 PA 53-54. Effective September 6, 2007. Requires the Register of Deeds to remove or obscure the first 5 digits of a social security number that appears on any document that will be recorded. MCL 565.491 & MCL 565.452.
- G. VEHICLE REGISTRATION.** 2007 PA 143. Effective November 19, 2007. Eliminates the requirement to sign your vehicle registration certification. MCL 257.223.