

2004 CRIME LEGISLATION UPDATE

An Outline of Recently Passed Legislation From January 1 to December 31, 2004.

This outline is a summary of 2004 Legislation 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. TRAFFIC SAFETY

IV. CHILDREN

V. MISCELLANEOUS

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I. NEW CRIMES & PENALTIES

- A. ADULTERATED DRUGS.** 2004 PA 213-216 & 218. Effective October 12, 2004. Increases the penalties for distribution/manufacture of adulterated drugs or medicine.
1. The knowing or reckless adulteration, misbranding, removal or substituting of a drug or medicine that makes it injurious to health, or the knowing or reckless sale, possession or offer for sale, or manufacture of such a drug or medicine is a felony, punishable by imprisonment for up to 2 years and/or a fine of up to \$1,000. MCL 750.16(1). It's a G felony under the guidelines. MCL 777.16a.
 - a. The penalty increases to imprisonment for up to 4 years and/or a fine of up to \$4,000 if the violation results in personal injury. MCL 750.16(2). It's an F felony under the guidelines. MCL 777.16a.
 - b. The penalty increases to imprisonment for up to 5 years and/or a fine of up to \$5,000 if the violation results in serious impairment of a body function. MCL 750.16(3). It's an E felony under the guidelines. MCL 777.16a.
 - c. The penalty increases to imprisonment for up to 15 years and/or a fine of up to \$20,000 if the violation results in death. MCL 750.16(4). It's a C felony under the guidelines. MCL 777.16a.
 2. If the violation was done with the intent to kill or to cause the serious impairment of a body function of 2 or more people, and death results, the penalty is life without parole and a fine of up to \$40,000. MCL 750.16(5).
 3. The person may be convicted of any other violation committed while violating this section. MCL 750.16(7).
 4. The knowing or reckless mixing, coloring, staining, or powdering of a drug or medicine with an ingredient or material injurious to health, or the knowing or reckless sale, possession or offer for sale, or manufacture of such a drug or medicine is a felony, punishable by imprisonment for up to 2 years and/or a fine of up to \$1,000. MCL 750.18(1). It's a G felony under the guidelines. MCL 777.16a.
 - a. The penalty increases to imprisonment for up to 4 years and/or a fine of up to \$4,000 if the violation results in personal injury. MCL 750.18(2). It's an F felony under the guidelines. MCL 777.16a.
 - b. The penalty increases to imprisonment for up to 5 years and/or a fine of up to \$5,000 if the violation results in serious impairment of a body function. MCL 750.18(3). It's an E felony under the guidelines. MCL 777.16a.
 - c. The penalty increases to imprisonment for up to 15 years and/or a fine of up to \$20,000 if the violation results in death. MCL 750.18(4). It's a C felony under the guidelines. MCL 777.16a.
 5. If the violation was done with the intent to kill or to cause the serious impairment of a body function of 2 or more people, and death results, the penalty is life without parole and a fine of up to \$40,000. MCL 750.18(5).
 6. The person may be convicted of any other violation committed while violating this section.

MCL 750.18(9).

7. The knowing or reckless adulteration, misbranding, removal or substituting of a drug or device knowing that it shall be used, or the knowing or reckless sale, possession or offer for sale, or manufacture of such a drug is a felony, punishable by imprisonment for up to 2 years and/or a fine of up to \$1,000. MCL 333.17764(3). It's a G felony under the guidelines. MCL 777.13n.
 - a. The penalty increases to imprisonment for up to 4 years and/or a fine of up to \$4,000 if the violation results in personal injury. MCL 333.17764(4). It's an F felony under the guidelines. MCL 777.13n.
 - b. The penalty increases to imprisonment for up to 5 years and/or a fine of up to \$5,000 if the violation results in serious impairment of a body function. MCL 333.17764(5). It's an E felony under the guidelines. MCL 777.13n.
 - c. The penalty increases to imprisonment for up to 15 years and/or a fine of up to \$20,000 if the violation results in death. MCL 333.17764(6). It's a C felony under the guidelines. MCL 777.13n.
 2. If the violation was done with the intent to kill or to cause the serious impairment of a body function of 2 or more people, and death results, the penalty is life without parole and a fine of up to \$40,000. MCL 333.17764(7).
 3. The person may be convicted of any other violation committed while violating this section. MCL 333.17764(8).
- B. ANIMAL RESEARCH.** 2004 PA 519-520. Effective April 1, 2005. Makes it a crime to do any of the following to research property. Research means any lawful activity involving the use of animals, animal products, or other animal substances intended for or used for scientific purposes. MCL 750.395(8).
1. Damage or destroy the research property of another person with the intent to do any of the following:
 - a. To frighten, intimidate, or harass any person because of the person's participation or involvement in, or cooperation with, research.
 - b. To prevent any person from engaging in any lawful profession, occupation, or activity because of the person's participation or involvement in, or cooperation with, research.
 - c. To prevent, delay, hinder, or otherwise harm the research or use of the research.
 2. Place any object in any research property to prevent the lawful growing, harvesting, transportation, keeping, selling, or processing of that research property. MCL 750.395(1).
 3. The penalty increases depending on the value of the research destroyed or whether someone was injured.
 - a. If the value of the research destroyed was less than \$200, it's a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$500 or 3 times the value of the destroyed research, whichever is greater. MCL 750.395(2)(a).

- b. If the value of the research destroyed was more than \$200 but less than \$1,000, or the value is under \$200 and the person has a prior conviction, it's a misdemeanor punishable by imprisonment for up to 1 year and/or a fine of up to \$2,000 or 3 times the value of the destroyed research, whichever is greater. MCL 750.395(2)(b).
 - c. If the value of the research destroyed was more than \$1,000 but less than \$20,000, or the value is more than \$200 and less than \$1,000 and the person has a prior conviction, it's a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$10,000 or 3 times the value of the destroyed research, whichever is greater. MCL 750.395(2)(c). It's an E felony under the guidelines. MCL 777.16s.
 - d. If the value of the research destroyed was more than \$20,000, or the value is more than \$1,000 and less than \$20,000 and the person has 2 prior convictions, it's a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$15,000 or 3 times the value of the destroyed research, whichever is greater. MCL 750.395(2)(d). It's an E felony under the guidelines. MCL 777.16s.
 - e. If the violation results in injury to another person it's a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$20,000 or 3 times the value of the destroyed research, whichever is greater. MCL 750.395(2)(e). It's an E felony under the guidelines. MCL 777.16s.
 - f. If the violation causes serious impairment of a body function, it's a felony punishable by imprisonment for up to 10 years and/or a fine of up to \$25,000 or 3 times the value of the destroyed research, whichever is greater. MCL 750.395(2)(f). It's a D felony under the guidelines. MCL 777.16s.
 - g. If the violation results in death, it's a felony punishable by imprisonment for up to 15 years and/or a fine of up to \$40,000 or 3 times the value of the destroyed research, whichever is greater. MCL 750.395(2)(g). It's a C felony under the guidelines. MCL 777.16s.
- 4. A person may be charged with and convicted of another violation arising out of the same transaction, in lieu of a charge under this section. MCL 750.395(3).
 - 5. The value of research destroyed may be aggregated over a 12 month period. MCL 750.395(4).
- C. AQUATIC NUISANCES.** 2004 PA 246-247. Effective October 1, 2004. Creates permit procedures for the control of aquatic nuisances and criminal penalties for violations.
 - D. BOXING.** 2004 PA 403-404. Effective February 20, 2005. Creates the Michigan Boxing Regulatory Act, and provides misdemeanor penalties for licensing violations.
 - 1. A 1st offense is a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$500. A 2nd offense is a misdemeanor punishable by imprisonment for up to 1 year and/or a fine of up to \$1,000.
 - 2. Violations of the act are exempt from the prize fight prohibitions of the penal code. MCL 750.447.
 - E. CEMETERY SALES.** 2004 PA 21-22. Effective January 1, 2005. Includes pre-paid cemetery sales in the prepaid funeral services act.

1. The failure to properly escrow the funds is a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$5,000.
2. All other violations of the Act are misdemeanors punishable by imprisonment for up to 1 year and/or a fine of up to \$1,000. MCL 456.521 et. seq; MCL 328.211 et.seq.

F. CIGARETTES. 2004 PA 474. Effective December 28, 2004. Makes the following changes to the Cigarette tax laws.

1. Includes the illegal possession, acquisition, transport or sale of counterfeit cigarettes within the law. MCL 205.428. Counterfeit cigarette means a cigarette in an individual package of cigarettes or other container with a false manufacturing label or a cigarette in an individual package of cigarettes or other container with a counterfeit stamp. MCL 205.422(c).
2. Regulates the sale of cigarettes through the mail, by phone or over the Internet. MCL 205.431

G. EAVESDROPPING. 2004 PA 156 & 157. Effective September 1, 2004. Amends the eavesdropping statute as follows:

1. Prohibits the use, placement or installation of a device in a private place for the purpose of observing, transmitting, photographing or eavesdropping upon the sounds or events in that place. MCL 750.539d(1)(a).
 - a. A violation or attempted violation is a felony, punishable by imprisonment for up to 2 years and/or a fine of up to \$2,000. MCL 750.539d(3)(a)(i). It's an H felony under the guidelines. MCL 777.16z.
 - b. A second offense is a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$5,000. MCL 750.539d(3)(a)(ii). It's an E felony under the guidelines.
2. If the sounds or events obtained by eavesdropping are distributed, disseminated, or transmitted by a person who knows or should have known that they were obtained in violation of MCL 750.539d, the violation is a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$5,000. MCL 750.539d(3)(b). It's an E felony under the guidelines. MCL 777.16z.
3. Security monitoring in a residence is allowed, unless conducted for a lewd and lascivious purpose. MCL 750.539d(1)(b)
4. Prosecution for this offense does not preclude convictions for any crimes arising out of the same transaction. MCL 750.539d(4).

H. FALSE CRIME REPORTS. 2004 PA 104. Effective July 1, 2004. Amends MCL 750.411a, the false report of a crime statute, as follows:

1. Expands the statute to cover false reports made to 911 operators or other governmental employees or contractors who are authorized to receive reports of a crime. MCL 750.411a(1).
2. Expands the statute to cover intentionally causing a false report of the commission of a crime to be made. MCL 750.411a(1).

3. Provides a higher penalty for a false report of the poisoning of food, water, or medicine under MCL 750.397a or 750.436. MCL 750.411a(2).
- I. FALSE FINANCIAL STATEMENTS.** 2004 PA 212 & 304. Effective January 1, 2005. Makes the knowing or intentional filing of a false or fraudulent financial statement a felony. The penalty is imprisonment for up to 5 years and/or a fine of up to \$2,500. MCL 440.9501(6). It's an E felony under the guidelines. MCL 777.14g.
- J. FALSE PRETENSES.** 2004 PA 154. Effective September 1, 2004. Defines "false pretense" to include, but not be limited to, a false or fraudulent representation, writing, communication, statement, or message, communicated by any means to another person, that the maker of the representation, writing, communication, statement, or message knows is false or fraudulent. The false pretense may be a representation regarding a past or existing fact or circumstance or a representation regarding the intention to perform a future event or to have a future event performed. MCL 750.218.
- K. FELONY MURDER.** 2004 PA 58. Effective June 11, 2004. Includes 1st and 2nd degree vulnerable adult abuse in the felony murder statute. MCL 750.316(1)(b).
- L. FIREARMS.**
1. *Antique Firearms.* 2004 PA 99-101. Effective May 13, 2004. Exempts the purchase, ownership, carrying, possession, use or transportation of an antique firearm from the safety inspection requirement and the requirement to obtain a permit to purchase or carry. MCL 28.432.
 2. *CCW.* 2004 PA 129-130. Effective June 3, 2004. Allows a person with a CCW license, or a person who is exempt from the CCW licensing requirements to carry in an area frequented by wild animals. MCL 324.43510. They also preclude the DNR from passing a rule preventing a person with a CCW license, or a person who is exempt from the CCW licensing requirements, from carrying on state land. MCL 324.504.
 3. *CCW.* 2004 PA 254. Effective July 23, 2004. Precludes a CCW Board from requiring any statement of content on a certificate of completion of a pistol training or safety program other than a statement that the course complies with MCL 28.425j.
- M. FOREST FIRES.** 2004 PA 529. Effective January 3, 2005. Creates a procedure for doing prescribed burns, and exempting prescribed burns from the penalties for setting a forest fire. MCL 324.51510.
- N. HAZING.** 2004 PA 111-112. Effective August 18, 2004. Makes it a crime for a person employed by, attending, or volunteering at an educational institution to engage in hazing.
1. Hazing is an intentional, knowing or reckless act directed against another person that the actor knew or should have known endangered the physical health or safety of the person, and was done for the purpose of pledging, being initiated into, affiliating with, participating in, holding office in, or maintaining membership in any organization. MCL 750.411t(7)(b).
 - a. If the violation results in physical injury, it's a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$1,000. MCL 750.411t(2)(a).
 - b. If the violation results in serious impairment of a body function, it's a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$2,500. MCL 750.411t(2)(b). It's an E

felony under the guidelines. MCL 777.16t.

- c. If the violation results in death, it's a felony punishable by imprisonment for up to 15 years and/or a fine of up to \$10,000. MCL 750.411t(2)(c). It's a C felony under the guidelines. MCL 777.16t.
- 2. A conviction under this section does not preclude a conviction for any other offense arising out of the same transaction. MCL 750.411t(3).
- O. HIV TESTING.** 2004 PA 98. Effective May 13, 2004 . Allows a court to order a defendant to pay the cost of HIV/STD testing. Failure to pay is a misdemeanor. MCL 333.5129(10 & 11).
- P. IDENTITY THEFT.** 2004 PA 452-453; 456-458; 460 & 462. Effective March 1, 2005. These Acts make several changes to the laws regarding identity theft.
 - 1. Makes it a crime punishable by imprisonment for up to 5 years and/or a fine of up to \$25,000 to do any of the following. They are E felonies under the guidelines. MCL 777.14h.
 - a. With the intent to defraud or violate the law, use or attempt to use the personal identifying information of another person to obtain goods, services, money, property, a vital record, medical records or information, or employment, or to commit any other unlawful act. MCL 445.65(1)(a).
 - b. By concealing, withholding, or misrepresenting the person's identity, use or attempt to use the personal identifying information of another person to obtain goods, services, money, property, a vital record, medical records or information, or employment, or to commit any other unlawful act. MCL 445.65(1)(b).
 - c. Obtain or possess, or attempt to obtain or possess, personal identifying information of another person with the intent to use that information to commit identity theft or another crime. MCL 445.67(a).
 - d. Sell or transfer, or attempt to sell or transfer, personal identifying information of another person if the person knows or has reason to know that the specific intended recipient with use, attempt to use, or further transfer the information to another person for the purpose of committing identity theft or another crime. MCL 445.67(b).
 - e. Falsify a police report of identity theft, or knowingly create, possess, or use a false police report of identity theft. MCL 445.67(c).
 - 2. A person may be charged with any other violation of law committed by that person while violating or attempting to violate this section. MCL 445.69(3).
 - 3. Sentences may be consecutive. MCL 445.69(4).
 - 4. The knowing or intentional commission of the following acts committed in the conduct of trade or commerce is a misdemeanor punishable by imprisonment for up to 30 days and/or a fine of to \$1,000.
 - a. Deny credit or public utility service or to reduce the credit of a consumer, solely because they were a victim of identity theft. MCL 445.71(1)(a).

- b. Solicit to extend credit to a consumer who does not have an existing line of credit, or who has not applied for a line of credit within the preceding year, through the use of an unsolicited check. MCL 445.71(1)(b).
 - c. Solicit to extend credit to a consumer who does not have a current credit card, or who has not applied for a credit card within the preceding year, through the use of an unsolicited credit card. MCL 445.71(1)(c).
 - d. Extend credit to a consumer without exercising reasonable procedures to verify the identity of that consumer. MCL 445.71(1)(d).
5. MCL 750.285 was repealed.
6. Venue for identity theft violations is in:
- a. The jurisdiction in which the offense occurred. MCL 762.10c(1)(a).
 - b. The jurisdiction in which the information used to commit the violation was illegally used. MCL 762.10c(1)(b).
 - c. The jurisdiction in which the victim resides. MCL 762.10c(1)(a).
7. The statute of limitations for identity theft is 6 years unless the individual who committed the offense has not been identified. If the suspect has not been identified, the charges may be filed at any time within a 6 year period after the suspect is identified. MCL 767.24(4).
8. It is a misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$1,000 to secretly photograph or otherwise capture, record, distribute, disseminate or transmit personal identifying information obtained during a transaction involving a financial transaction device. MCL 750.539k.
9. A bona fide victim of identity theft is entitled to a copy of their police report in order to establish that they are a victim of identity theft for purposes of 15 USC 1681g. MCL 780.754a.
- Q. IMMIGRATION ASSISTANCE.** 2004 PA 161-162. Effective October 1, 2004. Creates the Michigan Immigration Clerical Assistance Act. Violations are misdemeanors punishable by imprisonment for up to 93 days and/or a fine of up to \$1,000 for a 1st offense. A second offense is a felony punishable by imprisonment for up to 2 years and/or a fine of up to \$10,000. MCL 338.3621 It's a G felony under the guidelines. MCL 777.13p.
- R. MEDICAL RECORDS.** 2004 PA 47-48. Effective April 1, 2004. Creates the medical records access act. Violations are misdemeanors, subject to a \$1,000 fine. MCL 333.20170 & 333.20199. The act requires health care providers to provide patients or the patient's advocate with copies of their medical records, and regulates the fees that can be charged for the copies.
- S. MINING.** 2004 PA 449. Effective December 27, 2004. Regulates nonferrous metallic mineral mining.

1. It's a felony punishable by imprisonment for up to 2 years and/or a fine of \$2,500 to \$25,000 to intentionally make a false statement, representation, or certification in an application for or form pertaining to a permit under this part or in a notice or report required by the terms and conditions of a permit. MCL 324.63223.
 2. The fine increases to \$25,000 to \$50,000 for a second offense. MCL 324.63223.
 3. If the violation posed a substantial endangerment to the public health, safety or welfare, the penalty is 5 years imprisonment and a fine of \$1,000,000. MCL 324.63223(5). Substantial endangerment is determined by whether the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following occurred:
 - a. The defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury.
 - b. The defendant acted in gross disregard of the standard of care that any reasonable person should observe in similar circumstances.
- T. MIP.** 2004 PA 62-63. Effective September 1, 2004. Makes the following changes to the Minor in Possession statute.
1. Criminalizes having any bodily alcohol content. MCL 436.1703(1). Bodily alcohol content means an alcohol content of .02%, or the presence of any alcohol in the minor's body, other than alcohol consumed as part of a recognized religious ceremony. MCL 436.1703(15).
 2. Creates a deferred sentence and dismissal process for 1st offenders. MCL 436.1703(3).
 3. Provides for imprisonment for up to 30 days in jail for a second conviction, and up to 60 days in jail for a 3rd conviction, only if the minor violates probation or fails to successfully complete treatment. MCL 436.1703(1)(b)(c).
 4. Provides the minor with an affirmative defense if the minor legally consumed alcohol in another jurisdiction, such as Canada. MCL 436.1703(14).
 5. Requires courts to abstract MIP deferrals to the Secretary of State. MCL 257.732(5).
- U. MOLOTOV COCKTAILS.** 2004 PA 523-524. Effective April 1, 2005. Prohibits the manufacture, use, possession, purchase or sale of a molotov cocktail. It's a felony punishable by imprisonment for up to 4 years and/or a fine of up to \$2,000. MCL 750.211a. It's an F felony under guidelines. MCL 777.16k.
1. "Molotov cocktail" means an improvised incendiary device that is constructed from a bottle or other container filled with a flammable or combustible material or substance and that has a wick, fuse, or other device designed or intended to ignite the contents of the device when it is thrown or placed near a target. MCL 750.211a(3).
- V. MOTION PICTURE PIRACY.** 2004 PA 423-424. Effective March 15, 2005. A person who knowingly records or transmits a motion picture exhibited in a theater is subject to the following penalties.

1. A 1st offense is a misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$10,000. MCL 750.465a(1)(a).
2. A 2nd offense is a felony, punishable by imprisonment for up to 2 years and/or a fine of up to \$20,000. MCL 750.465a(1)(b). It's a G felony under the guidelines. MCL 777.16w.

3. A 3rd offense is a felony, punishable by imprisonment for up to 4 years and/or a fine of up to \$40,000. MCL 750.465a(1)(c). It's an F felony under the guidelines. MCL 777.16w.
- W. PDDE.** 2004 PA 526 & 562. Effective January 3, 2005. Prohibits the manufacture, processing, or distribution of a product containing more than 1/10th of 1% of either penta-BDE or octa-BDE. Penalty is a misdemeanor punishable by a fine of \$2,500 to \$25,000 for each day of the violation. MCL 324.14725.
- X. PROBATION.**
1. *GED.* 2004 PA 116. Effective May 26, 2004. Makes the completion of high school or obtaining a GED a permissive condition of probation. MCL 771.3(2)(q).
 2. *Costs.* 2004 PA 330. Effective September 23, 2004. Allows probation fees and state costs to be ordered when sentencing is deferred. MCL 771.3.
- Y. ROBBERY.** 2004 PA 128. Effective July 1, 2004. Makes the following amendments to the robbery statutes.
1. *Unarmed Robbery.* Amends the statute to cover the use of force in the course of committing a larceny of money or other property. MCL 750.530(1).
 - a. In the course of committing a larceny includes acts that occur in an attempt to commit larceny, or during commission of a larceny, or in flight or attempted flight after the commission of a larceny, or in an attempt to retain possession of the property. MCL 750.530(2).
 2. *Armed Robbery.* Amends the statute to cover a violation of MCL 750.530 while armed. Other changes include:
 - a. Any person present, not just the person assaulted, can have a reasonable belief that the article used by the perpetrator is a dangerous weapon. MCL 750.529.
 - b. Allows the possession of a dangerous weapon to be established by the oral representation from the perpetrator that he has a dangerous weapon. MCL 750.529.
 3. *Car Jacking.* Amends the car jacking statute to cover the use of force during the commission of a larceny of motor vehicle. MCL 750.529a.
 - a. In the course of committing a larceny of a motor vehicle includes acts that occur in an attempt to commit larceny, or during commission of a larceny, or in flight or attempted flight after the commission of a larceny, or in an attempt to retain possession of the property. MCL 750.529(2).
- Z. SCHOOLS.** 2004 PA 417-418. Effective March 29, 2005. Prohibits the following acts by school officials.
1. The use of intermediate school district funds to purchase alcohol, jewelry, gifts, golf fees or any illegal item is a misdemeanor, punishable by imprisonment for up to 93 days and/or the following fines.
 - a. Up to \$1,000 if the cumulative amount of the funds misused is less than \$5,000. MCL

- 380.1814(3)(a).
 - b. \$1,000 to \$2,000 if the cumulative amount of the funds misused is more than \$5,000, but less than \$10,000. MCL 380.1814(3)(b).
 - c. \$2,000 to \$3,000 if the cumulative amount of the funds misused is more than \$10,000, but less than \$15,000. MCL 380.1814(3)(c).
 - d. \$3,000 to \$4,000 if the cumulative amount of the funds misused is more than \$15,000, but less than \$25,000. MCL 380.1814(3)(d).
 - e. \$4,000 if the cumulative amount of the funds misused is \$25,000 or more. MCL 380.1814(3)(e).
2. A knowing and intentional violation of the competitive bidding rules for school construction is a misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to 10% of the cost of the project. MCL 380.1815.
 3. The knowing and intentional misuse of bonds issued under the school code is a felony, punishable by imprisonment for up to 4 years and/or a fine of up to 10% of the cost of the project. MCL 380.1816. It is an F felony under the guidelines. MCL 777.13p.
- AA. SEPTAGE WASTE.** 2004 PA 381-382. Effective October 12, 2004. Increases the penalties for the improper disposal of septage waste to imprisonment for up to 90 days and/or a fine of up to \$5,000. MCL 324.11719(1).
1. Making a false statement on a license application is a felony, punishable by imprisonment for up to 2 years and/or a fine of \$2,500 to \$25,000. MCL 324.11719(2). It's a G offense under the guidelines. MCL 777.13c.
 2. All other violations are misdemeanors, punishable by imprisonment for up to 30 days, and/or a fine of \$1,000 to \$2,500. MCL 324.11719(3).
 3. Each day is a separate violation. MCL 324.11719(4).
- BB. SOCIAL SECURITY NUMBER PRIVACY.** 2004 PA 454. Effective March 1, 2005. Makes it a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of \$1,000 to knowingly and intentionally use more than 4 digits of a social security number. See act for details and exceptions.
- CC. SOLID WASTE.** 2004 PA 40-42. Effective March 29, 2004. Regulates the importation of solid waste.
1. Makes it a crime for a landfill to accept imported waste that does not meet the requirements for disposal of in-state waste. MCL 324.11526a. The penalty is a misdemeanor, punishable by imprisonment for up to 6 months, and/or a fine of up to \$1,000. MCL 324.11549.
 2. It's also a crime for a waste hauler to fail to notify its customers annually of the materials that may not be disposed of in a landfill. MCL 324.11527a. The penalty is a misdemeanor, punishable by imprisonment for up to 6 months, and/or a fine of up to \$1,000. MCL 324.11549.
 3. In addition, the AG may seek civil fines of \$10,000/day for a first violation, and \$25,000/day for a

second or subsequent violation. MCL 324.11546.

DD. STATE IDENTIFICATION CARDS. 2004 PA 149-150. Effective September 1, 2004. Makes the following changes to the laws prohibiting the possession or use of false state identification cards.

1. A person who intentionally reproduces, alters, counterfeits, forges or duplicates an official state personal identification card photograph, the photo negative, the card image, the card itself or any electronic data on the card is subject to the following penalties:
 - a. If the intent was to use the false ID card in the commission of a felony with a maximum penalty of 10 or more years, it's a felony punishable by imprisonment for up to 10 years and/or a fine of up to \$20,000. MCL 28.295(1)(a). It's a D felony under the guidelines. MCL 777.11b.
 - b. If the intent was to use the false ID card in the commission of a felony with a maximum penalty less than 10 years, or a misdemeanor with a maximum penalty of 6 or more months, it's a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$10,000. MCL 28.295(1)(b). It's an E felony under the guidelines. MCL 777.11b.
 - c. If the intent was to use the false ID card in the commission of a misdemeanor with a maximum penalty of less than 6 months, it's a misdemeanor punishable by imprisonment for up to 1 year and/or a fine of up to \$2,000. MCL 28.295(1)(c).
2. The sale, possession with intent to deliver, or possession of 2 or more false state ID cards is a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$10,000. MCL 28,295(2). It's an E felony under the guidelines. MCL 777.11b.
3. The possession of 1 false state ID cards is a misdemeanor punishable by imprisonment for up to 1 year and/or a fine of up to \$2,000. MCL 28.295(3).
4. The felony violations do not apply to a minor whose intent was to use the false ID to purchase alcohol. MCL 28.295(7).

EE. TELECOMMUNICATION ACCESS DEVICES. 2004 PA 1-2. Effective February 12, 2004. Revises MCL 750.540c to prohibit the manufacture, possession, delivery or use of any telecommunication device with the intent to defraud.

FF. VIDEO VOYEURISM. 2004 PA 155 & 157. Effective September 1, 2004. Creates the following crimes.

1. Makes it a felony punishable by imprisonment for up to 2 years and/or a fine of up to \$2,000 for a person to surveil or to attempt to surveil another individual clad only in his or her undergarments, the unclad genitalia of another person, or the unclad breasts of a female, under circumstances in which the individual would have a reasonable expectation of privacy. MCL 750.539j(1)(a). It's an H felony under the guidelines. MCL 777.16z.
 - a. A second offense is a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$5,000. MCL 750.539j(2)(a)(ii). It's an E felony under the guidelines. MCL 777.16z.
 - b. Surveil means to secretly observe the activities of another person for the purpose of spying upon and invading the privacy of the person observed. MCL 750.539j(6) & 750.539a.

2. If the person photographs or attempts to photograph or otherwise capture or record the undressed visual image of the person surveilled, it's a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$5,000. MCL 750.539j(1)(b) and (2)(b). It's an E felony under the guidelines. MCL 777.16z.
3. If the person distributes, disseminates or transmits for access by another person, or attempts to distribute, disseminate or transmit for access by another person the undressed visual image of the person surveilled, knowing or having to reason to know the visual image was obtained in violation of MCL 750.539j, it's a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$5,000. MCL 750.539j(1)(c) and (2)(b). It's an E felony under the guidelines. MCL 777.16z.
4. Security monitoring in a residence is allowed, unless conducted for a lewd and lascivious purpose. MCL 750.539j(4).
5. Prosecution for this offense does not preclude convictions for any crimes arising out of the same transaction. MCL 750.539j(3).
6. This section does not apply to a law enforcement officer while in the performance of the officer's duties. MCL 750.539j(5).

GG. VULNERABLE ADULTS. 2004 PA 255. Effective September 1, 2004. Eliminates the requirement that a person who defrauds a vulnerable adult must be in a relationship of trust with the vulnerable adult, and expands the definition of vulnerable adult. MCL 750.174a

1. Vulnerable adult means 1 or more of the following:

- a. An individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently.
- b. An adult as defined in section 3(1)(b) of the adult foster care facility licensing act, MCL 400.703.
- c. An adult as defined in section 11(b) of the social welfare act, MCL 400.11.

II. CRIMINAL PROCEDURE

A. BAIL.

1. *Appellate Bond*. 2004 PA 32. Effective June 30, 2004. A defendant convicted of sexual assault of a minor cannot be admitted to bail for the period between conviction and sentencing, nor during an appeal of the conviction. MCL 770.9b.
 - a. Sexual assault of a minor means a violation of 1st, 2nd or 3rd degree CSC, or assault with intent to commit CSC, when the victim is less than 16 years old. Convictions for MCL 750.520d(1)(a), consensual sexual penetration with a victim between the ages of 13-15, inclusive, when the defendant is within 5 years of age of the victim, are excepted from the bail ban. MCL 770.9b(3).
2. *Forfeiture*. 2004 PA 332. Effective September 23, 2004. Eliminate the requirement that the prosecutor file a motion before the court gives notice of bail forfeiture to a surety. MCL 765.28.
3. *Surety Bond*. 2004 PA 167. Effective June 24, 2004. Allows a surety bond at 25% of the bail amount if the court allows a 10% deposit bond.

B. DRUG TREATMENT COURTS. 2004 PA 219-226. Effective January 1, 2004. Establishes drug treatment courts. Key provisions are:

1. Memo of understanding is required between court, county PA, defense representative, representative of community treatment providers. Probation and service providers are discretionary parties to the agreement. MCL 600.1062.
2. Individuals eligible for admission to the drug treatment court must undergo pre-admission screening to determine appropriateness of placement. MCL 600.1064(3).
3. Under MCL 600.1064(2), individuals may be placed in a drug treatment court as part of a deferred proceeding under:
 - a. The Youthful Trainee Act
 - b. Section 7411 of the public health code
 - c. DV deferral under MCL 769.4a.
 - d. Parental kidnaping deferral under MCL 750.350a.
 - e. Intoxicated medical professional. MCL 750.430.
4. Statements made during assessment or treatment are confidential and cannot be used in a criminal prosecution unless they reveal criminal acts other than, or inconsistent with, personal drug use. MCL 600.1064(4); MCL 600.1072(2).
5. The defendant must sign a written agreement to participate in the drug treatment court, the prosecutor must approve his or her participation. MCL 600.1068.

6. The defendant must plead guilty to be eligible for the program. MCL 600.1070.
 7. A condition of the program is the payment of restitution, fines and costs, including the reasonable costs of drug treatment and the administration of the drug treatment court. MCL 600.1070(4); MCL 600.1074.
 8. Under MCL 600.1076 successful completion of the drug treatment program may result in the discharge and dismissal of the criminal proceedings if:
 - a. The individual is in a drug treatment court for the first time.
 - b. They are not required to be sentenced to a correctional facility.
 - c. They are not in the program for a traffic offense.
 - d. The person has not had more than one dismissal under YTA, sec. 7411, 769.4a, 750.350a or 750.430.
 - e. A dismissal cannot occur in a DV case unless the person has not previously had a DV dismissal under 769.4a and the current charge is one that would be eligible for discharge under 769.4a.
 9. In all other cases of successful completion of treatment, the conviction stays on the person's record. MCL 600.1076(7).
 10. Disposition reporting to the MSP shall indicate whether the person was admitted to a drug treatment court and whether the person successfully or unsuccessfully completed the treatment program. MCL 600.1076.
- C. JUVENILES.** 2004 PA 102. Effective May 13, 2004. Allows a juvenile to petition the juvenile court for remission of the minimum state costs imposed as a result of the conviction. MCL 712a.18(19).
- D. PRELIMINARY EXAMINATIONS.** 2004 PA 20. Effective March 4, 2004. On motion of either party, the magistrate may permit the testimony of an expert witness or, upon a showing of good cause, any witness, to be conducted by means of telephonic, voice or video conferencing. MCL 766.11a.
- E. SEX OFFENDER REGISTRY.** 2004 PA 237-240. Effective October 1, 2004. Allows non-violent juvenile offenders and youthful trainees to petition for removal from the registry.
- 1. Juveniles under 13: victim within 5 years of age, convicted after October 1, 2004.**
- a. Juveniles under the age of 13 **convicted** of 1st, 2nd, or 3rd degree CSC, or attempt or conspiracy to commit 1st, 2nd or 3rd degree CSC under MCL 750.520b(1)(a), 520c(1)(a) or 520d(1)(a), for having consensual sex with a victim under 16 who is within 5 years of age of the offender, register once on the private registry. They do not have to verify their address every 3 months, but must notify the police if they move. MCL 28.725a(5); MCL 28.728c(15).
 - b. Juveniles under the age of 13 **charged** with 1st, 2nd or 3rd degree CSC, or attempt or conspiracy to commit 1st, 2nd or 3rd degree CSC under MCL 750.520b(1)(a), 520c(1)(a) or 520d(1)(a), for having consensual sex with a victim under 16 who is within 5 years of age of the offender, and who are

convicted of assault with intent to commit CSC or 4th degree CSC, or of attempting or conspiring to commit assault with intent to commit CSC or 4th degree CSC also register once on the private registry. They do not have to verify their address every 3 months, but must notify the police if they move. MCL 28.725a(5); MCL 28.728c(15).

c. These juvenile offenders may petition for removal from the registry at age 17. MCL 28.728c.

2. Juveniles between 13 and 16, inclusive: victim within 3 years of age, convicted after October 1, 2004.

a.. Juveniles between the ages of 13 to 16, inclusive, **convicted** of 1st, 2nd, or 3rd degree CSC, or attempt or conspiracy to commit 1st, 2nd or 3rd degree CSC under MCL 750.520b(1)(a), 520c(1)(a) or 520d(1)(a), for having consensual sex with a victim under 16 who is within 3 years of age of the offender, register once on the private registry. They do not have to verify their address every 3 months, but must notify the police if they move. MCL 28.725a(5); MCL 28.728c(15).

b. Juveniles between the ages of 13 to 16, inclusive, **charged** with 1st, 2nd or 3rd degree CSC, or attempt or conspiracy to commit 1st, 2nd or 3rd degree CSC under MCL 750.520b(1)(a), 520c(1)(a) or 520d(1)(a), for having consensual sex with a victim under 16 who is within 3 years of age of the offender, and who are **convicted** of assault with intent to commit CSC or 4th degree CSC, or of attempting or conspiring to commit assault with intent to commit CSC or 4th degree CSC also register once on the private registry. They do not have to verify their address every 3 months, but must notify the police if they move. MCL 28.725a(5); MCL 28.728c(15).

c. These juvenile offenders may petition for removal from the registry at age 17. MCL 28.728c.

3. Procedures for juveniles to petition for removal from the registry; Conviction after October 1, 2004.

a. Juveniles convicted of a registration offense go on the private registry at the time of conviction. If the conviction was of 1st or 2nd degree CSC they move to the public registry at age 18. MCL 28.728. If they are eligible offenders and file a petition for removal from the registry the court may allow them to remain on the private registry pending the resolution of the petition. MCL 28.728c(9); MCL 28.728d(2).

b. At age 17, juvenile offenders listed in section I. A or B can petition under oath, subject to the penalties for perjury, to be removed from the registry. The petition must be filed before the juvenile's 20th birthday. MCL 28.728c(4)(5) & (6).

c. Only one petition may be filed. MCL 28.728c(4).

d. Under MCL 28.728c(14), A petition cannot be granted if:

i. The person has another SORA conviction.

ii. The person fails to prove by clear and convincing evidence that he or she is not likely to engage in further criminal sexual acts.

iii. The court determines that the offense of conviction involved one of the CSC aggravating factors, such as force or coercion.

iv. The individual has pending felony charges. The petition can be held in abeyance pending the

resolution of the pending charges. MCL 28.728c(4).

- e. The prosecution office that prosecuted the case is given 30 days notice of the petition hearing date and can participate in the proceedings. The prosecutor can also appeal the court's decision. MCL 28.728c(7).
- f. If the name of the victim is known to the prosecutor, the prosecutor must give the victim notice of the petition and hearing by first class mail at their last known address. MCL 28.728c(8).
 - i. The victim has the right to appear at all proceedings on the petition and to make an oral or written impact statement. The victim cannot be compelled to appear at the hearing on the petition. MCL 28.728c(11).
- g. Other factors the court considers in granting the petition are:
 - i. The juvenile's age and level of maturity at the time of the offense.
 - ii. The victim's age and level of maturity at the time of the offense.
 - iii. The nature of the offense.
 - iv. The severity of the offense.
 - v. The juvenile's prior criminal history.
 - vi. The juvenile's likelihood to engage in further criminal sexual acts.
 - vii. Any victim impact statement.
 - viii. Any other information considered relevant by the court. MCL 28.728c(12).
- h. If the court grants the petition, the juvenile will be removed from the registry at the time of granting the petition. MCL 28.728d(1).
- i. If the petition is denied, the juvenile will remain on the public or private registry as applicable, for 25 years or life, with the normal reporting requirements.

4. Juveniles convicted before October 1, 2004.

- a. If a person was convicted before October 1, 2004 as a juvenile of the offenses described in I. A or B, then the juvenile can petition for removal from the registry.
 - i. The petition must be filed by October 1, 2007, or within 3 years of the juvenile's release from juvenile court jurisdiction, whichever is later. MCL 28.728(4).
 - ii. Petition procedures and relief are the same as described in section I. C.

5. Juveniles sentenced as adults are not eligible for SORA relief. MCL 28.728c(14)(e).

6. Individuals assigned to Youthful Trainee status after October 1, 2004.

- a. Assignment to YTA is no longer a conviction for SORA purposes, unless YTA status is revoked

and a conviction is entered. MCL 28.722(a)(ii)(B).

- b. YTA status is precluded for convictions of 1st, 2nd, 3rd or 4th degree CSC, or assault with intent to commit 1st, 2nd, 3rd or 4th degree CSC, including attempts and conspiracy convictions, except for:
 - i. 3rd or 4th degree CSC under MCL 750.520d(1)(a) or 750.520e(1)(a) for having consensual sexual relations with a 13 to 15 year old. MCL 762.11(2)(d).
 - ii. Assault with intent to commit 3rd or 4th degree CSC under MCL 750.520d(1)(a) or 750.520e(1)(a) for having consensual sexual relations with a 13 to 15 year old. MCL 762.11(2)(e).
- c. A YTA petition cannot be granted on any YTA eligible SORA offense if:
 - i. The person has another SORA conviction. MCL 762.11(3)(a).
 - ii. The person fails to prove by clear and convincing evidence that he or she is not likely to engage in further criminal sexual acts. MCL 762.11(3)(b).
 - iii. The court determines that the offense of conviction involved one of the CSC aggravating factors, such as force or coercion. MCL 762.11(3)(c).
- d. If YTA status is granted the person is not subject to SORA unless they fail YTA and a conviction is entered. MCL 28.722(a)(ii)(b).

7. Individuals assigned to Youthful Trainee status before October 1, 2004.

- a. Individuals assigned to YTA status before October 1, 2004 for any SORA offense, who successfully complete YTA status, may petition to have their registration period reduced from 25 to 10 years. MCL 28.728c & 28.728d.
- b. Petition procedures and relief are the same as described in section I. C.
- c. The petition must be filed within 3 years of the successful completion of YTA or by October 1, 2007, whichever is later. MCL 28.728c(4).

8. Sex Offender Registration Fees.

- a. Everyone required to register will pay a one time registration fee of \$35. MCL 28.725a(6).
- b. \$10 will be retained by the receiving agency, and \$25 will be sent to the sex offender registration fund to pay the costs of running the registry. MCL 28.725b.
- c. Wilful failure to pay the fee is a misdemeanor, punishable by imprisonment for up to 90 days. MCL 28.729(4). The fee may be waived upon a showing of indigence. MCL 28.725b(3).
- d. Effective October 16, 2004.

9. Sex Offender Photos on the Registry.

- a. Requires a photo of every offender on the registry. MCL 28.728.
- b. Effective May 1, 2005.

F. TEACHERS. 2004 PA 51. Effective April 1, 2004. Requires the prosecutor and court to ask every defendant convicted of a felony or certain misdemeanors whether they hold a teaching certificate or state board of education approval. The court must report the conviction to the superintendent of public instruction and local school officials within 15 days of conviction. MCL 380.1535a & 380.1539b.

1. Misdemeanors covered include;

- a. 4th degree CSC or attempted 4th degree CSC.
- b. 4th degree child abuse or attempted 3rd degree child abuse.
- c. Cruelty, torture, or indecent exposure involving a child.
- d. Drug delivery to minors or on school property.
- e. Assault; Aggravated assault; Illegal entry; Allowing minors to consume alcohol at a social gathering; Soliciting a child for an immoral purpose; Using the internet to commit a crime against a minor; and stealing from a vacant building.
- f. Furnishing alcohol to a minor.

II. TRAFFIC SAFETY

- A. ABANDONED VEHICLES.** 2004 PA 493-496. Effective December 29, 2004. Makes the following changes regarding abandoned vehicles.
1. Revises the procedures for notifying abandoned vehicle owners, and establishes a process for obtaining possession upon payment of various fees. MCL 257.252 et. seq.
 2. Defines an abandoned vehicle as litter. A first offense is a civil infraction with a fine of \$500 to \$2,500. A second or subsequent offense is subject to a fine of \$1,000 to \$5,000. MCL 324.8905a.
 3. Requires private sellers of motor vehicles to either accompany the buyer to the secretary of states office, or to keep documentation of the sale for 18 months. Violation is a civil infraction, and the seller is considered the registered owner for the payment of towing and storage fees on the vehicle. MCL 257.240.
- B. EMERGENCY VEHICLES.** 2004 PA 19. Effective June 2, 2004. Includes road service vehicles with flashing, rotating or oscillating lights within the definition of authorized emergency vehicle for purposes of MCL 257.653a. That statute requires drivers to move to the far lane or to use due care when approaching an emergency vehicle parked on the road.
- C. HANDICAPPED PARKING.** 2004 PA 49. Effective April 1, 2004. Amends the law allowing volunteers to issue tickets for handicapped parking violations to include tickets for parking in the access aisle next to a handicapped parking space. MCL 257.675d.
- D. MACKINAC BRIDGE.** 2004 PA 336. Effective November 1, 2004. Makes the failure to pay the Mackinac Bridge toll a misdemeanor, punishable by imprisonment for up to 30 days and/or a fine of up to \$500. MCL 254.322.
- E. MACKINAC ISLAND.** 2004 PA 176. Effective July 1, 2004. Increases the penalties for operating a vehicle on Mackinac Island to imprisonment for up to 93 days and/or a fine of up to \$500. MCL 324.76507.
- F. MOTOR CARRIER SAFETY ACT.** 2004 PA 168. Effective June 24, 2004. Makes knowing or willful violations of the Act a misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$500. MCL 480.17c(3). The same penalty applies if death or injury results from the violation of the Act. MCL 480.17c(4).
- G. MOTORCYCLES.** 2004 PA 163. Effective June 23, 2004. Changes motorcycle registration dates from March 31 to the owner's birthday. MCL 257.226.
- H. OPERATING WITH PRESENCE OF A SCHEDULE 1 CONTROLLED SUBSTANCE.** 2004 PA 62. Effective May 3, 2004. Incorporates references to the new crime of operating with any presence of a schedule 1 controlled substance in the following sections of the vehicle code.
1. Section 319b requiring license suspension or revocation for multiple convictions. MCL 257.319b(1)(c)(i) & 257.319b(1)(e)(i).
 2. Section 321a for FAC suspensions. MCL 257.321a(3).
 3. Section 625b for arraignment, pretrial conferences, pleas and sentencing. MCL 257.625b.

4. Section 727 for arrests. MCL 257.727(b).
5. Section 732 for abstracting to the Secretary of State. MCL 257.732(1)(b).
- I. OPERATOR LICENSES.** 2004 PA 362. Effective October 4, 2004. Requires the Secretary of State to check the National driver registry before providing operator or chauffeur licenses, or license endorsements. Keeps records on out of state motor vehicle convictions, and requires applicants for a license to list any states they have been licensed in during the previous 10 years.
- J. PROOF OF INSURANCE.** 2004 PA 52. Effective May 1, 2004. Rescinds the driver responsibility fee for no proof of insurance violations if the driver can present proof that he or she had insurance at the time of the violation.
 1. Proof of insurance must be presented by the date specified in the citation. MCL 257.328 & 257.907(16).
 2. The court can charge a \$25 fee for handling the citation. MCL 257.328(3).
 3. The maximum fine for no proof of insurance is \$50. MCL 257.907(2).
 4. The new driver responsibility fee for drivers found responsible for no proof of insurance is \$200/year for 2 years. MCL 257.732a(2)(d).
 5. Drivers who payed an assessment under the old law may obtain a refund by proving to the court that handled their ticket that they were insured at the time of the violation. They must present proof of insurance within 60 days of May 1, 2004. MCL 257.732a(8).
 6. Operating without insurance violations will be abstracted to the secretary of state. MCL 257.732(3)(1).
- K. RECKLESS DRIVING.** 2004 PA 331. Effective November 1, 2004. Increases the penalty for reckless driving to imprisonment for up to 93 days and/or a fine of up to \$500. MCL 257.626.
- L. TRAFFIC SIGNALS.** 2004 PA 25-26. Effective June 14, 2004. Makes it a crime to possess, use, sell or purchase a portable signal preemption device. A portable signal preemption device is a device that is capable of changing a traffic control signal to green out of sequence. Penalties are:
 1. Possession of a device is a misdemeanor, punishable by imprisonment for up to 90 days and/or a fine of up to \$5,000. MCL 257.616a(2)(a).
 2. The sale or purchase of a device is a felony, punishable by imprisonment for up to 2 years and/or a fine of up to \$10,000. MCL 257.616a(2)(f). It's a G felony under the guidelines. MCL 777.12e.
 3. Use of a device is a felony, punishable by imprisonment for up to 2 years and/or a fine of up to \$10,000. MCL 257.616a(2)(b). It's a G felony under the guidelines. MCL 777.12e.
 - a. If the use of the device results in a traffic accident, the penalty increases to imprisonment for up to 5 years and/or a fine of up to \$15,000. MCL 257.616a(2)(c). It's an E felony under the guidelines. MCL 777.12e.

- b. If the use of the device results in serious impairment of a body function, the penalty increases to imprisonment for up to 10 years and/or a fine of up to \$20,000. MCL 257.616a(2)(c). It's a D felony under the guidelines. MCL 777.12e.
- c. If the use of the device results in the death of another person, the penalty increases to imprisonment for up to 15 years and/or a fine of up to \$25,000. MCL 257.616a(2)(e). It's a C felony under the guidelines. MCL 777.12e.

IV. CHILDREN

- A. CHILD ABUSE.** 2004 PA 195. Effective July 8, 2004. Requires a protective service worker to provide his or her name and the abuse allegations to a person being contacted as a result of an abuse or neglect report. MCL 722.628(2).
- B. CHILD PROTECTION REGISTRY ACT.** 2004 PA 241-242. Effective July 1, 2005. Creates the child protection registry act to allow parents to register their child's email address to preclude the child from receiving offensive email. It's a crime to:
1. Send a message to a protected email address that advertises a product or service that a minor is prohibited by law from purchasing, viewing, possessing, participating in or otherwise receiving. PA 241, sec. 5.
 2. Release information regarding a protected email. PA 241, sec. 6(1).
 3. Access the registry except as provided by the Act. PA 241, sec. 6(2).
 - a. A 1st offense is a misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$10,000. MCL 752.796a(1)(a).
 - b. A 2nd offense is a felony, punishable by imprisonment for up to 2 years and/or a fine of up to \$20,000. MCL 752.796a(1)(b).
 - c. A 3rd offense is a felony, punishable by imprisonment for up to 3 years and/or a fine of up to \$30,000. MCL 752.796a(1)(c).
 4. It's a defense if the transmission was accidental. The defendant bears the burden of proof on this issue. MCL 752.796a(3).
 5. Computer equipment used in the commission of the violation and the proceeds of the violation are subject to forfeiture. MCL 752.796b.
- C. CHILD PROTECTIVE PROCEEDINGS.**
1. *GALS.* 2004 PA 475. Effective December 28, 2004. Defines the term relative for purposes of making an out of home placement with a relative. MCL 712A.13a(1)(j). Specifies a guardian ad litem's duties to meet with the child. MCL 712A.17d(1)(c)(d).
 2. *Review hearings.* 2004 PA 477. Effective December 28, 2004. Specifies that review hearings must be held within 182 days of filing the petition when the child is left in the home, and within 182 days of the child's removal from the home when the child is placed outside the home. Additional review hearings shall be held every 91 days for 1 year. After that year, review hearings must be held every 182 days. MCL 712A.19.
 3. *Permanency planning hearings.* 2004 PA 473. Effective December 28, 2004. Requires a permanency planning hearing within 12 months of a child's removal from the home, and within 12 months of each preceding permanency planning hearing. MCL 712A. 19a.

4. *Post termination review hearings.* 2004 PA 476. Effective December 28, 2004. Specifies that if a child remains in placement after termination, review hearings must be held every 91 days after termination for the first year. After that year, review hearings must be held every 182 days if the child remains in foster care. MCL 712A.19.
- D. CHILD SEXUALLY ABUSIVE MATERIAL.** 2004 PA 478. Effective December 28, 2004. Provides confidentiality and immunity for a computer technician who reports the discovery of child sexually abusive material. MCL 750.145c(9).
- E. CHILD SUPPORT.** 2004 PA 481-484. Effective January 1, 2006. Allows a lien for unpaid child support to be filed on payments from an estate, an arbitration award, civil judgment or worker's compensation award. MCL 552.625a.
 1. *Amnesty.* 2004 PA 564, 567-568. Effective June 1, 2005. Creates an amnesty period for the payment of child support arrearages. The amnesty period will be designated by the director of the Office of Child Support and will last between 90 days and 7 months. MCL 400.233b.
 - a. If the person applies for amnesty and pays 100% of their child support arrearage within the amnesty period, they cannot be prosecuted or subjected to civil enforcement procedures. MCL 750.161a; MCL 552.511(3).
 - b. A person is not eligible for amnesty if there is a pending prosecution for criminal non-support, or they have been arrested on a bench warrant for non-payment of support. MCL 400.233b(3).
 2. *Arrest warrants.* 2004 PA 569-570. Effective January 3, 2005. Requires a cash bond of \$500 or 25% of the child support arrearage, whichever is greater, to be posted when a person is arrested for felony non-support. MCL 750.165(3).
 3. *Bench Warrants.* 2004 PA 203 & 205. Effective October 1, 2004. Increases the judgment fees for custody, support or parenting time proceedings, and allocates \$10 to the child support bench warrant enforcement fund. MCL 600.2529. The enforcement fund will be used to contract with law enforcement agencies to enforce civil warrants related to child support. MCL 400.236a.
 4. *Paternity.* 2004 PA 253. Effective October 1, 2004. Requires the apportionment of confinement expenses between the parents under the Paternity Act, unless the pregnancy resulted from assault or was paid by medicaid. In those cases, the father is responsible for the costs. MCL 722.712.
 5. *Paternity.* 2004 PA 209. Effective October 1, 2004. Retroactive child support can only be ordered to the date of filing the complaint, unless the filing was delayed due to the defendant's wrongdoing. MCL 722.717.
- F. SUDDEN INFANT DEATHS.** 2004 PA 179. Effective July 1, 2004. Requires the Department of Community Health to promulgate rules to promote consistency and accuracy among medical examiners in determining the cause of death of children under the age of two. MCL 52.205a(2).

V. MISCELLANEOUS

- A. ADULT FOSTER CARE.** 2004 PA 59. Effective August 1, 2004. Prospectively requires a criminal background check for every employee or contractor who works in an adult foster care facility.
1. Employment is precluded if the person has been convicted of a felony within the last 15 years, or a misdemeanor involving vulnerable adult abuse or financial exploitation within the last 10 years. MCL 400.734a.
 2. Precludes licensing of a person to operate an adult foster care facility if they have been convicted of a felony violation of the licensing act or vulnerable adult abuse. MCL 400.713(9).
 3. Precludes licensing of a person to operate an adult foster care facility for a period of 10 years if they have been convicted of a misdemeanor violation of the licensing act or misdemeanor vulnerable adult abuse. MCL 400.713(9).
- B. ASSISTIVE OUTPATIENT TREATMENT.** 2004 PA 496-499. Effective March 30, 2005. Creates a process to order a mentally ill person into outpatient treatment. MCL 330.1401 et. seq.
- C. CONTROLLED SUBSTANCES.** 2004 PA 105-106. Effective September 1, 2004. Allows a landlord to give a 24 hour notice of eviction if the tenant allows controlled substance use, possession, manufacture or delivery on the leased premises. MCL 600.5714 & MCL 554.134.
- D. DIVORCE.** 2004 PA 376. Effective October 11, 2004. Eliminates the \$5 fee prosecutors receive for appearing in divorce cases. MCL 552.45.
- E. FINGERPRINTING FEES.** 2004 PA 359. Effective September 30, 2004. Allows the MSP to charge a fee of \$30 for employment related fingerprinting until October 1, 2007. MCL 28.273.
- F. JOINT POLICE ADMINISTRATIVE BOARDS.** 2004 PA 463-464. Effective December 28, 2004. Allows cities with a population between 15,000 and 70,000 located in a county with a population between 200,000 and 235,000 to form a joint police board with adjoining communities. MCL 41.810-811.
- G. LAW ENFORCEMENT AGENCIES.** 2004 PA 378-380. Effective October 12, 2004. Allows school boards in Detroit and Grand Rapids, and multi-county metro parks with a population of over 3,000,000, to establish police departments.
- H. LAW ENFORCEMENT OFFICERS MEMORIAL ACT.** 2004 PA 177. Effective July 1, 2004. Establishes the Michigan Law Enforcement Officers Memorial Act to create and fund a monument for officers who died in the line of duty. 2004 PA 438. Effective December 21, 2004. Establishes May 15 of each year as "*Peace Officers Memorial Day*" in recognition of law enforcement officers who have lost their lives in the line of duty.
- I. MEDICAL EXAMINERS.** 2004 PA 153. Effective June 15, 2004. Eliminates the requirement for an examination by a medical examiner if a person dies while under home hospice care and the person has received medical attention from a physician or registered nurse within the 48 hours immediately preceding the death. MCL 52.202.

- J. MEDICAL FIRST RESPONDERS.** 2004 PA 6. Effective February 20, 2004. Provides that a police officer is not a medical first responder just because his or her vehicle is equipped with an automated external defibrillator. MCL 333.20906.
- K. PAWNBROKERS.** 2004 PA 585. Effective January 4, 2005. Requires pawnbrokers to be licensed as a pawnbroker even if they have a precious metal and gem license or a second hand goods or junk dealer license. MCL 446.201(2). Precludes pawnbrokers from accepting any property that customarily has a serial number or other identifying insignia unless the serial number or insignia is plainly visible. MCL 446.213.
- L. PERSONAL WATERCRAFT.** 2004 PA 27. Effective March 16, 2004. Requires everyone riding on or being towed by a personal watercraft to wear a type I, II or III personal flotation device as described in R 281.1234 of the Michigan Administrative Code. This provision sunsets in 5 years. MCL 324.80205.
- M. PRISONER PRESCRIPTIONS.** 2004 PA 329. Effective September 23, 2004. Allows pharmacies operated by the DOC or under contract with the DOC or a county jail to accept and redistribute previously prescribed drugs. MCL 333.17766d.
- N. PROSECUTOR INVESTIGATORS.** 2004 PA 379. Effective October 12, 2004. Provides peace officer powers to prosecutor investigators under the MCOLES Act if they are sworn and fully empowered by the county Sheriff. MCL 28.602(1)(l).
- O. PUBLIC SAFETY OFFICERS BENEFIT ACT.** 2004 PA 46. Effective October 1, 2003. Provides a \$25,000 payment for any law enforcement officer, firefighter, rescue squad member or ambulance crew member who dies or is permanently and totally disabled as the direct and proximate result of a personal injury sustained in the line of duty.
- P. SCHOOL BOMB THREATS.** 2004 PA 56. Effective April 12, 2004. Precludes a school official from ordering an untrained school employee to remain in or to search a school vacated due to a bomb threat. MCL 380.1305.
- Q. SCHOOL SEX EDUCATION.** 2004 PA 166. Effective June 24, 2004. Requires schools to instruct students that having underage sex is a crime. MCL 388.1766a.
- R. SWAT TEAMS.** 2004 PA 428. Effective December 17, 2004. Provides immunity to doctors, nurses or EMT's who assist SWAT teams. MCL 691.1407.
- S. TASERS.** 2004 PA 338. Effective September 23, 2004. Allows local corrections officers to possess or use a taser upon written authorization of the Sheriff. MCL 750.224a.
- T. TOWNSHIP POLICE SERVICES.** 2004 PA 416. Effective November 29, 2004. Allows a township to provide police or fire protection to a city, village or another township. MCL 41.806.
- U. WARRANT PAPER QUALITY.** 2004 PA 318. Effective August 27, 2004. Deletes the requirement that SCAO establish paper quality for arrest warrants. MCL 764.1.
- V. WILDLIFE VIOLATOR COMPACT.** 2004 PA 235. Effective July 21, 2004. Authorizes Michigan to participate in a compact with other states to provide for reciprocal enforcement of wildlife violations committed by Michigan residents in another state, and vice versa.

