

# **2005 CRIME LEGISLATION UPDATE**

## **An Outline of Recently Passed Legislation From January 1 to December 31, 2005.**

This outline is a summary of 2005 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. VICTIM RIGHTS**

### **V. MISCELLANEOUS**

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Prepared by:

Thomas M. Robertson  
Executive Secretary  
Prosecuting Attorneys Coordinating Council

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## I. NEW CRIMES & PENALTIES

- A. ACCOUNTING.** 2005 PA 278-279. Effective December 19, 2005. Makes it a felony punishable by imprisonment for up to 5 years and/or a fine of up to \$25,000 to do any of the following. MCL 339.735. It's an E felony under the guidelines. MCL 777.13p.
1. Use the title CPA without approval of the state board of accountancy. MCL 339.723(1).
  2. Engage in the practice of public accounting without a license. MCL 339.723(2).
- B. ALCOHOL VAPOR DEVICE.** 2005 PA 320. Effective December 27, 2005. Prohibits the use or offer to use, possession, sale or offer to sell of an alcohol vapor device. MCL 436.1914.
1. An alcohol vapor device uses air or oxygen bubbled through alcoholic liquor to produce a vapor mist that the user inhales. MCL 436.1105(2).
  2. The penalty is a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$100, unless the violation was committed by person licensed under the liquor control act. If the violation was committed by a licensee, the penalty is imprisonment for up to 6 months and/or a fine of up to \$500. MCL 436.1909.
- C. BALLAST.** 2005 PA 32-33. Effective January 1, 2007. Prohibits the discharge of the ballast of an ocean going vessel in the great lakes. MCL 324.3109. Penalties are in MCL 324.3115.
- D. CHILD ABDUCTION.** 2005 PA 205 & 207. Effective February 1, 2006. Prohibits false reports of child abduction.
1. Intentionally making a false report of child abduction, or intentionally causing a false report to be made to law enforcement or 911 is a felony, punishable by imprisonment for up to 4 years and/or a fine of up to \$2,000. MCL 28.754(1). It's an F felony under the guidelines.

MCL 777.11b.

2. Intentionally making a false report that a child with a severe mental or physical disability is missing, or intentionally causing a false report to be made to law enforcement or 911 is a misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$1,000. MCL 28.754(2).
3. The defendant may be ordered to pay the government and media costs of responding to the false reports. A juvenile's parents may also be ordered to pay. MCL 28.754(3-5)

**E. CHILD AND DAY CARE CENTERS.** 2005 PA 128, 133 & 134. Effective January 1, 2006. Prohibits registered sex offenders and others with certain criminal records from owning or working in a child or day care center.

1. A criminal background check must be run on everyone who applies for a license to run a child care center or day care center. MCL 722.115(15).
  - a. A license cannot be issued or renewed if the applicant has been convicted of an SORA offense.
  - b. A background check must be run on every employee or applicant for employment. If they have been convicted of an SORA offense they cannot be hired, or if already employed, must be fired. MCL 722.115d.
  - c. A child care center or day care center licensee shall report to the department and an employee of a child care center or day care center shall report to that child care center or day care center within 3 business days after he or she has been arraigned for 1 or more of the following crimes. MCL 722.115e.
    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 their 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 722.115e(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 722.115e(2)(b).
2. A criminal background check must be run on everyone who applies for a license to run a family day care home or group day care home. MCL 722.115(16).
- a. A license cannot be issued or renewed if the applicant or a resident in the home over the age of 18 has been convicted of an SORA offense.
  - b. A family day care home or group day care home licensee shall report to the department within 3 business days after he or she has been arraigned for 1 or more of the crimes previously listed in this section, or within 3 business after he or she knows or reasonably should know that an employee or a person over the age of 18 residing in the home has been arraigned for 1 or more of those crimes. MCL 722.115f.
  - c. If the person failed to report their 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 722.115f(8)(a). It's a G felony under the guidelines. MCL 777.15g.
  - d. 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 722.115f(8)(b).

**F. CIGARETTES.** 2005 PA 238. Effective January 1, 2006. Adds counterfeit cigarette papers, gray market cigarettes and gray market cigarette papers to tobacco tax act violations. MCL 205.428.

- 1. Counterfeit cigarette paper means a cigarette paper with a false manufacturing label or that has not been printed, manufactured, or made by authority of the trademark owner. MCL 205.422(d).
- 2. Gray market cigarette means any cigarette the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, a label stating "for export only", "U.S. tax exempt", "for use outside U.S.", or similar wording. MCL 205.422(h).
- 3. Gray market cigarette paper means any cigarette paper the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarette papers to be sold, distributed, or used in the United States, including, but not limited to, a label stating "for export only", "U.S. tax exempt", "for use outside U.S.", "for use in \_\_\_\_\_ (another country) only", or similar wording. MCL 205.422(i).

**G. COMPUTER ASSISTED SHOOTING.** 2005 PA 110-112. Effective September 22, 2005. Prohibits the computer assisted shooting of a firearm, crossbow or a bow. MCL 750.236a & 236b.

1. A 1<sup>st</sup> offense is a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$500. MCL 750.236c(1).
2. A 2<sup>nd</sup> or subsequent offense is a misdemeanor punishable by imprisonment for up to 1 year and/or a fine of up to \$,1000. MCL 750.236c(2).
3. The instrumentalities of the crime are subject to forfeiture. MCL 750.236c(2).

**H. CONTROLLED SUBSTANCES.** 2005 PA 167-168. Effective January 1, 2006. A person who delivers a schedule 1 or 2 controlled substance, other than marihuana, to another person that is consumed by that person or any other person and that causes the death of that person or other person is guilty of a felony punishable by imprisonment for life or any term of years. MCL 750.317a. It's an A felony under the guidelines. MCL 777.16p.

**I. DISSEMINATING OBSCENITY.** 2005 PA 245. Effective February 1, 2006. Makes is a crime for a parent or guardian to disseminate sexually explicit matter to their child if the dissemination is for the sexual gratification of the parent or guardian. MCL 722.676(a).

**J. IMPERSONATING A FIREFIGHTER.** 2005 PA 170-171. Effective January 1, 2006. It's a felony, punishable by imprisonment for up to 2 years and/or a fine of up to \$1,000 to impersonate a firefighter or EMT with the intent to do one of more of the following. MCL 750.217f. The sentence may be served consecutively and it's a G felony under the guidelines. MCL 777.16L.

1. Perform the duties of a firefighter or emergency medical service personnel.
2. Represent to another person that he or she is a firefighter or emergency medical service personnel for any unlawful purpose.
3. Compel a person to do or refrain from doing any act against his or her will.
4. Gain or attempt to gain entry to a residence, building, structure, facility, or other property.
5. Remain or attempt to remain in or upon a residence, building, structure, facility, or other property.
6. Gain or attempt to gain access to financial account information.
7. Commit or attempt to commit a crime.
8. Obtain or attempt to obtain information to which the individual is not entitled.
9. Gain access or attempt to gain access to a person less than 18 years of age or a vulnerable adult.

**K. INDECENT EXPOSURE.** 2005 PA 300 - 302. Effective February 1, 2006. Increases the penalty for indecent exposure if the defendant fondles their genitals, pubic area, buttocks or female breasts while exposed.

1. The crime is a misdemeanor, punishable by imprisonment for up to 2 years and/or a fine of up to \$2,000. MCL 750.335a.

2. It's a G felony under guidelines, and indecent exposure by a sexually delinquent person is an A felony. MCL 777.16q.
  3. Sex offender registration is required if a person convicted of the fondling offense has a prior indecent exposure conviction. MCL 28.722(e)(iii).
- L. LEIN.** 2005 PA 308-311. Effective February 1, 2006. Combines LEIN and AFIS council responsibilities in the CJIS policy council, and makes the following changes:
1. Increases council membership to include representation from the judiciary, human services and the private security business. MCL 28.212.
  2. Specifies that the council will exercise its powers independently of the state police. MCL 28.213a.
  3. Changes the standard for criminal violations regarding improper access or disclosure of criminal justice information as follows:
    - a. Only intentional violations regarding the access, use or disclosure of nonpublic information for personal use or gain, or the intentional disclosure of information in a manner not authorized by law or rule are criminal violations. MCL 28.214(3)(5) & (6).
  4. Prosecutors or the court may disclose a defendant's criminal history to the defendant's attorney without violating the act. MCL 28.214(4).
  5. The council may suspend or deny access to an individual who violates the act, policies or rules of the council. MCL 28.215(c).
- M. OPEN INTOXICANTS.** 2005 PA 21. Effective May 19, 2005. Allows a person who purchases a bottle of wine at a restaurant to have the bottle re-corked so they can take it home. Transportation of the re-corked bottle must comply with the open intox. statute, MCL 257.624a. MCL 436.1021.
- N. PLANTS AND INSECTS.** 2005 PA 52-54. Effective September 1, 2005. Creates penalties for the violation of laws regulating plants and insects. Violations are:
1. Civil infractions with a fine of up to \$1,000 for statutory or rule violations. MCL 286.228(1) & MCL 286.260(1).
  2. Civil infractions with a fine of \$1,000 to \$10,000 for violating a quarantine order. MCL 286.228(3) & MCL 286.260(2).
  3. Misdemeanors punishable by imprisonment for up to 1 year and/or a fine of \$1,000 to \$10,000 for knowingly violating a quarantine order. MCL 286.228(5) & MCL 286.260(3).
  4. Felonies punishable by imprisonment for up to 5 years and/or a fine of not more than \$250,000 for intentionally violating a quarantine order for the purpose of causing damage to plants, natural resources, agricultural, silvicultural or horticultural products. MCL 286.228(6) & MCL 286.260(4). They are E felonies under the guidelines. MCL 777.12m.
- O. POLICE BADGES OR UNIFORMS.** 2005 PA 314. Effective January 1, 2006. Prohibits

the following acts involving the improper use or display of police identification.

1. With certain exceptions, a person shall not sell, furnish, possess, wear, exhibit, display or use the badge, patch or uniform or a facsimile of a badge, patch or uniform of a law enforcement agency. MCL 750.216a.
  - a. A violation is a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$500. A conviction does not preclude prosecution and conviction for any other violation arising from the same transaction. MCL 750.216a(2).
2. A non-police officer shall not wear or display the emblem, insignia, logo, service mark, or other law enforcement identification of any law enforcement agency, or a facsimile thereof, if either of the following applies:
  - a. The person represents themselves to be a peace officer. MCL 750.216b(1)(a).
  - b. The wearing or display occurs in a manner that would lead a reasonable person to falsely believe that the represented law enforcement agency is endorsing a commercial service or charitable endeavor. MCL 750.216b(1)(b).
  - c. A violation is a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$500. A conviction does not preclude prosecution and conviction for any other violation arising from the same transaction. MCL 750.216b(2).

**P. POLICE OFFICERS.** 2005 PA 303. Effective December 21, 2005. Exempts police officers from violations of intentionally pointing or discharging a firearm without malice while in the performance of their duties. Statutes covered include: MCL 750.233, 750.234, 750.234a, 750.234b, 750.235 & 750.329.

**Q. PROHIBITED PLANT, INSECT AND FISH SPECIES.** 2005 PA 76-79 & 81. Effective July 19, 2005. Some of the criminal penalties do not take effect until November 1, 2005.

1. A person who sells or offers to sell a restricted species is subject to a civil fine of \$1,000 to \$10,000. MCL 324.41309(5).
2. A person who sells or offers to sell a prohibited species is subject to a civil fine of \$2,000 to \$20,000. MCL 324.41309(5).
3. A person who knowingly possesses a restricted species without a permit, or who violates a condition of the permit is subject to a civil fine of up to \$5,000. MCL 324.41309(2).
4. A person who knowingly possesses a prohibited species without a permit, or who violates a condition of the permit is subject to a civil fine of up to \$10,000. MCL 324.41309(2).
5. A person who knows that possession of a restricted species is unlawful, or who wilfully or in a grossly negligent manner violates a condition of a permit, is guilty of a misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of \$1,000 to \$10,000. MCL 324.41309(3)(a).
  - a. If the violation was done with the intent to damage natural, agricultural or silvicultural resources, it's a felony punishable by imprisonment for up to 2 years and/or a fine of

\$1,000 to \$250,000. MCL 324.41309(4)(a). It's a G felony under the guidelines. MCL 777.13e.

6. A person who knows that possession of a prohibited species is unlawful, or who wilfully or in a grossly negligent manner violates a condition of a permit, is guilty of a felony, punishable by imprisonment for up to 2 years and/or a fine of \$2,000 to \$20,000. MCL 324.41309(3)(b). It's a G felony under the guidelines. MCL 777.13e.
  - a. If the violation was done with the intent to damage natural, agricultural or silvicultural resources, it's a felony punishable by imprisonment for up to 4 years and/or a fine of \$2,000 to \$500,000. MCL 324.41309(4)(b). It's an F felony under the guidelines. MCL 777.13e.
7. A person who introduces a restrictive species or nonnative fish or aquatic plant without a permit is guilty of a misdemeanor punishable by imprisonment for up to 6 months and/or a fine of \$500 to \$5,000. MCL 324.41309(6)(a).
  - a. If the person knows or should have known the identity of the species or nonnative fish or aquatic plant, the penalty increases to imprisonment for up to 1 year and or a fine of \$1,000 to \$10,000. MCL 324.41309(7).
  - b. If the person knows the introduction is unlawful, it's a felony punishable by imprisonment for up to 2 years and or a fine of \$1,000 to \$250,000. MCL 324.41309(9)(a). It's a G felony under the guidelines. MCL 777.13e.
  - c. If the violation was done with the intent to damage natural, agricultural or silvicultural resources, it's a felony punishable by imprisonment for up to 3 years and or a fine of \$1,000 to \$500,000. MCL 324.41309(10)(a). It's an F felony under the guidelines. MCL 777.13e.
8. A person who introduces a prohibited species or genetically engineered fish or aquatic plant without a permit is guilty of a misdemeanor punishable by imprisonment for up to 1 year and/or a fine of \$1,000 to \$10,000. MCL 324.41309(6)(b).
  - a. If the person knows or should have known the identity of the species or genetically engineered fish or aquatic plant, the crime is a felony punishable by imprisonment for up to 2 years and/or a fine of \$2,000 to \$20,000. MCL 324.41309(8). It's a G felony under the guidelines. MCL 777.13e.
  - b. If the person knows the introduction is unlawful, it's a felony, punishable by imprisonment for up to 4 years and or a fine of \$2,000 to \$500,000. MCL 324.41309(9)(b). It's an F felony under the guidelines. MCL 777.13e.
  - c. If the violation was done with the intent to damage natural, agricultural or silvicultural resources, it's a felony, punishable by imprisonment for up to 5 years and or a fine of \$2,000 to \$1,000,000. MCL 324.41309(10)(b). It's an E felony under the guidelines. MCL 777.13e.

**R. PSEUDOEPHEDRINE.** 2005 PA 86-87. Effective December 15, 2005. Places the following restrictions on the sale of products containing ephedrine or pseudoephedrine. Violations are civil infractions subject to a fine of up to \$50 per violation.

1. The product cannot be sold to a person under 18. MCL 333.17766f(1)(a). It is an affirmative defense if the retailer has a written policy for employees to prevent the sale to minors. MCL 333.17766f(7).
2. No more than 2 packages, or 48 tablets, can be sold in a single sale. MCL 333.17766f(1)(b).
3. No more than 2 personal convenience packages containing 2 tablets can be sold in a single sale. MCL 333.17766f(1)(c).
4. All products must be kept either:
  - a. Behind a counter.
  - b. In a locked case.
  - c. Within 20 feet of a counter that allows an attendant to constantly view the product, or the product must have an anti-theft device that sounds an alarm and must be under constant video surveillance. MCL 333.17766e(1).
5. If the products are not kept behind a counter or in a locked case, the retailer must keep a log of the sale of the products. The log must include the date of the sale, name and DOB of the buyer and the amount and description of the product sold. MCL 333.17766e(2) & (3).
6. These provisions do not apply to:
  - a. A pediatric product intended for children under 12.
  - b. A product in a liquid form if pseudoephedrine is not the only active ingredient.
  - c. A product dispensed pursuant to a prescription.
  - d. A product determined by a state or federal drug agency to be formulated in such a way as to prevent its conversion into methamphetamine. MCL 333.17766e(4); MCL 333.17766f(2).

**S. PUBLIC SERVANTS.** 2005 PA 198 & 265. Effective December 16, 2005. Regulates the purchase of public property by public servants of a city or village. Violations are felonies, punishable by imprisonment for up to 1 year and/or a fine of \$1,000 up to 3 times the value of the property. MCL 15.324. It's a G felony under the guidelines.

**T. SEX OFFENDER REGISTRATION.** 2005 PA 122, 123 & 132. Effective January 1, 2006. Increases the penalties for sex offenders who fail to report quarterly or to report a change of address.

1. A 1<sup>st</sup> offense is a misdemeanor, punishable by imprisonment for up to 93 days and/or a fine of up to \$1,000. MCL 28.729(2)(a).
2. A 2<sup>nd</sup> offense is a misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$2,000. MCL 28.729(2)(b).

3. A 3<sup>rd</sup> offense is a felony, punishable by imprisonment for up to 4 years and/or a fine of up to \$2,500. MCL 28.729(2)(c). It's an F felony under the guidelines. MCL 777.11b.

**U. SCHOOL BONDS.** 2005 PA 92-96. Effective July 20, 2005. Makes it a felony punishable by imprisonment for up to 4 years and/or a fine of up to \$5,000 to knowingly make a false statement or knowingly conceal material information in relation to obtaining qualification of a school bond issue. MCL 388.1237. It's an F felony under the guidelines. MCL 777.13p.

**V. STUDENT SAFETY ZONES.** 2005 PA 121, 126, 127, 139 & 322. Effective January 1, 2006. Establishes student safety zones where registered sex offenders cannot live, loiter or work.

1. A student safety zone is an area that lies within 1,000 feet of school property. It is a misdemeanor punishable for imprisonment for up to 1 year and/or a fine of up to \$1,000 for a registered sex offender to live, work or loiter in a student safety zone. MCL 28.734 & 28.735.

- a. A second or subsequent offense is a felony punishable by imprisonment for up to 2 years and/or a fine of up to \$2,000. MCL 28.734 & 28.735. They are G felonies under the guidelines. MCL 777.11b.

2. Exceptions:

- a. An individual who was working in a student safety zone as of January 1, 2006. MCL 28.734(3)(a).
- b. An individual who's place of employment is in a student safety zone because the school is established within 1,000 of the person's workplace. MCL 28.734(3)(b).
- c. An individual who sporadically or intermittently enters a student safety zone for purposes of work. MCL 28.734(3)(c).
- d. An individual under 19 who attends the school and resides with their parent. MCL 28.735(3)(a).
- e. An individual under 26 who attends a special education program and resides with their parent, in a group home or an independent living facility. MCL 28.735(3)(b).
- f. An individual who was living in the student safety zone as of January 1, 2006. MCL 28.735(3)(c).
- g. An individual who is a patient in a hospice or hospital in a student safety zone. MCL 28.735(3)(d).
- h. An individual who is a patient in a mental hospital or an inmate of a prison or jail located in a student safety zone. MCL 28.735(3)(e).
- i. An individual under 13 convicted of CSC for having consensual sex with a victim under the age of 13 who is not more than 5 years older than the victim. MCL 28.736.
- j. An individual between the ages of 13 to 16 inclusive convicted of CSC for having consensual sex with a victim under the age of 16 who is not more than 3 years older than

the victim. MCL 28.736.

3. A person convicted of an SORA offense has 90 days to move out of a student safety zone. MCL 28.735(4).
4. An individual placed on probation for an SORA offense shall be ordered not to loiter, reside or work in a student safety zone. The same exceptions apply to the order of probation. MCL 771.2a(6).

**W. TEACHERS.** 2005 PA 124, 125, 129-131 & 138. Effective January 1, 2006. Requires criminal background checks and the reporting of crimes committed by teachers, school administrators, or personnel requiring state board of education approval.

1. A background check of any full or part time school employee, or of any person who works continuously and regularly under contract in any school must be conducted before employment. MCL 380.1230.
2. A background check of any current full or part time school employee, or of any person who works continuously and regularly under contract in any school must be conducted by July 1, 2008. MCL 380.1230g.
3. If the background check discloses that the person has been convicted of an SORA offense, they cannot be hired, or if employed, must be fired. MCL 380.1230(9) & 380.1230g(8).
4. If the background check discloses that the person has been convicted of felony other than an SORA offense, school officials must approve the employment or continued employment in writing. MCL 380.1230(9) & 380.1230g(8).
5. If a person employed by a school is charged with one of the following crimes they must report the charges to the Department of Education and local superintendent or chief administrator of the school within 3 business days of arraignment. MCL 380.1230d.
  - a. Any felony.
  - b. 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 section 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.

6. The failure to report a felony or misdemeanor SORA offense is a felony, punishable by imprisonment for up to 2 years and/or a fine of up to \$2,000. MCL 380.1230d(3)(a). It's a G felony under the guidelines. MCL 777.13p.

a. The failure to report a misdemeanor is a misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$1,000. MCL 380.1230d(3)(b).

7. Upon conviction, the employee must file a form with the court and prosecutor, which the court and prosecutor must send to the Superintendent or chief administrator within 7 days of receipt. MCL 380.1230d(2) & 380.1230d(6).

8. The Departments of State Police, Education and Information Technology are tasked with developing an automated system to match fingerprints and criminal records with the Department of Education's list of school personnel. MCL 380.1230d(7) & 380.1230f.

**X. TORTURE.** 2005 PA 335-336. Effective March 1, 2006. Creates the crime of Torture as a felony punishable by imprisonment for life or any term of years. MCL 750.85. It's an A felony under guidelines. MCL 777.16d. Elements are:

1. With the intent to cause cruel or extreme physical or mental pain and suffering
2. Inflicts great bodily injury or severe mental pain or suffering upon another person
3. Within his or her custody or physical control.

a. "Cruel" means brutal, inhuman, sadistic, or that which torments.

b. "Custody or physical control" means the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority.

c. "Great bodily injury" means either of the following:

i. Serious impairment of a body function as that term is defined in MCL 257.58c.

ii. One or more of the following conditions: internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds.

d. "Severe mental pain or suffering" means a mental injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner caused by or resulting from any of the following:

i. The intentional infliction or threatened infliction of great bodily injury.

- ii. The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt the senses or the personality.
  - iii. The threat of imminent death.
  - iv. The threat that another person will imminently be subjected to death, great bodily injury, or the administration or application of mind-altering substances or other procedures calculated to disrupt the senses or personality.
3. Proof that a victim suffered pain is not an element of the crime under this section.
  4. A conviction or sentence under this section does not preclude a conviction or sentence for a violation of any other law of this state arising from the same transaction.

**Y. TRESPASSING.** 2005 PA 304-305. Effective April 15, 2006. Makes it a felony punishable by imprisonment for up to 4 years and or a fine of up to \$2,500 to trespass at a key infrastructure facility. MCL 750.552c. It's an F felony under the guidelines. MCL 777.16y.

1. The key facility must be completely enclosed by a physical barrier and posted against entry.
2. Key facilities include:
  - a. A chemical manufacturing facility.
  - b. A refinery.
  - c. An electric utility facility.
  - d. A water intake structure or water treatment facility.
  - e. A natural gas utility facility.
  - f. Gasoline, propane or LNG fuel terminal or storage facility.
  - g. A transportation facility.
  - h. A pulp or paper manufacturing facility.
  - i. A pharmaceutical manufacturing facility.
  - j. A hazardous waste storage, treatment or disposal facility.
  - k. A telecommunications facility, including cell phone towers.
  - l. Any substantially similar facility.

**Z. VIDEO GAMES.** 2005 PA 104, 105, 107 & 108. Effective December 1, 2005.

1. **OBSCENE VIDEO GAMES.** Makes the following changes to the statutes prohibiting the distribution of obscene material to minors.

- a. Includes obscene video games and computers in the statute. MCL 722.673.
- b. Excludes from violations: a medium of communication regulated by the FCC, an ISP that is not selling the obscene material, or the provider of subscription multichannel video services to a person age 18 or older. MCL 722.682a.

**2. VIOLENT VIDEO GAMES.** Creates the following offenses involving the dissemination of ultra-violent explicit video games to a person under the age of 17.

- a. The knowing dissemination of an ultra-violent explicit video game that is harmful to minors to a person under the age of 17 is a civil infraction, punishable by a fine of up to \$5,000. MCL 722.687(1).
- b. A second offense is punishable by a civil fine of up to \$15,000. MCL 722.687(2).
- c. A third or subsequent offense is punishable by a civil fine of up to \$40,000. MCL 722.687(2).
  - i. "Ultra-violent explicit video game" means a game that continually and repetitively depicts extreme and loathsome violence. MCL 722.686(l).
  - ii. "Extreme and loathsome violence" means real or simulated graphic depictions of physical injuries or physical violence against parties who realistically appear to be human beings, including actions causing death, inflicting cruelty, dismemberment, decapitation, maiming, disfigurement, or other mutilation of body parts, murder, criminal sexual conduct, or torture. MCL 722.686(g).
  - iii. "Harmful to minors" means having all of the following characteristics:
    - (a) Considered as a whole, appeals to the morbid interest in asocial, aggressive behavior of minors as determined by contemporary local community standards.
    - (b) Is patently offensive to contemporary local community standards of adults as to what is suitable for minors.
    - (c) Considered as a whole, lacks serious literary, artistic, political, educational, or scientific value for minors. MCL 722.686(h).
- d. It is not a violation if the ultra-violent explicit video is provided by a parent, guardian, an immediate family member, or a host of the guest minor. MCL 722.688.
- e. If a person knowingly makes a false representation that he or she is the parent of a minor, or that the minor is 17, with the intent to facilitate the dissemination of an ultra-violent explicit video, it's a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$15,000. MCL 722.689.
- f. If the manager of a business knowingly permits a minor who is not accompanied by a parent to play or view the playing of an ultra-violent explicit video game, it's a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$25,000. MCL 722.690.

- g. A video game retailer must post a sign indicating the rating system for video games. Failure to post the sign is a civil infraction punishable by a fine of up to \$1,000. MCL 750.143a.
- h. It is an affirmative defense to a violation if:
  - i. The person was shown identification indicating the minor was 17 or older. MCL 722.693(1)(a).
  - ii. The game was purchased or rented over the Internet, the seller's service terms do not allow the sale to a minor, it's purchased with a credit card, and is sent directly to the purchaser's home. MCL 722.693(1)(a).
  - iii. The person complies with the rating system. MCL 722.693(1)(c).
  - iv. The business has a policy that precludes the sale of ultra-violent video games to minors. MCL 722.693(2).

## **II. CRIMINAL PROCEDURE**

- A. CHILD CSC.** 2005 PA 135. Effective January 1, 2006. Allows prior sex acts committed against a person under the age of 18 to be admitted in evidence if the defendant is charged with committing a SORA offense against a minor. MCL 768.27a.
  - 1. Requires the PA to give notice of the intent to use the prior acts at least 15 days before the scheduled date of trial or at a later time for good cause shown.
- B. DNA.** 2005 PA 4. Effective April 1, 2005. Extends the time period for filing a post-conviction DNA petition to January 1, 2009. MCL 770.16(1).
- C. DOMESTIC VIOLENCE.** 2005 PA 106. Effective September 14, 2005. Includes a victim of dating violence as a person who cannot be required to sign a domestic violence complaint. MCL 764.1a. Requires a police departments domestic violence policy to include victims of dating violence. MCL 776.22.
- D. DRUG TREATMENT COURTS.** 2005 PA 151. Effective September 30, 2005. Allows \$5.00 of various District Court filing fees to be used for drug treatment courts. MCL 600.5756, 600.8371 & 600.8420.
- E. MURDER.** 2005 PA 35. Effective June 7, 2005. Eliminates the statute of limitations on conspiracy and solicitation to commit murder. MCL 767.24.
- F. SENTENCING.** 2005 PA 316 & 325. Effective January 1, 2006. Allows the court to order the payment of any fines, costs or assessments at the time a judgment of guilt is deferred or sentencing is delayed. MCL 769.1k.
  - 1. The DOC may take the payments out of a prisoner's institutional account. MCL 769.1L.

## **III. TRAFFIC SAFETY**

- A. FAILURE TO STOP.** 2005 PA 3. Effective April 1, 2005. Eliminates the requirement that the driver know whether a person has been killed or injured as a predicate for higher penalties for failing to stop at the scene of an accident. Addresses *People v Lang*, 250 Mich App 565 (2002). MCL 257.617-619.
1. A driver may leave the scene to report the accident to the nearest police agency if he or she has a reasonable and honest belief that remaining at the scene will result in further harm.
- B. HIGHWAY VENDORS.** 2005 PA 1. Effective March 24, 2005. Allows the state transportation department to issue a permit for a vendor to run a road side stand in the right-of-way of a state trunk line highway. MCL 257.676a.
- C. SNOWMOBILES.** 2005 PA 307. Effective December 27, 2005. Allows snowmobiles to be operated in designated portions of the right of way of a limited access highway. MCL 324.82119.
- D. VEHICLE REGISTRATION.** 2005 PA 317. Effective December 27, 2005. Allows out of state drunk driving convictions to be counted when refusing to issue a vehicle registration or license plate. MCL 257.219(1)(d); MCL 257.233(6).

## **IV. VICTIM RIGHTS**

**2005 PA 184.** Effective January 1, 2006. This Act renames Michigan's Crime Victim Rights Act the William Van Regenmorter Crime Victim Rights Act and made the following changes to the CVRA.

### **A. NEW VICTIM NOTICES.**

1. Provides notice to the Victim when a probation violator is sentenced to prison or to jail for 90 days or more. MCL 780.763a(2).
2. Provides 30 days notice to a Victim when the DOC proposes to place a prisoner in a boot camp program. The sentencing judge is required to review the Victim's impact statement before deciding whether to object to the placement. MCL 780.763a(3).
3. Provides notice to the Victim when a person found NGRI escapes from a hospital, or is transferred or released from a hospital. MCL 780.769a & 780.770.
4. Provides the Victim with notice of appellate oral arguments. MCL 780.68a.

### **B. RESTITUTION.**

1. Restitution and a victim rights assessment must be ordered as part of any delayed or deferred sentence, including assignment to youthful trainee status. MCL 780.766(2); MCL 790.905.
2. Restitution must be ordered for lost income incurred by a family member to care for the Victim. MCL 780.766(3)(h).
3. If the Victim is a minor, restitution must be ordered for other reasonable costs incurred by the parent; including homemaking and child care expenses; income loss additional to that incurred to care for the child's injury; mileage, meals, lodging or

housing; and any other costs incurred in exercising rights under the CVRA. MCL 780.766(24).

4. Requires the court to order a wage assignment for the payment of restitution if the defendant is employed and misses 2 or more regularly scheduled payments. MCL 780.766(18).
5. If the Victim cannot accept restitution, the payments go to the crime victim rights fund. MCL 780.766(21).
6. A restitution order may be amended if the prosecutor, Victim or defendant presents the court with new information regarding the injury, damages or loss suffered by the Victim. MCL 780.766(22).
7. If a court receives notice that a defendant ordered to pay restitution is declaring bankruptcy, the court must notify the Victim. MCL 780.766(23).
8. Precludes the transfer of payments from one case to pay fines, costs, etc on another case until restitution is paid in full. MCL 780.766a(1).
9. Allows the DOC and Sheriff to sweep the prisoners institutional account for restitution. When the account exceeds \$50; 50% of the amount over \$50 may be seized. MCL 780.767a.

#### **C. NEW SERIOUS MISDEMEANORS**

1. Contributing to the delinquency of a minor. MCL 780.811(1)(a)(v).
2. A misdemeanor violation of MCL 750.145D, using a computer to make a prohibited communication. MCL 780.811(1)(a)(vii).
3. Intentionally aiming a firearm without malice. MCL 780.811(1)(a)(viii).
4. Injuring a worker in a highway work zone. MCL 780.811(1)(a)(xiii).

#### **D. MISCELLANEOUS**

1. Includes the sale of “memorabilia” in the “Son of Sam” provision. MCL 780.768.
2. Exempts a Victim’s statement to the Parole board from discovery under FOIA. MCL 780.771(4).

## **V. MISCELLANEOUS**

- A. AGRICULTURAL LABOR CAMPS.** 2005 PA 43. Effective June 16, 2005. Provides a civil fine of \$1,000/day for operating an agricultural labor camp without a license. MCL 333.12411.

- B. AMMONIUM NITRATE FERTILIZER.** 2005 PA 68. Effective July 11, 2005. Requires retailers of ammonium nitrate fertilizer to obtain picture identification from purchasers and to retain a record of the sale. MCL 324.8515.
- C. AUTOPSIES.** 2005 PA 176. Effective October 19, 2005. Requires medical examiners to coordinate autopsies with the timely removal of organs for donation. MCL 52.209.
- D. COUNTY BOARDS.** 2005 PA 20. Effective May 5, 2005. Commissioner pay raises must be voted upon before a new board takes office. MCL 46.415.
- E. FIREARMS.**
- 1. BACKGROUND CHECKS.** 2005 PA 242. Effective November 22, 2005. Before issuing a permit to purchase or carry a firearm, the licensing agency must check with NICS to see if the applicant is prohibited by federal law from possessing or transporting a firearm, and if the applicant is not a U.S. citizen the issuing agency must also check the US immigration and customs enforcement agency database to determine that the applicant is not an illegal alien or nonimmigrant alien. MCL 28.436.
  - 2. CCW.** 2005 PA 262. Effective July 1, 2006. Clarifies that the start date of a CCW renewal license is the expiration date of the preceding license. MCL 28.425L.
- F. JURIES.** 2005 PA 6. Effective April 7, 2005. Allows the jury board to remove the name of a convicted felon from a jury list. MCL 600.1312.
- G. THEFT.** 2005 PA 44. Effective June 16, 2005. Provides triple damages in a civil action for theft, embezzlement or receiving and concealing stolen property. MCL 600.2919a.
- H. MCOLES.** 2005 PA 239. Effective November 22, 2005. A certified officer who is a member of the armed forces reserve and who is called to active duty is not considered to have discontinued employment as a certified officer. MCL 28.609(3).
- I. SEARCH AND RESCUE.** 2005 PA 318. Effective December 27, 2005. Provides immunity for an uncompensated nurse, EMT or other medical professional who assists in a search and rescue operation. MCL 691.1407.