Recreational Vehicles Benchbook

Content Formerly Part of the Original MJI Traffic Benchbook, Vol. 2



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Michigan Supreme Court

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- The Honorable Noah P. Hood, *MJI Liaison Justice*
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- The Honorable Richard H. Bernstein, *Justice*
- The Honorable Elizabeth M. Welch, *Justice*
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Statements in this benchbook represent the professional judgment of the author and are not intended to be authoritative statements by the justices of the Michigan Supreme Court. This benchbook was initially published in 2015, and the text has been revised, reordered, and updated through September 23, 2026.

Note on Precedential Value

The Michigan Judicial Institute endeavors to present accurate, binding precedent when discussing substantive legal issues. "The essence of the common law doctrine of precedent or stare decisis is that the rule of the case creates a binding legal precept." *Hudson v Dep't of Corrections*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted). "Maintaining consistency in the law is one of the primary benefits of stare decisis, as it provides the public with some level of predictability in how the courts have interpreted the law." *Plachta v Plachta*, ___ Mich App ___, ___ (2026). Generally, trial courts "must follow the published decisions of the Court of Appeals and the Michigan Supreme Court." *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382 (2007).

Negative subsequent history. Several cases in this book have been reversed, vacated or overruled in part and/or to the extent that they contained a specific holding on one issue or another. While a case that has been fully reversed, vacated, or overruled is no longer binding precedent, it is less clear when an opinion is not reversed, vacated or overruled in its entirety. Some cases state that "an overruled proposition in a case is no reason to ignore all other holdings in the case." *People v Carson*, 220 Mich App 662, 672 (1996). See also *Stein v Home-Owners Ins Co*, 303 Mich App 382, 389 (2013) (distinguishing between reversals in their entirety and reversals in part); *Graham v Foster*, 500 Mich 23, 31 n 4 (2017) (because the Supreme Court vacated a portion of the Court of Appeals decision, "that portion of the Court of Appeals' opinion [had] no precedential effect and the trial court [was] not bound by its reasoning"). However, other cases provide that a "decision that has been reversed on other grounds has no precedential value." *Dunn v Detroit Inter-Ins Exch*, 254 Mich App 256, 262 (2002), citing *Taylor v Kurapati*, 236 Mich App 315 (1999). See also *Horace v City of Pontiac*, 456 Mich 744, 754–755 (1998) (holding that where the Supreme Court reverses a Court of Appeals decision on one issue and does not specifically address a second issue in the case, "no rule of law remain[s] from the Court of Appeals decision"). Note that *Stein* specifically distinguished its holding from the *Dunn* holding because the precedent discussed in *Dunn* involved a reversal in its entirety while the precedent discussed in *Stein* involved a reversal in part. *Stein*, 303 Mich App at 389.

Because it may be unclear under certain circumstances how subsequent case history may affect the precedential value of a particular opinion, trial courts should proceed with caution when relying on cases that have negative subsequent history. The analysis presented in a case that is not binding may still be persuasive. See generally, *Dunn*, 254 Mich App at 264-266.

United States Supreme Court. Michigan courts are bound by "our state Supreme Court precedent, unless the United States Supreme Court has addressed a federal

constitutional question." *People v Beasley*, 239 Mich App 548, 559 (2000). "A plurality opinion of the United States Supreme Court, however, is not binding precedent." *Id*., citing *Texas v Brown*, 460 US 730, 737 (1983).

Other federal and state courts. "Cases from foreign jurisdictions, which are not binding, can be persuasive." *Bazzy v Citizens Ins Co of America*, ___ Mich App ___, ___ (2025) (cleaned up). Accordingly, state courts are not bound by the decisions of lower federal courts construing federal law, and Michigan courts "are free to follow or reject their authority." *People v Gillam*, 479 Mich 253, 261 (2007). "Caselaw from other states is not binding but may be considered for its persuasive value." *Kewadin Casinos Gaming Auth v Patterson Earnhart Real Bird & Wilson LLP*, ___ Mich App ___, ___ n 4 (2026) (quotation marks and citation omitted).

Michigan Supreme Court. A Michigan "Supreme Court opinion becomes binding precedent for intermediate appellate and trial courts at the time a signed opinion is date-stamped and filed with the Clerk of the Supreme Court, unless" the opinion "specifically states that the opinion is effective at a different date." *Riley v Northland Geriatric Center*, 425 Mich 668, 678 (1986). "'The clear rule in Michigan is that a majority of the [Michigan Supreme] Court must agree on a ground for decision in order to make that binding precedent for future cases.'" *People v Sexton*, 458 Mich 43, 65 (1998), quoting *People v Anderson*, 389 Mich 155, 170 (1973). See MCR 7.315(A) ("Except for affirmance of action by a lower court or tribunal by even division of the justices, a decision of the Court must be made by concurrence of a majority of the justices voting."). "Plurality decisions in which no majority of the justices participating agree as to the reasoning are not an authoritative interpretation binding . . . under the doctrine of *stare decisis*." *Negri v Slotkin*, 397 Mich 105, 109 (1976). However, "a [plurality] decision rendered by less than four justices who nevertheless constitute a majority of a legally constituted quorum is binding on the Court of Appeals and the trial courts." *Id*. at 106. "'If there is merely a majority for a particular result, then the parties to the case are bound by the judgment but the case is not authority beyond the immediate parties.'" *Sexton*, 458 Mich at 65, quoting *Anderson*, 389 Mich at 170. In other words, "plurality opinions in which no majority of the participating justices agree with respect to the reasoning for the holding are not generally considered authoritative interpretations that are binding under the doctrine of stare decisis." *Auto Club Group Ins Co v Booth*, 289 Mich App 606, 613 (2010).

For information regarding the precedential value of an order or judgment issued by the Michigan Supreme Court, see the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Section 1.4(B).

Michigan Court of Appeals. "A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis." MCR 7.215(C)(2). Accordingly, "the publication of an opinion of the Court of Appeals creates binding precedent until the Michigan Supreme Court enters a decision altering [the] Court's

decisions or its rationale." *Esordi v Macomb Twp*, ___ Mich App ___, ___ (2025) (citation omitted). "A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in [MCR 7.215]." MCR 7.215(J)(1). "Under the plain terms of MCR 7.215(C)(2), all published decisions of [the] Court [of Appeals] issued prior to November 1, 1990, are binding, precedential decisions under stare decisis." *Plachta*, ___ Mich App at ___. "They are *not* merely persuasive and are not on par with unpublished decisions." *Id*. at ___. Although the Court of Appeals is "not strictly required to follow uncontradicted opinions . . . decided before November 1, 1990, those opinions are nonetheless considered to be precedent and entitled to significantly greater deference than are unpublished cases." *People v Bensch*, 328 Mich App 1, 7 n 6 (2019) (quotation marks and citation omitted). See also *People v Schurr*, 350 Mich App 47, 76 n 6 (2024) (stating "decisions published before November 1, 1990, [are binding] only on the trial courts and only are precedent if uncontradicted"). In other words, "there is no difference in the precedential effect of a pre- versus post-1990 decision." *Plachta*, ___ Mich App at ___. "Instead, the only difference between a pre- and post-November 1, 1990 decision is that the latter must be followed by a subsequent panel unless it is overruled by a conflict panel or the Supreme Court, while the former must be followed unless a subsequent three-judge panel concludes it is distinguishable or warrants reversal." *Id*. at ___.

For more information regarding the precedential nature of Court of Appeals opinions, see the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Section 1.4(C).

Foreword and Acknowledgments

The *Recreational Vehicles Benchbook* derives from the former *Traffic Benchbook*. The *Traffic Benchbook* was first published in 1993, and a revised edition was developed through a project funded by the Michigan Office of Highway Safety Planning and the U.S. Department of Transportation. The third edition was produced in 2005.

The first edition of the *Recreational Vehicles Benchbook* was authored by MJI Research Attorneys, Alessa Boes and Lisa Schmitz, and was edited by MJI Publications Manager, Sarah Roth. The authors of the first edition were greatly assisted by an editorial advisory committee whose members reviewed draft text and provided valuable feedback. The members of the editorial advisory committee were:

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1.1 Scope Note

This chapter discusses the jurisdiction and authority of district court magistrates as it relates to the following recreational vehicles: off-road vehicles (ORVs), snowmobiles, marine vessels, and personal watercraft. It also provides an overview of the penalties and sanctions generally associated with specified recreational vehicle violations under certain circumstances. Finally, it discusses the default mens rea standard for criminal offenses committed on or after January 1, 2016.

1.2 Jurisdiction and Authority of District Court Magistrates

"Only to the extent expressly authorized by the chief judge, presiding judge, or only judge of the district court district, a district court magistrate may do 1 or more of the following:

> (a) Accept an admission of responsibility, decide a motion to set aside a default or withdraw an admission, and order civil sanctions for a civil infraction and order an appropriate civil sanction permitted by the statute or ordinance defining the act or omission.
>
> (b) Accept a plea of guilty or nolo contendere and impose sentence for a misdemeanor or ordinance violation punishable by a fine and which is not punishable by imprisonment by the terms of the statute or ordinance creating the offense." MCL 600.8512a.

A. State Civil Infractions

"A district court magistrate may hear, preside over, and conduct any of the following in civil infraction actions under [the Michigan vehicle code (MVC)], MCL 257.746, the Michigan Regulation and Taxation of Marijuana Act [(MRTMA)], MCL 333.27951 to [MCL 333.27967], or [MCL 600.8719] or [MCL 600.8819] of [the Revised Judicature Act (RJA)], or in civil fine actions under the Michigan Medical Marihuana Act [(MMMA)], MCL 333.26421 to [MCL 333.26430], as applicable:

> (a) Admissions.
>
> (b) Admissions with explanation.
>
> (c) Motions to set aside default or withdraw admissions.

(d) Informal hearings." MCL 600.8512(1).

"In exercising the authority conferred under [MCL 600.8512(1)], a district court magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law." MCL 600.8512(2). If a defendant is determined to be responsible for a civil infraction, or, a civil fine under the MMMA, the district court magistrate may impose the civil sanctions authorized by the MVC, the MRTMA, the MMMA, or [MCL 600.8827], as applicable. MCL 600.8512(2).

B. Misdemeanors Punishable by Not More Than 90 Days

District court magistrates, when authorized by the chief judge of the district court, have the jurisdiction and authority to arraign and sentence upon pleas of guilty or nolo contendere for misdemeanor violations of the Marine Safety Act, or substantially corresponding local ordinances, if the maximum penalty does not exceed 90 days in jail or a fine, or both. MCL 600.8511(a)(*iii*).

C. Misdemeanors Punishable by Not More Than 93 Days

Except for violations of MCL 324.81134, MCL 324.81135[1], MCL 324.82128, and MCL 324.82129, district court magistrates, if authorized by the chief judge of the district court district, have the jurisdiction and authority to arraign and sentence defendants based on guilty or nolo contendere pleas for misdemeanor violations of the ORV Act and the Snowmobile Act, or substantially corresponding local ordinances, if the maximum penalty does not exceed 93 days in jail or a fine, or both. MCL 600.8511(c). "However, the chief judge may authorize the magistrate to arraign defendants and set bond with regard to violations of [MCL 324.81134, MCL 324.81135, MCL 324.82128, and MCL 324.82129]." MCL 600.8511(c).

1.3 Authority of Secretary of State

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

[1] MCL 324.81135 was repealed by 2014 PA 405, effective March 31, 2015. The crime of operating while visibly impaired is now codified at MCL 324.81134(3). MCL 600.8511(c) has not been amended to reflect this change.

1.4 Filings by Incarcerated Individuals

A pleading or other document filed by an unrepresented individual who is incarcerated in prison or jail "must be deemed timely filed if it was deposited in the institution's outgoing mail on or before the filing deadline. Proof of timely filing may include a receipt of mailing, a sworn statement setting forth the date of deposit and that postage has been prepaid, or other evidence (such as a postmark or date stamp) showing that the document was timely deposited and that postage was prepaid." MCR 1.112.

1.5 Abstracts of Convictions

A. ORVs and Snowmobiles

1. Michigan Vehicle Code (MVC)

"Each municipal judge and each clerk of a court of record shall keep a full record of every case in which an individual is charged with or cited for a violation of [the Michigan Vehicle Code (MVC)] or a local ordinance substantially corresponding to [the MVC] regulating the operation of vehicles on highways and with those offenses pertaining to the operation of ORVs or snowmobiles for which points are assessed under [MCL 257.320a(1)(c) or MCL 257.320a(1)(i)]." MCL 257.732(1).

"Except as provided in [MCL 257.732(16)], the municipal judge or clerk of the court of record shall prepare and forward to the secretary of state an abstract of the court record . . . [i]mmediately for each case charging a violation of [MCL 324.82127(1), MCL 324.82127(3), or MCL 324.81134], or a local ordinance substantially corresponding to those sections." MCL 257.732(1)(c).

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

> (a) The name, address, and date of birth of the individual charged or cited.
>
> (b) The number of the individual's operator's . . . license, if any.
>
> (c) The date and nature of the violation.

(d) The type of vehicle driven at the time of the violation[.]

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

(f) Whether bail was forfeited.

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

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

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

2. ORV Act

"Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with a violation of [MCL 324.81134]." MCL 324.81134(20). "The municipal judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the court of record for each case charging a violation of [MCL 324.81134]." MCL 324.81134(20).

3. Snowmobile Act

"Each district judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with or cited for a violation of [MCL 324.82101 *et seq.*,] or former Act No. 74 of the Public Acts of 1968 or of a local ordinance corresponding to [MCL 324.82101 *et seq.*,] or former Act No. 74 of the Public Acts of 1968 regulating the operation of snowmobiles." MCL 324.82157(1).

"Within 14 days after a conviction, forfeiture of bail, entry of a civil infraction determination, or default judgment upon a charge of, or citation for, violating [MCL 324.82101 *et seq.*,] or a local ordinance corresponding to [MCL 324.82101 *et seq.*,] regulating the operation of snowmobiles, except as provided in [MCL 324.82157(11)], the district judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the record of the court for the case. The abstract shall be certified to be true and correct by signature, stamp, or facsimile signature by the person required to prepare the abstract. If a city or village department, bureau, or person

is authorized to accept a payment of money as a settlement for a violation of a local ordinance corresponding to [MCL 324.82101 *et seq.*], the city or village department, bureau, or person shall send a full report of each case in which a person pays any amount of money to the city or village department, bureau, or person to the secretary of state upon a form prescribed by the secretary of state." MCL 324.82157(2).

"The abstract or report required under [MCL 324.82157] shall be made upon a form furnished by the secretary of state and shall include all of the following:

> (a) The name, address, and date of birth of the person charged or cited.
>
> (b) The date and nature of the violation.
>
> (c) The type of snowmobile operated at the time of the violation.
>
> (d) The date of the conviction, finding, forfeiture, judgment, or determination.
>
> (e) Whether bail was forfeited.
>
> (f) Any order issued by the court pursuant to [MCL 324.82101 *et seq.*].
>
> (g) Other information considered necessary to the secretary of state." MCL 324.82157(3).

"If a person is charged with a felony in which a snowmobile was used, the prosecuting attorney shall include the following statement on the complaint and information filed in district or circuit court:

> 'You are charged with the commission of a felony in which a snowmobile was used. If you are convicted and the judge finds that the conviction is for a felony in which a snowmobile was used, as defined in [MCL 324.82157], the secretary of state will order you not to operate a snowmobile in this state.'" MCL 324.82157(5).

"The court shall not submit, and the secretary of state shall discard and not enter on the snowmobiling record, an abstract for a conviction or civil infraction determination for a violation of [MCL 324.82101 *et seq.*] that could not be the basis for the secretary of state's issuance of an order not to operate a snowmobile in [Michigan]." MCL 324.82157(11). "The secretary of state shall discard and not enter on the

snowmobiling record an abstract for a bond forfeiture that occurred outside [Michigan]." *Id*.

"The secretary of state shall inform the court of the violations of [MCL 324.82101 *et seq*.] that are used by the secretary of state as the basis for issuance of an order not to operate a snowmobile in [Michigan]." MCL 324.82157(12).

"If a conviction or civil infraction determination is reversed upon appeal, the court shall transmit a copy of the order of reversal to the secretary of state, and the secretary of state shall enter the order in the proper book or index in connection with the record of the conviction or civil infraction determination." MCL 324.82157(13).

"Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with a violation of [MCL 324.82127(1) or MCL 324.82127(3)]." MCL 324.82141(3). "The municipal judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the court of record for each case charging a violation of [MCL 324.82127(1) or MCL 324.82127(3)]." MCL 324.82141(3).

B. Marine Vessels

"Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with or cited for a violation of [MCL 324.80101 *et seq*.,] or of a local ordinance corresponding to [MCL 324.80101 *et seq*.,] regulating the operation of vessels." MCL 324.80131(1).

"Within 14 days after a conviction, forfeiture of bail, entry of a civil infraction determination, or default judgment upon a charge of, or citation for, violating [MCL 324.80101 *et seq*.,] or a local ordinance corresponding to [MCL 324.80101 *et seq*.,] regulating the operation of vessels, except as provided in [MCL 324.80131(11)], the municipal judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the record of the court for the case. The abstract shall be certified to be true and correct by signature, stamp, or facsimile signature by the person required to prepare the abstract. If a city or village department, bureau, or person is authorized to accept a payment of money as a settlement for a violation of a local ordinance corresponding to [MCL 324.80101 *et seq*.], the city or village department, bureau, or person shall send a full report of each case in which a person pays any amount of money to the city or village department, bureau, or person to the

secretary of state upon a form prescribed by the secretary of state." MCL 324.80131(2).

"The abstract or report required under [MCL 324.80131] shall be made upon a form furnished by the secretary of state and shall include all of the following:

> (a) The name, address, and date of birth of the person charged or cited.
>
> (b) The date and nature of the violation.
>
> (c) The type of vessel operated at the time of the violation.
>
> (d) The date of the conviction, finding, forfeiture, judgment, or determination.
>
> (e) Whether bail was forfeited.
>
> (f) Any order issued by the court pursuant to [MCL 324.80101 *et seq*.].
>
> (g) Other information considered necessary to the secretary of state." MCL 324.80131(3).

"If a person is charged with a felony in which a vessel was used, the prosecuting attorney shall include the following statement on the complaint and information filed in district or circuit court:

> 'You are charged with the commission of a felony in which a vessel was used. If you are convicted and the judge finds that the conviction is for a felony in which a vessel was used, as defined in [MCL 324.80131], the secretary of state will order you not to operate a vessel on the waters of this state.'" MCL 324.80131(5).

"The court shall not submit, and the secretary of state shall discard and not enter on the boating record, an abstract for a conviction or civil infraction determination for a violation of [MCL 324.80101 *et seq*.] that could not be the basis for the secretary of state's issuance of an order not to operate a vessel on the waters of this state." MCL 324.80131(11). "The secretary of state shall discard and not enter on the boating record an abstract for a bond forfeiture that occurred outside [Michigan]." *Id*.

"The secretary of state shall inform the court of the violations of [MCL 324.80101 *et seq*.] that are used by the secretary of state as the basis for issuance of an order not to operate a vessel on the waters of this state." MCL 324.80131(12).

"If a conviction or civil infraction determination is reversed upon appeal, the court shall transmit a copy of the order of reversal to the secretary of state, and the secretary of state shall enter the order in the proper book or index in connection with the record of the conviction or civil infraction determination." MCL 324.80131(13).

1.6 Points

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

"If more than 1 conviction, civil infraction determination, or probate court disposition results from the same incident, points must be entered only for the violation that receives the highest number of points under [MCL 257.320a]." MCL 257.320a(5).

A. ORVs

Six points must be assessed for a violation of MCL 324.81134 (operating an ORV while under the influence, with an unlawful bodily alcohol content, with any amount of certain controlled substances, while visibly impaired, with any bodily alcohol content if under 21 years old, or in violation of certain provisions in MCL 324.81134 with an occupant under 16 years old), or a substantially corresponding law or ordinance. MCL 257.320a(1)(c).[2]

Operating an ORV while visibly impaired is a violation of MCL 324.81134(3). MCL 257.320a(1)(c) assesses six points for a violation of MCL 324.81134 without limiting the assessment to particular subsections.

B. Snowmobiles

Six points must be assessed for a violation of MCL 324.82127(1) (operating a snowmobile while under the influence, with an unlawful blood alcohol content, or with any amount of certain controlled substances), or a substantially corresponding law or ordinance. MCL 257.320a(1)(c).[3]

[2]See Section 2.29 for more information on operating an ORV while under the influence or with an unlawful bodily alcohol content. See Section 2.30 for more information on operating an ORV while visibly impaired.

Four points must be assessed for a violation of MCL 324.82127(3) (operating a snowmobile while visibly impaired), or a substantially corresponding law or ordinance. MCL 257.320a(1)(i).[4]

1.7 Rebuttable Presumption Regarding Jail or Probation Sentence

"There is a rebuttable presumption that the court shall sentence an individual convicted of a misdemeanor, other than a serious misdemeanor, with a fine, community service, or other nonjail or nonprobation sentence." MCL 769.5(3). "The court may depart from the presumption under [MCL 769.5(3)] if the court finds reasonable grounds for the departure and states on the record the grounds for the departure." MCL 769.5(4).

"Unlike cases involving felony convictions, there are no sentencing guidelines that a sentencing court must consult when sentencing a person convicted of only a misdemeanor offense." *People of the City of Auburn Hills v Mason*, ___ Mich App ___, ___ (2024). However, MCL 769.5(3) and MCL 769.5(4) "establish a sentencing framework for misdemeanor convictions that is similar to the framework for felony convictions and the legislative sentencing guidelines." *Mason*, ___ Mich App at ___. Accordingly, "a 'nonjail or nonprobation sentence' imposed on 'an individual convicted of a misdemeanor, other than a serious misdemeanor,' pursuant to MCL 769.5(3) is a presumptively proportionate sentence, as a within-guidelines sentence is for a felony conviction." *Mason*, ___ Mich App at ___ ("Just like in the context of sentencing guidelines, the district court was obligated to explain why a departure sentence of 93 days in jail was more suitable than a non-jail or non-probation sentence under MCL 769.5(3)."). "Nonetheless, under MCL 769.5(4), a court imposing a sentence for an ordinary misdemeanor conviction remains free to depart from the presumption in MCL 769.5(4) 'if the court finds reasonable grounds for the departure and states on the record the grounds for the departure.'" *Mason*, ___ Mich App at ___ (holding that the "[district] court did not adequately justify the imposed sentence," because it "did not consider the circumstances of the offense and did not explain how its departure sentence was more proportionate than a different sentence would have been").

[3] See Section 3.31 for more information on operating a snowmobile while under the influence or with an unlawful bodily alcohol content.

[4] See Section 3.32 for more information on operating a snowmobile while visibly impaired.

1.8 Failure to Comply with Sentence

"If the court finds that the sentenced person has not complied with his or her sentence, including a nonjail or nonprobation sentence, the court may issue an order for the person to show cause why he or she should not be held in contempt of court for not complying with the sentence. If the court finds the person in contempt, it may impose an additional sentence, including jail or probation if appropriate." MCL 769.5(5). If the sentenced person is found in contempt "for nonpayment of fines, costs, or other legal financial obligations, the court must find on the record that the person is able to comply with the payments without manifest hardship, and that the person has not made a good-faith effort to do so, before imposing an additional sentence." MCL 769.5(6).

1.9 Felony Sentencing[5]

"[T]he legislative sentencing guidelines are advisory in every case, regardless of whether the case actually involves judicial fact-finding." *People v Rice*, 318 Mich App 688, 692 (2017); MCL 769.34(2)-(3). See also *People v Steanhouse*, 500 Mich 453, 466 (2017).

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

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

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

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

[5] A comprehensive discussion of felony sentencing is outside the scope of this benchbook. For more information on felony sentencing, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2.*

A. Calculating the Minimum Sentence Range

While the legislative sentencing guidelines are advisory, "a sentencing court must determine the applicable guidelines range and take it into account when imposing a sentence[.]" *Lockridge*, 498 Mich at 365. The recommended minimum sentence range for an offense to which the sentencing guidelines apply is determined by scoring the appropriate offense variables (OVs) and prior record variables (PRVs) for a specific conviction. MCL 777.21. All felony offenses to which the sentencing guidelines apply fall into one of six offense categories called crime groups,[6] and each crime group is further organized into crime classes[7] that indicate the severity of the offense. See MCL 777.5 and MCL 777.21(1)(c). An offense's crime class determines which sentencing grid must be used when determining an offender's recommended minimum sentence range. See MCL 777.61 to MCL 777.69. The crime group an offense falls into dictates which OVs must be scored for that offense and how those variables must be scored.[8] *People v Bonilla-Machado*, 489 Mich 412, 422 (2011). For cases involving recreational vehicles, OVs 17 (degree of negligence exhibited) and 18 (operator ability affected by alcohol/drugs) contain offense characteristics specific to offenses involving "the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive." MCL 777.22(1); MCL 777.22(5).[9]

The rule of *Apprendi v New Jersey*, 530 US 466, 490 (2000) ("[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt[]"), does not apply to prior convictions and therefore presumably does not implicate the scoring of *prior record* variables under Michigan's sentencing guidelines. See *Alleyne*, 570 US at 111 n 1 (noting that "[i]n *Almendarez-Torres v United States*, [523 US 224 (1998)], [the United States Supreme Court] recognized a narrow exception to [the] general rule [of *Apprendi*] for the fact of a prior conviction[;]" the *Alleyne* Court declined to revisit *Almendarez-Torres* "[b]ecause

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

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

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

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

the parties [did] not contest that decision's vitality[]"); see also, generally, *Lockridge*, 498 Mich at 370 n 12.

B. Departures[10]

"A court may depart from the appropriate sentence range established under the sentencing guidelines set forth in [MCL 777.1 *et seq*.] if the departure is reasonable and the court states on the record the reasons for departure." MCL 769.34(3). "A sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness[, and] . . . [r]esentencing will be required when a sentence is determined to be unreasonable." *People v Lockridge*, 498 Mich 358, 392 (2015). "[S]entencing courts must justify the sentence imposed in order to facilitate appellate review." *Lockridge*, 498 Mich at 392. Appellate courts review the reasonableness of a sentence for an abuse of discretion "informed by the 'principle of proportionality' standard" set forth in *People v Milbourn*, 435 Mich 630, 636 (1990). *People v Steanhouse*, 500 Mich 453, 476 (2017). The principle of proportionality requires "'sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.'" *Id*., quoting *Milbourn*, 435 Mich at 636. See also *Steanhouse*, 500 Mich at 460, 472, quoting *Milbourn*, 435 Mich at 661 ("'the key test is whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines' recommended range'").

1.10 Minimum State Costs for Felony Offenses

If a court orders a defendant convicted of a felony to pay any combination of a fine, costs, or assessments, the court must order the defendant to pay state minimum costs of not less than $68.00. MCL 769.1j(1)(a). The costs imposed under MCL 769.1j(1)(a) constitute a tax, and this tax does not violate the separation of powers requirement under Const 1963, art 3, § 2 or the requirement of Const 1963, art 4, § 32 that "[e]very law which imposes, continues or revives a tax shall distinctly state the tax." *People v Shenoskey*, 320 Mich App 80, 83-84 (2017) (applying the analysis of MCL 769.1k(1)(b)(*iii*) in *People v Cameron*, 319 Mich App 215 (2017) to MCL 769.1j(1)(a) because the statutes are "closely related"). Payment of the state minimum costs must be included as a condition of the defendant's probation. MCL 771.3(1)(g); MCL 769.1j(3). "The court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the

[10] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 5, for detailed information about sentence departures.

court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order." MCR 6.425(D)(3)(a). MCR 6.425(D)(3) also addresses payment alternatives and offers guidance for determining manifest hardship. For a detailed discussion of MCR 6.425(D)(3), see the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 2*, Chapter 8.

1.11 Costs[11]

At the time of sentencing or a delay in sentencing or entry of a deferred judgment of guilt, the court may impose "[a]ny cost authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty," or "[u]ntil December 31, 2026, any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case[.]" MCL 769.1k(1)(b)(*ii*)-(*iii*).

"MCL 769.1k(1)(b)(*iii*) "is [not] facially unconstitutional." *People v Johnson*, 336 Mich App 688, 705 (2021).[12] "MCL 769.1k(1)(b)(*iii*) independently authorizes the imposition of costs in addition to those costs authorized by the statute for the sentencing offense," and "[a] trial court possesse[s] the authority under MCL 769.1k, . . . to order defendant to pay court costs." *People v Konopka (On Remand)*, 309 Mich App 345, 350, 358 (2015). "[A]lthough the costs imposed . . . need not be separately calculated, . . . the trial court [must] . . . establish a factual basis" demonstrating that "the costs imposed [are] reasonably related to the actual costs incurred by the trial court[.]" *Konopka*, 309 Mich App at 359-360.

"MCL 769.1k(1)(b)(*iii*) does not provide the trial court with the authority to increase the costs imposed on criminal defendants as a means for generating more revenue." *Johnson*, 336 Mich App at 701 (citation omitted; concluding that although MCL 769.1k(1)(b)(*iii*) "is a revenue-generating statute," defendant "failed to show that [the statute] also authorizes courts to administer the revenue so collected" or establish that courts ordering the assessments benefit from a portion of the revenue under circumstances where they do not have control over administration

[11] Note that "[t]he court shall not sentence a defendant to a term of incarceration . . . for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order." MCR 6.425(D)(3)(a). MCR 6.425(D)(3) also addresses payment alternatives and offers guidance for determining manifest hardship. For a detailed discussion of MCR 6.425(D)(3), see the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 2*, Chapter 8.

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

of the revenue). "While . . . use of the funds generated pursuant to MCL 769.1k(1)(b)(*iii*) to finance the operations of the sentencing judge's court, coupled with intense pressure placed on that court by its local funding unit, could create, at a minimum, an appearance of impropriety, [defendant failed] to establish that no set of circumstances exist under which MCL 769.1k(1)(b)(*iii*) would be valid. The fact that the statute might operate unconstitutionally under some conceivable set of circumstances is insufficient." *Johnson*, 336 Mich App at 703 (quotation marks, alterations, and citation omitted).

The imposition of court costs under MCL 769.1k(1)(b)(*iii*) is a tax, rather than a governmental fee, and it must therefore comply with the Distinct-Statement Clause and the separation-of-powers doctrine. *People v Cameron*, 319 Mich App 215, 236 (2017). "[A]lthough it imposes a tax, MCL 769.1k(1)(b)(*iii*) is not unconstitutional[.]" *Cameron*, 319 Mich App at 218.[13]

MCL 769.34(6) addresses the sentencing guidelines and the duties of the court when sentencing, and it generally authorizes the court to order court costs ("As part of the sentence, the court may also order the defendant to pay any combination of a fine, costs, or applicable assessments."). However, "MCL 769.34(6) allows courts to impose only those costs or fines that the Legislature has separately authorized by statute[]" and "does not provide courts with the independent authority to impose any fine or cost." *People v Cunningham*, 496 Mich 145, 158 n 11 (2014).[14] For a complete listing of statutes specifically authorizing the imposition of costs, see the Michigan Judicial Institute's Table of General Costs, Table of Misdemeanor Offenses for Which Costs are Authorized, and Table of Felony Offenses for Which Costs are Authorized.

Further, a defendant may be ordered to pay any additional costs incurred to compel his or her attendance. MCL 769.1k(2). In addition, MCL 769.1k(4) authorizes a court to order that a defendant pay by wage assignment any of the costs authorized in MCL 769.1k(1). A court may provide for the collection of costs imposed under MCL 769.1k at any time. MCL 769.1k(5).

"A defendant must not be imprisoned, jailed, or incarcerated for the nonpayment of costs ordered under [MCL 769.1k] unless the court determines that the defendant has the resources to pay the ordered costs and has not made a good-faith effort to do so." MCL 769.1k(10). See also MCR 6.425(D)(3) (providing similar preconditions to incarceration for

[13]For a detailed discussion of the categorization of MCL 769.1k(1)(b)(*iii*) as a tax and of the application of the Distinct-Statement Clause and separation-of-powers, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 8.

[14]For a more in-depth discussion of costs, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 8.

nonpayment in felony proceedings). This determination must be made by a judge; district court magistrates are not authorized to make determinations regarding a defendant's ability to pay. See MCL 600.8511, MCL 600.8512; MCL 600.8512a, MCL 600.8513 (setting forth authority of district court magistrates without granting authority for making ability to pay determinations).

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

1.12 Restitution[15]

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

MCR 6.430 governs postjudgment motions to amend restitution. The prosecuting attorney, victim, or defendant may file a postjudgment motion to amend an order of restitution "based upon new or updated information related to the injury, damages, or loss for which the restitution was ordered." MCR 6.430(A).

See the Michigan Judicial Institute's *Crime Victim Rights Benchbook*, Chapter 8, for detailed information about restitution.

1.13 Mens Rea Standard

Effective December 22, 2015, 2015 PA 250 added MCL 8.9 to provide a default mens rea standard applicable to certain[16] crimes committed on or

[15]Note that "[t]he court shall not sentence a defendant to a term of incarceration . . . for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order." MCR 6.425(D)(3)(a). MCR 6.425(D)(3) also addresses payment alternatives and offers guidance for determining manifest hardship. For a detailed discussion of MCR 6.425(D)(3), see the Michigan Judicial Institute's *Criminal Proceedings Benchbook Vol. 2*, Chapter 8.

after January 1, 2016. MCL 8.9 also provides that "[i]t is not a defense to a crime that the defendant was, at the time the crime occurred, under the influence of or impaired by a voluntarily and knowingly consumed alcoholic liquor, drug, including a controlled substance, other substance or compound, or combination of alcoholic liquor, drug, or other substance or compound. However, it is an affirmative defense to a specific intent crime, for which the defendant has the burden of proof by a preponderance of the evidence, that he or she voluntarily ingested a legally obtained and properly used medication or other substance and did not know and reasonably should not have known that he or she would become intoxicated or impaired." MCL 8.9(6).

For a more detailed discussion of MCL 8.9, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 10.

[16] As relevant to this benchbook, MCL 8.9 "does not apply to, and shall not be construed to affect, crimes under . . . [t]he Michigan [P]enal [C]ode, . . . MCL 750.1 to [MCL] 750.568." MCL 8.9(7)(d).

Chapter 2: Off-Road Vehicles

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Part A—An Overview of the ORV Act[1]

2.1 Introduction

The Off-Road Vehicle Act (ORV Act) is codified as Part 811 of the Natural Resources and Environmental Protection Act (NREPA). MCL 324.81101 *et seq*.

"[A]ll forest roads shall be open to ORV use as provided in [MCL 324.72118[2]]. All other state owned land under the jurisdiction of the [Department of Natural Resources (DNR)] shall be closed to ORV use except the following:

(a) Designated roads that are not forest roads.

(b) Designated trails.

(c) Designated areas." MCL 324.81127(1).

"Copies of maps of trails shall be prepared and made available by the [DNR] in sufficient quantities to accompany each ORV certificate of title issued by the secretary of state and to place in each county sheriff's office and each [DNR] field office." MCL 324.81123(5). Maps of ORV trails are also available at: https://www.michigan.gov/dnr/things-to-do/ORV-Riding/where.

2.2 Assumption of Risks When Participating in Sport of ORV Riding

"Each person who participates in the sport of ORV riding accepts the risks associated with that sport insofar as the dangers are inherent. Those risks include, but are not limited to, injuries to persons or property that can result from variations in terrain; defects in traffic lanes; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; and collisions with fill material, decks, bridges, signs, fences, trail maintenance equipment, or other ORVs. Those risks do not include injuries to persons or property that result from

---

[1] See also *The Handbook of Michigan Off-Road Vehicle Laws and Riding Basics* (2023 edition), published by Kalkomey Enterprises, LLC, by authority of the Michigan Department of Natural Resources.

[2] MCL 324.72118 requires the DNR to inventory forest roads that are state roads which, beginning when the inventory for a region is completed or required to be completed, whichever occurs first, will be open to motorized use by the public unless designated otherwise by an order of the DNR under MCL 324.504. However, forest roads in Michigan's Upper Peninsula will be open to motorized use by the public unless designated otherwise by an order of the DNR under MCL 324.504. MCL 324.72118(2)(a). The DNR is also required to annually post to its website the total miles of forest roads open to motorized use in all inventoried regions. MCL 324.72118(3).

the use of an ORV by another person in a careless or negligent manner likely to endanger person or property. When an ORV is operated in the vicinity of a railroad right-of-way, each person who participates in the sport of ORV riding additionally assumes risks including, but not limited to, entanglement with railroad tracks, switches, and ties and collisions with trains and train-related equipment and facilities." MCL 324.81133(3).

2.3 ORV Operation on State-Owned Lands

"**State Forest Lands:** ORV restrictions vary by location.

- **Upper Peninsula:** ORV operation is permitted on designated trails and forest roads in the Upper Peninsula unless posted as closed.

- **Lower Peninsula:** ORV operation is permitted on all designated trails, designated areas, and designated routes (forest roads that are designated for ORV use) in the Lower Peninsula.

- **Statewide:** ORV use on designated trails is limited to vehicles not more than 50 inches in width. Off-trail or off-route operation outside of a designated area is prohibited except for hunters operating an ORV at speeds of 5 mph or less for the purpose of removing deer, bear, or elk. ORV operation on designated routes is open to all ORVs.

State Game Areas: *All* motorized vehicle operation is prohibited except on established roads open to the public. *ORVs are specifically prohibited*. These areas are found primarily in the southern third of Michigan.

State Parks and State Recreation Areas: ORV operation is prohibited in all state parks and recreation areas except in designated areas of Silver Lake State Park." Michigan Department of Natural Resources, *The Handbook of Michigan Off-Road Vehicle Laws and Riding Basics* https://www.michigan.gov/dnr/things-to-do/ORV-Riding/rules

2.4 State-Owned Land Use Rules[3]

Committee Tip: *Many DNR officers issue ORV tickets under the following State Land Use Rules when offenders are operating their ORVs in closed areas on state land instead of issuing a complaint for a misdemeanor under MCL 324.81133(1)(d).*[4]

A. Unlawful Acts Generally

"On land owned or under the control of the [DNR], it is unlawful to do any of the following:

> (a) Enter, use, or occupy state-owned land for any purpose where posted against entry, use, or occupancy, as ordered by the [DNR].
>
> * * *
>
> (h) Destroy, damage, or remove a tree, including a dead and downed tree and woody debris, shrub, wildflower, grass, or other vegetation. Except in a wildlife food plot, this subdivision does not apply to picking and removing mushrooms, berries, and edible fruits or nuts for personal use.
>
> * * *
>
> (k) Obstruct any road or trail in a manner that hinders public access to state-owned land.
>
> (*l*) Park a vehicle of any type in an area posted as no parking; or, where a designated parking area exists, to park a vehicle of any type in an area other than the designated parking area. If a motor vehicle is found parked on state-owned land and is found to be in violation of this rule, the registered owner is prima facie responsible for the violation as defined in MCL 257.675c(1).

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[3] The land use rules discussed in this section are limited to those rules that may directly or indirectly apply to ORV use. Other prohibited acts are outside the scope of this benchbook.

[4] See Section 2.21 for more information on MCL 324.81133(1)(d).

> (m) Park any vehicle in or otherwise occupy a designated campsite, except by a registered camper or authorized visitor to a registered camper.
>
> * * *
>
> (p) Use or operate any wheeled, motorized vehicle, except a [personal assistive mobility device (PAMD)], on state-owned land in the Upper Peninsula of this state, except on a designated route, a designated trail, a designated area, or a forest road not otherwise posted as closed due to the use of motorized vehicles or entry.
>
> (q) Use or operate any wheeled, motorized vehicle, except a PAMD, on state-owned land in the Lower Peninsula of this state, except on a designated route, a designated trail, or a designated area. A wheeled, motorized vehicle that is properly registered under [MCL 257.1 to MCL 257.923], may be operated on a forest road not otherwise posted as closed to the use of motorized vehicles. . . ." Mich Admin Code, R 299.922.

B. Unlawful Acts in Specified Areas

"In addition to the unlawful acts specified in R 299.922, on state-owned land under the control of the [DNR] other than state parks, recreation areas, game and wildlife areas, designated campgrounds, and public access sites, it is unlawful to do any of the following:

> (a) Park any wheeled, motorized vehicle more than 50 feet from the traveled portion of a road, forest road, parking lot, or trail open to such vehicle use.
>
> (b) Use, operate, or possess a wheeled, motorized vehicle, except a [personal assistive mobility device (PAMD)], on a designated state forest pathway[.]" Mich Admin Code, R 299.924.

C. Unlawful Acts in Game and Wildlife Areas

"In addition to the unlawful acts specified in R 299.922, on state-owned land in a state game or wildlife area, it is unlawful to do any of the following:

> * * *
>
> (b) Park any wheeled, motorized vehicle more than 50 feet from the traveled portion of a road, forest road,

parking lot, or trail open to wheeled, motorized vehicle use.

(c) Operate any wheeled self-propelled or motorized vehicle, except a [personal assistive mobility device (PAMD)], including a snowmobile and bicycle, on other than a designated road open to the public, a trail, parking lot, or area properly signed by the [DNR] as being open to such use." Mich Admin Code, R 299.926.

D. Unlawful Acts in State Parks and Recreation Areas

"In addition to the unlawful acts specified in R 299.922, in state parks, recreation areas, forest campgrounds, and pathway trailheads, it is unlawful to do any of the following:

* * *

(p) Operate an ORV in a designated campground, except for entrance to and departure from a designated ORV campground or by order of the [DNR].

(q) Use, operate, or possess a wheeled, motorized vehicle, except for a [personal assistive mobility device (PAMD)], on a designated state forest pathway." Mich Admin Code, R 299.927.

2.5 Provisions Related to Local Ordinances

A. Adopting Local Ordinances Authorizing Use of ORVs

MCL 324.81131 specifies the local units of government that may authorize the operation of ORVs and under what circumstances.

MCL 324.81131 provides, in relevant part:[5]

(1) A municipality may pass an ordinance allowing a permanently disabled person to operate an ORV in that municipality.

(2) Subject to [MCL 324.81131(4)], a county board of commissioners may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the county. . . .

[5] For more information on the requirements for adopting a proposed ordinance, see MCL 324.81131 in its entirety.

(3) Subject to [MCL 324.81131(4)], the legislative body of a township or municipality may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the township or municipality, respectively. . . . [MCL 324.81131(3)] does not apply to a township or municipality until 1 year after the effective date of the amendatory act that first authorized the county in which that township or municipality is located to adopt an ordinance under [MCL 324.81131(2)].

* * *

(5) The legislative body of a municipality may adopt an ordinance authorizing the operation of ORVs on 1 or more streets within the municipality.

(6) The legislative body of a local unit of government may request the state transportation department to authorize the local unit of government to adopt an ordinance authorizing the operation of ORVs on a highway, other than an interstate highway, located within the local unit of government . . . . A county may submit a request for authorization under this subsection on behalf of 1 or more local units of government located within that county if requested by those local units of government. Before January 1, 2015, the state transportation department may authorize the operation of ORVs on a highway as provided in this subsection and [MCL 324.81131(7)] on the department's initiative and without having received a request from a local unit of government.

(7) The state transportation department shall authorize operation of an ORV under [MCL 324.81131(6)] only on a highway that is not an interstate highway and that meets 1 or more of the following requirements:

(a) Serves as a connector between ORV areas, routes, or trails designated by the [DNR] or an ORV user group.

(b) Provides access to tourist attractions, food service establishments, fuel, motels, or other services.

(c) Serves as a connector between 2 segments of the same county road that run along discontinuous town lines and on which ORV use is authorized

> pursuant to [MCL 324.81131(2) or MCL 324.81131(3)].
>
> (d) Includes a bridge or culvert that allows an ORV to cross a river, stream, wetland, or gully that is not crossed by a street or county road on which ORVs are authorized to operate under [MCL 324.81131(2), MCL 324.81131(3), or MCL 324.81131(5)].

B. Closing County Roads and Highways to ORVs

1. County Roads

"The board of county road commissioners may close a county road to the operation of ORVs otherwise authorized pursuant to [MCL 324.81131(2) or MCL 324.81131(3)]." MCL 324.81131(4). However, "[a] county road may be closed to the operation of ORVs under [MCL 324.81131(4)] only to protect the environment or if the operation of ORVs poses a particular and demonstrable threat to public safety." *Id.*

"A county road commission shall not under [MCL 324.81131(4)] close more than 30% of the linear miles of county roads located within the county to the operation of ORVs otherwise authorized pursuant to [MCL 324.81131(2) or MCL 324.81131(3)]." MCL 324.81131(4). "The legislative body of a township or municipality may adopt an ordinance to close a county road located in the township or municipality to the operation of ORVs otherwise authorized pursuant to [MCL 324.81131(2)]." MCL 324.81131(4). "The legislative body of a village may adopt an ordinance to close a county road located in the village to the operation of ORVs otherwise authorized by the township pursuant to [MCL 324.81131(3)]." MCL 324.81131(4).

2. Highways

"The state transportation department may close a highway to the operation of ORVs otherwise authorized pursuant to [MCL 324.81131(6)] after written notice to the clerk of each local unit of government where the highway is located and the senate and house committees with primary responsibility for natural resources, recreation, and transportation." MCL 324.81131(8). "The notice shall be in writing and sent by first-class United States mail or personally delivered not less than 30 days before the adoption of the rule or order closing the highway." *Id.* "The notice shall set forth specific reasons for the closure." *Id.*

C. Operating an ORV After Adoption of Local Ordinance

MCL 324.81131(12) and MCL 324.81131(13) govern the operation of an ORV under *any* provision of MCL 324.81131:

> (12) A person shall not operate an ORV as authorized pursuant to [MCL 324.81131] without displaying a lighted headlight and lighted taillight.
>
> (13) A person under 18 years of age shall not operate an ORV as authorized pursuant to [MCL 324.81131] unless the person is in possession of a valid driver license or under the direct supervision of a parent or guardian and the person has in his or her immediate possession an ORV safety certificate issued pursuant to [MCL 324.81101 *et seq.*,] or a comparable ORV safety certificate issued under the authority of another state or a province of Canada. A person under 12 years of age shall not operate an ORV as authorized pursuant to [MCL 324.81131]. The requirements of this subsection are in addition to any applicable requirements of [MCL 324.81129].

In addition, MCL 324.81131 contains provisions governing the operation of ORVs that apply only in certain instances:

> (9) Subject to [MCL 324.81131(4)], if a local unit of government adopts an ordinance pursuant to [MCL 324.81131(2), MCL 324.81131(3), or MCL 324.81131(5)], a person may operate an ORV with the flow of traffic on the far right of the maintained portion of the street or county road covered by the ordinance. If the operation of ORVs on a highway is authorized pursuant to [MCL 324.81131(6)], a person may operate an ORV with the flow of traffic as follows:
>
> > (a) On the right shoulder of the highway.
> >
> > (b) If there is not a right shoulder or the right shoulder is not of adequate width, on the right unmaintained portion of the highway.
> >
> > (c) On the far right of the right traffic lane of the highway, if necessary to cross a bridge or culvert and if the operator brings the ORV to a complete stop before entering and yields the right-of-way to an approaching vehicle on that traffic lane.
>
> (10) A person shall not operate an ORV as authorized pursuant to [MCL 324.81131(2), MCL 324.81131(3), MCL

> 324.81131(5), or MCL 324.81131(6)] at a speed greater than 25 miles per hour or a lower posted ORV speed limit or in a manner that interferes with traffic on the street, county road, or highway.
>
> (11) Unless the person possesses a license as defined in . . . MCL 257.25, a person shall not operate an ORV as authorized pursuant to [MCL 324.81131(2), MCL 324.81131(3), MCL 324.81131(5), or MCL 324.81131(6)] if the ORV is registered as a motor vehicle under [MCL 257.201 to MCL 257.259], and either is more than 65 inches wide or has 3 wheels. ORVs operated as authorized pursuant to [MCL 324.81131(2), MCL 324.81131(3), MCL 324.81131(5), or MCL 324.81131(6)] shall travel single file, except that an ORV may travel abreast of another ORV when it is overtaking and passing, or being overtaken and passed by, another ORV.

D. Limited Duty to Maintain Surfaces Where ORVs are Authorized to Operate

A duty to maintain the surface on which an ORV may be operated exists in certain limited circumstances:

> A township that has authorized the operation of ORVs on a county road under [MCL 324.81131(3)] does not have a duty to maintain the maintained portion or unmaintained portion of the county road in a condition reasonably safe and convenient for the operation of ORVs. [Michigan] does not have a duty to maintain a highway in reasonable repair so that it is reasonably safe and convenient for the operation of ORVs except ORVs registered and operated as motor vehicles as provided in the [Michigan Vehicle Code (MVC), MCL 257.1 *et seq*.] A board of county road commissioners, a county board of commissioners, or a municipality does not have a duty to maintain the maintained portion or unmaintained portion of a county road or street under its jurisdiction in a condition reasonably safe and convenient for the operation of ORVs, except the following ORVs:
>
> > (a) ORVs registered and operated as motor vehicles as provided in [the MVC].
> >
> > (b) ORVs operated as authorized pursuant to [MCL 324.81131(1)]. [MCL 324.81131(14).]

E. Governmental Immunity

Governmental immunity may exist in certain circumstances:

> Subject to . . . MCL 691.1405, [Michigan], a board of county road commissioners, a county board of commissioners, and a local unit of government are immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation or use, on the maintained portion or unmaintained portion of a highway, road, or street, of an ORV that is not registered under the [MVC] or that is registered under the [MVC] but is operated as authorized pursuant to [MCL 324.81131(2), MCL 324.81131(3), MCL 324.81131(5), or MCL 324.81131(6)]. The immunity provided by [MCL 324.81131(15)] does not apply to actions of an employee of [Michigan], an employee of a board of county road commissioners, an employee of a county board of commissioners, or an employee of a local unit of government that constitute gross negligence. [MCL 324.81131(15).]

F. Penalties for Violating Local Ordinance or Rule

MCL 324.81131(17) and MCL 324.81131(19) prescribe penalties for violating certain portions of MCL 324.81131:

> (17) A violation of an ordinance described in [MCL 324.81131] is a municipal civil infraction. The ordinance may provide for a fine of not more than $500.00 for a violation of the ordinance. In addition, the court shall order the defendant to pay the cost of repairing any damage to the environment, a street, county road, or highway, or public property as a result of the violation.
>
> * * *
>
> (19) A person who violates a rule promulgated or order issued under [MCL 324.81131(6)] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00. In addition, the court shall order the defendant to pay the cost of repairing any damage to the environment, a highway, or public property as a result of the violation.

2.6 Liability for Collisions Involving Unregistered ORV

An ORV operator may be considered prima facie negligent in operating an unregistered ORV that is involved in a collision:

> In a court action in [Michigan], if competent evidence demonstrates that a vehicle that is permitted to operate on a road, street, or highway pursuant to [the MVC] was in a collision on a roadway with an ORV that is not registered under [the MVC], the operator of the ORV shall be considered prima facie negligent. [MCL 324.81131(16).]

2.7 Authority to Enforce the ORV Act

A. DNR Conservation Officers

"Conservation officers appointed by the [DNR] and trained and certified pursuant to [MCL 28.601 to MCL 28.615], are peace officers, and except as otherwise provided by law, are vested with all the powers, privileges, prerogatives, and immunities conferred upon peace officers as provided in [MCL 300.21 to MCL 300.22], and in the general laws of [Michigan]." MCL 324.1501.

"Except as otherwise provided by law, conservation officers appointed by the [DNR] have the same power to serve criminal process and to require aid in executing criminal process as sheriffs, and are entitled to the same fees as sheriffs in performing those duties under [the NREPA], under [MCL 300.21 to MCL 300.22], and under the general laws of [Michigan]." MCL 324.1502.

B. Commissioned Park and Recreation Officers

"The [DNR] may commission park and recreation officers to enforce, on property regulated under [MCL 324.74101 *et seq*., (state parks)], rules promulgated by the [DNR] and orders issued by the [DNR] that are authorized in those rules, including, but not limited to, rules promulgated or orders issued under [MCL 324.504], and any laws of [Michigan] specified in those rules as enforceable by commissioned park and recreation officers." MCL 324.1606(2).

"In performing those enforcement activities, commissioned park and recreation officers are vested with the powers, privileges, prerogatives, and immunities conferred upon peace officers under the laws of [Michigan]." MCL 324.1606(2).

> "In addition to the limited arrest authority granted in [MCL 324.1606(2)], on property regulated under [MCL

> 324.74101 *et seq.*, (state parks)], a commissioned park and recreation officer may arrest an individual without a warrant if 1 or more of the following circumstances exist:
>
> > (a) In the presence of the park and recreation officer, the individual commits an assault or an assault and battery in violation of . . . MCL 750.81 and MCL 750.81a.
> >
> > (b) The park and recreation officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the individual has committed it.
> >
> > (c) The park and recreation officer has received affirmative written or verbal notice from a law enforcement officer or agency that a peace officer possesses a warrant for the individual's arrest.
> >
> > * * *
> >
> > (e) The person violates . . . [MCL 324.81101 *et seq.*] . . . . [MCL 324.1606(3).]
>
> "If a conservation officer or a park and recreation officer commissioned under [MCL 324.1606(2)] arrests a person without warrant for a minor offense committed in the officer's presence, instead of immediately bringing the person for arraignment by the court having jurisdiction, the officer may issue to and serve upon the person an appearance ticket as authorized by [MCL 764.9c to MCL 764.9g]." MCL 324.1606(6).

C. Peace Officers

"A peace officer may issue an appearance ticket for a violation of [MCL 324.81101 *et seq.*] under [MCL 764.9a to MCL 764.9g]." MCL 324.81145(1).

D. State Forest Officers

"A state forest officer may enforce . . . MCL 324.81101 to [MCL] 324.81150." Mich Admin Code, R 299.932(*l*).

2.8 Enforcement of the ORV Act on Federal Property

The ORV Act is enforced in the three national forests in Michigan. This includes titling, licensing, equipment requirements, and general operating restrictions. In cases of individuals operating an ORV in a closed area, road, or trail, the offense cited will typically be MCL 324.81133(1)(q), operating in a manner contrary to operating regulations on public lands.[6] Michigan conservation officers are the primary enforcing agency of the Act on these lands. Law enforcement officers and other staff employed by the federal government are not authorized to enforce the Michigan ORV Act but may issue citations for violations of federal land use regulations.

A. Huron-Manistee National Forest

The Huron-Manistee National Forest is located in the northern portion of the Lower Peninsula.

"Motorized vehicles may only be operated on designated roads, trails or areas open to that use. To find what roads and trails are open to a particular use, visitors should obtain a Motor Vehicle Use Map[.]" United States Forest Service, *Off-Highway Vehicles (OHV)*, https://www.fs.usda.gov/r09/huron-manistee/recreation/opportunities/highway-vehicles-ohv.

B. Hiawatha National Forest

The Hiawatha National Forest is located in the eastern and central portions of the Upper Peninsula.

"Visitors to the Hiawatha National Forest will find a wide variety of roads and trails designated open for motorized use." United States Forest Service, Hiawatha National Forest, *Maps & Publications*, http://www.fs.usda.gov/main/hiawatha/maps-pubs. To determine where to ride a given type of motorized vehicle, consult the Hiawatha's Motor Vehicle Use Map, which is updated annually. *Id*.

C. Ottawa National Forest

The Ottawa National Forest is located in the northwest corner of the Upper Peninsula.

"The Ottawa National Forest has over 2,300 miles of Forest Service road and trail open to off-highway vehicles

[6] See Section 2.21 for more information on MCL 324.81133(1)(q).

(OHVs). . . . Roads and trails designated as open to OHVs are open to vehicles 65 inches or less in width and utilizing off-road low-pressure tires." United States Forest Service, Ottawa National Forest, *Off-Highway Vehicles (OHV)*, https://www.fs.usda.gov/r09/ottawa/recreation/opportunities/highway-vehicles-ohv. For more information, obtain a Motor Vehicle Use Map. *Id*.

2.9 Enforcement of the ORV Act on Private Property

Although enforcement of the ORV Act is generally permitted on private property, exceptions exist and are discussed throughout this chapter.

Committee Tip: *The DNR Law Enforcement Division believes that the primary responsibility of Michigan's conservation officers in the area of ORV enforcement is protecting natural resources and safeguarding the health and safety of individuals utilizing public lands for recreation. General enforcement of the ORV Act is focused on public lands. Conservation officers do enforce the ORV Act on private property when it is necessary to protect the safety and welfare of an individual in imminent danger (where a child is involved or there is a reasonable suspicion the operator is under the influence) or where damage is being done to public natural resources (damage to streams or regulated wetlands).*

2.10 Rulemaking Authority of the DNR[7]

A. ORV Safety Programs

"The [DNR] may promulgate rules to implement [MCL 324.81129(8), MCL 324.81129(9), MCL 324.81129(10), and MCL 324.81129(17)]." MCL 324.81129(11).

[7] The administrative rules are available here. In addition, the DNR website contains detailed information about DNR ORV riding rules and regulations, available here. See also the *Handbook of Michigan Off-Road Vehicle Laws and Riding Basics*.

B. ORV Trail Systems

The DNR is authorized to promulgate rules to implement the state aid for recreational trails. See Mich Admin Code, R 257.1521 to R 257.1533.

C. Operation and Conduct of ORVs on the Frozen Surface of Public Waters

"The [DNR] may promulgate rules governing the operation and conduct of ORVs, vehicle speed limits, use of vehicles by day and hour, and the establishment and designation of areas within which vehicles may be used in a manner compatible with, and that will best protect, the public safety and general welfare on the frozen surface of public waters, and that will preserve the submerged marshlands adjacent to the borders of the Great Lakes, Lake St. Clair, and the navigable inland waters of the state." MCL 324.81132(1).

D. Wrongful or Improper Use or Occupancy

"The [DNR] shall promulgate rules to protect and preserve lands and other property under its control from depredation, damage, or destruction or wrongful or improper use or occupancy." MCL 324.504(1).

"The [DNR] shall issue orders necessary to implement rules promulgated under [MCL 324.504]." MCL 324.504(9). "The orders are effective upon posting." *Id*.

"A person who violates a rule promulgated under [MCL 324.504] or an order issued under [MCL 324.504] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.504(14).

"If the [DNR] finds that rules are necessary to implement the regulatory provisions of [MCL 324.81101 *et seq*.,] or to clarify the intent of [MCL 324.81101 *et seq*.], the [DNR] shall promulgate rules." MCL 324.81124.

The administrative rules are available here.

2.11 Warrantless Arrest Under the ORV Act

"If a peace officer has reasonable cause to believe that a person was, at the time of an accident, the operator of an ORV involved in the accident and was operating the ORV while under the influence of an alcoholic

liquor, a controlled substance as defined in . . . MCL 333.7104, or a combination of alcoholic liquor and a controlled substance, or was operating the ORV while his or her ability to operate an ORV was impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the peace officer may arrest the alleged operator of the ORV without a warrant." MCL 324.81144.

2.12 Penalty Provisions in the ORV Act

A. General Penalty Provision

Except as otherwise provided, a person who violates the ORV Act is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not less than $50 or more than $1,000; or
- both. MCL 324.81147(1).

B. Restoration of Damaged Lands and Impounding and Seizure of ORVs

"In addition to the penalties otherwise provided under [MCL 324.81101 *et seq.*], a court of competent jurisdiction may order a person to restore, as nearly as possible, any land, water, stream bank, streambed, or other natural or geographic formation damaged by the violation of [MCL 324.81101 *et seq.*,] to the condition it was in before the violation occurred." MCL 324.81147(5).

"The [DNR] or any other peace officer may impound the ORV of a person who commits a violation of [MCL 324.81101 *et seq.*,] that is punishable as a misdemeanor or who causes damage to the particular area in which the ORV was used in the commission of the violation." MCL 324.81147(6).

"Upon conviction of a person for violation described in [MCL 324.81147(6)], a court of competent jurisdiction may order the ORV and any personal property on the ORV seized as a result of the violation returned to the owner or, upon recommendation of the local prosecuting attorney, turned over to the [DNR]." MCL 324.81147(7). "An ORV or any other property turned over to the [DNR] under [MCL 324.81147(7)] shall be disposed of in the manner provided for condemnation of property in [MCL 324.1601 *et seq.*]" MCL 324.81147(7). "The proceeds realized by the [DNR] under

[MCL 324.81147(7)] shall first be used to restore areas damaged by ORV use, and any balance shall be deposited into the off-road vehicle account." *Id*.

2.13 Costs and Minimum State Costs

MCL 769.1k(1)(b)(*ii*) (allowing the court to impose "[a]ny cost authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty[]") does not provide courts with "the independent authority to impose costs upon criminal defendants." *People v Cunningham (Cunningham II)*, 496 Mich 145, 147 (2014), rev'g 301 Mich App 218 (2013) and overruling *People v Sanders (After Remand)*, 298 Mich App 105 (2012), and *People v Sanders*, 296 Mich App 710 (2012). Rather, it "provides courts with the authority to impose only those costs that the Legislature has separately authorized by statute." *Id*. at 154. Effective October 17, 2014, 2014 PA 352 amended MCL 769.1k in response to the Michigan Supreme Court's holding in *Cunningham II*.[8] In *Cunningham II*, the Court held that MCL 769.1k(1)(b) — which, at the time, provided for the imposition of "[a]ny cost in addition to the minimum state cost"— did "not provide courts with the independent authority to impose 'any cost'"; rather, it "provide[d] courts with the authority to impose only those costs that the Legislature has separately authorized by statute." *Cunningham II*, 496 Mich at 147, 158 (concluding that "[t]he circuit court erred when it relied on [former] MCL 769.1k(1)(b)(*ii*) as independent authority to impose $1,000 in court costs"). 2014 PA 352, in addition to making other revisions to MCL 769.1k, added MCL 769.1k(1)(b)(*iii*) to provide for the imposition of "any cost reasonably related to the actual costs incurred by the trial court[.]"[9] The amendments effectuated by 2014 PA 352 "appl[y] to all fines, costs, and assessments ordered or assessed under . . . MCL 769.1k[] *before June 18, 2014*, and *after [October 17, 2014]*." 2014 PA 352, enacting section 1 (emphasis supplied).

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

[8] The amended version of MCL 769.1k does not violate a defendant's due process or equal protection rights, nor does it violate the constitutional prohibition on ex post facto punishments or the principle of separation of powers. *People v Konopka (On Remand)*, 309 Mich App 345, 361, 369-370, 376 (2015).

[9] This provision expires on December 31, 2026. See MCL 769.1k(1)(b)(*iii*).

trial court[.]'" *Konopka (On Remand)*, 309 Mich App at 359-360, quoting MCL 769.1k(1)(b)(*iii*).

"If a defendant is determined to be responsible or responsible 'with explanation' for a state civil infraction, the judge or district court magistrate may order the defendant to pay . . . costs as provided in [MCL 600.8827(3)][.]" MCL 600.8827(2). "In the order of judgment, the judge or district court magistrate may grant a defendant permission to pay . . . costs . . . within a specified period of time or in specified installments." *Id*. "Otherwise, the . . . costs . . . are payable immediately." *Id*.

"If a defendant is ordered to pay a civil fine under [MCL 600.8827(2)], the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the state civil infraction, up to the entry of judgment." MCL 600.8827(3). "Costs of not more than $500.00 must be ordered." *Id*.

"[I]f the court orders a person convicted of an offense to pay any combination of a fine, costs, or applicable assessments, the court shall order that the person pay costs of not less than the following amount, as applicable:

> (a) $68.00, if the defendant is convicted of a felony.
>
> (b) $50.00, if the defendant is convicted of a misdemeanor or ordinance violation." MCL 769.1j(1). See also MCL 600.8381(4).

The costs imposed under MCL 769.1j(1)(a) constitute a tax, and this tax does not violate the separation of powers requirement under Const 1963, art 3, § 2 or the requirement of Const 1963, art 4, § 32 that "[e]very law which imposes, continues or revives a tax shall distinctly state the tax." *People v Shenoskey*, 320 Mich App 80, 83-84 (2017) (applying the analysis of MCL 769.1k(1)(b)(*iii*) in *People v Cameron*, 319 Mich App 215 (2017) to MCL 769.1j(1)(a) because the statutes are "closely related").

"Payment of the minimum state cost is a condition of probation under [MCL 771.1 *et seq*.]" MCL 769.1j(3). See also MCL 771.3(1)(g) ("[t]he probationer shall pay the minimum state cost prescribed by [MCL 769.1j]").

2.14 Justice System Assessment

"[W]hen fines and costs are assessed by a judge or district court magistrate in a civil infraction action, the defendant shall be ordered to

pay the state assessment required by [MCL 600.8727, MCL 600.8827, or MCL 257.907 (Michigan Vehicle Code)]." MCL 600.8381(5).

MCL 600.8727 applies to municipal civil infractions and requires the court to "order the defendant to pay a justice system assessment of $10.00" "in addition to any fine or cost ordered to be paid under [MCL 600.8727(2)]." MCL 600.8727(4).

MCL 600.8827 applies to state civil infractions and requires the court to "order the defendant to pay a justice system assessment of $10.00" "in addition to any fine or cost ordered to be paid under [MCL 600.8827(2) or MCL 600.8827(3).]" MCL 600.8827(4).

2.15 Specified ORV Sanctions

A. Impoundment

"The [DNR] or any other peace officer may impound the ORV of a person who commits a violation of [MCL 324.81101 *et seq.*,] that is punishable as a misdemeanor or who causes damage to the particular area in which the ORV was used in the commission of the violation." MCL 324.81147(6).

"Upon conviction of a person for violation described in [MCL 324.81147(6)], a court of competent jurisdiction may order the ORV and any personal property on the ORV seized as a result of the violation returned to the owner or, upon recommendation of the local prosecuting attorney, turned over to the [DNR]." MCL 324.81147(7). "An ORV or any other property turned over to the [DNR] under [MCL 324.81147(7)] shall be disposed of in the manner provided for condemnation of property in [MCL 324.1601 *et seq.*] The proceeds realized by the [DNR] under [MCL 324.81147(7)] shall first be used to restore areas damaged by ORV use, and any balance shall be deposited in the off-road vehicle account." MCL 324.81147(7).

2.16 Presumption That Owner Was Operator

"In a proceeding for a violation of [MCL 324.81101 *et seq.*,] involving prohibited operation or conduct, the registration number or numbered decal or vehicle identification number displayed on an ORV constitutes prima facie evidence that the owner of the vehicle was the person operating the vehicle at the time of the offense; unless the owner identifies the operator of the vehicle to a peace officer, the vehicle was reported as stolen at the time of the violation, or that the vehicle was stolen or not in use at the time of the violation." MCL 324.81145(2).

Part B—Nonmoving Violations in the ORV Act

2.17 Titling Requirements

A. Statutory Authority

1. General Rule and Application Requirements

"[E]very ORV sold by a dealer to a retail purchaser shall be subject to the certificate of title provisions of [MCL 324.81101 *et seq.*]" MCL 324.81103(2).

"[A] person who purchases or otherwise acquires an ORV shall apply for a certificate of title as provided in [MCL 324.81101 *et seq.*]" MCL 324.81103(3). "The purchaser or other transferee of an ORV subject to the titling provisions of [MCL 324.81101 *et seq.*,] shall, except as provided in [MCL 324.81109(2) (applicable to situations where purchaser is buying from a dealer)], apply to the department of state for issuance of a certificate of title to the ORV." MCL 324.81109(1). "The application shall be filed within 15 days after the date of purchase or transfer." *Id.*

"An application for an ORV certificate of title shall be on a form prescribed by the department of state." MCL 324.81108(1). "The owner or purchaser shall sign the application or, if the application is filed electronically, provide information requested by the department of state to verify the owner's identity." *Id.*

"The department of state shall charge a fee of $11.00 for processing an application for an ORV certificate of title or a duplicate ORV certificate of title." MCL 324.81110(1). "The department of state shall charge an additional $5.00 for processing an application on an expedited basis." *Id.*

2. Titling under the ORV Act or Michigan Vehicle Code (MVC)

"[T]he owner of an ORV that has not been titled pursuant to [MCL 324.81103(2) or MCL 324.81103(3)] or the [MVC, MCL 257.1 *et seq.*,] may apply for and, if otherwise eligible, receive a certificate of title issued under [MCL 324.81101 *et seq.*]" MCL 324.81103(4). "If the ORV was previously titled under the [MVC], it is not eligible for titling under [MCL 324.81101 *et seq.*]" MCL 324.81103(4).

"The owner of an ORV that has been and is titled under [MCL 324.81101 *et seq.*,] may apply for and, if otherwise eligible, receive a title to the ORV under the [MVC]." MCL 324.81104. "If the owner applies for a title under the [MVC], any certificate of title issued under [MCL 324.81101 *et seq.*,] shall at that time be surrendered to the department of state." MCL 324.81104.

3. Requirements for Transferring ORV After Titling

"Subject to [MCL 324.81105(2)], after an ORV has been titled under [MCL 324.81101 *et seq.*], both of the following apply:

> (a) The owner, except as provided in [MCL 324.81104], shall not sell or otherwise assign ownership in the ORV without delivering to the transferee a certificate of title showing assignment of the ORV in the transferee's name.
>
> (b) A person shall not purchase or otherwise acquire an ORV without obtaining a certificate of title to it in the person's name pursuant to either [MCL 324.81101 *et seq.*,] or the [MVC]." MCL 324.81105(1).

"A person shall not sell or otherwise transfer an ORV to a dealer, to be used by the dealer for purposes of display and resale, without delivering to the dealer a manufacturer's certificate of origin executed in accordance with [MCL 324.81107]." MCL 324.81107(1). "A dealer shall not purchase or otherwise acquire a new ORV without obtaining a manufacturer's certificate of origin." *Id.*

B. Penalties

"[A] person who violates [MCL 324.81103, MCL 324.81104, MCL 324.81108] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $1,000.00, or both, for each violation." See MCL 324.81147(1).

"A person who violates [MCL 324.81105 or MCL 324.81107] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.81147(3).

"[A] person who violates [MCL 324.81109] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00." MCL 324.81109(7).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- ORV impoundment/seizure authorized under certain circumstances for violation of MCL 324.81103, MCL 324.81104, and MCL 324.81108. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

2.18 Licensing Requirements[10]

A. Statutory Authority

"Subject to [MCL 324.81115(2)], a person shall not operate an ORV under any of the following conditions unless the ORV is licensed with the [DNR] or a dealer as provided in [MCL 324.81101 *et seq.*]:

> (a) Except as otherwise provided by law, on or over land, snow, ice, or other natural terrain.
>
> (b) Except as otherwise provided in [MCL 324.81101 *et seq.*], on a forest trail or in a designated area.
>
> (c) On a street, county road, or highway, except if the vehicle is registered under the [Michigan Vehicle Code (MVC), MCL 257.1 *et seq.*]" MCL 324.81115(1).

"An ORV is not required to be licensed under [MCL 324.81101 *et seq.*,] under any of the following circumstances:

> (a) The ORV is used exclusively in a comprehensive program for training as required in [MCL 324.81129].
>
> (b) The ORV is operated solely on private property by the owner of the property, a family member of the owner, or an invited guest of the owner.
>
> (c) The ORV is being operated on a free ORV-riding day. The [DNR] shall designate as free ORV-riding days each year a Saturday and the following Sunday that are also designated as free fishing days under [MCL 324.43534]. In addition, the [DNR] may designate 1 other day or 2

[10] A driver's license is not required to operate an ORV; the licensing requirements refer to licensing the ORV, not the operator. But see Section 2.22 for a summary of the statute that requires children under 16 years of age to have an ORV safety certificate.

> other consecutive days each year as free ORV-riding days. A person operating an unlicensed ORV during a free ORV-riding day has the same privileges and is subject to the same rules and regulations as a person operating an ORV licensed as required under [MCL 324.81115(1)].
>
> (d) If and to the extent the [DNR] waives the requirement pursuant to a reciprocal agreement with another state."[11] MCL 324.81115(2).

"To obtain a license required under [MCL 324.81101 *et seq.*,] the owner of an ORV shall file an application with the [DNR] or a dealer on forms provided by the [DNR]." MCL 324.81116(1). "If an ORV is sold by a dealer, the application for a license shall be submitted to the [DNR] by the dealer in the name of the owner." *Id*. "The application shall include a certification." *Id*. "The owner of the vehicle shall sign the application or, if the application is filed electronically, provide information requested by the [DNR] to verify the owner's identity." *Id*. "The application shall be accompanied by a fee as provided in [MCL 324.81116(2)]." MCL 324.81116(1). "A person shall not file an application for a license that contains false information." *Id*.

"Upon receipt of the application in approved form and payment of the appropriate fee, the [DNR] or dealer shall issue to the applicant a license." MCL 324.81116(1). "A license is valid for the 12-month period beginning April 1 and ending the following March 31." *Id*.

"The fee for a license is as follows:

> (a) Except as provided in subdivision (b), $26.25.
>
> (b) If the license authorizes operation of the ORV on state ORV trails, $36.25." MCL 324.81116(2).

"Before a vehicle that requires an ORV license is operated, the owner shall ensure that a license is permanently attached to the vehicle in the manner prescribed by and, subject to [MCL 324.81116(4)], in the location designated by the [DNR]. The license for a 2-wheel vehicle shall be attached as provided in either of the following:

> (a) Centered on the exposed surface of the rear fender.

[11] "The [DNR] is authorized to enter a reciprocal agreement described in [MCL 324.81115(2)(d)]." MCL 324.81115(3).

> (b) Located at a visible place facing forward on a front suspension fork." MCL 324.81116(4).

Mich Admin Code, R 257.1691 states that "[t]he license for an off-road recreation vehicle shall be permanently attached to the vehicle and shall be visibly displayed in the following manner:

> (a) For a 2-wheel vehicle, it shall be centered on the exposed surface of the rear fender.
>
> (b) For a 3- or 4-wheel multitrack or multiwheeled vehicle, it shall be attached and visible on a flat metal surface, bumper, or plate permanently attached to the rear of the vehicle.
>
> (c) For an amphibious machine, or for a ground effect air-cushioned vehicle, it shall be centered on the rear thereof."

"If, when a vehicle that otherwise requires a license under this part is sold, the purchaser certifies on a form provided by the [DNR] that the vehicle will be used and stored outside of [Michigan] and will not be returned by the purchaser to [Michigan] for use, a license is not required for the vehicle." MCL 324.81116(5).

"If a license acquired by the owner of an ORV is lost or destroyed, the [DNR] shall provide that person with a replacement license free of charge." MCL 324.81116(6). "The [DNR] may require a person requesting a replacement license to supply sufficient evidence of the loss or destruction of the original license." *Id.*

B. Penalties

"A person who violates [MCL 324.81115 or MCL 324.81116] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.81147(3).

2.19 Equipment Requirements

A. Statutory Authority

1. Crash Helmet and Protective Eyewear

"An individual who is operating or is a passenger on an ORV shall wear a crash helmet and protective eyewear that are approved by the United States Department of Transportation." MCL 324.81133(2).

"[MCL 324.81133(2)] does not apply to any of the following:

> (a) An individual who owns the property on which the ORV is operating, is a family member of the owner and resides at that property, or is an invited guest of an individual who owns the property. An exception under [MCL 324.81133(2)(a)] does not apply to any of the following:
>
> > (*i*) An individual less than 16 years of age.
> >
> > (*ii*) An individual 16 or 17 years of age, unless the individual has consent from his or her parent or guardian to ride without a crash helmet.
> >
> > (*iii*) An individual participating in an organized ORV riding or racing event if an individual who owns the property receives consideration for use of the property for operating ORVs.
>
> (b) An individual wearing a properly adjusted and fastened safety belt if the ORV is equipped with a roof that meets or exceeds United States Department of Transportation standards for a crash helmet.
>
> (c) An ORV operated on a state-licensed game bird hunting preserve at a speed of not greater than 10 miles per hour.
>
> (d) An ORV operated for the purpose of towing a fishing shanty or supply shed over the frozen surface of public waters at the minimum speed required to maintain controlled forward movement of the vehicle while traveling to and from a fishing shanty at a speed of not greater than 10 miles per hour. An owner of private property is not liable for personal injuries, including death, to an individual who operates an ORV described in [MCL 324.81133(2)(d)] without wearing a helmet while traveling on the owner's property." MCL 324.81133(2).

2. Headlights and Taillights

"An individual shall not operate an ORV . . . [d]uring the hours of 1/2 hour after sunset to 1/2 hour before sunrise without displaying a lighted headlight and lighted taillight." MCL

324.81133(1)(b). "The requirements of [MCL 324.81133(1)(b)] are in addition to any applicable requirements of [MCL 324.81131(12)]." MCL 324.81133(1)(b). MCL 324.81131(12) states that "[a] person shall not operate an ORV as authorized pursuant to [MCL 324.81131] without displaying a lighted headlight and lighted taillight."

3. Braking System, Brake Light, & Throttle

"An individual shall not operate an ORV . . . [u]nless the vehicle is equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible from behind the vehicle when the brake is activated, if the vehicle is operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise; and a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle." MCL 324.81133(1)(c).

4. Muffler

"An individual shall not operate an ORV . . . [u]nless the vehicle is equipped with a spark arrester type United States Forest Service approved muffler, in good working order and in constant operation." MCL 324.81133(1)(f).

B. Penalties

"A person who violates [MCL 324.81133(1)(b), MCL 324.81133(1)(c), MCL 324.81133(1)(f), or MCL 324.81133(2)] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.81147(3).

Part C—Moving Violations in the ORV Act

2.20 Operation of Unregistered ORVs on Public Highways and Streets

A. Statutory Authority

"A person shall not operate an ORV that is not registered under the [Michigan Vehicle Code (MVC), MCL 257.1 *et seq.*,] upon a street, county road, or highway, except as provided in [MCL 324.81131[12]] or under the following conditions and circumstances:

> (a) The operator of a vehicle may cross a street, county road, or highway, other than a limited access highway, at right angles, for the purpose of getting from 1 area to another, if the operation can be done in safety. The operator shall bring the vehicle to a complete stop before proceeding across a street, county road, or highway, and shall yield the right-of-way to oncoming traffic.
>
> (b) A vehicle may be operated on a street, county road, or highway for a special event of limited duration and conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction. Subject to [MCL 324.81122(2)], a special event involving ORVs may be conducted on the frozen surface of public waters only under permit from the [DNR].
>
> (c) A farmer, employee of a farmer, or family member of a farmer who is at least 16 years of age may operate an ORV on a street, county road, or highway while traveling to or from the farmer's residence or work location or field during the course of farming operations. An ORV shall not be operated pursuant to this subdivision during the period of 30 minutes before sunset to 30 minutes after sunrise or when visibility is substantially reduced due to weather conditions. The individual shall operate the ORV in the same manner and on the same portion of the street, county road, or highway as required under [MCL 324.81131(9)[13]]. . . . An operator of an ORV under this subdivision shall have attached to the ORV a flag made of reflective material. The flag shall extend not less than 8 feet from the surface of the street, county road, or highway and not less than 4 feet above the top of the

[12] MCL 324.81131 permits local governments to establish ORV access routes.

> ORV. The flag shall be not less than 12 inches high by 18 inches long and not measure less than 100 square inches." MCL 324.81122(1).

"The [DNR] shall not require a permit under [MCL 324.81101 *et seq.*,] merely for organized group recreational ORV riding on [DNR] lands, or for an ORV event on the frozen surface of public waters, if conducted in compliance with applicable statutes, rules, and orders." MCL 324.81122(2).

"In a court action in [Michigan] if competent evidence demonstrates that a vehicle that is permitted to operate on a highway pursuant to the [MVC] is in a collision on a roadway with an ORV that is not registered under the [MVC], the operator of the ORV involved in the collision shall be considered prima facie negligent." MCL 324.81122(3).

B. Penalties

"[A] person who violates [MCL 324.81122] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $1,000.00, or both, for each violation." See MCL 324.81147(1).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

[13] MCL 324.81131(9) provides that "[s]ubject to [MCL 324.81131(4)], if a local unit of government adopts an ordinance pursuant to [MCL 324.81131(2), MCL 324.81131(4), or MCL 324.81131(5)], a person may operate an ORV with the flow of traffic on the far right of the maintained portion of the street or county road covered by the ordinance. If the operation of ORVs on a highway is authorized pursuant to [MCL 324.81131(6)], a person may operate an ORV with the flow of traffic as follows: (a) [o]n the right shoulder of the highway[;] (b) [i]f there is not a right shoulder or the right shoulder is not of adequate width, on the right unmaintained portion of the highway[;] (c) [o]n the far right of the right traffic lane of the highway, if necessary to cross a bridge or culvert and if the operator brings the ORV to a complete stop before entering and yields the right-of-way to an approaching vehicle on that traffic lane."

2.21 Operation of ORVs in Prohibited Places[14]

A. Misdemeanors

1. Statutory Authority

- "An individual shall not operate an ORV . . . [i]n a state game area or state park or recreation area, except on roads, trails, or areas designated for this purpose, notwithstanding [MCL 324.72118[15]]; on other state-owned lands under the control of the [DNR] where the operation would be in violation of rules promulgated by the [DNR]; in a forest nursery or planting area; on public lands posted or reasonably identifiable as an area of forest reproduction, and when growing stock may be damaged; in a dedicated natural area of the [DNR]; or in any area in such a manner as to create an erosive condition, or to injure, damage, or destroy trees or growing crops. However, the [DNR] may permit an owner and guests of the owner to use an ORV within the boundaries of a state forest in order to access the owner's property." MCL 324.81133(1)(d).

- "An individual shall not operate an ORV . . . [i]n or upon the lands of another without the written consent of the owner, the owner's agent, or a lessee, when required by [MCL 324.73101 *et seq*.] The operator of the vehicle is liable for damage to private property caused by operation of the vehicle, including, but not limited to, damage to trees, shrubs, or growing crops, injury to other living creatures, or erosive or other ecological damage. The owner of the private property may recover from the individual responsible nominal damages of not less than the amount of damage or injury. Failure to post private property or fence or otherwise enclose in a manner to exclude intruders or of the private property owner or other authorized person to personally communicate

[14] Violations that occur due to operation in prohibited places where speed is an issue are addressed in Section 2.25.

[15] MCL 324.72118 requires the DNR to inventory forest roads that are state roads which, beginning when the inventory for a region is completed or required to be completed, whichever occurs first, will be open to motorized use by the public unless designated otherwise by an order of the DNR under MCL 324.504. However, forest roads in Michigan's Upper Peninsula will be open to motorized use by the public unless designated otherwise by an order of the DNR under MCL 324.504. MCL 324.72118(2)(a). The DNR is also required to annually post to its website a map or maps of the forest roads and the total miles of forest roads open to motorized use in all inventoried regions. MCL 324.72118(3).

against trespass does not imply consent to ORV use." MCL 324.81133(1)(h).

- "An individual shall not operate an ORV . . . [o]n an operating or nonabandoned railroad or railroad right-of-way, or public utility right-of-way, other than for the purpose of crossing at a clearly established site intended for vehicular traffic, except railroad, public utility, or law enforcement personnel while in performance of their duties, and except if the right-of-way is designated as provided for in [MCL 324.81127]." MCL 324.81133(1)(m).

- "An individual shall not operate an ORV . . . [i]n or upon the waters of any stream, river, bog, wetland, swamp, marsh, or quagmire except over a bridge, culvert, or similar structure." MCL 324.81133(1)(n).

- "An individual shall not operate an ORV . . . [o]n public land, in a manner contrary to operating regulations." MCL 324.81133(1)(q).[16]

- "An individual shall not operate an ORV . . . [o]n a forest trail if the ORV is greater than 50 inches in width." MCL 324.81133(1)(u).

2. Penalties

"[A] person who violates [MCL 324.81133(1)(d) (unless the operation creates an erosive condition, see below), MCL 324.81133(1)(m), MCL 324.81133(1)(q), or MCL 324.81133(1)(u)] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $1,000.00, or both, for each violation." See MCL 324.81147(1).

"A person who violates [MCL 324.81133(1)(d)] by operating an ORV in such a manner as to create an erosive condition or who violates [MCL 324.81133(1)(h) or MCL 324.81133(1)(n)] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $250.00 or more than $1,000.00, or both, for each violation." MCL 324.81147(2).

[16]This offense is commonly cited by conservation officers when an ORV is operated in a closed area of the federal forest lands. See Section 2.8.

3. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

B. State Civil Infractions

1. Statutory Authority

- "An individual shall not operate an ORV . . . [i]n an area on which public hunting is permitted during the regular November firearm deer season, from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except as follows:

  (*i*) During an emergency.

  (*ii*) For law enforcement purposes.

  (*iii*) To go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle.

  (*iv*) To remove legally harvested deer, bear, or elk from public land. An individual shall operate an ORV under this subparagraph at a speed not exceeding 5 miles per hour, using the most direct route that complies with [MCL 324.81133(1)(n)].

  (*v*) To conduct necessary work functions involving land and timber survey, communication and transmission line patrol, or timber harvest operations.

  (*vi*) On property owned or under control of the operator or on which the operator is an invited guest.

  (*vii*) While operating a vehicle registered under the [MVC] is exempt from this subdivision while operating on a private road capable of sustaining automobile traffic or a street, county road, or highway.

  (*viii*) If the individual holds a valid permit to hunt from a standing vehicle issued under [MCL

> 324.40101 *et seq*.] or is a person with a disability using an ORV to access public lands for purposes of hunting or fishing through use of a designated trail or forest road. An individual holding a valid permit to hunt from a standing vehicle issued under [MCL 324.40101 *et seq*.], or a person with a disability using an ORV to access public lands for purposes of hunting or fishing, may display a flag, the color of which the [DNR] shall determine, to identify himself or herself as a person with a disability or an individual holding a permit to hunt from a standing vehicle under [MCL 324.40101 *et seq*.]" MCL 324.81133(1)(i).

- "An individual shall not operate an ORV . . . [o]n or across a cemetery or burial ground, or land used as an airport." MCL 324.81133(1)(k).

- "An individual shall not operate an ORV . . . [w]ithin 100 feet of a slide, ski, or skating area, unless the vehicle is being used for the purpose of servicing the area or is being operated pursuant to [MCL 324.81131(2), MCL 324.81131(3), MCL 324.81131(5), or MCL 324.81131(6)[17]]." MCL 324.81133(1)(*l*).

2. Penalties

"A person who violates [MCL 324.81133(1)(i), MCL 324.81133(1)(k), or MCL 324.81133(1)(*l*)] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.81147(3).

[17] MCL 324.81131(2) authorizes a county board of commissioners to adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the county. MCL 324.81131(3) authorizes the legislative body of a township or municipality to adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the township or municipality, respectively. MCL 324.81131(5) authorizes the legislative body of a municipality to adopt an ordinance authorizing the operation of ORVs on 1 or more streets within the municipality. MCL 324.81131(6) authorizes the legislative body of a local unit of government to request the Michigan Department of Transportation (MDOT) to authorize the local unit of government to adopt an ordinance authorizing the operation of ORVs on a highway, other than an interstate highway, located within the local unit of government.

2.22 Operation of ORVs by Children Under 16 Years of Age

A. Safety Education Course

1. Statutory Authority

"A person who is under 16 years of age, before operating an ATV or ORV, shall complete an ORV safety education course approved by the [DNR]." MCL 324.81130(1). "This course may include a written examination and a driving test designed to test the competency of the applicant." *Id*. "Upon successful completion of this safety education course, a person shall receive an ORV safety certificate." *Id*.

The requirements for conducting safety education courses and inspections of those courses are governed by MCL 324.81130(2)-(6).

2. Penalties

"A person who violates [MCL 324.81130] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.81147(3).

B. Age-Specific Restrictions

1. Statutory Authority[18]

[18] "The requirements of [MCL 324.81129] are in addition to any applicable requirements of [MCL 324.81131(13),]" which requires a person who is under the age of 18 to possess a valid driver license or be under the direct supervision of a parent or guardian and possess an ORV safety certificate before operating an ORV. MCL 324.81129(19); MCL 324.81131(13).

MCL 324.81129 establishes restrictions on the operation of ORVs by minors. The following table summarizes each of these offenses and exceptions:

Person Responsible	Prohibited Conduct	Statutory Reference
A parent or legal guardian of a child less than 16 years of age.	"[S]hall not permit the child to operate an ORV unless the child is under the direct visual supervision of an adult and the child has an ORV safety certificate in his or her immediate possession."	MCL 324.81129(1). **Note:** No safety certificate is required for children operating ORVs in organized racing or riding events as long as certain conditions are met. MCL 324.81129(17).
A parent or legal guardian of a child less than 12 years of age.	"[S]hall not permit the child to operate an ATV with 4 or more wheels unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child."	MCL 324.81129(2). **Note:** This subsection does not apply to ATVs used in agricultural operations or organized racing or riding events as long as certain conditions are met. MCL 324.81129(17).
A parent or legal guardian of a child less than 16 years of age.	"[S]hall not permit the child to operate a 3-wheeled ATV."	MCL 324.81129(3).
The owner or person in charge of an ORV.	"[S]hall not knowingly permit the vehicle to be operated by a child less than 16 years of age unless the child is under the direct visual supervision of an adult and the child has an ORV safety certificate in his or her immediate possession."	MCL 324.81129(4). **Note:** No safety certificate is required for children operating ORVs in organized racing or riding events as long as certain conditions are met. MCL 324.81129(17).

Person Responsible	Prohibited Conduct	Statutory Reference
The owner or person in charge of an ATV with 4 or more wheels.	"[S]hall not knowingly permit the vehicle to be operated by a child less than 12 years of age unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child."	MCL 324.81129(5). **Note:** This subsection does not apply to ATVs used in agricultural operations or organized racing or riding events as long as certain conditions are met. MCL 324.81129(17).
The owner or person in charge of a 3-wheeled ATV.	"[S]hall not knowingly permit the vehicle to be operated by a child less than 16 years of age."	MCL 324.81129(6).
A child who is less than 16 years of age.	"[S]hall not operate an ORV unless the child is under the direct visual supervision of an adult and the child has an ORV safety certificate in his or her immediate possession."	MCL 324.81129(12). **Note:** No safety certificate is required for children operating ORVs in organized racing or riding events as long as certain conditions are met. MCL 324.81129(17).
A child who is less than 12 years of age.	"[S]hall not operate an ATV with 4 or more wheels unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child."	MCL 324.81129(13). **Note:** This subsection does not apply to ATVs used in agricultural operations or organized racing or riding events as long as certain conditions are met. MCL 324.81129(17).
A child who is less than 16 years of age.	"[S]hall not operate a 3-wheeled ATV."	MCL 324.81129(14).

In addition, the following restrictions also apply to children under 16 years of age who operate an ORV:

- "Subject to [MCL 324.81129(17)], when operating an ORV, a child who is less than 16 years of age shall present the ORV safety certificate to a peace officer upon demand." MCL 324.81129(15).

- "Notwithstanding any other provision of [MCL 324.81129], an operator who is less than 12 years of age shall not cross a street, county road, or highway." MCL 324.81129(16).

- "An operator who is not less than 12 years of age but less than 16 years of age may cross a street, county road, or highway or operate an ORV pursuant to [MCL 324.81131(9)] if the operator has an ORV safety certificate in his or her immediate possession and meets any other requirements under [MCL 324.81129] for operation of the vehicle." MCL 324.81129(16).

2. Penalties

"[A] person who violates [MCL 324.81129 or MCL 324.81131] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $1,000.00, or both, for each violation." MCL 324.81147(1).

3. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

2.23 Allowing a Mentally or Physically Incompetent Person to Operate an ORV

A. Statutory Authority

"The owner or person in charge of an ORV shall not knowingly permit the vehicle to be operated by an individual who is incompetent to operate the vehicle because of mental or physical disability." MCL 324.81129(7).

B. Penalties

"[A] person who violates [MCL 324.81129] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $1,000.00, or both, for each violation." MCL 324.81147(1).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

2.24 Operation of ORVs in a Careless, Unsafe, or Otherwise Prohibited Manner

A. Statutory Authority

- "An individual shall not operate an ORV . . . [a]t a rate of speed greater than is reasonable and proper, or in a careless manner, having due regard for conditions then existing." MCL 324.81133(1)(a).

- "An individual shall not operate an ORV . . . [e]xcept as otherwise provided in [MCL 324.40111], while transporting on the vehicle a bow unless unstrung or encased, or a firearm unless unloaded and securely encased, or equipped with and made inoperative by a manufactured keylocked trigger housing mechanism." MCL 324.81133(1)(j).

- "An individual shall not operate an ORV . . . [t]o hunt, pursue, worry, kill, or attempt to hunt, pursue, worry, or kill an animal, whether wild or domesticated." MCL 324.81133(1)(o).

- "An individual shall not operate an ORV . . . [i]n a manner so as to leave behind litter or other debris." MCL 324.81133(1)(p).

- "An individual shall not operate an ORV . . . [w]hile transporting or possessing, in or on the vehicle, alcoholic liquor in a container that is open or uncapped or upon which the seal is broken, except under either of the following circumstances:

  (*i*) The container is in a trunk or compartment separate from the passenger compartment of the vehicle.

  (*ii*) If the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is encased or enclosed." MCL 324.81133(1)(r).

- "An individual shall not operate an ORV . . . [w]hile transporting any passenger in or upon an ORV unless the manufacturing standards for the vehicle make provisions for transporting passengers." MCL 324.81133(1)(s).

- "An operator of an ORV, who is given by hand, voice, emergency light, or siren a visual or audible signal by a peace officer acting in the lawful performance of the peace officer's duty, directing the operator to bring the vehicle to a stop, and who willfully fails to obey the signal by increasing speed, extinguishing lights, or otherwise attempting to flee or elude the officer, is guilty of a misdemeanor." MCL 324.81146(1). "The peace officer giving the signal must be in uniform, and the peace officer's vehicle must be easily identifiable as an official law enforcement vehicle." *Id*.

- "The operator of a vehicle on the private premises of another, when visibly hailed by the owner or the owner's authorized agent, shall bring the vehicle to an immediate stop and provide personal identification." MCL 324.81146(2). "Refusal to obey such a request to stop or subsequent escape or attempt to escape is a misdemeanor." *Id*.

B. Penalties

"[A] person who violates [MCL 324.81133(1)(a), MCL 324.81133(1)(j); MCL 324.81133(1)(o); MCL 324.81133(1)(p); MCL 324.81133(1)(r); MCL 324.81133(1)(s); or MCL 324.81146] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $1,000.00, or both, for each violation." See MCL 324.81147(1).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

2.25 Operation of ORVs at a Greater Than Minimum Speed at Prohibited Locations

A. Misdemeanor

1. Statutory Authority

MCL 324.81133(1)(t) provides:

> An individual shall not operate an ORV . . . [o]n adjacent private land, in an area zoned residential, within 300 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle except under any of the following circumstances:
>
> > (*i*) On a forest road or forest trail if the forest road or forest trail is maintained by or under the jurisdiction of the [DNR].
> >
> > (*ii*) On a street, county road, or highway on which ORV use is authorized under [MCL 324.81131(2), MCL 324.81131(3), MCL 324.81131(5), or MCL 324.81131(6)[19]].

2. Penalties

"[A] person who violates [MCL 324.81133(1)(t)] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $1,000.00, or both, for each violation." See MCL 324.81147(1).

3. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

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[19] MCL 324.81131(2) authorizes a county board of commissioners to adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the county. MCL 324.81131(3) authorizes the legislative body of a township or municipality to adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the township or municipality, respectively. MCL 324.81131(5) authorizes the legislative body of a municipality to adopt an ordinance authorizing the operation of ORVs on 1 or more streets within the municipality. MCL 324.81131(6) authorizes the legislative body of a local unit of government to request the Michigan Department of Transportation (MDOT) to authorize the local unit of government to adopt an ordinance authorizing the operation of ORVs on a highway, other than an interstate highway, located within the local unit of government.

- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

B. State Civil Infractions

1. Statutory Authority

- "An individual shall not operate an ORV . . . [o]n the frozen surface of public waters within 100 feet of an individual not in or upon a vehicle, or within 100 feet of a fishing shanty or shelter or an area that is cleared of snow for skating purposes, except at the minimum speed required to maintain controlled forward movement of the vehicle, or as may be authorized by permit in special events." MCL 324.81133(1)(e).

- "An individual shall not operate an ORV . . . [w]ithin 100 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle, except under any of the following circumstances:

  (*i*) On property owned by or under the operator's control or on which the operator is an invited guest.

  (*ii*) On a forest road or forest trail if the forest road or forest trail is maintained by or under the jurisdiction of the [DNR].

  (*iii*) On a street, county road, or highway on which ORV use is authorized under [MCL 324.81131(2), MCL 324.81131(3), MCL 324.81131(5), or MCL 324.81131(6)[20]]." MCL 324.81133(1)(g).

2. Penalties

"A person who violates [MCL 324.81133(1)(e) or MCL 324.81133(1)(g)] is responsible for a state civil infraction and

[20] MCL 324.81131(2) authorizes a county board of commissioners to adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the county. MCL 324.81131(3) authorizes the legislative body of a township or municipality to adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the township or municipality, respectively. MCL 324.81131(5) authorizes the legislative body of a municipality to adopt an ordinance authorizing the operation of ORVs on 1 or more streets within the municipality. MCL 324.81131(6) authorizes the legislative body of a local unit of government to request the Michigan Department of Transportation (MDOT) to authorize the local unit of government to adopt an ordinance authorizing the operation of ORVs on a highway, other than an interstate highway, located within the local unit of government.

may be ordered to pay a civil fine of not more than $500.00." MCL 324.81147(3).

2.26 Operation of ORV After Operating Privileges Have Been Suspended

A. Statutory Authority

"A person whose right to operate an ORV has been suspended pursuant to [MCL 324.81101 *et seq.*,] and who operates an ORV is guilty of a misdemeanor[.]" MCL 324.81142.

B. Penalties

A violation of MCL 324.81142 is "punishable by imprisonment for not more than 90 days, or a fine of not more than $1,000.00, or both." MCL 324.81142.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

2.27 Operation of ORV After Driver's License Has Been Suspended or Revoked

A. Statutory Authority

"If the operator's or chauffeur's license of a person who is a resident of [Michigan] is suspended or revoked by the secretary of state under the [Michigan Vehicle Code (MVC), MCL 257.1 *et seq.*], or if the driver license of a person who is a nonresident is suspended or revoked under the law of the state in which he or she resides, that person shall not operate an ORV under [MCL 324.81101 *et seq.*,] for the same period." MCL 324.81140a(1).

B. Penalties

"A person who violates [MCL 324.81140a] is guilty of a misdemeanor punishable as follows:

(a) For a first conviction, imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

(b) For a second or subsequent conviction, imprisonment for not more than 180 days or a fine of not more than $1,000.00, or both." MCL 324.81140a(2).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

Part D—Offenses in the ORV Act Involving Alcohol and/or Controlled Substances

2.28 Preliminary Chemical Breath Analysis (PBT) & Chemical Tests of Blood, Urine, or Breath

A. Preliminary Chemical Breath Analysis (PBT)

1. Submitting to or Refusing a Preliminary Chemical Breath Analysis Test (PBT)

"A peace officer who has reasonable cause to believe that a person was operating an ORV and that the person by the consumption of alcoholic liquor may have affected his or her ability to operate the ORV, may require the person to submit to a [PBT]." MCL 324.81141(1). "A peace officer may arrest a person based in whole or in part upon the results of a [PBT]." MCL 324.81141(2).

"A person who submits to a [PBT] remains subject to the requirements of [MCL 324.81136–MCL 324.81140] for the purposes of chemical tests described in those sections." MCL 324.81141(4).

"A person who refuses to submit to a [PBT] upon a lawful request by a peace officer is responsible for a state civil

infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.81141(5).

2. Admissibility at Trial

"The results of a [PBT] shall be admissible in a criminal prosecution for a crime enumerated in [MCL 324.81136(1)] or in an administrative hearing held under [MCL 324.81140], solely to assist the court or hearing officer in determining a challenge to the validity of an arrest." MCL 324.81141(3). "[MCL 324.81141(3)] does not limit the introduction of other competent evidence offered to establish the validity of an arrest." MCL 324.81141(3).

B. Chemical Tests

1. Implied Consent Upon Arrest

MCL 324.81137(1) provides:

> Except as provided in [MCL 324.81137(2)], a person who operates an ORV is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood, and may be requested by a peace officer to submit to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood if:
>
> > (a) The person is arrested for a violation of [MCL 324.81134(1), MCL 324.81134(3), MCL 324.81134(4), MCL 324.81134(5), MCL 324.81134(6), or MCL 324.81134(7)] or a local ordinance substantially corresponding to [MCL 324.81134(1), MCL 324.81134(3), or MCL 324.81134(6)].
> >
> > (b) The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of an ORV, and the peace officer has reasonable grounds to believe that the person was operating the ORV in violation of [MCL 324.81134].

"A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood." MCL 324.81137(2).

2. Advice

"A person who is requested pursuant to [MCL 324.81137(1)] to take a chemical test shall be advised of the right to refuse to submit to chemical tests; and if the person refuses the request of a peace officer to submit to chemical tests, a test shall not be given without a court order." MCL 324.81138(1). See also MCL 324.81136(5) (requiring peace officer, upon refusal to take the test, to advise the arrested person that a test will not be given without a court order and that the person's right to operate an ORV will be suspended). MCL 324.81136 also requires that a person arrested for a crime enumerated in MCL 324.81136(1) who submits to a chemical test "be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests . . . within a reasonable time after his or her detention, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the defendants innocence or guilt[.]" MCL 324.81136(4). The defendant is responsible for obtaining a chemical analysis of the test sample when the defendant opts to have a chemical test administered by a person of his or her own choosing.[21] *Id.*

3. Submitting to or Refusing a Chemical Test

"If a person refuses the request of a peace officer under [MCL 324.81137(1)] to submit to a chemical test, a written report shall be forwarded to the secretary of state by the peace officer." MCL 324.81138(2). "The report shall state that the officer had reasonable grounds to believe that the person committed a violation described in [MCL 324.81137(1)] and that the person refused to submit to a chemical test upon the request of the

[21]However, the defendant cannot choose a specific analyst at the Michigan State Police (MSP) laboratory to administer the chemical test. See *People v Green*, 310 Mich App 249, 255 (2015) (reversing the trial court's order compelling the MSP laboratory to retest evidence at the defendant's request and holding that MCL 257.625a(6), which provides the defendant with an identical right to independent testing in the context of motor vehicles, does not permit a defendant to choose a forensic scientist at the MSP laboratory to administer a chemical test because "there is no indication that the MSP laboratory . . . offers chemical testing services to private individuals or is able to bill for such services[]"). "[T]he trial court lacks authority to compel a state agency to perform services it does not offer." *Green*, 310 Mich App at 255. Further, "MCR 6.201(A)(6) does not provide the trial court with the authority to order the MSP to retest its own evidence. Rather, it merely provides the court with the authority to provide *defendant* with the opportunity to test any tangible physical evidence." *Green*, 310 Mich App at 256-257.

peace officer and was advised of the consequences of the refusal." MCL 324.81138(2).

a. Requesting a Hearing

"Upon receipt of a report made pursuant to [MCL 324.81138], the secretary of state shall immediately notify the person in a writing, mailed to the person's last known address, that the report has been received and that within 14 days after the date of the notice the person may request an administrative hearing as provided in [MCL 324.81140]." MCL 324.81139(1). "The notice shall specifically state that failure to request a hearing within 14 days shall result in the suspension of the person's right to operate an ORV and that the person is not required to retain counsel for the hearing, although counsel will be permitted to represent the person at the hearing." MCL 324.81139(2).

"If a person who refuses to submit to a chemical test under [MCL 324.81138] does not request an administrative hearing within 14 days after the date of notice under [MCL 324.81139], the secretary of state shall suspend the person's right to operate an ORV for a period of 1 year, or for a second or subsequent refusal within a period of 7 years, for 2 years." MCL 324.81140(1).

If the person requests a hearing, MCL 324.81140(2)-(3) govern the procedures for that hearing. "After the administrative hearing, if the person is found to have unreasonably refused to submit to a chemical test, the secretary of state shall suspend the person's right to operate an ORV for a period of 1 year, or for a second or subsequent refusal within a period of 7 years, for 2 years." MCL 324.81140(4).

b. Circuit Court Appeal

"Within 60 days after the final decision or order is issued by the hearing officer, the person may file a petition in the circuit court of the county in which the arrest was made to review the suspension. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under [MCL 324.81138] may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in [MCL 324.81140b]." MCL 324.81140(4). "The

scope of the court's review shall be limited to the issues provided in . . . MCL 24.306." MCL 324.81140(4).

Under MCL 24.306, "the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

> (a) In violation of the constitution or a statute.
>
> (b) In excess of the statutory authority or jurisdiction of the agency.
>
> (c) Made upon unlawful procedure resulting in material prejudice to a party.
>
> (d) Not supported by competent, material and substantial evidence on the whole record.
>
> (e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
>
> (f) Affected by other substantial and material error of law." MCL 24.306(1).

"The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings." MCL 24.306(2). See the Michigan Judicial Institute's *Appeals & Opinions Benchbook*, Chapter 2, for more information on administrative appeals.

A person aggrieved by a final determination of the secretary of state may petition for a review of the determination in the circuit court in the county where the person was arrested. MCL 324.81140b(1). Moreover, a peace officer who is aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under MCL 324.81140 may, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the county where the arrest was made. MCL 324.81140b(1). In both instances, the petition "shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made." MCL 324.81140b(1).

After a Petition is Filed. "Except as otherwise provided in [MCL 324.81140b], the circuit court shall enter an order setting the cause for hearing for a day certain that is not more than 63 days after the date of the order. The order, a

copy of the petition that includes the person's full name, current address, birth date, and driver license number, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared under [MCL 324.81140], the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing." MCL 324.81140b(2).

At the hearing. "The court may take testimony and examine all the facts and circumstances incident to the order that the person not operate an ORV in this state. The court may affirm, modify, or set aside the order. The order of the court shall be duly entered, and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order." MCL 324.81140b(3).

Review of a Determination under MCL 324.81140 (Chemical Rights). "Except as otherwise provided in [MCL 324.81140b], in reviewing a determination under [MCL 324.81140], the court shall confine its consideration to a review of the record prepared under [MCL 324.81140] to determine whether the hearing officer properly determined the issues enumerated in [MCL 324.81140]." MCL 324.81140b(4).

Review of a Determination under MCL 324.81134 (Illegal Operation of an ORV). "In reviewing a determination resulting in issuance of an order under [MCL 324.81134], the court shall confine its consideration to a review of the record prepared under [MCL 324.81140]. The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:

> (a) In violation of the constitution of the United States, the state constitution of 1963, or a statute.
>
> (b) In excess of the secretary of state's statutory authority or jurisdiction.
>
> (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
>
> (d) Not supported by competent, material, and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law." MCL 324.81140b(5)

4. Requirements for Collecting Sample/Specimen for Chemical Test

"A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the alcoholic content of the blood under [MCL 324.81101 *et seq*.] Liability for a crime or civil damages predicated on the act of withdrawing blood and related procedures shall not attach to a qualified person who withdraws blood or assists in the withdrawal in accordance with [MCL 324.81101 *et seq*.,] unless the withdrawal is performed in a negligent manner." MCL 324.81136(3).

5. Disclosure

"If a chemical test of an operator's blood, urine, or breath is given, the results of the test shall be made available to the person charged with an offense enumerated in [MCL 324.81136(1)] or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court." MCL 324.81136(2). "The prosecution shall furnish the report at least 2 days before the day of the trial and the results shall be offered as evidence by the prosecution in a criminal proceeding." *Id*. "Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution." *Id*.

Similarly, where an ORV has been involved in an accident, chemical tests may be taken and must be disclosed as required by statute. See MCL 324.81136(8)-(9). Under MCL 324.81136(8), if a chemical analysis of an ORV operator's blood has been taken pursuant to that provision (taking blood after ORV accident for medical purposes), "[t]he medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure." Under MCL

324.81136(9), a person's blood must be withdrawn "in a manner directed by the medical examiner" following an accident involving an ORV where the operator dies. "The medical examiner shall give the results of the chemical analysis to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police." *Id.*

6. Admissibility Issues

"In a criminal prosecution for violating [MCL 324.81134] or a local ordinance substantially corresponding to [MCL 324.81134(1), MCL 324.81134(3), or MCL 324.81134(6)] or in a criminal prosecution for negligent homicide, manslaughter, or murder resulting from the operation of an ORV while the operator is alleged to have been impaired by or under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance, or to have had a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or to have had in his or her body any amount of a controlled substance listed in schedule 1 under . . . MCL 333.7212, or a rule promulgated under [MCL 333.7212], or of a controlled substance described in [MCL 333.7214(a)(*iv*)], the amount of alcohol or controlled substance in the operator's blood at the time alleged as shown by chemical analysis of the operator's blood, urine, or breath is admissible into evidence." MCL 324.81136(1).

"[MCL 324.81136] shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was impaired by or under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance, or whether the person had a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or had in his or her body any amount of a controlled substance listed in schedule 1 under . . . MCL 333.7212, or a rule promulgated under [MCL 333.7212], or of a controlled substance described in [MCL 333.7214(a)(*iv*).]" MCL 324.81136(6).

"If a jury instruction regarding a defendant's refusal to submit to a chemical test under [MCL 324.81136] is requested by the prosecution or the defendant, the jury instruction shall be given as follows:

> 'Evidence was admitted in this case which, if believed by the jury, could prove that the defendant had exercised his or her right to refuse a chemical test. You are instructed that such a refusal is within the statutory rights of the defendant and is not evidence of the defendant's guilt. You are not to consider such a refusal in determining the guilt or innocence of the defendant.'" MCL 324.81136(7).

2.29 Operating an ORV While Under the Influence, With an Unlawful Bodily Alcohol Content, or With Any Amount of Certain Controlled Substances

A. Statutory Authority

MCL 324.81134(1) provides:

> A person shall not operate an ORV if any of the following apply:
>
> > (a) The person is under the influence of alcoholic liquor or a controlled substance, as defined by . . . MCL 333.7104, or a combination of alcoholic liquor and a controlled substance.
> >
> > (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
> >
> > (c) The person has in his or her body any amount of a controlled substance listed in schedule 1 under . . . MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in [MCL 333.7214(a)(*iv*).]

B. Procedural Issues

"Before accepting a plea of guilty under [MCL 324.81134], the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of the person's right to operate an ORV and the penalty imposed for violation of [MCL 324.81134]." MCL 324.81134(19).

C. Penalties

"Before imposing sentence for a violation of [MCL 324.81134(1), MCL 324.81134(3), MCL 324.81134(6), or MCL 324.81134(7)] or a

local ordinance substantially corresponding to [MCL 324.81134(1),MCL 324.81134(3), or MCL 324.81134(6)], the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs." MCL 324.81134(18). "As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs." *Id*. "The person shall pay for the costs of the screening, assessment, and rehabilitative services." *Id*.

1. No Prior Convictions Within Seven Years

A person convicted of violating MCL 324.81134(1)(a) or MCL 324.81134(1)(b) is guilty of a misdemeanor punishable by one or more of the following:

- community service for not more than 360 hours
- imprisonment for not more than 93 days;
- fine of not less than $100 or more than $500. MCL 324.81134(8)(a)(*i*)-(*iii*).

Additionally, the court may order payment of the costs of the prosecution. MCL 324.81134(16).

If the court finds that the person has no prior convictions within seven years, "[a]s part of the sentence for a violation of [MCL 324.81134(1)], or a local ordinance substantially corresponding to [MCL 324.81134(1)], . . . the court shall order that the person not operate an ORV for a period of not less than 6 months or more than 2 years." MCL 324.81134(14)(a).

2. One Prior Conviction Within Seven Years

A person convicted of a second violation, within a seven year period, of MCL 324.81134(1)(a) or MCL 324.81134(1)(b), or a substantially corresponding local ordinance, must be sentenced to pay a fine of not less than $200 or more than $1,000 and to one or more of the following:

- imprisonment for not less than 5 days or more than 1 year.;
- community service for not less than 30 days or more than 90 days. MCL 324.81134(8)(b).

Any term of imprisonment imposed shall not be suspended "unless the defendant agrees to participate in a specialty court program and successfully completes the program." MCL 324.81134(8)(d).

If the court finds that the person has one or more prior convictions within seven years, "[a]s part of the sentence for a violation of [MCL 324.81134(1)] or a local ordinance substantially corresponding to [MCL 324.81134(1)], . . . the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years." MCL 324.81134(14)(b).

3. Two or More Prior Convictions

A person convicted of two or more prior convictions, regardless of the number of years that have elapsed, is guilty of a felony and must be sentenced to pay a fine of not less than $500 or more than $5,000 and either of the following:

- imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than 5 years;

- Probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed must be served consecutively. MCL 324.81134(8)(c)(*i*)-(*ii*).

Any term of imprisonment imposed shall not be suspended "unless the defendant agrees to participate in a specialty court program and successfully completes the program." MCL 324.81134(8)(d).

If the court finds that the person has two or more prior convictions within a 10-year period, "[a]s part of the sentence for a violation of [MCL 324.81134(1)] or a local ordinance substantially corresponding to [MCL 324.81134(1)], . . . the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years." MCL 324.81134(14)(c).

4. Community Service

"A person sentenced to perform community service under [MCL 324.81134] shall not receive compensation and shall reimburse the state or appropriate local unit of government for

the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service." MCL 324.81134(17).

5. Reimbursement For Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.81134], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(d). See also MCL 324.81134(16) (authorizing the court to order the person to pay the costs of the prosecution).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: https://www.michigan.gov/sos/-/media/Project/Websites/sos/License-and-ID/License-hearings/Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(c). See Section 1.6 for more information on points.
- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

2.30 Operating an ORV While Visibly Impaired

A. Statutory Authority

"A person shall not operate an ORV if, due to the consumption of alcoholic liquor, a controlled substance, . . . or a combination of alcoholic liquor and a controlled substance, the person's ability to operate an ORV is visibly impaired." MCL 324.81134(3).

"If a person is charged with violating [MCL 324.81134(1)], a finding of guilty is permissible under [MCL 324.81134(3)]." MCL 324.81134(3).

B. Procedural Issues

"Before accepting a plea of guilty under [MCL 324.81134], the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of the person's right to operate an ORV and the penalty imposed for violation of [MCL 324.81134]." MCL 324.81134(19).

C. Penalties

"Before imposing sentence for a violation of [MCL 324.81134(1), MCL 324.81134(3), MCL 324.81134(6), or MCL 324.81134(7)] or a local ordinance substantially corresponding to [MCL 324.81134(1),MCL 324.81134(3), or MCL 324.81134(6)], the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs." MCL 324.81134(18). "As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs." *Id*. "The person shall pay for the costs of the screening, assessment, and rehabilitative services." *Id*.

1. No Prior Convictions Within Seven Years

A person convicted of a violation of MCL 324.81134(3) is guilty of a misdemeanor punishable by one or more of the following:

- community service for not more than 45 days;
- imprisonment for not more than 93 days;
- fine of not more than $300. MCL 324.81134(10)(a).

Additionally, the court may order payment of the costs of the prosecution. MCL 324.81134(16).

If the court finds that the person has no prior convictions within seven years, "[a]s part of the sentence for a violation of [MCL 324.81134(3)] or a local ordinance substantially corresponding to [MCL 324.81134(3)], . . . the court shall order that the person not operate an ORV for a period of not less than 90 days or more than 1 year." MCL 324.81134(15)(a).

2. One Prior Conviction Within Seven Years

If the violation of MCL 324.81134(3) occurs within seven years of one prior conviction, the person must be sentenced to a fine of not less than $200 or more than $1,000, and either of the following:

- community service for not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than one year;
- imprisonment for not more than one year, and may be sentenced to community service for not more than 90 days. MCL 324.81134(10)(b).

If the court finds that the person has one or more prior convictions within seven years, "[a]s part of the sentence for a violation of [MCL 324.81134(3)] or a local ordinance substantially corresponding to [MCL 324.81134(3)], . . . the court shall order that the person not operate an ORV for a period of not less than 6 months or more than 18 months." MCL 324.81134(15)(b).

3. Two or More Prior Convictions

If the violation occurs after two or more prior convictions regardless of the number of years that have elapsed since any prior conviction, the person shall be sentenced to a fine of not less than $200 or more than $1,000, and either of the following:

- community service for a period of not less than ten days or more than 90 days, and may be sentenced to imprisonment for not more than one year
- imprisonment for not more than one year, and may be sentenced to community service for not more than 90 days. MCL 324.81134(10)(c).

If the court finds that the person has two or more prior convictions within a 10-year period, "[a]s part of the sentence for a violation of [MCL 324.81134(3)] or a local ordinance substantially corresponding to [MCL 324.81134(3)], . . . the court shall order that the person not operate an ORV for a period of not less than 1 year or more than 2 years." MCL 324.81134(15)(c).

4. Community Service

"A person sentenced to perform community service under [MCL 324.81134] shall not receive compensation and shall

reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service." MCL 324.81134(17).

5. Reimbursement For Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.81134], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(d). See also MCL 324.81134(16) (authorizing the court to order the person to pay the costs of the prosecution).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: https://www.michigan.gov/sos/-/media/Project/Websites/sos/License-and-ID/License-hearings/Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(c). See Section 1.6 for more information on points.
- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

2.31 Operating Under the Influence, With Unlawful Bodily Alcohol Content, With Any Amount of Certain

Controlled Substances, or While Visibly Impaired Causing Death

A. Statutory Authority

"A person who operates an ORV in violation of [MCL 324.81134(1) or MCL 324.81134(3)] and by the operation of that ORV causes the death of another person is guilty of a felony[.]" MCL 324.81134(4).

B. Procedural Issues

"Before accepting a plea of guilty under [MCL 324.81134], the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of the person's right to operate an ORV and the penalty imposed for violation of [MCL 324.81134]." MCL 324.81134(19).

C. Penalties

Operating an ORV while under the influence, with an unlawful bodily alcohol content, or while visibly impaired resulting in the death of another person is a felony punishable by:

- imprisonment for not more than 15 years;
- fine of not less than $2,500 or more than $10,000; or
- both. MCL 324.81134(4).

"A person may be charged with and convicted of [MCL 324.81134(4)[22]] for each death arising out of the same criminal transaction, and the court may order the terms of imprisonment to be served consecutively to each other[.]" MCL 769.36(1)(c).

1. Reimbursement For Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.81134], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(d). See

[22] Effective March 31, 2015, 2014 PA 405 amended MCL 324.81134, and the amendments resulted in the renumbering of the statute's subsections. Former MCL 324.81134(7) is now MCL 324.81134(4). However, MCL 769.36(1)(c) has not yet been amended to reflect this change.

also MCL 324.81134(16) (authorizing the court to order the person to pay the costs of the prosecution).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: https://www.michigan.gov/sos/-/media/Project/Websites/sos/License-and-ID/License-hearings/Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(a). See Section 1.6 for more information on points.
- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

2.32 Operating While Under the Influence, With Unlawful Bodily Alcohol Content, With Any Amount of Certain Controlled Substances, or While Visibly Impaired Causing Serious Impairment of a Body Function

A. Statutory Authority

"A person who operates an ORV within [Michigan] in violation of [MCL 324.81134(1) or MCL 324.81134(3)] and by the operation of that ORV causes a serious impairment of a body function of another person is guilty of a felony[.]" MCL 324.81134(5).

B. Procedural Issues

"Before accepting a plea of guilty under [MCL 324.81134], the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of the person's right to operate an ORV and the penalty imposed for violation of [MCL 324.81134]." MCL 324.81134(19).

C. Penalties

Operating an ORV while under the influence, with an unlawful bodily alcohol content, or while visibly impaired and causing a serious impairment of a body function is a felony punishable by:

- imprisonment for not more than five years;
- fine of not less than $1,000 or more than $5,000; or
- both. MCL 324.81134(5).

1. Reimbursement For Expenses Incurred

> "As part of the sentence for a conviction of [violating or attempting to violate MCL 324.81134], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(d). See also MCL 324.81134(16) (authorizing the court to order the person to pay the costs of the prosecution).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: https://www.michigan.gov/sos/-/media/Project/Websites/sos/License-and-ID/License-hearings/Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(a). See Section 1.6 for more information points.
- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

2.33 Knowingly Allowing Another Who is Under the Influence of Alcoholic Liquor and/or a Controlled

Substance, Has Unlawful Alcohol Content, or is Visibly Impaired to Operate ORV

A. Statutory Authority

"The owner or person in charge or in control of an ORV shall not authorize or knowingly permit the ORV to be operated by a person if any of the following apply:

> (a) The person is under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance.
>
> (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
>
> (c) The person's ability to operate an ORV is visibly impaired due to the consumption of an alcoholic liquor, a controlled substance, or a combination of an alcoholic liquor and a controlled substance." MCL 324.81134(2).

B. Penalties

A violation of MCL 324.81134(2) is a misdemeanor punishable by:

- imprisonment for not more than 93 days;
- fine of not less than $100 or more than $500; or
- both;
- plus costs of the prosecution. MCL 324.81134(9); MCL 324.81134(16).

1. Reimbursement for Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.81134], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(d). See also MCL 324.81134(16) (authorizing the court to order the person to pay the costs of the prosecution).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: https://www.michigan.gov/sos/-/media/Project/Websites/sos/License-and-ID/License-hearings/Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(c). See Section 1.6 for more information on points.
- ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

2.34 The Michigan Medical Marihuana Act and The Michigan Regulation and Taxation of Marihuana Act

"The Michigan Medical Marihuana Act (MMMA) prohibits the prosecution of registered patients who internally possess marijuana, but the act does not protect registered patients who operate a vehicle while 'under the influence' of marijuana." *People v Koon*, 494 Mich 1, 3 (2013). Although the situation in *Koon* involved a motor vehicle and the Motor Vehicle Code's (MVC) zero-tolerance provision, its discussion is included here as potentially relevant to a similar situation involving an ORV. See MCL 324.81134(1)(c), which contains language similar to MCL 257.625(8), the MVC's zero-tolerance provision. "The [MVC] prohibits a person from driving with any amount of a schedule 1 controlled substance, a list that includes marijuana, in his or her system." *Id*. However, "the MMMA's protection supersedes the [MVC's] prohibition and allows a registered patient to drive when he or she has indications of marijuana in his or her system but is not otherwise under the influence of marijuana." *Id*. Stated another way, "MCL 257.625(8), which is inconsistent with the MMMA, does not apply to the medical use of marijuana." *Koon*, 494 Mich at 7. "[T]he MMMA is inconsistent with, and therefore supersedes, MCL 257.625(8) unless a registered qualifying patient loses immunity because of his or her failure to act in accordance with the MMMA." *Koon*, 494 Mich at 8-9.

Effective December 6, 2018, Initiated Law 1 of 2018, MCL 333.27951 *et seq*., created the Michigan Regulation and Taxation of Marihuana Act (MRTMA), the purpose of which "is to make marihuana legal under state and local law for adults 21 years of age or older, to make industrial hemp

legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved." MCL 333.27952.

Similar to the conduct limitations set forth in the MMMA[23], the MRTMA "does not authorize . . . operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while [consuming marihuana or] under the influence of marihuana[.]" MCL 333.27954(1)(a); MCL 333.27954(1)(g). "[S]moking marihuana within the passenger area of a vehicle upon a public way" is also prohibited. MCL 333.27954(1)(g). Notwithstanding, the MRTMA penalty provision does not penalize such conduct. MCL 333.27965.

The NREPA continues to prohibit the operation of a vehicle if the operator has any amount of a schedule 1 substance, which includes marihuana, in his or her body. MCL 324.81134(1)(c); MCL 333.7212(1)(c). It is unclear if violations of the limited conduct set forth in the MRTMA will be pursued under the NREPA. It is equally unclear if the *Koon* holding, which provides that the MMMA supersedes the MVC, will be extended to the MRTMA or to recreational vehicles.[24]

For more general information on the MMMA and the MRTMA, see the Michigan Judicial Institute's *Controlled Substances Benchbook*, Chapter 8.

2.35 Operating an ORV with Any Bodily Alcohol Content by a Person Who is Less Than 21 Years of Age

A. Statutory Authority

"A person who is less than 21 years of age, whether licensed or not, shall not operate an ORV if the person has any bodily alcohol content." MCL 324.81134(6).

B. Penalties

1. No Prior Convictions Within Seven Years

A person convicted of violating MCL 324.81134(6) is guilty of a misdemeanor punishable by one or both of the following:

[23]See MCL 333.26427(b)(4), which provides that the MMMA "does not authorize a person to . . . [o]perate, navigate, or be in actual physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana."

[24]See State Court Administrative Office (SCAO) Memorandum dated January 24, 2019, regarding frequently asked questions about the MRTMA.

- community service for not more than 360 hours;
- fine of not more than $250. MCL 324.81134(11)(a).

2. One or More Prior Conviction Within Seven Years

A person convicted of violating MCL 324.81134(6) within seven years of one or more prior convictions is guilty of a misdemeanor punishable by:

- community service for not more than 60 days;
- fine of not more than $500;
- imprisonment for not more than 93 days. MCL 324.81134(11)(b).

3. Community Service

"A person sentenced to perform community service under [MCL 324.81134] shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service." MCL 324.81134(17).

4. Reimbursement For Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.81134], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(d). See also MCL 324.81134(16) (authorizing the court to order the person to pay the costs of the prosecution).

C. Sanctions

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

Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(c). See Section 1.6 for more information on points.

ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

2.36 Operating an ORV in Violation of § 81134(1), (3), (4), (5), or (6) While Another Person Who is Less Than 16 Years of Age is Occupying the ORV

A. Statutory Authority

"A person shall not operate an ORV in violation of [MCL 324.81134(1), MCL 324.81134(3), MCL 324.81134(4), MCL 324.81134(5), or MCL 324.81134(6)] while another person who is less than 16 years of age is occupying the ORV." MCL 324.81134(7).

B. Penalties

1. Violation of § 81134(1), (3), (4), or (5) With Occupant Under 16: No Prior Convictions Within Seven Years

A person who violates MCL 324.81134(7) by operating an ORV in violation of MCL 324.81134(1), MCL 324.81134(3), MCL 324.81134(4), or MCL 324.81134(5) while another person who is less than 16 years of age is occupying the ORV is guilty of a misdemeanor and must be sentenced to pay a fine of not less than $200 or more than $1,000, and to one or more of the following:

- Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this term of imprisonment must be served consecutively. This term of imprisonment must not be suspended unless the defendant agrees to participate in and successfully completes a specialty court program.

- Community service for not less than 30 days or more than 90 days. MCL 324.81134(12)(a)(*i*)(A)-(B).

2. Violation of § 81134(1), (3), (4), or (5) With Occupant Under 16: One Prior Conviction Within Seven Years or Two or More Prior Convictions

A person who violates MCL 324.81134(7) by operating an ORV in violation of MCL 324.81134(1), MCL 324.81134(3), MCL 324.81134(4), or MCL 324.81134(5) within seven years of a prior conviction or after two or more prior convictions, regardless of the number of years that have elapsed since any prior conviction is guilty of a felony and must be sentenced to pay a fine of not less than $500 or more than $5,000 and to either of the following:

- Imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than five years

- Probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this term of imprisonment must be served consecutively. This term of imprisonment must not be suspended unless the defendant agrees to participate in and successfully completes a specialty court program. MCL 324.81134(12)(a)(*ii*)(A)-(B).

3. Violation of § 81134(6) With Occupant Under 16: No Prior Convictions Within Seven Years

A person who violates MCL 324.81134(7) by operating an ORV in violation of MCL 324.81134(6) while another person who is less than 16 years of age is occupying the ORV is guilty of a misdemeanor punishable by one or more of the following:

- community service for not more than 60 days;

- a fine of not more than $500;

- imprisonment for not more than 93 days. MCL 324.81134(12)(b)(*i*)(A)-(C).

4. Violation of § 81134(6) With Occupant Under 16: One Prior Conviction Within Seven Years or Two or More Prior Convictions

A person who violates MCL 324.81134(7) by operating an ORV in violation of MCL 324.81134(6) within seven years of a prior conviction or after two or more prior convictions, regardless of

the number of years that have elapsed since any prior conviction, a person who violates MCL 324.81134(7) by operating an ORV in violation of MCL 324.81134(6) must be sentenced to pay a fine of not less than $200 or more than $1,000, and to one or more of the following:

- Imprisonment for not less than five days or more than one year. This term of imprisonment must not be suspended unless the defendant agrees to participate in and successfully completes a specialty court program;
- Community service for not less than 30 days or more than 90 days. MCL 324.81134(12)(b)(*ii*)(A)-(B).

5. Community Service

"A person sentenced to perform community service under [MCL 324.81134] shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service." MCL 324.81134(17).

6. Reimbursement For Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.81134], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(d). See also MCL 324.81134(16) (authorizing the court to order the person to pay the costs of the prosecution).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: https://www.michigan.gov/sos/-/media/Project/Websites/sos/License-and-ID/License-hearings/Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(c). See Section 1.6 for more information on points.

ORV impoundment/seizure authorized under certain circumstances. See MCL 324.81147(6)-(7). See Section 2.15 for more information on impoundment/seizure.

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Part A—An Overview of the Snowmobile Act

3.1 Introduction

The Snowmobile Act is codified as Part 821 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.82101 *et seq*.

Maps of snowmobile trails are available at: www.michigan.gov/dnr/things-to-do/snowmobiling/snowmobile-maps-in-list-format.

3.2 Assumption of Risks When Participating in Sport of Snowmobiling

"Each person who participates in the sport of snowmobiling accepts the risks associated with that sport insofar as the dangers are obvious and inherent. Those risks include, but are not limited to, injuries to persons or property that can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; and collisions with signs, fences, or other snowmobiles or snow-grooming equipment. Those risks do not include injuries to persons or property that can result from the use of a snowmobile by another person in a careless or negligent manner likely to endanger person or property. When a snowmobile is operated in the vicinity of a railroad right-of-way, each person who participates in the sport of snowmobiling additionally assumes risks including, but not limited to, entanglement with tracks, switches, and ties and collisions with trains and other equipment and facilities." MCL 324.82126(8).

3.3 State-Owned Land Use Rules[1]

A. Unlawful Acts Generally

Mich Admin Code, R 299.922 provides:

> On land owned or under the control of the [DNR], it is unlawful to do any of the following:
>
> > (a) Enter, use, or occupy state-owned land for any purpose where posted against entry, use, or occupancy, as ordered by the [DNR].

[1] The land use rules discussed in this section are limited to those rules that may directly or indirectly apply to snowmobile use. Other prohibited acts are outside the scope of this benchbook. See Section 3.21 for more information on operating a snowmobile in prohibited places.

* * *

> (h) Destroy, damage, or remove a tree, including a dead and downed tree and woody debris, shrub, wildflower, grass, or other vegetation. Except in a wildlife food plot, this subdivision does not apply to picking and removing mushrooms, berries, and edible fruits or nuts for personal use.
>
> * * *
>
> (k) Obstruct any road or trail in a manner that hinders public access to state-owned land.
>
> (*l*) Park a vehicle of any type in an area posted as no parking; or, where a designated parking area exists, to park a vehicle of any type in an area other than the designated parking area. If a motor vehicle is found parked on state-owned land and is found to be in violation of this rule, the registered owner is prima facie responsible for the violation as defined in MCL 257.675c(1).
>
> (m) Park any vehicle in or otherwise occupy a designated campsite, except by a registered camper or authorized visitor to a registered camper.

B. Unlawful Acts in Game and Wildlife Areas

"In addition to the unlawful acts specified in R 299.922, on state-owned land in a state game or wildlife area, it is unlawful to do any of the following . . . [o]perate any wheeled self-propelled or motorized vehicle, except a [personal assistive mobility device (PAMD)], including a snowmobile and bicycle, on other than a designated road open to the public, a trail, parking lot, or area properly signed by the [DNR] as being open to such use." Mich Admin Code, R 299.926(c).

3.4 Provisions Related to Local Ordinances

A. Adopting Local Ordinances Authorizing Use of Snowmobiles

MCL 324.82124(1) authorizes municipalities to pass a local ordinance regulating the operation of snowmobiles:

> (1) Any municipality may pass an ordinance regulating the operation of snowmobiles if the ordinance meets substantially the minimum requirements of [MCL 324.82101 *et seq*]. A local unit of government may not adopt an ordinance that:
>
> > (a) Imposes a fee for a license.
> >
> > (b) Specifies accessory equipment to be carried on the snowmobile.
> >
> > (c) Requires a snowmobile operator to possess a motor vehicle driver license.
> >
> > (d) Restricts operation of a snowmobile on the frozen surface of public waters or on lands owned by or under the control of the state except pursuant to [MCL 324.82125].

In addition, the DNR may promulgate rules related to snowmobile use on the frozen surface of public waters, and the governing body of the political subdivision where the frozen waters lie "may enact an ordinance that is identical to the proposed rule [prepared by the DNR,] and the [DNR] shall promulgate the rule. An ordinance enacted pursuant to [MCL 324.82125(3)] is not effective until the proposed rule is promulgated and effective." *Id.*

Finally, "[a] city or village by ordinance may designate 1 or more specific public highways or streets within its jurisdiction as egress and ingress routes for the use of snowmobiles. A city or village acting under the authority of this subdivision shall erect and maintain, in accordance with the Michigan manual of uniform traffic control devices standards, a sign unit giving proper notice of the designation." MCL 324.82119(1)(i).

B. No Duty to Maintain Surfaces Where Snowmobiles are Authorized to Operate

"A board of county road commissioners, a county board of commissioners, and a county have no duty to maintain any highway under their jurisdiction in a condition reasonably safe and convenient for the operation of snowmobiles." MCL 324.82124(2).

C. Governmental Immunity

Governmental immunity may exist in certain circumstances:

> Beginning on October 19, 1993, a board of county road commissioners, a county board of commissioners, and a

> county are immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation or use of a snowmobile on maintained or unmaintained highways, shoulders, and rights-of-way over which the board of county road commissioners, the county board of commissioners, or the county has jurisdiction. The immunity provided by this subsection does not apply to actions which constitute gross negligence. Gross negligence is defined as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results. [MCL 324.82124(3).]

3.5 Liability for Collisions Involving a Snowmobile

A snowmobile operator may be considered prima facie negligent in operating a snowmobile that is involved in a collision:

> In a court action in this state where competent evidence demonstrates that a vehicle that is permitted to be operated on a highway pursuant to the Michigan vehicle code, . . . MCL 257.1 to [MCL 257.923], collided with a snowmobile on a roadway, the driver of the snowmobile involved in the collision shall be considered prima facie negligent. [MCL 324.82119(1)(d).]

3.6 Authority to Enforce the Snowmobile Act

A. DNR Conservation Officers

"Conservation officers appointed by the [DNR] and trained and certified pursuant to [MCL 28.601 to MCL 28.615], are peace officers, and except as otherwise provided by law, are vested with all the powers, privileges, prerogatives, and immunities conferred upon peace officers as provided in [MCL 300.21 to MCL 300.22], and in the general laws of [Michigan]." MCL 324.1501.

"Except as otherwise provided by law, conservation officers appointed by the [DNR] have the same power to serve criminal process and to require aid in executing criminal process as sheriffs, and are entitled to the same fees as sheriffs in performing those duties under [the NREPA], under [MCL 300.21 to MCL 300.22], and under the general laws of [Michigan]." MCL 324.1502.

B. Commissioned Park and Recreation Officers

"The [DNR] may commission park and recreation officers to enforce, on property regulated under [MCL 324.74101 *et seq.*, (state parks)], rules promulgated by the [DNR] and orders issued by the [DNR] that are authorized in those rules, including, but not limited to, rules promulgated or orders issued under [MCL 324.504], and any laws of [Michigan] specified in those rules as enforceable by commissioned park and recreation officers." MCL 324.1606(2).

"In performing those enforcement activities, commissioned park and recreation officers are vested with the powers, privileges, prerogatives, and immunities conferred upon peace officers under the laws of [Michigan]." MCL 324.1606(2).

MCL 324.1606(3) provides:

> In addition to the limited arrest authority granted in [MCL 324.1606(2)], on property regulated under [MCL 324.74101 *et seq.*, (state parks)], a commissioned park and recreation officer may arrest an individual without a warrant if 1 or more of the following circumstances exist:
>
> > (a) In the presence of the park and recreation officer, the individual commits an assault or an assault and battery in violation of . . . MCL 750.81 and MCL 750.81a.
> >
> > (b) The park and recreation officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the individual has committed it.
> >
> > (c) The park and recreation officer has received affirmative written or verbal notice from a law enforcement officer or agency that a peace officer possesses a warrant for the individual's arrest.
> >
> > * * *
> >
> > (e) The person violates . . . [MCL 324.82101 *et seq.*] . . . .

"If a conservation officer or a park and recreation officer commissioned under [MCL 324.1606(2)] arrests a person without warrant for a minor offense committed in the officer's presence, instead of immediately bringing the person for arraignment by the court having jurisdiction, the officer may issue to and serve upon

the person an appearance ticket as authorized by [MCL 764.9c to MCL 764.9g]." MCL 324.1606(6).

C. Peace Officers and Police Officers

"A peace [officer] or police officer may issue appearance tickets for violations of [MCL 324.82101 *et seq.*,] pursuant to [MCL 764.9a to MCL 764.9e][.]" MCL 324.82134(1).

D. State Forest Officers

"A state forest officer may enforce . . . MCL 324.82101 to [MCL 324.82160]." Mich Admin Code, R 299.932(m).

3.7 Enforcement of the Snowmobile Act on Federal Property

The Snowmobile Act is enforced in the three national forests in Michigan. This includes titling, licensing, equipment requirements, and general operating restrictions. However, unlike the ORV Act, the Snowmobile Act does not contain an offense for operating a snowmobile in a manner contrary to operating regulations on public land.[2] MCL 324.81133(1)(q). Therefore, Michigan conservation officers do not have authority to issue citations to individuals for operating snowmobiles on areas of federal land that are closed to snowmobile operation. However, these individuals may be in violation of federal land use regulations and would therefore be subject to arrest and prosecution by federal officers.

3.8 Enforcement of the Snowmobile Act on Private Property

Although enforcement of the Snowmobile Act is generally permitted on private property, exceptions exist and are discussed throughout this chapter.

Committee Tip: *The DNR Law Enforcement Division believes that the primary responsibility of Michigan's conservation officers in the area of snowmobile enforcement is protecting natural resources and safeguarding the health and safety of individuals utilizing public lands for recreation.*

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[2] See Section 2.8 and Section 2.21.

General enforcement of the Snowmobile Act is focused on public lands. Conservation officers do enforce the Snowmobile Act on private property when it is necessary to protect the safety and welfare of an individual in imminent danger (where a child is involved or there is a reasonable suspicion the operator is under the influence) or where damage is being done to public natural resources (damage to streams or regulated wetlands).

3.9 Rulemaking Authority of the DNR[3]

A. Snowmobile Safety Programs

The DNR is authorized to promulgate administrative rules to implement the state aid for snowmobile safety programs. MCL 324.82107(9). See Mich Admin Code, R 257.1501 to R 257.1511.

B. Snowmobile Trail Systems

The DNR is authorized to promulgate rules to implement state aid for recreational and snowmobile trails and permanent snowmobile trail easements. MCL 324.82109. See Mich Admin Code, R 257.1521 to R 257.1533.

C. Operation and Conduct of Snowmobiles on the Frozen Surface of Public Waters

"The [DNR] may promulgate rules to govern the operation and conduct of snowmobiles, speed limits, and the times when a snowmobile may be used and to establish and designate areas where snowmobiles may be used in a manner that will ensure compatible use and best protection of the safety and general welfare of the public on the frozen surface of public waters." MCL 324.82125(1).

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[3] The administrative rules are available here. In addition, the DNR website contains detailed information about DNR snowmobiling rules and regulations, available here.

D. Wrongful or Improper Use or Occupancy

"The [DNR] shall promulgate rules to protect and preserve lands and other property under its control from depredation, damage, or destruction or wrongful or improper use or occupancy." MCL 324.504(1).

"The [DNR] shall issue orders necessary to implement rules promulgated under [MCL 324.504]." MCL 324.504(9). "The orders are effective upon posting." *Id*.

"A person who violates a rule promulgated under [MCL 324.504] or an order issued under [MCL 324.504] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.504(14).

The administrative rules are available here.

3.10 Warrantless Arrest Under the Snowmobile Act

"A peace officer who observes a violation by a person of [MCL 324.82101 *et seq*.,] or of a local ordinance or rule established under [MCL 324.82101 *et seq*.,] may arrest the person without a warrant." MCL 324.82158(4).

"A peace officer, without a warrant, may arrest a person if the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a snowmobile involved in the accident in [Michigan] while in violation of [MCL 324.82127(1), MCL 324.82127(3), MCL 324.82127(4), MCL 324.82127(5), MCL 324.82127(6), or MCL 324.82127(7)] or a local ordinance substantially corresponding to [MCL 324.82127(1), MCL 324.82127(3), or MCL 324.82127(6)]." MCL 324.82136(1).

"If a person is arrested without a warrant for any of the following, the arrested person shall be taken, without unreasonable delay, before a magistrate or judge who is within the county in which the offense charged is alleged to have been committed, who has jurisdiction of the offense, and who is nearest or most accessible with reference to the place where the arrest is made:

(a) The person is arrested upon a charge of negligent homicide.

(b) The person is arrested under [MCL 324.82127] or a local ordinance substantially corresponding to [MCL 324.82127]." MCL 324.82159.

"If in the existing circumstances it does not appear that releasing the person pending the issuance of a warrant will constitute a public menace, the arresting officer may proceed as provided by [MCL 324.82134]." MCL 324.82159(b).

3.11 General Penalty Provision in the Snowmobile Act

Except as otherwise provided, a person who violates the Snowmobile Act is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.82133; MCL 750.504.

3.12 Costs and Minimum State Costs

MCL 769.1k(1)(b)(*ii*) (allowing the court to impose "[a]ny cost authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty[]") does not provide courts with "the independent authority to impose costs upon criminal defendants." *People v Cunningham (Cunningham II)*, 496 Mich 145, 147 (2014), rev'g 301 Mich App 218 (2013) and overruling *People v Sanders (After Remand)*, 298 Mich App 105 (2012), and *People v Sanders*, 296 Mich App 710 (2012). Rather, it "provides courts with the authority to impose only those costs that the Legislature has separately authorized by statute." *Id.* at 154. Effective October 17, 2014, 2014 PA 352 amended MCL 769.1k in response to the Michigan Supreme Court's holding in *Cunningham II*.[4] In *Cunningham II*, the Court held that MCL 769.1k(1)(b)— which, at the time, provided for the imposition of "[a]ny cost in addition to the minimum state cost"—did "not provide courts with the independent authority to impose 'any cost'"; rather, it "provide[d] courts with the authority to impose only those costs that the Legislature has separately authorized by statute." *Cunningham II*, 496 Mich at 147, 158 (concluding that "[t]he circuit court erred when it relied on [former] MCL 769.1k(1)(b)(*ii*) as independent authority to impose $1,000 in court costs"). 2014 PA 352, in addition to making other revisions to MCL 769.1k, added MCL 769.1k(1)(b)(*iii*) to provide for the imposition of "any cost reasonably related to the actual costs incurred by the trial court[.]"[5] The amendments effectuated by 2014 PA 352 "appl[y] to all

[4]The amended version of MCL 769.1k does not violate a defendant's due process or equal protection rights, nor does it violate the constitutional prohibition on ex post facto punishments or the principle of separation of powers. *People v Konopka (On Remand)*, 309 Mich App 345, 361, 369-370, 376 (2015).

[5] This provision expires on December 31, 2026. See MCL 769.1k(1)(b)(*iii*).

fines, costs, and assessments ordered or assessed under . . . MCL 769.1k[] *before June 18, 2014*, and *after [October 17, 2014]*." 2014 PA 352, enacting section 1 (emphasis supplied).

MCL 769.1k(1)(b)(*iii*) authorizes the imposition of costs independently of the statute for the sentencing offense, and "[a] trial court possessed the authority under MCL 769.1k, as amended by 2014 PA 352, to order [the] defendant to pay court costs." *People v Konopka (On Remand)*, 309 Mich App 345, 350, 358 (2015). "However, although the costs imposed [under MCL 769.1k(1)(b)(*iii*)] . . . need not be separately calculated, . . . the trial court [must] . . . establish a factual basis" demonstrating that "the court costs imposed [are] 'reasonably related to the actual costs incurred by the trial court[.]'" *Konopka (On Remand)*, 309 Mich App at 359-360, quoting MCL 769.1k(1)(b)(*iii*).

"If a defendant is determined to be responsible or responsible 'with explanation' for a state civil infraction, the judge or district court magistrate may order the defendant to pay . . . costs as provided in [MCL 600.8827(3)][.]" MCL 600.8827(2). "In the order of judgment, the judge or district court magistrate may grant a defendant permission to pay . . . costs . . . within a specified period of time or in specified installments." *Id*. "Otherwise, the . . . costs . . . are payable immediately." *Id*.

"If a defendant is ordered to pay a civil fine under [MCL 600.8827(2)], the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the state civil infraction, up to the entry of judgment." MCL 600.8827(3). "Costs of not more than $500.00 must be ordered." *Id*.

"[I]f the court orders a person convicted of an offense to pay any combination of a fine, costs, or applicable assessments, the court shall order that the person pay costs of not less than the following amount, as applicable:

> (a) $68.00, if the defendant is convicted of a felony.
>
> (b) $50.00, if the defendant is convicted of a misdemeanor or ordinance violation." MCL 769.1j(1). See also MCL 600.8381(4).

The costs imposed under MCL 769.1j(1)(a) constitute a tax, and this tax does not violate the separation of powers requirement under Const 1963, art 3, § 2 or the requirement of Const 1963, art 4, § 32 that "[e]very law which imposes, continues or revives a tax shall distinctly state the tax." *People v Shenoskey*, 320 Mich App 80, 83-84 (2017) (applying the analysis of

MCL 769.1k(1)(b)(*iii*) in *People v Cameron*, 319 Mich App 215 (2017) to MCL 769.1j(1)(a) because the statutes are "closely related").

"Payment of the minimum state cost is a condition of probation under [MCL 771.1 *et seq*.]" MCL 769.1j(3). See also MCL 771.3(1)(g) ("[t]he probationer shall pay the minimum state cost prescribed by [MCL 769.1j]").

3.13 Justice System Assessment

"[W]hen fines and costs are assessed by a judge or district court magistrate in a civil infraction action, the defendant shall be ordered to pay the state assessment required by [MCL 600.8727, MCL 600.8827, or MCL 257.907 (Michigan Vehicle Code)]." MCL 600.8381(5).

MCL 600.8727 applies to municipal civil infractions and requires the court to "order the defendant to pay a justice system assessment of $10.00" "in addition to any fine or cost ordered to be paid under [MCL 600.8727(2)]." MCL 600.8727(4).

MCL 600.8827 applies to state civil infractions and requires the court to "order the defendant to pay a justice system assessment of $10.00" "in addition to any fine or cost ordered to be paid under [MCL 600.8827(2) or MCL 600.8827(3).]" MCL 600.8827(4).

3.14 Specified Snowmobile Sanctions

A. Impoundment

"When a person is convicted under [MCL 324.82152(1)], the snowmobile, if it is owned by that person, shall be ordered impounded for not less than 30 or more than 120 days from the date of judgment." MCL 324.82153(1).

"An order of impoundment issued pursuant to [MCL 324.82153(1)] is valid throughout [Michigan]. Any peace officer may execute the impoundment order. The order shall include the implied consent of the owner of the snowmobile to the storage for insurance coverage purposes." MCL 324.82153(2).

"The owner of a snowmobile impounded pursuant to [MCL 324.82153] is liable for expenses incurred in the removal and storage of the snowmobile whether or not the snowmobile is returned to him or her. The snowmobile shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the snowmobile is not returned as provided in [MCL

324.82153] within 30 days after the time set in the impoundment order for return of the snowmobile, the snowmobile shall be considered abandoned." MCL 324.82153(3).

"Nothing in [MCL 324.82153] affects the rights of a conditional vendor, chattel mortgagee, or lessor of a snowmobile registered in the name of another person as owner who becomes subject to [MCL 324.82101 *et seq*.]" MCL 324.82153(4).

B. Court Order Not to Operate Snowmobile

"Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of [MCL 324.82127(1), MCL 324.82127(3), MCL 324.82127(4), MCL 324.82127(5), MCL 324.82127(6), or MCL 324.82127(7)] or a local ordinance substantially corresponding to [MCL 324.82127(1), MCL 324.82127(3), or MCL 324.82127(6)] whether or not the person is eligible to be sentenced as a multiple offender, the court shall consider all prior convictions established under [MCL 324.82130], except those convictions that, upon motion by the defendant, are determined by the court to be constitutionally invalid, and shall impose the following sanctions:

> (a) For a conviction under [MCL 324.82127(4) or MCL 324.82127(5)], the court shall order, without an expiration date, that the person not operate a snowmobile.
>
> (b) For a conviction under [MCL 324.82127(1)] or a local ordinance substantially corresponding to [MCL 324.82127(1)]:
>
> > (*i*) If the court finds that the person has no prior convictions within 7 years, the court shall order that the person not operate a snowmobile for not less than 6 months or more than 2 years and shall require that the person take and successfully complete the snowmobile safety education and training program before operating a snowmobile.
> >
> > (*ii*) If the court finds that the person has 1 or more prior convictions within 7 years, the court shall order that the person not operate a snowmobile for a period of not less than 1 year or more than 2 years and shall require the person to take and successfully complete the snowmobile safety education and training program before operating a snowmobile.

> (*iii*) If the court finds that the person has 2 or more prior convictions within 10 years, the court shall order, without an expiration date, that the person not operate a snowmobile.
>
> (c) For a conviction under [MCL 324.82127(3)] or a local ordinance substantially corresponding to [MCL 324.82127(3)]:
>
> > (*i*) If the court finds that the convicted person has no prior conviction within 7 years, the court shall order that the person not operate a snowmobile for not less than 90 days or more than 1 year.
> >
> > (*ii*) If the court finds that the person has 1 prior conviction within 7 years, the court shall order that the person not operate a snowmobile for not less than 6 months or more than 2 years.
> >
> > (*iii*) If the court finds that the person has 2 or more prior convictions within 10 years, the court shall order, without an expiration date, the person not to operate a snowmobile." MCL 324.82142.

C. Secretary of State Order Not to Operate Snowmobile For Specified Period of Time

"Notwithstanding a court order issued under [MCL 324.82127(1), MCL 324.82127(3), MCL 324.82127(4), or MCL 324.82127(5)], section 15a(1), (3), (4), or (5) of former 1968 PA 74, [MCL 324.82141–MCL 324.82142], or a local ordinance substantially corresponding to [MCL 324.82127(1) or MCL 324.82127(3)], or [MCL 324.82141–MCL 324.82142], if a court has not ordered a person not to operate a snowmobile as authorized by [MCL 324.82101 *et seq.*], the secretary of state shall issue an order that the person not operate a snowmobile as follows:

> (a) For 90 days, upon receiving a record of the conviction of the person for a violation of [MCL 324.82127(3)], section 15a(3) of former 1968 PA 74, a local ordinance substantially corresponding to [MCL 324.82127(3)], or a law of another state substantially corresponding to [MCL 324.82127(3)], if the person has no prior convictions within 7 years for a violation of [MCL 324.82127(1), MCL 324.82127(3), MCL 324.82127(4), or MCL 324.82127(5)], section 15a(1), (3), (4), or (5) of former 1968 PA 74, or section 15a of former 1968 PA 74, a local ordinance substantially corresponding to [MCL 324.82127(1) or MCL

> 324.82127(3)] or section 15a of former 1968 PA 74, or a law of another state substantially corresponding to [MCL 324.82127(1), MCL 324.82127(3), MCL 324.82127(4), or MCL 324.82127(5)] or section 15a of former 1968 PA 74.
>
> (b) For 1 year for a violation of [MCL 750.324, MCL 750.413, or MCL 750.414]; or a violation of [MCL 257.626(3) or MCL 257.626(4)].
>
> (c) For 6 months, if the person has the following convictions within a 7-year period, whether under the law of [Michigan], a local ordinance substantially corresponding to a law of [Michigan] or a law of another state substantially corresponding to a law of [Michigan]:
>
> > (*i*) One conviction under [MCL 324.82127(1)], section 15a(1) of former 1968 PA 74, or section 15a of former 1968 PA 74.
> >
> > (*ii*) Two convictions under [MCL 324.82127(3)], section 15a(3) of former 1968 PA 74, or section 15a of former 1968 PA 74.
> >
> > (*iii*) One conviction under [MCL 324.82127(1)] or section 15a(1) of former 1968 PA 74 and 1 conviction under [MCL 324.82127(3)], section 15a(3) of former 1968 PA 74, or section 15a of former 1968 PA 74.
> >
> > (*iv*) One conviction under [MCL 324.82127(4) or MCL 324.82127(5)] or section 15a(4) or (5) of former 1968 PA 74 followed by 1 conviction under [MCL 324.82127(3)] or section 15a(3) of former 1968 PA 74." MCL 324.82147(1).

"If the secretary of state receives records of more than 1 conviction or probate court or family division of circuit court disposition of a person resulting from the same incident, a suspension shall be imposed only for the violation to which the longest period of suspension applies under [MCL 324.82147]." MCL 324.82147(2).

D. Secretary of State Order Not to Operate Snowmobile Without Expiration

"Upon receipt of the appropriate records of conviction, the secretary of state shall issue an order with no expiration date that the person not operate a snowmobile to a person having any of the following convictions, whether under a law of [Michigan], a local ordinance

substantially corresponding to a law of [Michigan], or a law of another state substantially corresponding to a law of [Michigan]:

> (a) Two convictions of a felony involving the use of a snowmobile within 7 years.
>
> (b) Any combination of 2 convictions within 7 years for a violation of [MCL 324.82127(1)], section 15a(1) of former 1968 PA 74, or section 15a of former 1968 PA 74, as added by 1980 PA 402.
>
> (c) One conviction under [MCL 324.82127(4) or MCL 324.82127(5)] or section 15a(4) or (5) of former 1968 PA 74.
>
> (d) Any combination of 3 convictions within 10 years for a violation of [MCL 324.82127(1) or MCL 324.82127(3)], section 15a(1) or (3) of former 1968 PA 74, or section 15a of former 1968 PA 74, as added by 1980 PA 402." MCL 324.82148(1).[6]

"The secretary of state shall issue an order with no expiration date that a person not operate a snowmobile notwithstanding a court order issued under [MCL 324.82142], or a local ordinance substantially corresponding to [MCL 324.82142]. The secretary of state shall not terminate an indefinite order issued under [MCL 324.82101 *et seq.*,] until both of the following occur:

> (a) The later of the following:
>
> > (*i*) The expiration of not less than 1 year after the order was issued.
> >
> > (*ii*) The expiration of not less than 5 years after the date of a subsequent issuance of an indefinite order occurring within 7 years after the date of a prior order.
>
> (b) The person meets the requirements of the department of state." MCL 324.82148(3).

"Multiple convictions or probate court dispositions resulting from the same incident shall be treated as a single violation for purposes of issuance of an order under [MCL 324.82148]." MCL 324.82148(4).

[6] "The [DNR] shall seek to enter agreements with the appropriate agencies of other states, Canada, and provinces and territories of Canada for the sharing of records of convictions described in [MCL 324.82148(1)]." MCL 324.82148(2).

1. Judicial Review

"A person who is aggrieved by the issuance of an order by the secretary of state under [MCL 324.82148] may request a hearing with the secretary of state. The hearing shall be requested within 14 days after issuance of an order under [MCL 324.82148] by the secretary of state. If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in [MCL 257.322]." MCL 324.82148(5).

"The hearing officer shall make a record of proceedings held under [MCL 324.82148(5)]. The record shall be prepared and transcribed in accordance with [MCL 24.286]. Upon notification of the filing of a petition for judicial review under [MCL 324.82150] and not less than 10 days before the matter is set for review, the hearing officer shall transmit to the court in which the petition is filed the original or a certified copy of the official record of the proceedings. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record." MCL 324.82148(6).

"Judicial review of an administrative sanction under [MCL 324.82148] is governed by the law in effect at the time the offense was committed or attempted." MCL 324.82148(7).

2. Failure to Answer Citation, Appear, or Comply with Court Order or Judgment

"If a person is charged with, or convicted of, a violation of [MCL 324.82127(1), MCL 324.82127(2), MCL 324.82127(3), MCL 324.82127(4), or MCL 324.82127(5)], former section 15a(1), (2), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, or a local ordinance substantially corresponding to [MCL 324.82127(1), MCL 324.82127(2), or MCL 324.82127(3)], and the person fails to answer a citation or a notice to appear in court, or for any matter pending, or fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, the court shall immediately give notice by first-class mail sent to the person's last known address that if the person fails to appear within 7 days after the notice is issued or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, within 14 days after the notice is issued, the secretary of state will issue

an order with no expiration date that the person not operate a snowmobile." MCL 324.82149(1). "If the person fails to appear within the 7-day period or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within the 14-day period, the court shall immediately inform the secretary of state who shall immediately issue the order and send a copy to the person by personal service or first-class mail sent to the person's last known address." *Id.*

"An order imposed under [MCL 324.82149(1)] remains in effect until both of the following occur:

> (a) The court informs the secretary of state that the person has appeared before the court and that all matters relating to the violation are resolved.
>
> (b) The person has paid to the court a $25.00 administrative order processing fee." MCL 324.82149(2).

E. Expiration of Order Not to Operate Snowmobile

"Whether of definite or indefinite length, an order not to operate a snowmobile does not expire until the person subject to the order pays an administrative order processing fee of $125.00 to the secretary of state." MCL 324.82155.

F. Failing to Comply with "No-Operate Order": Cancellation of Snowmobile Certificate of Registration

"If a person is convicted of violating [MCL 324.82152(1)[7]], the court shall order cancellation of the certificate of registration for the snowmobile, unless the snowmobile was stolen or permission to use the snowmobile was not knowingly given." MCL 324.82152(4).

"The secretary of state shall not issue a certificate of registration for a snowmobile whose registration is canceled until after the expiration of 90 days after the cancellation." MCL 324.82152(4).

3.15 Appealing Final Determination By Secretary of State

"A person who is aggrieved by a final determination of the secretary of state under [MCL 324.82101 *et seq.*,] may petition for a review of the determination in the circuit court in the county where the person was

[7] See Section 3.28 for more information on this offense.

arrested. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made." MCL 324.82150(1).

"As provided in [MCL 324.82146], a peace officer who is aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under [MCL 324.82146] may, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the county where the arrest was made. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made." MCL 324.82150(1).

"The circuit court shall enter an order setting the cause for hearing for a day certain that is not more than 63 days after the date of the order. The order, a copy of the petition, which shall include the person's full name, current address, and birth date, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared pursuant to [MCL 324.82146], the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing." MCL 324.82150(2).

"Except as provided in [MCL 324.82150(4) and MCL 324.82150(6)], the court may take testimony and examine all the facts and circumstances incident to the order that the person not operate a snowmobile. The court may affirm, modify, or set aside the order. The order of the court shall be duly entered, and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order." MCL 324.82150(3).

"In reviewing a determination under [MCL 324.82146], the court shall confine its consideration to a review of the record prepared pursuant to [MCL 324.82146] to determine whether the hearing officer properly determined the issues enumerated in [MCL 324.82146]." MCL 324.82150(4).

"In reviewing a determination resulting in issuance of an order under [MCL 324.82148(1)(b), MCL 324.82148(1)(c), or MCL 324.82148(1)(d)], the court shall confine its consideration to a review of the record prepared pursuant to [MCL 324.82148]. The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:

> (a) In violation of the constitution of the United States, the state constitution of 1963, or a statute.

> (b) In excess of the statutory authority or jurisdiction of the secretary of state.
>
> (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
>
> (d) Not supported by competent, material, and substantial evidence on the whole record.
>
> (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
>
> (f) Affected by other substantial and material error of law." MCL 324.82150(5).

"[MCL 324.82150] does not apply to an order issued by the secretary of state pursuant to a court order issued as part of the sentence for a conviction under [MCL 324.82127], [MCL 324.82141-MCL 324.82142] or a local ordinance substantially corresponding to [MCL 324.82127(1), MCL 324.82127(2), or MCL 324.82127(3)]." MCL 324.82150(6).

"Within 63 days after the determination, a person who is aggrieved by a final determination of the secretary of state under [MCL 324.82101 *et seq.*,] may petition the circuit court for the county in which the conviction or determination resulting in issuance of the order that the person not operate a snowmobile for an order staying the order." MCL 324.82151(1).

"Except as provided in [MCL 324.82151(2)], the court may enter an ex parte order staying the order subject to terms and conditions prescribed by the court until the determination of an appeal to the secretary of state or of an appeal or a review by the circuit court, or for a lesser time that the court considers proper." MCL 324.82151(1).

"The court shall not enter an ex parte order staying the order if the order is based upon a claim of undue hardship." MCL 324.82151(2).

3.16 Presumption That Owner Was Operator

"In a proceeding for a violation of [MCL 324.82101 *et seq.*,] involving prohibited operation or conduct, the registration number displayed on a snowmobile constitutes prima facie evidence that the owner of the snowmobile was the person operating the snowmobile at the time of the offense." MCL 324.82134(2).

Part B—Nonmoving Violations in the Snowmobile Act

3.17 Registration Requirements

A. Statutory Authority

"Except as otherwise provided in this part, a snowmobile must not be operated unless the owner first obtains a certificate of registration and a registration decal." MCL 324.82103(1). "The certificate of registration must be secured at the time of purchase or transfer of ownership." *Id*.

"The certificate of registration and registration decal authorizes the operation of the snowmobile for a 3-year period that begins on October 1 and expires on September 30 of the third year." MCL 324.82105(3). "The certificate of registration and registration decal may be renewed beginning July 1 of the expiration year by payment of a fee of $30.00." *Id*. "The registration decal shall be displayed as prescribed by rule promulgated by the department of state." *Id*. "The person shall make the certificate of registration available for inspection upon demand by a peace officer." MCL 324.82105(1).

"The owner of a snowmobile having been issued a certificate of registration for the snowmobile shall affix to each side of the forward half of the cowl above the footwell of the snowmobile the registration decal assigned to that snowmobile." MCL 324.82113(1). "The registration decal shall be as prescribed by the [DNR]." *Id*.

"The department of state may cancel, suspend, revoke, or refuse to issue a snowmobile registration if any of the following occur:

> (a) The applicant has failed to furnish all required information or reasonable additional information requested by the department of state.
>
> (b) The required fees have not been paid.
>
> (c) The applicant is not entitled to a snowmobile registration under [MCL 324.82101 *et seq*.]
>
> (d) The department of state issued the registration in error.
>
> (e) The application contains a false or fraudulent statement.
>
> (f) The department of state has reasonable grounds to believe that the snowmobile was stolen or embezzled." MCL 324.82105b.

B. Penalties

"A person who is convicted of a violation of [MCL 324.82103] shall be fined not more than $50.00." MCL 324.82103(2). In addition, the person may also be subject to imprisonment for not more than 90 days. See MCL 324.82133; MCL 750.504. However, "[a]n individual who violates [MCL 324.82113 or MCL 324.82114(1)] for a first time is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $150.00." MCL 324.82133(2) and (3).

Committee Tip: *The penalty provision of the registration statute uses the term "convicted" but does not specify whether the fine is a civil fine or a criminal fine. As a result, the DNR has concluded that a violation of this statute is a criminal offense, rather than a civil infraction. By comparison, the penalty provision for the snowmobile trail permit statute specifically states that a violation of that statute is a state civil infraction. See* ***Section 3.18*****.**

C. Exceptions

1. Snowmobile Operated on Owner's Land or in Safety Program

"A certificate of registration or a registration decal is not required for a snowmobile operated exclusively on lands owned or under the control of the snowmobile owner or for a snowmobile used entirely in a safety education and training program conducted by a certified snowmobile safety instructor and authorized under [MCL 324.82108]." MCL 324.82103(1).

2. Snowmobile Operated in Special Events of Limited Duration

"A certificate of registration or a registration decal is not required for a snowmobile that is exclusively operated in a special event of limited duration conducted according to a prearranged schedule under a permit from the governmental unit having jurisdiction." MCL 324.82104.

3. Historic Snowmobiles

"The secretary of state may issue to the owner of a historic snowmobile a historic snowmobile registration decal which shall bear the inscription 'historic snowmobile - Michigan' and the registration number." MCL 324.82105c(1). "The registration decal shall be affixed above or below the headlight or, if the historic snowmobile was not originally equipped with a headlight, on the forward half of the cowl above the footwell of the historic snowmobile." *Id*.

"The owner of a historic snowmobile applying for a historic snowmobile registration decal under [MCL 324.82105c] shall pay a fee of $50.00 and shall certify that the snowmobile for which the registration is requested is owned and operated solely as a historic snowmobile." MCL 324.82105c(2).

"A registration issued under [MCL 324.82105c] is valid for the period the historic snowmobile is owned by the owner and is nontransferable." MCL 324.82105c(3).

"The secretary of state may revoke a registration decal issued under [MCL 324.82105c], for cause shown and after a hearing, for failure of the applicant to comply with [MCL 324.82105c] or for use of the snowmobile for which the registration was issued for purposes other than those enumerated in [MCL 324.82101(i)[8]]." MCL 324.82105c(4).

"A historic snowmobile registered under [MCL 324.82105c] is exempt from registration under [MCL 324.82105]." MCL 324.82105c(5).

"The secretary of state may promulgate rules to implement [MCL 324.82105c]." MCL 324.82105c(6).

3.18 Trail Permit Requirements

A. Statutory Authority

"In addition to registration of a snowmobile under [MCL 324.82105] or registration in another state or province, except as otherwise provided in [MCL 324.82118[9]], a person who desires to operate a snowmobile in [Michigan] shall purchase a Michigan snowmobile

[8] Formerly MCL 324.82101(f). MCL 324.82105c(4) has not been amended in accordance with amendments to MCL 324.82101.

[9] See, e.g., MCL 324.82118(8); MCL 324.82118(13). These exceptions are discussed in Section 3.18(B).

trail permit sticker." MCL 324.82118(1). "The Michigan snowmobile trail permit issued under [MCL 324.82118] is valid for a period of 1 year that begins on October 1 and ends on the following September 30." MCL 324.82118(1). "The fee for the permit is as follows:

> (a) For permits valid for the 1-year period beginning October 1, 2009 or October 1, 2010, $35.00.
>
> (b) For permits valid for the 1-year period beginning October 1, 2011, 2012, 2013, 2014, or 2015, $45.00.
>
> (c) For permits valid for the 1-year period beginning October 1, 2016 and every fifth year thereafter, the state treasurer shall adjust the current permit fee by an amount determined by the state treasurer to reflect the cumulative percentage change in the Consumer Price Index during the most recent 5-year period for which Consumer Price Index statistics are available, rounded to the nearest dollar. A fee adjusted by the state treasurer under [MCL 324.82118(1)(c)] remains in effect for 5 years." MCL 324.82118(1).

"The [DNR] shall make the sale of trail permits available on its website." MCL 324.82118(3).[10] "The [DNR] may contract with a person to act as an agent for the purpose of issuing Michigan snowmobile trail permits." MCL 324.82118(5).

"The trail permit sticker shall be permanently affixed to the snowmobile directly above or below the headlight of the snowmobile." MCL 324.82118(4).

B. Exceptions

"A snowmobile used solely for transportation on the frozen surface of public waters for the purpose of ice fishing is exempt from the requirement of purchasing and displaying a snowmobile trail permit sticker[.]" MCL 324.82118(8).

"[MCL 324.82118] does not apply to a historic snowmobile registered under [MCL 324.82105c]." MCL 324.82118(13).Penalty/ Sanction Provisions

"An agent who uses or allows the use of a permit by anyone except the snowmobile user to whom the permit is sold is guilty of a misdemeanor, punishable by a fine of $50.00 for each instance of use or allowed use." MCL 324.82118(6).

[10]Snowmobile trail permits are available for purchase at https://www.michigan.gov/en/dnr/things-to-do/snowmobiling/permits-and-requirements.

"A person who fails to secure a permit under [MCL 324.82118] or who violates [MCL 324.82118(4)] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00." MCL 324.82118(11).

3.19 Equipment Requirements

A. Misdemeanors

1. Statutory Authority

"A snowmobile shall not be operated unless it has at least 1 headlight, 1 taillight, and adequate brakes capable, while the snowmobile travels on packed snow and carries an operator who weighs 175 pounds or more, of stopping the snowmobile in not more than 40 feet from an initial steady speed of 20 miles per hour or of locking the snowmobile's traction belt or belts." MCL 324.82122(1).

"A person shall not sell or offer to sell in [Michigan] a snowmobile manufactured after July 1, 1978, unless it meets the minimum safety standards for snowmobile product certification of the snowmobile safety and certification committee's November 23, 1976, volume 3, safety standards for snowmobiles for product certification, including detailed standard supplement and test specifications and procedures, covering machine sound levels, seats, controls, brake systems, fuel systems, shields and guards, electrical systems and lighting, reflectors, handgrips, and general hazard requirements." MCL 324.82122(2). "Proof of compliance with [MCL 324.82122] shall be in the form of certification by a qualified independent testing company that is not affiliated with the manufacturer and is approved by the [DNR]." MCL 324.82122(2).

"A person shall not operate a snowmobile without displaying a lighted headlight and a lighted taillight." MCL 324.82131(1). "However, the headlight shall not be covered with a lens cap of any color." *Id*. "[MCL 324.82131] does not apply to a snowmobile of a model year 25 years old or older." MCL 324.82131(2).

"A person operating or riding on a snowmobile shall wear a crash helmet on his or her head." MCL 324.82123. "Crash helmets shall be approved by the United States department of transportation." *Id*. "[MCL 324.82123] does not apply to a

person riding on or operating a snowmobile on his or her own private property." MCL 324.82123.

2. Penalties

A person who violates an equipment requirement regarding lights, brakes, or a crash helmet is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.82133; MCL 750.504.

B. State Civil Infraction

1. Statutory Authority

"[A] person shall not operate a snowmobile unless the snowmobile is equipped with a muffler in good working order and in constant operation from which noise emission does not exceed either of the following:

> (a) For a snowmobile manufactured after July 1, 1977 and sold or offered for sale in [Michigan], 78 decibels at 50 feet, as measured using the 2003 society of automotive engineers standard J192.
>
> (b) For a stationary snowmobile manufactured after July 1, 1980 and sold or offered for sale in [Michigan], 88 decibels, as measured using the 2004 society of automotive engineers standard J2567." MCL 324.82126(2).

"A person is exempt from the requirement of [MCL 324.82126(2)] under either of the following circumstances:

> (a) While operating a snowmobile during an organized race on a course that is used solely for racing.
>
> (b) While operating a snowmobile on private property, with the permission of the private property owner, in preparation for an organized race, if the operation of the snowmobile is in compliance with applicable local noise ordinances." MCL 324.82126(3).

2. Penalties

"A person who violates [an equipment requirement regarding a muffler, MCL 324.82126(2)] is responsible for a state civil infraction and shall be ordered to pay a civil fine of not less than $100.00 or more than $250.00." MCL 324.82126(9).

Part C—Moving Violations in the Snowmobile Act

3.20 Operation of Snowmobiles on Public Highways and Streets

A. Statutory Authority

"A person shall not operate a snowmobile upon a public highway, land used as an airport or street, or on a public or private parking lot not specifically designated for the use of snowmobiles except under the following conditions and circumstances:

> (a) Subject to [MCL 324.82119(2)], a snowmobile may be operated on the right-of-way of a public highway, except a limited access highway, if it is operated at the extreme right of the open portion of the right-of-way and with the flow of traffic on the highway. However, a snowmobile may be operated on the right-of-way of a public highway against the flow of traffic if the right-of-way is a snowmobile trail that is designated by the [DNR] in the plan developed pursuant to [MCL 324.82106(2)] and that is approved by the state transportation department. Snowmobiles operated on the right-of-way of a public highway, as provided in [MCL 324.82119(1)(a)], shall travel single file and shall not be operated abreast except when overtaking and passing another snowmobile. In the absence of a posted snowmobile speed limit, a snowmobile operated on the right-of-way of a public highway, as provided in [MCL 324.82119(1)(a)], shall not exceed the speed limit posted on the public highway.
>
> (b) Subject to [MCL 324.82119(2)], a snowmobile may be operated on the right-of-way of a limited access public highway if it is operated on a snowmobile trail that is designated by the [DNR] in the plan developed pursuant to [MCL 324.82106(2)] and that is approved by

the state transportation department. A snowmobile shall only be operated on that right-of-way in the manner provided in that plan. In addition, a snowmobile operated on the right-of-way of a public highway, as provided in [MCL 324.82119(1)(b)], shall travel single file and shall not be operated abreast except when overtaking and passing another snowmobile. In the absence of a posted snowmobile speed limit, a snowmobile operated on the right-of-way of a public highway, as provided in [MCL 324.82119(1)(b)], shall not exceed the speed limit posted on the public highway.[11]

(c) A snowmobile may be operated on the roadway or shoulder when necessary to cross a bridge or culvert if the snowmobile is brought to a complete stop before entering onto the roadway or shoulder and the driver yields the right-of-way to an approaching vehicle on the highway.

* * *

(e) A snowmobile may be operated across a public highway other than a limited access highway, at right angles to the highway, for the purpose of getting from 1 area to another when the operation can be done in safety and another vehicle is not crossing the highway at the same time in the same general area. An operator shall bring his or her snowmobile to a complete stop before proceeding across the public highway and shall yield the right-of-way to all oncoming traffic.

(f) Snowmobiles may be operated on a highway in a county road system that is not normally snowplowed for vehicular traffic and on the plowed right-of-way or shoulder when no right-of-way exists on a snowplowed highway in the county road system, outside the corporate limits of a city or village, that is designated and marked for snowmobile use by the county road commission having jurisdiction. Upon the request of a county road commission that has designated all county roads outside the corporate limits of a city or village for snowmobile use, the state transportation department shall erect at county road commission expense and shall maintain, in accordance with the Michigan manual of

[11] "The state transportation department and the [DNR] may promulgate rules to implement [MCL 324.82119(1)(b)]." MCL 324.82119(3).

> uniform traffic control devices standards, the basic snowmobile sign unit together with a supplemental panel stating 'permitted on right-of-way or shoulder of all . . . (county name) roads–MCL 324.82119' at the county line on all state trunk line highways and county roads. A sign erected before [December 27, 2005] may cite 1968 PA 74 instead of citing [MCL 324.82119].
>
> (g) A law enforcement officer of a local unit of government or the state may authorize use of a snowmobile on a public highway or street within his or her jurisdiction when an emergency occurs and conventional motor vehicles cannot be used for transportation due to snow or other extreme highway conditions.
>
> (h) A snowmobile may be operated on a highway or street for a special event of limited duration conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction. The event may be conducted on the frozen surface of public waters only under permit from the [DNR].
>
> (i) A city or village by ordinance may designate 1 or more specific public highways or streets within its jurisdiction as egress and ingress routes for the use of snowmobiles. A city or village acting under the authority of [MCL 324.82119(1)(i)] shall erect and maintain, in accordance with the Michigan manual of uniform traffic control devices standards, a sign unit giving proper notice of the designation." MCL 324.82119(1).[12]

"Notwithstanding [MCL 324.82119], an operator who is less than 12 years of age shall not cross a highway or street. An operator who is at least 12 years of age but less than 17 years of age may cross a highway or street only if he or she has a valid snowmobile safety certificate in his or her immediate possession."[13] MCL 324.82120(4). "The owner of a snowmobile shall not permit the snowmobile to be operated contrary to [MCL 324.82120]." MCL 324.82120(5).

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[12] MCL 324.82119(2) details the method by which the DNR may permanently prohibit snowmobile use in a particular area if, within 10 years of December 27, 2005, the specific requirements outlined in MCL 324.82119(2)(a)-(e) are met.

[13] See Section 3.22 for more information on the operation of snowmobiles by individuals under age 17.

B. Penalties

A person who commits a violation of any of the above-listed provisions is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.82133; MCL 750.504.

3.21 Operation of Snowmobiles in Prohibited Places

A. Statutory Authority

"A person shall not operate a snowmobile under any of the following circumstances:

> (a) At a rate of speed greater than is reasonable and proper having due regard for conditions then existing.
>
> (b) In a forest nursery, planting area, or on public lands posted or reasonably identifiable as an area of forest reproduction when growing stock may be damaged or posted or reasonably identifiable as a natural dedicated area that is in zone 2 or zone 3.
>
> (c) On the frozen surface of public waters as follows:
>
> > (*i*) Within 100 feet of a person, including a skater, who is not in or upon a snowmobile.
> >
> > (*ii*) Within 100 feet of a fishing shanty or shelter except at the minimum speed required to maintain forward movement of the snowmobile.
> >
> > (*iii*) On an area that has been cleared of snow for skating purposes unless the area is necessary for access to the public water.
>
> (d) Within 100 feet of a dwelling between 12 midnight and 6 a.m., at a speed greater than the minimum required to maintain forward movement of the snowmobile.
>
> (e) In an area on which public hunting is permitted during the regular November firearm deer season from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except under 1 or more of the following circumstances:

(*i*) During an emergency.

(*ii*) For law enforcement purposes.

(*iii*) To go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle.

(*iv*) For the conduct of necessary work functions involving land and timber survey, communication and transmission line patrol, or timber harvest operations.

(*v*) On the person's own property or property under the person's control or as an invited guest.

* * *

(g) On or across a cemetery or burial ground.

(h) Within 100 feet of a slide, ski, or skating area except when traveling on a county road right-of-way pursuant to [MCL 324.82119] or a snowmobile trail that is designated and funded by the [DNR]. A snowmobile may enter such an area for the purpose of servicing the area or for medical emergencies.

(i) On a railroad or railroad right-of-way. This prohibition does not apply to railroad personnel, public utility personnel, law enforcement personnel while in the performance of their duties, or persons using a snowmobile trail located on or along a railroad right-of-way, or an at-grade snowmobile trail crossing of a railroad right-of-way, that has been expressly approved in writing by the owner of the right-of-way and each railroad company using the tracks and that meets the conditions imposed in [MCL 324.82126(4) and MCL 324.82126(5)]. A snowmobile trail or an at-grade snowmobile trail crossing shall not be constructed on a right-of-way designated by the federal government as a high-speed rail corridor." MCL 324.82126(1).

B. Penalties

A person who commits a violation of any of the above-listed provisions is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or

- both. MCL 324.82133; MCL 750.504.

3.22 Operation of Snowmobiles by Children Under 17 Years of Age

A. Safety Certificate Requirement

1. Statutory Authority

"A person less than 17 years of age who successfully completes a training program shall carry the safety certificate on his or her person whenever operating a snowmobile in [Michigan]." MCL 324.82108(1).

2. Penalties

"A person less than 17 years of age who fails to have a safety certificate on his or her person is subject to a fine of not more than $25.00." MCL 324.82108(6). Violation of MCL 324.82108(6) is a misdemeanor. MCL 324.82133. See also MCL 750.504.[14]

B. Age-Specific Restrictions

1. Statutory Authority

MCL 324.82120 establishes additional restrictions on the operation of snowmobiles by minors. The following chart summarizes each of these offenses and exceptions:

Person Responsible	Prohibited Conduct	Statutory Reference
Parent or legal guardian of children less than 12 years of age.	Permitting his or her child to operate a snowmobile without the direct supervision of an adult except on land owned or under the control of the parent or legal guardian.	MCL 324.82120(1).

[14] It is not clear whether any of the general misdemeanor penalties set forth in MCL 750.504 apply to violations of MCL 324.82108(1) because MCL 324.82108(6) specifies a penalty of "not more than $25.00." *Id.*

Person Responsible	Prohibited Conduct	Statutory Reference
Children at least 12 but less than 17 years of age.	"[M]ay operate a snowmobile if 1 of the following conditions exist: (a) The person is under the direct supervision of a person who is 21 years of age or older. (b) The person has in his or her immediate possession a snowmobile safety certificate issued pursuant to a program conducted under [MCL 324.82107]. (c) The person is on land owned or under the control of his or her parent or legal guardian. (d) The person possesses a snowmobile safety certificate issued to the person under the authority of a law of another state or province of Canada."	MCL 324.82120(2).
Children less than 12 years of age.	When operating a snowmobile shall not cross a highway or street.	MCL 324.82120(4).
Children at least 12 but less than 17 years of age.	When operating a snowmobile shall not cross a highway or street unless he or she has a valid snowmobile safety certificate in his or her immediate possession.	MCL 324.82120(4).

"A person who is operating a snowmobile pursuant to [MCL 324.82120(2)(b)] shall present the snowmobile safety certificate to any peace officer upon demand." MCL 324.82120(3).

"The owner of a snowmobile shall not permit the snowmobile to be operated contrary to [MCL 324.82120]." MCL 324.82120(5).

2. Penalties

A person who commits a violation of any of the above-listed provisions is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.82133; MCL 750.504.

"When the judge of a juvenile court determines that a person who is less than 17 years of age has violated [MCL 324.82101 *et seq.*], the judge shall immediately report the determination to the [DNR]." MCL 324.82120(6). "The [DNR] upon receiving a notice of a determination pursuant to [MCL 324.82120(6)] may

suspend the snowmobile safety certificate without a hearing." MCL 324.82120(6).

3.23 Operation of Snowmobiles in a Careless, Negligent, Reckless, or Otherwise Prohibited Manner

A. Careless or Negligent Operation of a Snowmobile

1. Statutory Authority

"A person shall not operate a snowmobile upon a highway, public trail, frozen surface of a public lake, stream, river, pond, or another public place, including but not limited to an area designated for the parking of snowmobiles or other motor vehicles, in a careless or negligent manner likely to endanger any person or property." MCL 324.82126a(1).

2. Penalty

"A person who violates [MCL 324.82126a(1)] is responsible for a state civil infraction." MCL 324.82126a(2). MCL 600.8827 governs the fine, costs, and assessments that may be ordered upon determining a person responsible for a state civil infraction. See Section 3.12 and Section 3.13 for more information.

B. Reckless Operation of a Snowmobile

1. Statutory Authority

"A person shall not operate a snowmobile upon a highway, public trail, frozen surface of a public lake, stream, river, pond, or another public place, including, but not limited to, an area designated for the parking of snowmobiles or other motor vehicles, in willful or wanton disregard for the safety of persons or property." MCL 324.82126b(1).

2. Penalty

"A person who violates [MCL 324.82126b(1)] is guilty of a misdemeanor punishable by a fine of not more than $250.00." MCL 324.82126b(2). In addition, the person may also be subject to imprisonment for not more than 90 days. See MCL 324.82133; MCL 750.504.

C. Unsafe or Prohibited Manner

1. Statutory Authority

"A snowmobile shall not be used to hunt, pursue, worry, or kill a wild bird or animal." MCL 324.82121.

"A person shall not operate a snowmobile . . . [a]t a rate of speed greater than is reasonable and proper having due regard for conditions then existing." MCL 324.82126(1)(a).

"A person shall not operate a snowmobile . . . [w]hile transporting on the snowmobile a bow, unless unstrung or encased, or a firearm, unless unloaded in both barrel and magazine and securely encased." MCL 324.82126(1)(f).

2. Penalties

A person who commits a violation of any of the above-listed provisions is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.82133; MCL 750.504.

3.24 Careless or Negligent Operation of a Snowmobile Causing Death or Serious Impairment of Bodily Function

A. Statutory Authority

"A person who operates a snowmobile in a careless or negligent manner causing the death or serious impairment of bodily function of another is guilty of a misdemeanor[.]" MCL 324.82126c(1).

B. Penalties

A person who violates MCL 324.82126c(1) is guilty of a misdemeanor punishable by:

- imprisonment for not more than two years;
- fine of not more than $2,000; or
- both. MCL 324.82126c(1).

"Upon a person's conviction of a violation under [MCL 324.82126c], the court may issue an order prohibiting the person from operating a snowmobile in [Michigan] for a period of 2 or more years in the discretion of the court." MCL 324.82126c(4). "An order issued under [MCL 324.82126c] is in addition to any other penalty authorized under [MCL 324.82101 *et seq*.]" MCL 324.82126c(4).

3.25 Reckless Operation of a Snowmobile Causing Serious Impairment of Bodily Function

A. Statutory Authority

"A person who, by the operation of a snowmobile in a careless and heedless manner in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, causes the serious impairment of bodily function, but does not cause the death of another, is guilty of the offense of felonious operation[.]" MCL 324.82126c(2).

B. Penalties

A person who violates MCL 324.82126c(2) is guilty of a felony punishable by:

- imprisonment for not more than two years;
- fine of not more than $2,000; or
- both. MCL 324.82126c(2).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from the Michigan Department of State Court Manual includes a table detailing traffic offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: https://www.michigan.gov/sos/-/media/Project/Websites/sos/License-and-ID/License-hearings/Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(a). See Section 1.6 for more information on points.

- Discretionary court-ordered prohibition on operating a snowmobile for two or more years. See MCL 324.82126c(4).

3.26 Failure to Stop for Peace Officers

A. Statutory Authority

"An operator of a snowmobile who is given by hand, voice, emergency light, or siren a visual or audible signal by a peace, police, or conservation officer acting in the lawful performance of his or her duty, directing the operator to bring his or her snowmobile to a stop, and who willfully fails to obey the direction by increasing his or her speed or extinguishing his or her lights, or who otherwise attempts to flee or elude the officer, is guilty of a misdemeanor." MCL 324.82135.

"The officer giving the signal shall be in uniform." MCL 324.82135. "A vehicle or snowmobile which is used by an officer at night for purposes of enforcing [MCL 324.82101 *et seq.*,] shall be identified as an official law enforcement vehicle or snowmobile." MCL 324.82135.

"The operator or person in charge of a snowmobile being used or operated in [Michigan], who is by hand, voice, emergency light or siren, or a visual or audible signal directed to bring his or her snowmobile to a stop by any peace, police, or conservation officer who is in uniform and empowered to enforce [MCL 324.82101 *et seq.*,] or the provisions of a local ordinance or rules established under [MCL 324.82101 *et seq.*], shall immediately bring the snowmobile to a stop or maneuver it in a manner that permits the officer to come alongside." MCL 324.82158(1).

"A vehicle or snowmobile that is used by an officer at night for purposes of enforcing [MCL 324.82101 *et seq.*,] shall be identified as an official law enforcement vehicle or snowmobile." MCL 324.82158(1). "The operator or person in charge of the snowmobile and any other person on board shall give his or her correct name and address, exhibit the certificate of registration awarded for the snowmobile, and submit to a reasonable inspection of the snowmobile and to a reasonable inspection and test of the equipment of the snowmobile." *Id.*

"A person who willfully fails to obey the direction by increasing his or her speed or extinguishing his or her lights, or who otherwise attempts to flee or elude the officer, is guilty of a misdemeanor." MCL 324.82158(2).

"A person who is detained for a violation of [MCL 324.82101 *et seq.*,] or of a local ordinance substantially corresponding to a provision of [MCL 324.82101 *et seq.*,] and who furnishes a peace officer false, forged, fictitious, or misleading verbal or written information identifying the person as another person is guilty of a misdemeanor." MCL 324.82158(3).

B. Penalties

A person who commits a violation of any of the above-listed provisions is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.82133; MCL 750.504.

3.27 Failure to Report Accident

A. Statutory Authority

"The operator of a snowmobile involved in an accident resulting in injuries to or the death of any person or property damage in an estimated amount of $100.00 or more shall immediately by the quickest means of communication notify a state police officer or officers, the sheriff's office of the county in which the accident occurred, or the office of the police department of the local unit of government in which the accident occurred." MCL 324.82132.

B. Penalties

A person who fails to report an accident is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.82133; MCL 750.504.

3.28 Operation of Snowmobile After Operating Privileges Have Been Suspended

A. Statutory Authority

"A person who is ordered not to operate a snowmobile and who has been notified of the order by personal service or first-class mail shall not operate a snowmobile." MCL 324.82152(1). "A person shall not knowingly permit a snowmobile owned by the person to be operated by a person who is subject to such an order." *Id*.

"Upon receiving a record of the conviction or probate court disposition of a person upon a charge of unlawful operation of a snowmobile while the person is subject to an order not to operate a snowmobile, the secretary of state shall immediately extend the length of the order for an additional like period." MCL 324.82152(2). "If the secretary of state receives records of more than 1 conviction or probate court disposition resulting from the same incident, all of the convictions or probate court dispositions shall be treated as a single violation for purposes of extending the length of an order under [MCL 324.82152(2)]." MCL 324.82152(3).

B. Penalties

1. First Offense

A person convicted of violating MCL 324.82152(1) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.82152(1)(a).

2. Second or Subsequent Offense

A person convicted of a second or subsequent violation of MCL 324.82152(1) is guilty of a misdemeanor punishable by:

- imprisonment for not more than one year;
- fine of not more than $1,000; or
- both. MCL 324.82152(1)(b).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- Limited mandatory cancellation of snowmobile certificate of registration.[15] MCL 324.82152(4). See Section 3.14 for more information on cancellation of snowmobile certificate of registration.
- Mandatory denial of new snowmobile certificate of registration for snowmobile with canceled registration for 90 days after cancellation. MCL 324.82152(4). See Section 3.14 for more information on denial of snowmobile certificate of registration.
- Mandatory snowmobile impoundment for not less than 30 or more than 120 days. MCL 324.82153(1). See Section 3.14 for more information on impoundment.

3.29 Operation of Snowmobile After Driver's License Is Suspended or Revoked

A. Statutory Authority

"If the operator's . . . license of a person who is a resident of [Michigan] is suspended or revoked by the secretary of state under the [Michigan Vehicle Code (MVC), MCL 257.1 *et seq.*], or if the driver license of a person who is a nonresident is suspended or revoked under the law of the state in which he or she resides, that person shall not operate a snowmobile under [MCL 324.82101 *et seq.*,] for the same period." MCL 324.82147a(1).

B. Penalties

1. First Offense

A person who violates MCL 324.82147a(1) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 93 days;
- fine of not more than $500; or

[15] Cancellation is mandatory "unless the snowmobile was stolen or permission to use the snowmobile was not knowingly given." MCL 324.82152(4).

- both. MCL 324.82147a(2)(a).

2. Second or Subsequent Offense

A person convicted of a second or subsequent violation of MCL 324.82147a(1) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 180 days;
- a fine of not more than $1,000; or
- both. MCL 324.82147a(2)(b).

Part D—Offenses in the Snowmobile Act Involving Alcohol and/or Controlled Substances

3.30 Preliminary Chemical Breath Analysis (PBT) & Chemical Tests of Blood, Urine, or Breath

A. Preliminary Chemical Breath Analysis (PBT)

1. Submitting to or Refusing a Preliminary Chemical Breath Analysis Test (PBT)

"A peace officer who has reasonable cause to believe that a person was operating a snowmobile and that, by the consumption of alcoholic liquor, the person may have affected his or her ability to operate a snowmobile may require the person to submit to a [PBT]." MCL 324.82136(2).

"A person who submits to a [PBT] remains subject to the requirements of [MCL 324.82143–MCL 324.82146] for the purposes of chemical tests described in those sections." MCL 324.82136(2)(c).

"A person who refuses to submit to a [PBT] upon a lawful request by a peace officer is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.82136(2)(d).

2. Admissibility at Trial

"The results of a [PBT] are admissible in a criminal prosecution for a crime enumerated in [MCL 324.82143(1)] or in an

administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest." MCL 324.82136(2)(b). "[MCL 324.82136(2)(b)] does not limit the introduction of other competent evidence offered to establish the validity of an arrest." *Id*.

B. Chemical Tests

"A rule relating to a chemical test for alcohol or a controlled substance promulgated under the [MVC], applies to a chemical test administered under [MCL 324.82120 *et seq*.]" MCL 324.82137(3).

1. Implied Consent Upon Arrest

"A person who operates a snowmobile is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in his or her blood in all of the following circumstances:

> (a) The person is arrested for a violation of [MCL 324.82127(1), MCL 324.82127(3), MCL 324.82127(4), MCL 324.82127(5), MCL 324.82127(6), or MCL 324.82127(7)] or a local ordinance substantially corresponding to [MCL 324.82127(1), MCL 324.82127(3), or MCL 324.82127(6)].
>
> (b) The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of a snowmobile, and the peace officer had reasonable grounds to believe that the person was operating the snowmobile in violation of [MCL 324.82127]." MCL 324.82143(1).

"A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood." MCL 324.82143(2).

"A chemical test described in [MCL 324.82143(1)] shall be administered as provided in [MCL 324.82137 and MCL 324.82138]." MCL 324.82143(3).

2. Advice

"A person arrested for a crime described in [MCL 324.82143(1)] shall be advised of all of the following:

(*i*) That if the person takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, the person has the right to demand that someone of the person's own choosing administer 1 of the chemical tests; that the results of the test are admissible in a judicial proceeding as provided under [MCL 324.82101 *et seq*.,] and shall be considered with other competent evidence in determining the innocence or guilt of the defendant; and that the person is responsible for obtaining a chemical analysis of a test sample obtained pursuant to the person's own request.[16]

(*ii*) That if the person refuses the request of a peace officer to take a test described in [MCL 324.82137(1)(b)(*i*)], the test shall not be given without a court order, but the peace officer may seek to obtain such a court order.

(*iii*) That the person's refusal of the request of a peace officer to take a test described in [MCL 324.82137(1)(b)(*i*)] will result in issuance of an order that the person not operate a snowmobile." MCL 324.82137(1)(b).

3. Submitting to or Refusing a Chemical Test

"A chemical test described in [MCL 324.82137[17]] shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in [MCL 324.82143(1)]." MCL 324.82138(1).

"A person who takes a chemical test administered at the request of a peace officer, as provided in [MCL 324.82137], shall be given a reasonable opportunity to have someone of the person's own choosing administer 1 of the chemical tests described in [MCL 324.82137] within a reasonable time after

[16] However, the defendant cannot choose a specific analyst at the Michigan State Police (MSP) laboratory to administer the chemical test. See *People v Green*, 310 Mich App 249, 255 (2015) (reversing the trial court's order compelling the MSP laboratory to retest evidence at the defendant's request and holding that MCL 257.625a(6), which provides the defendant with an identical right to independent testing in the context of motor vehicles, does not permit a defendant to choose a forensic scientist at the MSP laboratory to administer a chemical test because "there is no indication that the MSP laboratory . . . offers chemical testing services to private individuals or is able to bill for such services[]"). "[T]he trial court lacks authority to compel a state agency to perform services it does not offer." *Green*, 310 Mich App at 255. Further, "MCR 6.201(A)(6) does not provide the trial court with the authority to order the MSP to retest its own evidence. Rather, it merely provides the court with the authority to provide [the] *defendant* with the opportunity to test any tangible physical evidence." *Green*, 310 Mich App at 256-257.

[17] See Section 3.30 for more information on the requirements of MCL 324.82137.

the person's detention, and the results of the test are admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by someone of the person's own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample." MCL 324.82138(1).[18]

"If a person refuses the request of a peace officer to submit to a chemical test offered under [MCL 324.82137 or MCL 324.82138], a test shall not be given without a court order, but the officer may seek to obtain the court order." MCL 324.82144(1).

"If a person refuses a chemical test offered under [MCL 324.82137 or MCL 324.82138], or submits to the chemical test and the test reveals a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, the peace officer who requested the person to submit to the test shall immediately forward a written report to the secretary of state." MCL 324.82144(2). "The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in [MCL 324.82143(1)], and either that the person has refused to submit to the test upon the request of the peace officer and has been advised of the consequences of the refusal or that the test revealed a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine." MCL 324.82144(2).

a. Requesting a Hearing

"If a person refuses to submit to a chemical test pursuant to [MCL 324.82144], the peace officer shall immediately notify the person in writing that within 14 days of the date of the notice the person may request a hearing as provided in [MCL 324.82146]." MCL 324.82145(1).

[18]However, the defendant cannot choose a specific analyst at the Michigan State Police (MSP) laboratory to administer the chemical test. See *People v Green*, 310 Mich App 249, 255 (2015) (reversing the trial court's order compelling the MSP laboratory to retest evidence at the defendant's request and holding that MCL 257.625a(6), which provides the defendant with an identical right to independent testing in the context of motor vehicles, does not permit a defendant to choose a forensic scientist at the MSP laboratory to administer a chemical test because "there is no indication that the MSP laboratory . . . offers chemical testing services to private individuals or is able to bill for such services[]"). "[T]he trial court lacks authority to compel a state agency to perform services it does not offer." *Green*, 310 Mich App at 255. Further, "MCR 6.201(A)(6) does not provide the trial court with the authority to order the MSP to retest its own evidence. Rather, it merely provides the court with the authority to provide [the] *defendant* with the opportunity to test any tangible physical evidence." *Green*, 310 Mich App at 256-257.

"The notice shall specifically state that failure to request a hearing within 14 days will result in issuance of an order that the person not operate a snowmobile." MCL 324.82145(2). "The notice shall also state that there is not a requirement that the person retain counsel for the hearing, though counsel is permitted to represent the person at the hearing." *Id*.

"If a person who refuses to submit to a chemical test under [MCL 324.82144] does not request a hearing within 14 days of the date of notice under [MCL 324.82145], the secretary of state shall issue an order that the person not operate a snowmobile for 1 year or, for a second or subsequent refusal within 7 years, for 2 years." MCL 324.82146(1).

If the person requests a hearing, MCL 324.82146(2) governs the procedures for that administrative hearing. "After a hearing, if the person who requested the hearing does not prevail, the secretary of state shall order that the person not operate a snowmobile for 1 year or, for a second or subsequent refusal within 7 years, for 2 years." MCL 324.82146(4).

b. Circuit Court Appeal

"The person may file a petition in the circuit court of the county in which the arrest was made to review the order [not to operate a snowmobile] as provided in [MCL 324.82150]. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under [MCL 324.82144] may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in [MCL 324.82150]." MCL 324.82146(4). See also MCL 324.82150(1).

Generally, the petition for review must be filed within 63 days of the secretary of state's determination. MCL 324.82150(1). However, "for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made." *Id.*

"In reviewing a determination under [MCL 324.82146], the court shall confine its consideration to a review of the record prepared pursuant to [MCL 324.82146] to determine whether the hearing officer properly

determined the issues enumerated in [MCL 324.82146]." MCL 324.82150(4).

4. Requirements for Collecting Sample/Specimen for Chemical Test

"A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician, qualified to withdraw blood and acting in a medical environment, may withdraw blood at the request of a peace officer for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in a person's blood, as provided in this subsection. A qualified person who withdraws or analyzes blood, or assists in the withdrawal or analysis, in accordance with this part is not liable for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures unless the withdrawal or analysis is performed in a negligent manner." MCL 324.82137(2).

5. Disclosure

"If a chemical test described in [MCL 324.82137 and MCL 324.82138] is administered, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court." MCL 324.82139(2). "The prosecution shall furnish the results at least 2 days before the day of the trial." *Id*. "Failure to fully comply with the request bars the admission of the results into evidence by the prosecution." *Id*.

Similarly, where a snowmobile has been involved in an accident, chemical tests may be taken and must be disclosed as required by statute. See MCL 324.82138(2)-(3). Under MCL 324.82138(2), if a chemical analysis of a snowmobile operator's blood has been taken pursuant to that provision (taking blood after snowmobile accident for medical purposes), "[t]he medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in [MCL 324.82138(2)]. A medical facility or person disclosing information in compliance with [MCL 324.82138(2)] is not civilly or criminally liable for making the disclosure." Under MCL 324.82138(3), a person's blood must be withdrawn "in a manner directed by the medical examiner" following an accident involving a snowmobile where the operator dies. "The medical examiner

shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police." *Id*.

6. Admissibility Issues

"The amount of alcohol or presence of a controlled substance, or both, in an operator's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding." MCL 324.82137(1)(a).

"[T]he results of [a chemical test described in MCL 324.82137] are admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant." MCL 324.82138(1).

"A person's refusal to submit to a chemical test as provided in [MCL 324.82137 and MCL 324.82138] is admissible in a criminal prosecution for a crime described in [MCL 324.82143(1)] only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant." MCL 324.82140. "The jury shall be instructed accordingly." *Id*.

"The provisions of [MCL 324.82127 and MCL 324.82138] relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether a person was impaired by, or under the influence of, alcoholic liquor or a controlled substance, or both, or whether the person had a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or had in his or her body any amount of a controlled substance listed in schedule 1 under . . . MCL 333.7212, or a rule promulgated under [MCL 333.7212], or of a controlled substance described in [MCL 333.7214(a)(*iv*)]." MCL 324.82139(1).

3.31 Operating a Snowmobile While Under the Influence, With an Unlawful Blood Alcohol Content, or With Any Amount of Certain Controlled Substances

A. Statutory Authority

"A person shall not operate a snowmobile in [Michigan] if any of the following apply:

> (a) The person is under the influence of alcoholic liquor or a controlled substance, or both.
>
> (b) The person has a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
>
> (c) The person has in his or her body any amount of a controlled substance listed in schedule 1 under . . . MCL 333.7212, or a rule promulgated under [MCL 333.7212], or of a controlled substance described in [MCL 333.7214(a)(*iv*)]." MCL 324.82127(1).

"If a person is charged with violating [MCL 324.82127(1)], a finding of guilty under [MCL 324.82127(3)] may be rendered." MCL 324.82127(3).

B. Procedural Issues

"Before accepting a plea of guilty or nolo contendere under [MCL 324.82127] or a local ordinance substantially corresponding to [MCL 324.82127(1)], the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation." MCL 324.82141(1).

C. Penalties

"Before imposing sentence, other than court-ordered operating sanctions, for a violation of [MCL 324.82127(1)] or a local ordinance substantially corresponding to [MCL 324.82127(1)], the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs." MCL 324.82141(2). "As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative services." *Id*. "The person shall pay for the costs of the screening, assessment, and rehabilitative services." *Id*.

"A person who is convicted of an attempted violation of [MCL 324.82127(1)] or a local ordinance substantially corresponding to [MCL 324.82127(1)] shall be punished as if the offense had been completed." MCL 324.82130(3).

1. No Prior Convictions Within Seven Years

A person convicted of violating MCL 324.82127(1) is guilty of a misdemeanor punishable by one or more of the following:

- community service for not more than 45 days;
- imprisonment for not more than 93 days;
- fine of not less than $100 or more than $500. MCL 324.82128(1)(a).

2. One Prior Conviction Within Seven Years

A person convicted of violating MCL 324.82127(1) within seven years of a prior conviction is guilty of a misdemeanor punishable by:

- a fine of not less than $200 or more than $1,000; and either of the following:
  - community service for not less than 10 days or more than 90 days, and may be imprisoned for not more than 1 year; or
  - imprisonment for not less than 48 consecutive hours or more than 1 year, and may be sentenced to community service for not more than 90 days. MCL 324.82128(1)(b).

"A term of imprisonment imposed under [MCL 324.82128(1)(b)(*ii*)] shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program." MCL 324.82128(2).

3. Two or More Prior Convictions

A person convicted of violating MCL 324.82127(1) after two or more prior convictions regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony punishable by:

- imprisonment for not less than one year or more than five years;
- fine of not less than $500 or more than $5,000; or
- both. MCL 324.82128(1)(c).

4. Community Service

"A person sentenced to perform service to the community under [MCL 324.82128] shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service if ordered by the court." MCL 324.82128(3).

5. Reimbursement For Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.82127], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(c). See also MCL 324.82128(4) (authorizing the court to order the person to pay the costs of prosecution).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing certain snowmobile offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: https://www.michigan.gov/sos/-/media/Project/Websites/sos/License-and-ID/License-hearings/Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(c). See Section 1.6 for more information on points.

- Mandatory order not to operate a snowmobile (length dependent on specific conviction and criminal history). See MCL 324.82142(b); MCL 324.82147(1); MCL 324.82148(1). See Section 3.14 for more information on orders not to operate a snowmobile.

- Mandatory requirement to take and successfully complete the snowmobile safety education and training program before operating a snowmobile again, if eligible. See MCL 324.82142(b). See Section 3.14 for more information on snowmobile safety and education program requirements.

3.32 Operating a Snowmobile While Visibly Impaired

A. Statutory Authority

"A person shall not operate a snowmobile when, due to the consumption of an alcoholic liquor or a controlled substance, or both, the person's ability to operate the snowmobile is visibly impaired." MCL 324.82127(3).

"If a person is charged with violating [MCL 324.82127(1)], a finding of guilty under [MCL 324.82127(3)] may be rendered." MCL 324.82127(3).

B. Procedural Issues

"Before accepting a plea of guilty or nolo contendere under [MCL 324.82127] or a local ordinance substantially corresponding to [MCL 324.82127(3)], the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation." MCL 324.82141(1).

C. Penalties

"Before imposing sentence, other than court-ordered operating sanctions, for a violation of [MCL 324.82127(3)] or a local ordinance substantially corresponding to [MCL 324.82127(3)], the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs." MCL 324.82141(2). "As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs." *Id*. "The person shall pay for the costs of the screening, assessment, and rehabilitative services." *Id*.

1. No Prior Convictions Within Seven Years

A person convicted of violating MCL 324.82127(3) is guilty of a misdemeanor punishable by one or more of the following:

- community service for not more than 45 days;
- imprisonment for not more than 93 days;
- fine of not more than $300. MCL 324.82129(1)(a).

2. One Prior Conviction Within Seven Years

A person convicted of violating MCL 324.82127(3) within seven years of a prior conviction is guilty of a misdemeanor punishable by:

- fine of not less than $200 or more than $1,000, and either of the following:
  - community service for not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year; or
  - imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days. MCL 324.82129(1)(b).

3. Two or More Prior Convictions

A person convicted of violating MCL 324.82127(3) after two or more prior convictions regardless of the number of years that have elapsed since any prior conviction is guilty of a misdemeanor punishable by:

- fine of not less than $200 or more than $1,000, and either of the following:
  - community service for a period of not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year; or
  - imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days. MCL 324.82129(1)(c).

4. Community Service

"A person sentenced to perform service to the community under [MCL 324.82129] shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service as ordered by the court." MCL 324.82129(3).

5. Reimbursement For Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.82127], in addition to any other penalty authorized by law, the court may order the person

convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(c). See also MCL 324.82129(2) (authorizing the court to order the person to pay the costs of prosecution).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing certain snowmobile offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: https://www.michigan.gov/sos/-/media/Project/Websites/sos/License-and-ID/License-hearings/Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Four points. See MCL 257.320a(1)(i). See Section 1.6 for more information on points.
- Mandatory order not to operate a snowmobile (length dependent on specific conviction and criminal history). See MCL 324.82142(c); MCL 324.82147(1); MCL 324.82148(1). See Section 3.14 for more information on orders not to operate a snowmobile.
- Mandatory requirement to take and successfully complete the snowmobile safety education and training program before operating a snowmobile again, if eligible. See MCL 324.82142(b). See Section 3.14 for more information on snowmobile safety education and training program requirements.

3.33 Operating While Under the Influence, With an Unlawful Blood Alcohol Content, With Any Amount of Certain Controlled Substances, or While Visibly Impaired Causing Death

A. Statutory Authority

"A person who operates a snowmobile in violation of [MCL 324.82127(1) or MCL 324.82127(3)], and by the operation of that snowmobile causes the death of another person is guilty of a felony[.]" MCL 324.82127(4).

B. Procedural Issues

"Before accepting a plea of guilty or nolo contendere under [MCL 324.82127] . . . , the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation." MCL 324.82141(1).

C. Penalties

"Before imposing sentence, other than court-ordered operating sanctions, for a violation of [MCL 324.82127(4)] . . ., the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs." MCL 324.82141(2). "As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs." *Id*. "The person shall pay for the costs of the screening, assessment, and rehabilitative services." *Id*.

A violation of MCL 324.82127(4) is a felony punishable by:

- imprisonment for not more than 15 years;
- fine of not less than $2,500 or more than $10,000; or
- both. MCL 324.82127(4).

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.82127], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(c). See also MCL 324.82128(4) (authorizing the court to order the person to pay the costs of prosecution).

"A person may be charged with and convicted of [MCL 324.82127(4)] for each death arising out of the same criminal transaction, and the court may order the terms of imprisonment to be served consecutively to each other[.]" MCL 769.36(1)(c).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations

published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing certain snowmobile offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: https://www.michigan.gov/sos/-/media/Project/Websites/sos/License-and-ID/License-hearings/Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(a). See Section 1.6 for more information on points.
- Mandatory order, without expiration, not to operate a snowmobile. See MCL 324.82142(a); MCL 324.82147(1). See Section 3.14 for more information on orders not to operate a snowmobile.

3.34 Operating While Under the Influence, With an Unlawful Blood Alcohol Content, With Any Amount of Certain Controlled Substances, or While Visibly Impaired Causing Serious Impairment of a Body Function

A. Statutory Authority

"A person who operates a snowmobile in violation of [MCL 324.82127(1) or MCL 324.82127(3)], and by the operation of that snowmobile causes a serious impairment of a body function of another person is guilty of a felony[.]" MCL 324.82127(5).

B. Procedural Issues

"Before accepting a plea of guilty or nolo contendere under [MCL 324.82127] . . ., the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation." MCL 324.82141(1).

C. Penalties

"Before imposing sentence, other than court-ordered operating sanctions, for a violation of [MCL 324.82127(5)], the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs." MCL 324.82141(2). "As part of the sentence, the court may order the person to participate in and successfully complete 1

or more appropriate rehabilitative programs." *Id*. "The person shall pay for the costs of the screening, assessment, and rehabilitative services." *Id*.

A person convicted of MCL 324.82127(5) is guilty of a felony punishable by:

- imprisonment for not more than five years;
- fine of not less than $1,000 or more than $5,000; or
- both. MCL 324.82127(5).

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.82127], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(c). See also MCL 324.82128(4) (authorizing the court to order the person to pay the costs of prosecution).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense. The Offense Code Index for Traffic Violations published by the secretary of state and sourced from Michigan Department of State Court Manual includes a table detailing certain snowmobile offenses and applicable sanctions. The Offense Code Index for Traffic Violations is available at: https://www.michigan.gov/sos/-/media/Project/Websites/sos/License-and-ID/License-hearings/Offense-Codes-Update.pdf. See Section 1.5 for more information on abstracting procedures.

- Six points. See MCL 257.320a(1)(a). See Section 1.6 for more information on points.
- Mandatory order, without expiration, not to operate a snowmobile. See MCL 324.82142(a); MCL 324.82147(1). See Section 3.14 for more information on orders not to operate a snowmobile.

3.35 Knowingly Allowing Another Who is Under the Influence of Alcoholic Liquor and/or a Controlled Substance, Has Unlawful Alcohol Content, or is Visibly Impaired to Operate Snowmobile

A. Statutory Authority

"The owner of a snowmobile or a person in charge or in control of a snowmobile shall not authorize or knowingly permit the snowmobile to be driven or operated by a person if any of the following apply:

> (a) The person is under the influence of alcoholic liquor or a controlled substance, or both.
>
> (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
>
> (c) The person's ability to operate a snowmobile is visibly impaired due to the consumption of an alcoholic liquor, a controlled substance, or a combination of an alcoholic liquor and a controlled substance." MCL 324.82127(2).

B. Procedural Issues

"Before accepting a plea of guilty or nolo contendere under [MCL 324.82127] or a local ordinance substantially corresponding to [MCL 324.82127(2)], the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation." MCL 324.82141(1).

C. Penalties

A person convicted of violating MCL 324.82127(2) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 93 days;
- fine of not less than $100 or more than $500; or
- both. MCL 324.82128(5).

"As part of the sentence for a conviction of [MCL 324.82127], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident

including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(c).

3.36 The Michigan Medical Marihuana Act and The Michigan Regulation and Taxation of Marihuana Act

"The Michigan Medical Marihuana Act (MMMA) prohibits the prosecution of registered patients who internally possess marijuana, but the act does not protect registered patients who operate a vehicle while 'under the influence' of marijuana." *People v Koon*, 494 Mich 1, 3 (2013). Although the situation in *Koon* involved a motor vehicle and the Motor Vehicle Code's (MVC) zero-tolerance provision, its discussion is included here as potentially relevant to a similar situation involving a snowmobile. See MCL 324.82127(1)(c), which contains language similar to MCL 257.625(8), the MVC's zero-tolerance provision. "The [MVC] prohibits a person from driving with any amount of a schedule 1 controlled substance, a list that includes marijuana, in his or her system." *Id*. However, "the MMMA's protection supersedes the [MVC's] prohibition and allows a registered patient to drive when he or she has indications of marijuana in his or her system but is not otherwise under the influence of marijuana." *Id*. Stated another way, "MCL 257.625(8), which is inconsistent with the MMMA, does not apply to the medical use of marijuana." *Koon*, 494 Mich at 7. "[T]he MMMA is inconsistent with, and therefore supersedes, MCL 257.625(8) unless a registered qualifying patient loses immunity because of his or her failure to act in accordance with the MMMA." *Koon*, 494 Mich at 8-9.

Effective December 6, 2018, Initiated Law 1 of 2018, MCL 333.27951 *et seq*., created the Michigan Regulation and Taxation of Marihuana Act (MRTMA), the purpose of which "is to make marihuana legal under state and local law for adults 21 years of age or older, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved." MCL 333.27952.

Similar to the conduct limitations set forth in the MMMA[19], the MRTMA "does not authorize . . . operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while [consuming marihuana or] under the influence of marihuana[.]" MCL 333.27954(1)(a); MCL 333.27954(1)(g). "[S]moking marihuana within the passenger area of a vehicle upon a public way" is also prohibited. MCL 333.27954(1)(g). Notwithstanding,

[19]See MCL 333.26427(b)(4), which provides that the MMMA "does not authorize a person to . . . [o]perate, navigate, or be in actual physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana."

the MRTMA penalty provision does not penalize such conduct. MCL 333.27965.

The NREPA continues to prohibit the operation of a vehicle if the operator has any amount of a schedule 1 substance, which includes marihuana, in his or her body. MCL 324.82127(1)(c); MCL 333.7212(1)(c). It is unclear if violations of the limited conduct set forth in the MRTMA will be pursued under the NREPA. It is equally unclear if the *Koon* holding, which provides that the MMMA supersedes the MVC, will be extended to the MRTMA or to recreational vehicles.[20]

For more general information on the MMMA and the MRTMA, see the Michigan Judicial Institute's *Controlled Substances Benchbook*, Chapter 8.

3.37 Operating a Snowmobile with Any Bodily Alcohol Content by a Person Who is Less Than 21 Years of Age

A. Statutory Authority

"A person who is less than 21 years of age, whether licensed or not, shall not operate a snowmobile if the person has any bodily alcohol content." MCL 324.82127(6).

B. Penalties

1. No Prior Convictions Within Seven Years

A person convicted of violating MCL 324.82127(6) is guilty of a misdemeanor punishable by one or both of the following:

- community service for not more than 360 hours;
- fine of not more than $250. MCL 324.82129a(1)(a)(*i*)-(*ii*).

2. One Prior Conviction Within Seven Years

A person convicted of violating MCL 324.81134(6) within seven years of a prior conviction, including a conviction under MCL 324.82127(6), is guilty of a misdemeanor punishable by:

- community service for not more than 60 days;

[20] See SCAO Memorandum dated January 24, 2019, regarding frequently asked questions about the MRTMA.

- fine of not more than $500;
- imprisonment for not more than 93 days. MCL 324.82129a(1)(b)(*i*)-(*iii*).

3. Community Service

"A person sentenced to perform service to the community under [MCL 324.82129a] shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service." MCL 324.82129a(3).

4. Reimbursement for Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.82127], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(c). See also MCL 324.82129a(2) (authorizing the court to order the person to pay the costs of prosecution).

3.38 Operating a Snowmobile in Violation of § 82127(1), (3), (4), (5), or (6) While Another Person who is Less Than 16 Years of Age is Occupying the Snowmobile

A. Statutory Authority

"A person is subject to the following requirements:

> (a) He or she shall not operate a snowmobile in violation of [MCL 324.82127(1), MCL 324.82127(3), MCL 324.82127(4), or MCL 324.82127(5)] while another person who is less than 16 years of age is occupying the snowmobile.
>
> (b) He or she shall not operate a snowmobile in violation of [MCL 324.82127(6)] while another person who is less than 16 years of age is occupying the snowmobile." MCL 324.82127(7).

B. Penalties

1. Violation of § 82127(1), (3), (4), or (5) With Occupant Under 16: No Prior Convictions Within Seven Years

A person who violates MCL 324.82127(7)(a) by operating a snowmobile in violation of MCL 324.82127(1), MCL 324.82127(3), MCL 324.82127(4), or MCL 324.82127(5) while another person who is less than 16 years of age is occupying the snowmobile is guilty of a misdemeanor and must be sentenced to pay a fine of not less than $200 or more than $1,000, and to one or more of the following:

- Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this term of imprisonment must be served consecutively. This term of imprisonment must not be suspended unless the defendant agrees to participate in and successfully completes a specialty court program.

- Community service for not less than 30 days or more than 90 days. MCL 324.82129b(1)(a)(*i*)-(*ii*).

2. Violation of § 82127(1), (3), (4), or (5) With Occupant Under 16: One Prior Conviction Within Seven Years or Two or More Prior Convictions

A person who violates MCL 324.82127(7)(a) by operating a snowmobile in violation of MCL 324.82127(1), MCL 324.82127(3), MCL 324.82127(4), or MCL 324.82127(5) while another person who is less than 16 years of age is occupying the snowmobile within seven years of a prior conviction or after two or more prior convictions, regardless of the number of years that have elapsed since any prior conviction is guilty of a felony and shall be sentenced to pay a fine of not less than $500 or more than $5,000 and to either of the following:

- Imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than five years

- Probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this term of imprisonment must be served consecutively. This term of imprisonment must not be suspended unless the defendant agrees to participate in and

successfully completes a specialty court program. MCL 324.82129b(1)(b)(*i*)-(*ii*).

3. Violation of § 82127(6) With Occupant Under 16: No Prior Convictions Within Seven Years

A person who violates MCL 324.82127(7)(b) by operating a snowmobile in violation of MCL 324.82127(6) while another person who is less than 16 years of age is occupying the snowmobile is guilty of a misdemeanor punishable by one or more of the following:

- community service for not more than 60 days;
- a fine of not more than $500;
- imprisonment for not more than 93 days. MCL 324.82129b(2)(a)(*i*)-(*iii*).

4. Violation of § 82127(6) With Occupant Under 16: One Prior Conviction Within Seven Years or Two or More Prior Convictions

A person who violates MCL 324.82127(7)(b) by operating a snowmobile in violation of MCL 324.82127(6) within seven years of a prior conviction or after two or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates MCL 324.82127(7)(b) by operating a snowmobile in violation of MCL 324.82127(6) must be sentenced to pay a fine of not less than $200 or more than $1,000, and to one or more of the following:

- Imprisonment for not less than five days or more than one year. This term of imprisonment must not be suspended unless the defendant agrees to participate in and successfully completes a specialty court program.
- Community service for not less than 30 days or more than 90 days. MCL 324.82129b(2)(b)(*i*)-(*ii*).

5. Community Service

"A person sentenced to perform community service under [MCL 324.82129b] shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service." MCL 324.82129b(4).

6. Reimbursement For Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.82127], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(c). See also MCL 324.82129b(3) (authorizing the court to order the person to pay the costs of the prosecution).

Chapter 4: Marine Vessels

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Part A—An Overview of the Marine Safety Act

4.1 Introduction

The Marine Safety Act is codified as Part 801 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.80101 *et seq*.

The Marine Safety Act, MCL 324.80101 *et seq*., "applies to vessels and associated equipment used, to be used, or carried in vessels used on waters subject to the jurisdiction of [Michigan]." MCL 324.80105(1).

The Marine Safety Act, MCL 324.80101 *et seq*., "except where expressly indicated otherwise, does not apply to any of the following:

> (a) Foreign vessels temporarily using waters subject to state jurisdiction.
>
> (b) Military or public vessels of the United States, except recreational-type public vessels.
>
> (c) A vessel whose owner is a state or political subdivision of a state, other than [Michigan] and its political subdivisions, that is used principally for governmental purposes and that is clearly identifiable as such.
>
> (d) A ship's lifeboat." MCL 324.80105(2).

"The [Department of Natural Resources (DNR)] shall be responsible for administration of [MCL 324.80101 *et seq*.,] except as otherwise provided in [MCL 324.80101 *et seq*.]" MCL 324.80106.

"The [DNR] may regulate the operation of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances on the waters of this state." MCL 324.80108. "Where special regulations are determined necessary, the [DNR] may establish vessel speed limits; prohibit the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances; restrict the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances by day and hour; establish and designate areas restricted solely to boating, skin or scuba diving, fishing, swimming, or water skiing; and prescribe any other regulations relating to the use or operation of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances that will assure compatible use of state waters and best protect the public safety." *Id*. "The [DNR] shall prescribe special local regulations in such a manner as to make the regulations uniform with other special local regulations established on other waters of this state insofar as is reasonably possible." *Id*.

4.2 Common Jurisdiction of Certain Counties

A. Wayne and Monroe Counties

"The counties of Wayne and Monroe shall have jurisdiction, in common, of all offen[s]es committed on that part of Lake Erie, which lies within the limits of this state; and such offen[s]es may be heard and tried in either of said counties in which legal process against the offender shall be first issued, and in like manner and to the same effect as if such offen[s]e had been committed in any other part of either of said counties." MCL 45.6.

B. Wayne, Macomb, and St. Clair Counties

"The counties of Wayne, Macomb and St. Clair, shall have jurisdiction, in common, of all offen[s]es committed on that part of Lake St. Clair which lies within the limits of this state; and such offen[s]es may be heard and tried in either of said counties in which legal process against the offender shall be first issued, in like manner, and to the same effect as if the offen[s]e had been committed in any part of either of said counties." MCL 45.8.

C. Counties Bordering on Lake Michigan

"The counties now existing, or which may be hereafter organized, bordering upon the shore of Lake Michigan shall have jurisdiction of all offen[s]es committed on that part of Lake Michigan which lies within the limits of this state; and such offen[s]es shall be heard and tried in either of the 2 counties nearest the place where the alleged offen[s]e was committed." MCL 45.10.

D. Counties Bordering on Lake Huron

"The counties now existing, or which may be hereafter organized, bordering upon the shore of Lake Huron shall have jurisdiction of all offen[s]es committed on that part of Lake Huron which lies within the limits of this state; and such offen[s]es shall be heard and tried in either of the 2 counties nearest the place where the alleged offen[s]e was committed." MCL 45.12.

E. Counties Bordering on Lake Superior

"The county of Chippewa, and such other counties as may hereafter be organized upon the shore of Lake Superior, shall have jurisdiction, in common, of all offen[s]es committed on that part of Lake Superior which lies within the limits of this state, and such offen[s]es may be heard and tried in either of such counties in which

legal process against the offender shall be first issued, in like manner and to the same effect as if the offen[s]e had been committed in any part of either of said counties." MCL 45.14.

4.3 Provisions Related to Local Ordinances

"Local political subdivisions that believe that special local ordinances of the type authorized by this part are needed on waters subject to their jurisdiction shall inform the department and request assistance. All such requests shall be in the form of an official resolution approved by a majority of the governing body of the concerned political subdivision following a public hearing on the resolution. Upon receipt of a resolution under this section, the department shall proceed as required by [MCL 324.80110 and MCL 324.80111]." MCL 324.80112.

"Except as provided under [MCL 324.80112a] the [DNR] may initiate an investigation and inquiry into the need for a special rule for the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances on any of the waters of this state to assure compatibility of uses and to protect public safety." MCL 324.80110(1). "If the [DNR] receives a resolution under [MCL 324.80112], the [DNR] shall initiate an investigation and inquiry under [MCL 324.80110(1)]." MCL 324.80110(1). The process by which special rules are considered and enacted is set out in MCL 324.80110(2)-(6).

"Within 90 days after the public hearing under [MCL 324.80110(4)], if the [DNR] determines that a special rule is needed for the water body, the [DNR] shall propose a local ordinance or appropriate changes to a local ordinance." MCL 324.80110(5). The process for enacting a local ordinance is set out in MCL 324.80111. "Local political subdivisions may enact as an ordinance any or all of sections [MCL 324.80101 to MCL 324.80104, MCL 324.80122 to MCL 324.80124, MCL 324.80126, MCL 324.80140, MCL 324.80141, MCL 324.80144 to MCL 324.80153, MCL 324.80155, MCL 324.80164, MCL 324.80165, and MCL 324.80166 to MCL 324.80173]." MCL 324.80113(3).

Once a local ordinance proposed pursuant to MCL 324.80110 is enacted, it "shall be enforced as provided for in [MCL 324.80113]." MCL 324.80111.

"State, county, and local peace officers shall enforce local ordinances enacted in accordance with [MCL 324.80101 *et seq.*]" MCL 324.80113(1).

"All rules establishing special local watercraft controls promulgated under former 1967 PA 303 before March 17, 1986 shall remain in effect unless rescinded pursuant to [MCL 324.80108, MCL 324.80110, MCL 324.80111, and MCL 324.80112]." MCL 324.80113(2).

"A political subdivision having adopted a local ordinance in conformity with [MCL 324.80101 *et seq.*,] may provide that any violation of the ordinance is a misdemeanor." MCL 324.80171.

4.4 Authority to Enforce the Marine Safety Act

A. DNR Conservation Officers

"Conservation officers appointed by the [DNR] and trained and certified pursuant to [MCL 28.601 to MCL 28.615], are peace officers, and except as otherwise provided by law, are vested with all the powers, privileges, prerogatives, and immunities conferred upon peace officers as provided in [MCL 300.21 to MCL 300.22], and in the general laws of [Michigan]." MCL 324.1501.

"Except as otherwise provided by law, conservation officers appointed by the [DNR] have the same power to serve criminal process and to require aid in executing criminal process as sheriffs, and are entitled to the same fees as sheriffs in performing those duties under [the NREPA], under [MCL 300.21 to MCL 300.22], and under the general laws of [Michigan]." MCL 324.1502.

B. Commissioned Park and Recreation Officers

"The [DNR] may commission park and recreation officers to enforce, on property regulated under [MCL 324.78101 *et seq.*, (state waterways)], rules promulgated by the [DNR] and orders issued by the [DNR] that are authorized in those rules, including, but not limited to, rules promulgated or orders issued under [MCL 324.504], and any laws of [Michigan] specified in those rules as enforceable by commissioned park and recreation officers." MCL 324.1606(2).

"In performing those enforcement activities, commissioned park and recreation officers are vested with the powers, privileges, prerogatives, and immunities conferred upon peace officers under the laws of [Michigan]." MCL 324.1606(2).

MCL 324.1606(3) provides:

> In addition to the limited arrest authority granted in [MCL 324.1606(2)], on property regulated under [MCL 324.74101 *et seq.*, (state parks)], a commissioned park and recreation officer may arrest an individual without a warrant if 1 or more of the following circumstances exist:

> (a) In the presence of the park and recreation officer, the individual commits an assault or an assault and battery in violation of . . . MCL 750.81 and MCL 750.81a.
>
> (b) The park and recreation officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the individual has committed it.
>
> (c) The park and recreation officer has received affirmative written or verbal notice from a law enforcement officer or agency that a peace officer possesses a warrant for the individual's arrest.
>
> * * *
>
> (e) The person violates . . . [MCL 324.82101 *et seq.*] . . . .

"If a conservation officer or a park and recreation officer commissioned under [MCL 324.1606(2)] arrests a person without warrant for a minor offense committed in the officer's presence, instead of immediately bringing the person for arraignment by the court having jurisdiction, the officer may issue to and serve upon the person an appearance ticket as authorized by [MCL 764.9c to MCL 764.9g]." MCL 324.1606(6).

C. Peace Officers

A peace officer may enforce MCL 324.80101 *et seq*. See MCL 324.80104(c).

4.5 Rulemaking Authority of the DNR[1]

A. Broad Authority: "Rules as Necessary"

"The [DNR] may promulgate rules as may be necessary to implement [MCL 324.80101 *et seq.*]" MCL 324.80121. "The [DNR] shall publish the approved rules in a convenient form." See MCL 324.80109(1).

[1] The administrative rules are available here. In addition, the DNR website contains detailed information about DNR boating rules and regulations, available here. See also the *Handbook of Michigan Boating Laws and Responsibilities*.

B. Safety Standards

"The [DNR] may promulgate rules to establish performance or other safety standards relating to boat construction or the installation, use, or carriage of associated equipment." MCL 324.80114(1). "The [DNR] shall publish the approved rules in a convenient form." See MCL 324.80109(1).

"In order that a boat operator may pass unhindered from jurisdiction to jurisdiction, rules authorized by [MCL 324.80114] shall be identical to federal regulations for enforcement purposes." MCL 324.80114(2). "However, rules requiring the carrying or using of marine safety articles to meet uniquely hazardous conditions or circumstances within [Michigan] may be promulgated, if the rules for the safety articles are approved by the United States coast guard." *Id*.

"A person who violates a rule promulgated to implement [MCL 324.80114] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.80114(3).

The administrative rules are available here.

C. Decal Display

"The [DNR] shall promulgate a rule or rules to establish the manner in which the decal is to be displayed." MCL 324.80124(15). "The [DNR] shall publish the approved rules in a convenient form." See MCL 324.80109(1).

D. Reporting System

"The [DNR] shall promulgate rules to establish a state vessel collision, accident, or other casualty reporting system in conformity with that established by the United States coast guard." MCL 324.80139. "The [DNR] shall publish the approved rules in a convenient form." See MCL 324.80109(1).

E. Vessel Speeds

"The [DNR] may promulgate rules to establish maximum vessel speed limits or to allow unlimited vessel speed on the waters of this state." MCL 324.80146(1). "The [DNR] shall publish the approved rules in a convenient form." See MCL 324.80109(1).

F. Water Ski Tournaments

"The [DNR] shall adopt standards for water ski tournament boat operation established by U.S.A. water ski in 'Trained Boat Driver Program', April 1997, and by the American water ski association in 'Drivers' Policy Manual'. However, the [DNR] may promulgate rules providing for alternative standards under . . . MCL 24.201 to [MCL] 24.328." MCL 324.80152(6).

"The [DNR] shall adopt standards for tournament water skiers established by the Michigan water ski association in 'Guidelines for Training Permit Eligibility', proposed revision 125 of 1996. However, the [DNR] may promulgate rules providing for alternative standards under . . . MCL 24.201 to [MCL] 24.328." MCL 324.80152(7).

"The [DNR] shall publish the approved rules in a convenient form." See MCL 324.80109(1).

G. Boat Races

"The [DNR] may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments, or exhibitions, or trials for those events, on any waters of this state. The [DNR] shall promulgate and may amend rules concerning the conduct of such marine events." MCL 324.80164.

4.6 Warrantless Arrest Under the Marine Safety Act

A. Warrantless Arrest By Peace Officer

"A peace officer who observes a marine law violation or the commission of a crime may immediately arrest the person without a warrant or issue to the person a written or verbal warning." MCL 324.80166(4).

B. Cases in Which Arrested Person Must Be Arraigned By a Magistrate or Judge

"If a person is arrested without a warrant for any of the following, the arrested person shall, without unreasonable delay, be arraigned by a magistrate or judge who is within the county in which the offense charged is alleged to have been committed, who has jurisdiction of the offense, and who is nearest or most accessible with reference to the place where the arrest is made:

> (a) The person is arrested upon a charge of negligent homicide.
>
> (b) The person is arrested under [MCL 324.80176(1), MCL 324.80176(3), MCL 324.80176(4), or MCL 324.80176(5)], or a local ordinance substantially corresponding to [MCL 324.80176(1) or MCL 324.80176(3)].
>
> (c) The person is arrested under [MCL 324.80147] or a local ordinance substantially corresponding to [MCL 324.80147]. If in the existing circumstances it does not appear that releasing the person pending the issuance of a warrant will constitute a public menace, the arresting officer may proceed as provided by [MCL 324.80168]." MCL 324.80167.

C. Appearance Following a Warrantless Arrest

"When a person is arrested without a warrant for a violation of [MCL 324.80101 *et seq.*,] punishable as a misdemeanor, or of a provision of any local ordinance or rule established in conformity with [MCL 324.80101 *et seq.*], under conditions not referred to in [MCL 324.80167], the arresting officer shall prepare in duplicate a written notice to appear in court containing the name and address of the person, the offense charged, and the time and place when and where the person shall appear in court." MCL 324.80168(1). "If the arrested person so demands, he or she shall be arraigned by a magistrate or a district court judge as provided in [MCL 324.80167] in lieu of being given the notice." MCL 324.80168(1).

"The time specified in the notice to appear shall be within a reasonable time after the arrest unless the person arrested demands an earlier hearing." MCL 324.80168(2).

"The place specified in the notice to appear shall be before a magistrate or a district court judge who is within the township or county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense." MCL 324.80168(3).

"Appearance may be made in person, by representation, or by mail." MCL 324.80168(4). "When appearance is made by representation or mail, the magistrate or the district court judge may accept the plea of guilty or not guilty for purposes of arraignment, with the same effect as though the person personally appeared before him or her." MCL 324.80168(4). "The magistrate or the district court judge, by giving notice 5 days prior to the date of

appearance, may require appearance in person at the time and place designated in the notice." *Id*.

D. Warrantless Arrest of a Nonresident

"If a person not a resident of [Michigan] is arrested without a warrant for a violation of [MCL 324.80101 *et seq*.,] under conditions not referred to under [MCL 324.80167], the officer making the arrest, upon demand of the arrested person, shall immediately take the person for arraignment by a magistrate or a district court judge in the vicinity to answer to the complaint made against him or her." MCL 324.80169(1). "If a magistrate or a district court judge is not available or an immediate trial cannot be had, the person arrested may recognize to the officer for his or her appearance by leaving with him or her not more than $200.00." *Id*.

"The officer making the arrest shall give a receipt to the person arrested for the money deposited with him or her under [MCL 324.80169(1)], together with a written summons as provided in [MCL 324.80168]." MCL 324.80169(2). "If the offender fails to appear as required, the deposit shall be forfeited as in other cases of default in bail, in addition to any other penalty provided in [MCL 324.80101 *et seq*.]" MCL 324.80169(3). "Not more than 48 hours after taking a deposit under [MCL 324.80169], the officer shall deposit the money with the magistrate or the district court judge named in the notice to appear, together with a report stating the facts relating to the arrest." MCL 324.80169(4). "Failure to report and deposit the money is embezzlement of public money." *Id*.

E. Violation By Officer, Magistrate or District Court Judge

"Any officer, magistrate, or district court judge violating [MCL 324.80168 or MCL 324.80169] is guilty of misconduct in office and is subject to removal from office." MCL 324.80170(1).

"[MCL 324.80168 and MCL 324.80169] govern all peace officers in making arrests without a warrant for violations of [MCL 324.80101 *et seq*.,] and do not prevent the execution of a warrant for the arrest of the person as in other cases of misdemeanors when it may be necessary." MCL 324.80170(2).

4.7 General Penalty Provision in the Marine Safety Act

Except as otherwise provided, a person who violates the Marine Safety Act is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;

- fine of not more than $500; or
- both. MCL 750.504. See also MCL 324.80171.

Several exceptions to this general penalty provision exist and are discussed at length in this chapter.

4.8 Costs and Minimum State Costs

MCL 769.1k(1)(b)(*ii*) (allowing the court to impose "[a]ny cost authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty[]") does not provide courts with "the independent authority to impose costs upon criminal defendants." *People v Cunningham (Cunningham II)*, 496 Mich 145, 147 (2014), rev'g 301 Mich App 218 (2013) and overruling *People v Sanders (After Remand)*, 298 Mich App 105 (2012), and *People v Sanders*, 296 Mich App 710 (2012). Rather, it "provides courts with the authority to impose only those costs that the Legislature has separately authorized by statute." *Id.* at 154. Effective October 17, 2014, 2014 PA 352 amended MCL 769.1k in response to the Michigan Supreme Court's holding in *Cunningham II*.[2] In *Cunningham II*, the Court held that MCL 769.1k(1)(b)— which, at the time, provided for the imposition of "[a]ny cost in addition to the minimum state cost"—did "not provide courts with the independent authority to impose 'any cost'"; rather, it "provide[d] courts with the authority to impose only those costs that the Legislature has separately authorized by statute." *Cunningham II*, 496 Mich at 147, 158 (concluding that "[t]he circuit court erred when it relied on [former] MCL 769.1k(1)(b)(*ii*) as independent authority to impose $1,000 in court costs"). 2014 PA 352, in addition to making other revisions to MCL 769.1k, added MCL 769.1k(1)(b)(*iii*) to provide for the imposition of "any cost reasonably related to the actual costs incurred by the trial court[.]"[3] The amendments effectuated by 2014 PA 352 "appl[y] to all fines, costs, and assessments ordered or assessed under . . . MCL 769.1k[] *before June 18, 2014*, and *after [October 17, 2014]*." 2014 PA 352, enacting section 1 (emphasis supplied).

MCL 769.1k(1)(b)(*iii*) authorizes the imposition of costs independently of the statute for the sentencing offense, and "[a] trial court possessed the authority under MCL 769.1k, as amended by 2014 PA 352, to order [the] defendant to pay court costs." *People v Konopka (On Remand)*, 309 Mich App 345, 350, 358 (2015). "However, although the costs imposed [under MCL 769.1k(1)(b)(*iii*)] . . . need not be separately calculated, . . . the trial

[2]The amended version of MCL 769.1k does not violate a defendant's due process or equal protection rights, nor does it violate the constitutional prohibition on ex post facto punishments or the principle of separation of powers. *People v Konopka (On Remand)*, 309 Mich App 345, 361, 369-370, 376 (2015).

[3] This provision expires on December 31, 2026. See MCL 769.1k(1)(b)(*iii*).

court [must] . . . establish a factual basis" demonstrating that "the court costs imposed [are] 'reasonably related to the actual costs incurred by the trial court[.]'" *Konopka (On Remand)*, 309 Mich App at 359-360, quoting MCL 769.1k(1)(b)(*iii*).

"If a defendant is determined to be responsible or responsible 'with explanation' for a state civil infraction, the judge or district court magistrate may order the defendant to pay . . . costs as provided in [MCL 600.8827(3)][.]" MCL 600.8827(2). "In the order of judgment, the judge or district court magistrate may grant a defendant permission to pay . . . costs . . . within a specified period of time or in specified installments." *Id*. "Otherwise, the . . . costs . . . are payable immediately." *Id*.

"If a defendant is ordered to pay a civil fine under [MCL 600.8827(2)], the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the state civil infraction, up to the entry of judgment." MCL 600.8827(3). "Costs of not more than $500.00 must be ordered." *Id*.

"[I]f the court orders a person convicted of an offense to pay any combination of a fine, costs, or applicable assessments, the court shall order that the person pay costs of not less than the following amount, as applicable:

> (a) $68.00, if the defendant is convicted of a felony.
>
> (b) $50.00, if the defendant is convicted of a misdemeanor or ordinance violation." MCL 769.1j(1). See also MCL 600.8381(4).

The costs imposed under MCL 769.1j(1)(a) constitute a tax, and this tax does not violate the separation of powers requirement under Const 1963, art 3, § 2 or the requirement of Const 1963, art 4, § 32 that "[e]very law which imposes, continues or revives a tax shall distinctly state the tax." *People v Shenoskey*, 320 Mich App 80, 83-84 (2017) (applying the analysis of MCL 769.1k(1)(b)(*iii*) in *People v Cameron*, 319 Mich App 215 (2017) to MCL 769.1j(1)(a) because the statutes are "closely related").

"Payment of the minimum state cost is a condition of probation under [MCL 771.1 *et seq*.]" MCL 769.1j(3). See also MCL 771.3(1)(g) ("[t]he probationer shall pay the minimum state cost prescribed by [MCL 769.1j]").

4.9 Justice System Assessment

"[W]hen fines and costs are assessed by a judge or district court magistrate in a civil infraction action, the defendant shall be ordered to pay the state assessment required by [MCL 600.8727, MCL 600.8827, or MCL 257.907 (Michigan Vehicle Code)]." MCL 600.8381(5).

MCL 600.8727 applies to municipal civil infractions and requires the court to "order the defendant to pay a justice system assessment of $10.00" "in addition to any fine or cost ordered to be paid under [MCL 600.8727(2)]." MCL 600.8727(4).

MCL 600.8827 applies to state civil infractions and requires the court to "order the defendant to pay a justice system assessment of $10.00" "in addition to any fine or cost ordered to be paid under [MCL 600.8827(2) or MCL 600.8827(3).]" MCL 600.8827(4).

4.10 Specified Marine Vessel/Motorboat Sanctions

A. Impoundment

"When a person is convicted under [MCL 324.80196(1)], the vessel, if it is owned in whole or in part by that person, shall be ordered impounded for not less than 30 or more than 120 days from the date of judgment." MCL 324.80197(1).

"An order of impoundment issued pursuant to [MCL 324.80197(1)] is valid throughout [Michigan]. Any peace officer may execute the impoundment order. The order shall include the implied consent of the owner of the vessel to the storage for insurance coverage purposes." MCL 324.80197(1).

"The owner of a vessel impounded pursuant to [MCL 324.80197] is liable for expenses incurred in the removal and storage of the vessel whether or not the vessel is returned to him or her. The vessel shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the vessel is not returned as provided in [MCL 324.80197] within 30 days after the time set in the impoundment order for return of the vessel, the vessel shall be considered abandoned." MCL 324.80197(2).

"Nothing in [MCL 324.80197] affects the rights of a conditional vendor, chattel mortgagee, or lessor of a vessel registered in the name of another person as owner who becomes subject to [MCL 324.80101 *et seq*.]" MCL 324.80197(3).

B. Court Order Not to Operate Motorboat

"Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of [MCL 324.80176(1), MCL 324.80176(3), MCL 324.80176(4), MCL 324.80176(5), MCL 324.80176(6), or MCL 324.80176(7)] or a local ordinance substantially corresponding to [MCL 324.80176(1), MCL 324.80176(3), or MCL 324.80176(6)], whether or not the person is eligible to be sentenced as a multiple offender, the court shall consider all prior convictions currently entered upon the boating record of the person or other evidence of prior convictions established under [MCL 324.80179], except those convictions that, upon motion by the defendant, are determined by the court to be constitutionally invalid, and shall impose the following sanctions:

> (a) For a conviction under [MCL 324.80176(4) or MCL 324.80176(5)], the court shall order with no expiration date that the person not operate a motorboat on the waters of this state.
>
> (b) For a conviction under [MCL 324.80176(1)] or a local ordinance substantially corresponding to [MCL 324.80176(1)]:
>
> > (*i*) If the court finds that the person has no prior convictions within 7 years the court may order that the person not operate a motorboat on the waters of this state for not less than 1 year or more than 2 years.
> >
> > (*ii*) If the court finds that the person has 1 or more prior convictions within 7 years, the court shall order that the person not operate a motorboat on the waters of this state for not less than 2 years.
> >
> > (*iii*) If the court finds that the person has 2 or more prior convictions within 10 years, the court shall order with no expiration date that the person not operate a motorboat on the waters of this state.
>
> (c) For a conviction under [MCL 324.80176(3)] or a local ordinance substantially corresponding to [MCL 324.80176(3)]:
>
> > (*i*) If the court finds that the convicted person has no prior conviction within 7 years, the court may order that the person not operate a motorboat on the waters of this state for not less than 6 months or more than 1 year.

(*ii*) If the court finds that the person has 1 prior conviction within 7 years, the court shall order that the person not operate a motorboat on the waters of this state for not less than 1 year or more than 2 years.

(*iii*) If the court finds that the person has 2 or more prior convictions within 10 years, the court shall order with no expiration date that person not to operate a motorboat on the waters of this state." MCL 324.80186.

C. Secretary of State Order Not to Operate Marine Vessel For Specified Period of Time

"Notwithstanding a court order issued under [MCL 324.80176(1), MCL 324.80176(3), MCL 324.80176(4), or MCL 324.80176(5)], [MCL 324.80185 or MCL 324.80186], former section 171(1), (3), (4), or (5), 181, or 182 of the marine safety act, former section 73 or 73b of the marine safety act, or a local ordinance substantially corresponding to [MCL 324.80176(1) or MCL 324.80176(3)], [MCL 324.80185 or MCL 324.80186], or former section 73 or 73b of the marine safety act, if a court has not ordered a person not to operate a vessel as authorized by [MCL 324.80101 *et seq*.], the secretary of state shall issue an order that the person not operate a vessel on the waters of this state for not less than 6 months or more than 2 years, if the person has the following convictions within a 7-year period, whether under the law of [Michigan], a local ordinance substantially corresponding to a law of [Michigan], or a law of another state substantially corresponding to a law of [Michigan]:

(a) One conviction under [MCL 324.80176(1)], former section 171(1) of the marine safety act, or former section 73 of the marine safety act.

(b) Any combination of 2 convictions under [MCL 324.80176(3)], former section 171(3) of the marine safety act, or former section 73b of the marine safety act.

(c) One conviction under [MCL 324.80176(1)], former section 171(1) o[f] the marine safety act, or former section 73 of the marine safety act and 1 conviction under [MCL 324.80176(3)], former section 171(3) of the marine safety act, or former section 73b of the marine safety act.

(d) One conviction under [MCL 324.80176(4) or MCL 324.80176(5)] or former section 171(4) or (5) of the marine safety act followed by 1 conviction under [MCL

> 324.80176(3)] or former section 171(3) of the marine safety act." MCL 324.80191(1).

"If the secretary of state receives records of more than 1 conviction of a person resulting from the same incident, an order not to operate shall be issued solely for that violation for which an order could be effective for the longest period of time under [MCL 324.80191]." MCL 324.80191(2).

D. Secretary of State Order Not to Operate Vessel Without Expiration

"Upon receipt of the appropriate records of conviction, the secretary of state shall issue an order with no expiration date that the person not operate a vessel on the waters of this state to a person having any of the following convictions, whether under a law of [Michigan], a local ordinance substantially corresponding to a law of [Michigan], or a law of another state substantially corresponding to a law of [Michigan]:

> (a) Four convictions under [MCL 324.80147], former section 74 of the marine safety act, or a local ordinance substantially corresponding to [MCL 324.80147] within 7 years.
>
> (b) Two convictions of a felony involving the use of a vessel within 7 years.
>
> (c) Any combination of 2 convictions within 7 years for 1 or more of the following:
>
> > (*i*) A violation of [MCL 324.80176(1)] or former section 171(1) of the marine safety act.
> >
> > (*ii*) A violation of former section 73 of the marine safety act.
> >
> > (*iii*) A violation of [MCL 324.80176(4) or MCL 324.80176(5)] or former section 171(4) or (5) of the marine safety act.
>
> (d) One conviction under [MCL 324.80176(4) or MCL 324.80176(5)] or former section 171(4) or (5) of the marine safety act.
>
> (e) Any combination of 3 convictions within 10 years for 1 or more of the following:
>
> > (*i*) A violation of [MCL 324.80176(1), MCL 324.80176(3), MCL 324.80176(4), or MCL

> 324.80176(5)] or former section 171(1), (3), (4), or (5) of the marine safety act.
>
> (*ii*) A violation of former section 73 or former section 73b of the marine safety act." MCL 324.80192(1).

"The secretary of state shall issue an order with no expiration date that a person not operate a vessel on the waters of this state notwithstanding a court order issued under [MCL 324.80176, MCL 324.80185 or MCL 324.80186], former section 73, 73b, 171, 181, or 182 of the marine safety act, or a local ordinance substantially corresponding to [MCL 324.80176, MCL 324.80185 or MCL 324.80186], or former section 73 or 73b of the marine safety act." MCL 324.80192(2).

"The secretary of state shall not terminate an order with no expiration date issued under [MCL 324.80101 *et seq.*,] until both of the following occur:

> (a) The later of the following:
>
> > (*i*) The expiration of not less than 1 year after the order was issued.
> >
> > (*ii*) The expiration of not less than 5 years after the date of a subsequent issuance of an order with no expiration date occurring within 7 years after the date of a prior order.
>
> (b) The person meets the requirements of the [DNR]." MCL 324.80192(3).

"Multiple convictions resulting from the same incident shall be treated as a single violation for purposes of issuance of an order under [MCL 324.80192]." MCL 324.80192(4).

1. Judicial Review

"Judicial review of an administrative sanction under [MCL 324.80192] is governed by the law in effect at the time the offense was committed or attempted." MCL 324.80192(5).

2. Failure to Answer Citation, Appear, or Comply with Court Order or Judgment

"If a person is charged with, or convicted of, a violation of [MCL 324.80176(1), MCL 324.80176(2), MCL 324.80176(3), MCL 324.80176(4), or MCL 324.80176(5)] or a local ordinance substantially corresponding to [MCL 324.80176(1), MCL

324.80176(2), or MCL 324.80176(3)], and the person fails to answer a citation or a notice to appear in court, or for any matter pending, or fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, the court shall immediately give notice by first-class mail sent to the person's last known address that if the person fails to appear within 7 days after the notice is issued or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, within 14 days after the notice is issued, the secretary of state will issue an order with no expiration date that the person not operate a vessel on the waters of this state." MCL 324.80193(1). "If the person fails to appear within the 7-day period or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within the 14-day period, the court shall immediately inform the secretary of state who shall immediately issue the order and send a copy to the person by personal service or first-class mail sent to the person's last known address." *Id*.

"An order imposed under [MCL 324.80193(1)] remains in effect until both of the following occur:

> (a) The court informs the secretary of state that the person has appeared before the court and that all matters relating to the violation are resolved.
>
> (b) The person has paid to the court a $25.00 administrative order processing fee." MCL 324.80193(2).

E. Expiration of Order Not to Operate Marine Vessel

"Whether with or without an expiration date, an order not to operate a vessel on the waters of this state or to operate a vessel with restrictions does not expire until the person subject to the order pays an administrative order processing fee of $125.00 to the secretary of state." MCL 324.80198.

F. Failing to Comply with "No-Operate Order": Cancellation of Marine Vessel Certificate of Number and Registration Numbers

"If a person is convicted of violating [MCL 324.80196(1)[4]], the court shall order confiscation of the vessel's certificate of number and cancellation of the vessel's registration numbers, unless the vessel

was stolen or permission to use the vessel was not knowingly given." MCL 324.80196(5).

"The secretary of state shall not assign a registration number to or issue a certificate of number for a vessel whose number is canceled and certificate confiscated until after the expiration of 90 days after the cancellation or confiscation, whichever is later." MCL 324.80196(5).

4.11 Appealing Final Determination By Secretary of State

"A person who is aggrieved by a final determination of the secretary of state under [MCL 324.80101 *et seq.*,] may petition for a review of the determination in the circuit court in the county where the person was arrested. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made." MCL 324.80194(1).

"As provided in [MCL 324.80190], a peace officer who is aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under [MCL 324.80190] may, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the county where the arrest was made. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made." MCL 324.80194(1).

"The circuit court shall enter an order setting the cause for hearing for a day certain that is not more than 63 days after the date of the order. The order, a copy of the petition, which shall include the person's full name, current address, and birth date, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared pursuant to [MCL 324.80190], the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing." MCL 324.80194(2).

"Except as provided in [MCL 324.80194(4) and MCL 324.80194(6)], the court may take testimony and examine all the facts and circumstances incident to the order that the person not operate a vessel on the waters of this state. The court may affirm, modify, or set aside the order. The order of the court shall be duly entered, and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order." MCL 324.80194(3).

[4] See Section 4.25 for more information on this offense.

"In reviewing a determination under [MCL 324.80190], the court shall confine its consideration to a review of the record prepared pursuant to [MCL 324.80190] to determine whether the hearing officer properly determined the issues enumerated in [MCL 324.80190]." MCL 324.80194(4).

"[MCL 324.80194] does not apply to an order issued by the secretary of state pursuant to a court order issued as part of the sentence for a conviction under [MCL 324.80176, MCL 324.80185 or MCL 324.80186], former sections 171, 181, or 182 of the marine safety act, former section 73 or 73b of the marine safety act, or a local ordinance substantially corresponding to [MCL 324.80176(1), MCL 324.80176(2), or MCL 324.80176(3)], or former section 73 or 73b of the marine safety act." MCL 324.80194(5).

"In reviewing a determination resulting in issuance of an order under [MCL 324.80192(1)(c), MCL 324.80192(1)(d), or MCL 324.80192(1)(e)], the court shall confine its consideration to a review of the record prepared pursuant to [MCL 324.80190] or the boating record. The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:

> (a) In violation of the constitution of the United States, the state constitution of 1963, or a statute.
>
> (b) In excess of the statutory authority or jurisdiction of the secretary of state.
>
> (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
>
> (d) Not supported by competent, material, and substantial evidence on the whole record.
>
> (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
>
> (f) Affected by other substantial and material error of law." MCL 324.80194(6).

"Within 63 days after the determination, a person who is aggrieved by a final determination of the secretary of state under [MCL 324.80101 *et seq.*,] may petition the circuit court for the county in which the conviction or determination resulting in issuance of the order that the person not operate a vessel on the waters of this state for an order staying the order." MCL 324.80195(1).

"Except as provided in [MCL 324.80195(2)], the court may enter an ex parte order staying the order subject to terms and conditions prescribed

by the court until the determination of an appeal to the secretary of state or of an appeal or a review by the circuit court, or for a lesser time that the court considers proper." MCL 324.80195(1).

"The court shall not enter an ex parte order staying the order if the order is based upon a claim of undue hardship." MCL 324.80195(2).

4.12 Liability of Vessel Owner for Negligent Operation/ Presumption of Consent to Use

"The owner of a vessel is liable for any injury occasioned by the negligent operation of the vessel, whether the negligence consists of a violation of the statutes of [Michigan], or in the failure to observe such ordinary care in the operation as the rules of the common law require." MCL 324.80157.

"The owner is not liable unless the vessel is being used with his or her expressed or implied consent." MCL 324.80157. "It shall be presumed that the vessel is being operated with the knowledge and consent of the owner if it is driven at the time of the injury by his or her son, daughter, spouse, father, mother, brother, sister, or other immediate member of the owner's family." *Id*.

Part B—Nonmoving Violations in the Marine Safety Act

4.13 Rendering Assistance at an Accident

A. Statutory Authority

"The operator of a vessel involved in a collision, accident, or other casualty, and the operator of any other vessel, to the extent that he or she can do so without serious danger to his or her own vessel, crew, and passengers, shall render reasonable assistance to a person affected by the collision, accident, or other casualty, including the transporting of the injured person to a physician or surgeon for medical or surgical treatment, if it is apparent that treatment is necessary or when requested by the injured person." MCL 324.80133(1).

"A person who complies with [MCL 324.80133(1)], or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty without objection of the person assisted, is not liable for civil damages as a result of the rendering of assistance, or for an act or omission in providing or

arranging towage, medical treatment, or other assistance, if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances." MCL 324.80133(2).

B. Penalties

A person who violates MCL 324.80133 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80171; MCL 750.504.

C. DNR Rules

1. Authority

Pursuant to MCL 324.80139, the DNR has promulgated rules on marine collisions, accidents, or other casualties. Mich Admin Code, R 281.1221-R 281.1226.

2. Penalties

A violation of a DNR rule promulgated under MCL 324.80133 is a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80171; MCL 750.504.

4.14 Certificate of Number and Decal Requirements

A. Misdemeanor

1. Statutory Authority

"Except as otherwise provided in [MCL 324.80124], the owner of a vessel required, pursuant to [MCL 324.80122 and MCL 324.80123], to be numbered and to display a decal shall file an application for a certificate of number with the secretary of state. The secretary of state shall prescribe and furnish certificate of title application forms. If a vessel requiring a

certificate of title under [MCL 324.80301 *et seq*.,] is sold by a dealer, that dealer shall combine the application for a certificate of number that is signed by the vessel owner with the application for a certificate of title. The dealer shall obtain the certificate of number in the name of the owner. The application for a certificate of number shall include a certification. The owner of the vessel shall sign the application or, if the application is filed electronically, provide information requested by the secretary of state to verify the owner's identity. A person shall not file an application for a certificate of number that contains false information." MCL 324.80124(1).

2. Penalties

"A dealer who fails to submit an application as required by [MCL 324.80124] is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00, or both." MCL 324.80124(1).

B. State Civil Infraction

1. Statutory Authority

"Except as otherwise provided in [MCL 324.80101 *et seq*.], a person shall not operate or give permission for the operation of a vessel of any length on the waters of this state unless the fees prescribed in [MCL 324.80124] for the vessel are paid, the certificate of number assigned to the vessel is on board and is in full force and effect, and, except for the following, the identifying number and decal are displayed on each side of the forward half of the vessel in accordance with [MCL 324.80101 *et seq*.,] and the rules promulgated by the [DNR] under [MCL 324.80101 *et seq*.]:

> (a) A decal and identifying numbers for a wooden hull and historic vessel as that term is defined in [MCL 324.80124] may be displayed in the manner described in [MCL 324.80126(2)].
>
> (b) A decal for an inflatable boat may be displayed on the transom of the boat." MCL 324.80122(1).

"If a vessel is actually numbered in another state of principal use in accordance with a federally approved numbering system, it is in compliance with the numbering requirements of [Michigan] while it is temporarily being used in [Michigan]." MCL 324.80122(2). "[MCL 324.80122(2)] applies to a vessel for which a valid temporary certificate is issued to the vessel's

owner by the issuing authority of the state in which the vessel is principally used." MCL 324.80122(2).

"If a vessel is removed to [Michigan] as the new state of principal use, a number awarded by any other issuing authority is valid for not more than 60 days before numbering is required by [Michigan]." MCL 324.80122(3).

2. Penalties

"A person who violates [MCL 324.80122] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.80122(4).

3. Exceptions

"The owner of a vessel is not required to pay a fee and a vessel is not required to be numbered and to display a decal under [MCL 324.80101 *et seq.*,] if the vessel is 1 or more of the following:

> (a) Used temporarily on the waters of this state and the owner and the vessel are from a country other than the United States.
>
> (b) A vessel that is owned by the United States, used in the public service for purposes other than recreation, and clearly identifiable as such a vessel.
>
> (c) A vessel's lifeboat.
>
> (d) An all-terrain vehicle not used as a vessel.
>
> (e) A raft, sailboard, surfboard, or swim float.
>
> (f) A vessel 16 feet or less, propelled by hand either with oars or paddles, and not used for rental or other commercial purposes.
>
> (g) A nonmotorized canoe or kayak not used for rental or other commercial purposes." MCL 324.80123(1).

"The owner of a vessel documented by the United States coast guard or a federal agency that is the successor to the United States coast guard shall comply with [MCL 324.80101 *et seq.*], including the payment of fees as provided in [MCL 324.80101 *et seq.*]" MCL 324.80123(2). "However, the vessel shall not be required to display numbers under [MCL 324.80101 *et seq.*]" MCL 324.80123(2).

"[MCL 324.80101 *et seq.*,] does not prohibit the numbering of an undocumented vessel pursuant to [MCL 324.80101 *et seq.*,] upon request by the owner, even though the vessel is exempt from the numbering requirements of [MCL 324.80101 *et seq.*]" MCL 324.80123(3).

4. DNR Rules

a. Authority

The DNR has promulgated rules regarding the numbering of vessels and motorboats. Mich Admin Code, R 281.1201-R 281.1209.

b. Penalties

A violation of a DNR rule promulgated under MCL 324.80122 "is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.80122(4); See also MCL 324.80122(1).

4.15 Equipment Requirements and Required Personal Flotation Devices

A. Misdemeanors

1. Statutory Authority

"Subject to [MCL 324.80156(2)[5]], a person shall not operate a motorboat on the waters of this state unless the motorboat is equipped and maintained with an effective muffler or underwater exhaust system that does not produce sound levels in excess of 90 dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005 or a sound level in excess of 75 dB(A) when subjected to a shoreline sound level measurement procedure as described by SAE J1970." MCL 324.80156(1).

"The operator of a motorboat shall present the motorboat for a sound level test as prescribed by SAE J2005 upon the request of a peace officer." MCL 324.80156(1).

[5] MCL 324.80156(2) provides that "[t]he [DNR] may by rule establish a motorboat sound level test and set a maximum decibel level or levels permitted for motorboat operation that replace the tests and maximum decibel levels permitted under [MCL 324.80156(1)]."

"If a motorboat is equipped with more than 1 motor or engine, the test shall be performed with all motors or engines operating." MCL 324.80156(1).

"To determine whether a person is violating [MCL 324.80156(1)], a peace officer may measure sound levels pursuant to procedures prescribed in SAE J1970, issued 1991-92." MCL 324.80156(1).

"A person shall not manufacture, sell, or offer for sale a motorboat for use on the waters of this state unless that motorboat is equipped and maintained with an effective muffler or underwater exhaust system that complies with the applicable sound levels permitted under [MCL 324.80156(1) or MCL 324.80156(2)]." MCL 324.80156(3).

2. Penalties

"A person who violates [MCL 324.80156] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $150.00." MCL 324.80156(6). A person who violates [MCL 324.80156] a second or subsequent time is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not less than $100 or more than $500. MCL 324.80156(6).

"Additionally, before putting the motorboat back in use, a person who violates [MCL 324.80156] is required to install an effective muffler or underwater exhaust system that meets the requirements of [MCL 324.80156] on the motorboat in violation at his or her expense." MCL 324.80156(6).

3. Exceptions

"[MCL 324.80156(1) and MCL 324.80156(2)] do not apply to any of the following:

> (a) A motorboat tuning up or testing for or participating in official trials for speed records or a sanctioned race conducted pursuant to a permit issued by an appropriate unit of government.
>
> (b) A motorboat being operated by a boat or marine engine manufacturer for the purpose of testing or development.

(c) A motorboat that qualifies as an historic vessel." MCL 324.80156(4).

4. DNR Rules

a. Authority

The DNR has promulgated rules regarding associated equipment on vessels. Mich Admin Code, R 281.1231-R 281.1252.

b. Penalties

A violation of a DNR rule promulgated under MCL 324.80101 *et seq*., is a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80171; MCL 750.504.

B. State Civil Infraction

1. Statutory Authority

Personal flotation devices. "Except as provided in [MCL 324.80142(3)], a person shall not operate a vessel on the waters of this state unless each person in an open deck area on board the vessel who is less than 6 years of age is wearing a type I or type II personal flotation device as described in R 281.1234 of the Michigan administrative code." MCL 324.80142(1).

Marine safety equipment. "A person who operates a vessel, or the owner of a vessel who operates or causes or permits the vessel to be operated, on the waters of this state shall carry, store, maintain, and use marine safety equipment onboard the vessel as required by the department." MCL 324.80143a.

2. Penalties

"A person who violates [MCL 324.80142 or MCL 324.80143a] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00." MCL 324.80142(5); MCL 324.80143a.

3. Exceptions

MCL 324.80142(3) provides:

> [MCL 324.80142] does not apply to a charter boat bearing either of the following:
>
> (a) A valid certificate of inspection issued by the United States coast guard that verifies the charter boat's compliance with subchapter H or subchapter T of the code of federal regulations, [46 CFR 70.01-1 *et seq.*,] and [46 CFR 175.100 *et seq.*]
>
> (b) A valid certificate of inspection issued by the [DNR] for a class C vessel that is greater than 45 feet in length.

4.16 Exchanging Identification at an Accident

A. Statutory Authority

"In the case of collision, accident, or other casualty involving a vessel, the operator shall stop his or her vessel and give his or her name and address and identification of his or her vessel, and the name and address of the owner of the vessel if he or she is not the operator, to the operator or occupants of any other vessel involved or to the owner or his or her agents of any property damaged by the accident." MCL 324.80134.

Pursuant to MCL 324.80139, the DNR has promulgated rules on marine collisions, accidents, or other casualties. Mich Admin Code, R 281.1221-R 281.1226.

"[MCL 324.80134] appl[ies] to a vessel operated on waters subject to the jurisdiction of [Michigan] when the vessel is either of the following:

> (a) Operated by its operator for recreational purposes.
>
> (b) Required to be numbered in this state." MCL 324.80132(1).

B. Penalties

A person who violates MCL 324.80134 or the DNR rules promulgated under MCL 324.80134 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80171; MCL 750.504.

4.17 Failure to Report an Accident

A. Statutory Authority

"In the case of collision, accident, or other casualty involving a vessel, the operator shall report the collision, accident, or other casualty to the nearest peace officer, state police post, or the sheriff of the county in which the collision, accident, or other casualty occurred." MCL 324.80135(1).

"A report of a collision, accident, or other casualty involving a vessel that is made to a peace officer other than the sheriff of the county in which the collision, accident, or other casualty occurred shall be reported without delay by the peace officer to the sheriff of the county in which the collision, accident, or other casualty occurred." MCL 324.80135(2).

Pursuant to MCL 324.80139, the DNR has promulgated rules on marine collisions, accidents, or other casualties. Mich Admin Code, R 281.1221-R 281.1226.

"[MCL 324.80135] appl[ies] to a vessel operated on waters subject to the jurisdiction of [Michigan] when the vessel is either of the following:

> (a) Operated by its operator for recreational purposes.
>
> (b) Required to be numbered in this state." MCL 324.80132(1).

B. Penalties

A person who violates MCL 324.80135 or the DNR rules promulgated under MCL 324.80135 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80107; MCL 750.504.

4.18 Providing Misinformation to Peace Officer Upon Detainment

"A person who is detained for a violation of [MCL 324.80101 *et seq.*,] or of a local ordinance substantially corresponding to a provision of [MCL 324.80101 *et seq.*,] and who furnishes a peace officer false, forged, fictitious, or misleading verbal or written information identifying the person as another person is guilty of a misdemeanor." MCL 324.80166(3).

4.19 Stopping and Inspecting a Vessel

A. Statutory Authority

"Upon the direction of a peace officer acting in the lawful performance of his or her duty, the operator of a vessel moving on the waters of this state shall immediately bring the vessel to a stop or maneuver it in a manner that permits the peace officer to come beside the vessel." MCL 324.80166(1).

"The operator of the vessel shall do the following upon the request of the peace officer:

> (a) Provide his or her correct name and address.
>
> (b) Exhibit the certificate of number awarded for the vessel.
>
> (c) If the vessel does not bear a decal described in [MCL 324.80166a[6]] or an equivalent decal issued by or on behalf of another state, submit to a reasonable inspection of the vessel and to a reasonable inspection and test of the equipment of the vessel." MCL 324.80166(1).

"A peace officer shall not stop and inspect a vessel bearing the decal described in [MCL 324.80166a] or an equivalent decal issued by or on behalf of another state during the period the decal remains in effect unless that peace officer has a reasonable suspicion that the

[6] MCL 324.80166a(1) provides that the DNR "may enter into an agreement with the United States coast guard, the United States coast guard auxiliary, or an organization sponsored by [either] to provide for vessel safety checks of a vessel and its equipment." Under such an agreement, the DNR must be provided with "a sufficient number of vessel safety check decals for conservation officers and those counties that participate in the marine safety program." MCL 324.80166a(2). The decal must "bear the likeness of the state seal of Michigan" and must "display the year in which the decal was issued and during which it is valid." *Id.* MCL 324.80166a(3) provides that "[u]pon the completion of an inspection of a vessel or the vessel's equipment[,] . . . the vessel safety check decal" must be affixed to the vessel.

vessel or the vessel's operator is in violation of a marine law or is otherwise engaged in criminal activity." MCL 324.80166(2).

B. Penalties

A person who violates MCL 324.80166 is guilty of misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 750.504. See also MCL 324.80171.

4.20 Underwater Diving Requirements

A. Statutory Authority

"Any person diving or submerging in any of the waters of this state with the aid of a diving suit or other mechanical diving device shall place a buoy or boat in the water at or near the point of submergence." MCL 324.80155. "The buoy or boat shall bear a red flag not less than 14 inches by 16 inches with a 3-1/2 inch white stripe running from 1 upper corner to a diagonal lower corner." *Id*. "The flag shall be in place only while actual diving operations are in progress." *Id*. "A person diving shall stay within a surface area of 100 feet of the diver's flag." *Id*.

"A vessel shall not be operated within 200 feet of a buoyed diver's flag unless it is involved in tendering the diving operation." MCL 324.80155.

B. Penalties

A person who violates MCL 324.80155 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80171; MCL 750.504.

C. Local Ordinances

"Local political subdivisions may enact as an ordinance . . . [MCL 324.80155.]" MCL 324.80113(3). See Section 4.3 for more information on local ordinances as they relate to marine vessels.

Part C—Moving Violations in the Marine Safety Act

4.21 Accident Involving Serious Impairment of a Body Function or Death

A. Statutory Authority

"The operator of a vessel who knows or who has reason to believe that he or she has been involved in an accident resulting in serious impairment of a body function or death of a person shall immediately stop his or her vessel at the scene of the accident and shall remain there until the requirements of [MCL 324.80133[7] (providing assistance) and MCL 324.80134[8] (exchanging information)] are fulfilled." MCL 324.80134a(1).

The DNR has promulgated rules on marine collisions, accidents, or other casualties. Mich Admin Code, R 281.1221-R 281.1226.

B. Penalties

Except as provided in MCL 324.80134a(3), a person who violates MCL 324.80134a(1) is guilty of a felony punishable by:

- imprisonment for not more than 5 years;
- fine of not more than $5,000; or
- both. MCL 324.80134a(2).

A person who violates MCL 324.80134a(1) following an accident caused by that person that results in the death of another person is guilty of a felony punishable by:

- imprisonment for not more than 15 years;
- fine of not more than $10,000; or
- both. MCL 324.80134a(3).

[7] See Section 4.13(A).

[8] See Section 4.16(A).

4.22 Felonious Operation of Vessel

A. Statutory Authority

"A person who operates any vessel carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property and thereby injures so as to cripple any person, but not causing death, is guilty of the offense of felonious operation[.]" MCL 324.80173.

B. Penalties

A violation of MCL 324.80173 is punishable by:

- imprisonment for not more than 2 years;
- fine of not more than $2,000; or
- both. MCL 324.80173.

4.23 Fleeing and Eluding

A. Statutory Authority

MCL 750.479a(1) provides:

> An operator of a . . . vessel who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful performance of his or her duty, directing the operator to bring his or her . . . vessel to a stop shall not willfully fail to obey that direction by increasing the speed of the . . . vessel, extinguishing the lights of the . . . vessel, or otherwise attempting to flee or elude the police or conservation officer.

B. Penalties

1. First-Degree Fleeing and Eluding

"If the violation results in the death of another individual, an individual who violates [MCL 750.479a(1)] is guilty of first-degree fleeing and eluding, a felony punishable by imprisonment for not more than 15 years or a fine of not more than $15,000.00, or both." MCL 750.479a(5).

2. Second-Degree Fleeing and Eluding

"Except as provided in [MCL 750.479a(5)], an individual who violates [MCL 750.479a(1)] is guilty of second-degree fleeing and eluding, a felony punishable by imprisonment for not more than 10 years or a fine of not more than $10,000.00, or both, if 1 or more of the following circumstances apply:

> (a) The violation results in serious impairment of a body function of an individual.
>
> (b) The individual has 1 or more prior convictions for first-, second-, or third-degree fleeing and eluding, attempted first-, second-, or third-degree fleeing and eluding, or fleeing and eluding under a current or former law of [Michigan] prohibiting substantially similar conduct.
>
> (c) The individual has any combination of 2 or more prior convictions for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of [Michigan] prohibiting substantially similar conduct." MCL 750.479a(4).

3. Third-Degree Fleeing and Eluding

MCL 750.479a(3) provides:

> Except as provided in [MCL 750.479a(4) or MCL 750.479a(5)], an individual who violates [MCL 750.479a(1)] is guilty of third-degree fleeing and eluding, a felony punishable by imprisonment for not more than 5 years or a fine of not more than $5,000.00, or both, if 1 or more of the following circumstances apply:
>
> > (a) The violation results in a collision or accident.
> >
> > (b) For . . . a vessel, a portion of the violation occurred in an area designated as 'slow-no wake', 'no wake', or 'restricted' whether the area is posted or created by law or administrative rule.

4. Fourth-Degree Fleeing and Eluding

"Except as provided in [MCL 750.479a(3), MCL 750.479a(4), or MCL 750.479a(5)], an individual who violates [MCL 750.479a(1)] is guilty of fourth-degree fleeing and eluding, a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both." MCL 750.479a(2).

5. Conduct Arising Out of the Same Transaction

"Except as otherwise provided in [MCL 750.479a(8)], a conviction under [MCL 750.479a] does not prohibit a conviction and sentence under any other applicable provision for conduct arising out of the same transaction." MCL 750.479a(8).

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- For third- or fourth-degree fleeing and eluding, mandatory suspension of vessel operating privileges for up to five years. MCL 750.479a(6)(b).
- For first- or second-degree fleeing and eluding, mandatory revocation of vessel operating privileges for at least five years. MCL 750.479a(7)(b).

D. Exceptions

"[MCL 750.479a(1)] does not apply unless the police or conservation officer giving the signal is in uniform and the officer's . . . vessel is identified as an official police or [DNR] . . . vessel." MCL 750.479a(1).

4.24 Operating Vessel Causing Crippling or Death

A. Statutory Authority

"A person who, by the operation of any vessel at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not willfully or wantonly, injures so as to cripple or cause the death of another is guilty of a misdemeanor[.]"[9] MCL 324.80172.

B. Penalties

A person who violates MCL 324.80172 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 2 years;
- fine of not more than $2,000; or
- both. MCL 324.80172.

4.25 Operation of a Vessel After Operating Privileges Have Been Suspended

A. Statutory Authority

"A person who is ordered not to operate a vessel on the waters of this state and who has been notified of the order by personal service or first-class mail shall not operate a vessel on the waters of this state." MCL 324.80196(1).

"A person shall not knowingly permit a vessel owned by the person to be operated on the waters of this state by a person who is subject to such an order." MCL 324.80196(1).

B. Boating Record Must Be Furnished to Court Before Arraignment

"Before a person is arraigned before a judge or district court magistrate on a charge of violating [MCL 324.80196], the arresting officer shall obtain the boating record of the person from the secretary of state and shall furnish the record to the court." MCL 324.80196(3). "The boating record of the person may be obtained from the secretary of state's computer information network." *Id.*

C. Penalties

1. First Offense

A person who commits a violation of MCL 324.80196(1) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;

[9] See Section 4.31 for more information on speed violations and Section 4.29 for more information on reckless operation of a vessel.

- fine of not more than $500; or
- both. MCL 324.80196(1)(a).

2. Second or Subsequent Offense

A person who commits a second or subsequent violation of MCL 324.80196(1) is guilty of a misdemeanor punishable by:

- imprisonment for not more than one year;
- fine of not more than $1,000; or
- both. MCL 324.80196(1)(b).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- For an individual who unlawfully operates a vessel, mandatory order not to operate a vessel. See MCL 324.80196(2). See Section 4.10 for more information on orders not to operate a vessel.
- Mandatory confiscation of vessel certificate of number and cancellation of vessel registration numbers, unless stolen or used without permission. See MCL 324.80196(5). See Section 4.10 for more information on confiscation of vessel certificates of number and registration numbers.
- Mandatory vessel impoundment if vessel is owned by defendant. See MCL 324.80197(1). See Section 4.10 for more information on impoundment.

E. Exceptions

"[MCL 324.80196] does not apply to a person who operates a vessel solely for the purpose of protecting human life or property, if the life or property is endangered and the summoning or giving of prompt aid is essential." MCL 324.80196(4).

4.26 Operation of Airboats Near Residences

A. Statutory Authority

"A person shall not operate an airboat on the waters of this state within 450 feet of a residence between the hours of 11 p.m. and 6 a.m. at a speed in excess of the minimum speed required to maintain forward movement." MCL 324.80108a(1).

B. Penalties

A person who violates MCL 324.80108a is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. See MCL 324.80171; MCL 750.504.

C. Exceptions

"[MCL 324.80108a(1)] does not apply to any of the following:

> (a) The operation of an airboat in an emergency when necessary to protect public safety.
>
> (b) The operation of an airboat so as to free the airboat when it has run aground.
>
> (c) The operation of an airboat for a governmental purpose if the airboat is clearly marked and identified as being used for a governmental purpose." MCL 324.80108a(2).

4.27 Operation of Vessels by Children Under 16 Years of Age

A. Safety Education Course

"The [DNR] shall put into effect a program to train youthful boat operators and shall issue a boating safety certificate to those who satisfactorily complete the program." MCL 324.80140(2). "For the purpose of giving the courses of instruction and awarding boating safety certificates, the [DNR] may designate as its agent any person it considers qualified to act in this capacity." *Id*. "A charge shall not

be made for any instruction given or for the award of boating safety certificates." *Id.*

See https://www.michigan.gov/dnr/things-to-do/boating/safety-certificate for more information on boating safety courses.

B. Age-Specific Restrictions

1. Statutory Authority

MCL 324.80141 establishes restrictions on the operation of marine vessels by certain individuals. The following chart summarizes each of these offenses and exceptions:

Person Responsible	Prohibited Conduct	Statutory Reference
Children less than 12 years of age.	Operating a motorboat that is powered by a motor or motors totaling more than 6 horsepower on the waters of this state without meeting the following conditions: (1) being under the direct supervision of a person on board the motorboat who is 16 years of age or older and who, if born on or after July 1, 1996, has been issued a boating safety certificate; (2) operating a motorboat powered by motor(s) totaling no more than 35 hp; (3) being issued a boating safety certificate.	MCL 324.80141(1)-(2).
A person born on or after 7/1/96.	Operating a motorboat that is powered by a motor or motors totaling more than 6 horsepower on the waters of this state unless the person has been issued a boating safety certificate.	MCL 324.80141(2).

"A person operating or supervising the operation of a motorboat as described in [MCL 324.80141] shall present the boating safety certificate issued to him or her or, at the person's option, an electronic copy, in a format approved by the [DNR], of a boating safety certificate issued to him or her, upon the demand of a peace officer who identifies himself or herself as a peace officer." MCL 324.80141(3).

"An individual who, under [MCL 324.80141(3)], displays an electronic copy of his or her boating safety certificate using an electronic device is not presumed to have consented to a search of the electronic device. This state, an employee of this state, a peace officer, or an entity employing the peace officer is not liable for damage to or loss of an electronic device that occurs as a result of the peace officer's viewing an electronic copy of a boating safety certificate as provided in this section, regardless

of whether the peace officer was in possession of the electronic device at the time the damage or loss occurred." MCL 324.80141(4).

2. Penalties

A violation of MCL 324.80141 is a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80171; MCL 750.504.

3. Local Ordinances

"Local political subdivisions may enact as an ordinance . . . [MCL 324.80141]." MCL 324.80113(3). See Section 4.3 for more information on local ordinances as they relate to marine vessels.

4.28 Operation of Vessels in Restricted Areas

A. Statutory Authority

"A person operating a vessel on the waters of this state in areas not marked by well defined channels, canals, rivers, or stream courses shall operate the vessels in a counter-clockwise fashion to the extent that it is reasonably possible." MCL 324.80149(1).

"These persons and persons being towed on water skis or on a water sled, kite, surfboard, or similar contrivance shall maintain a distance of 100 feet from any dock, raft, buoyed or occupied bathing area, or vessel moored or at anchor, except when the vessel is proceeding at a slow-no wake speed or when water skiers are being picked up or dropped off, if that operation is otherwise conducted with due regard to the safety of persons and property and in accordance with the laws of [Michigan]." MCL 324.80149(1).

"A person shall not operate a vessel on any of the waters of this state within a lawfully authorized restricted area clearly marked by buoys, beacons, or other distinguishing devices as being prohibited to vessels." MCL 324.80150.

B. Penalties

Except as otherwise provided in MCL 324.80149(2), a person who violates MCL 324.80149 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80171; MCL 750.504.

"A person who violates [MCL 324.80149] while on any of the following bodies of water in [Michigan] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00:

(a) The Great Lakes.

(b) Lake St. Clair.

(c) The St. Clair river." MCL 324.80149(2).

A person who violates MCL 324.80150 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80171; MCL 750.504.

C. Local Ordinances

"Local political subdivisions may enact as an ordinance . . . [MCL 324.80149 or MCL 324.80150]." MCL 324.80113(3). See Section 4.3 for more information on local ordinances as they relate to marine vessels.

4.29 Reckless Operation of Vessels

A. Statutory Authority

"If a person carelessly and heedlessly operates a vessel upon the waters of this state in disregard of the rights or safety of others, without due caution and circumspection, or at a rate of speed or in a manner that endangers or is likely to endanger a person or property, that person is guilty of reckless[10] operation of a vessel and is subject to the penalties described in [MCL 324.80147(3)]." MCL 324.80147(1).

B. Penalties

A person who violates MCL 324.80147(1) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80171; MCL 750.504.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- Discretionary order not to operate a vessel for up to two years. See MCL 324.80147(3); MCL 324.80171.
- Mandatory order to participate in and complete a marine safety educational program approved by the DNR, following a subsequent conviction. See MCL 324.80147(3).

D. Local Ordinances

"Local political subdivisions may enact as an ordinance . . . [MCL 324.80147 and MCL 324.80172]." MCL 324.80113(3). See Section 4.3 for more information on local ordinances as they relate to marine vessels.

4.30 Right-of-Way Requirements

A. Statutory Authority

"When vessels are being operated in such a manner as to make collision imminent or likely, the following apply:

> (a) When 2 vessels are approaching each other head-on, or nearly so, the operator of each shall cause his or her vessel to pass on the port side of the other.
>
> (b) When overtaking a vessel proceeding in the same direction, the operator of the overtaking vessel, unless it

[10] See Section 4.24 for information on operating a vessel "at an immoderate rate of speed . . . so as to cripple or cause the death of another[.]" MCL 324.80172.

> is not feasible to do so, shall pass on the port side of the vessel ahead.
>
> (c) When 2 vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other than when 1 vessel is overtaking another, the operator of the vessel that has the other on his or her own port side shall hold his or her course and speed, and the operator of the vessel that has the other on his or her own starboard side shall give way to the other by directing his or her course to starboard so as to cross the stern of the other vessel or, if necessary to do so, shall slacken his or her speed, stop, or reverse.
>
> (d) When a motorboat and a vessel under sail are proceeding in a manner that involves a risk of collision, the operator of the motorboat shall give way to the vessel under sail.
>
> (e) When a motorboat and a vessel not propelled by sail or mechanical means are proceeding in a manner that involves risk of collision, the operator of the motorboat shall give way to the other vessel.
>
> (f) When, by any of the rules provided in [MCL 324.80144], the operator of a vessel is required to give way to the other, the operator of the other vessel shall maintain his or her direction and speed." MCL 324.80144(1).

"[MCL 324.80144] does not relieve the operator of a vessel otherwise privileged by [MCL 324.80144] from the duty to operate with due regard for the safety of all persons using the waters of this state." MCL 324.80144(2).

B. Penalties

"A person who violates [MCL 324.80144] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.80144(3).

C. Local Ordinances

"Local political subdivisions may enact as an ordinance . . . [MCL 324.80144]." MCL 324.80113(3). See Section 4.3 for more information on local ordinances as they relate to marine vessels.

4.31 Speed Requirements

A. Misdemeanors

1. Statutory Authority

"Subject to the exceptions described in [MCL 324.80148(2)], person shall not operate a motorboat at more than slow-no wake speed if any of the following circumstances exist:

> (a) A person is located on or in the bow of the motorboat, and that motorboat is not manufactured to provide bow seating.
>
> (b) A person or a portion of a person's body extends beyond the exterior port or starboard walls of the hull of the motorboat." MCL 324.80148(1).[11]

2. Penalties

A person who violates MCL 324.80148 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. See MCL 324.80171; MCL 750.504.

3. Exceptions

"[MCL 324.80148] does not apply to either of the following:

> (a) A person engaged in the operation of a sailboat that is not being powered by a motor.
>
> (b) A person on board a vessel who is attempting to anchor, moor, dock, or otherwise secure the vessel." MCL 324.80148(2).

4. Local Ordinances

"Local political subdivisions may enact as an ordinance . . . [MCL 324.80148 and MCL 324.80172]." MCL

[11] See Section 4.24 for information on operating a vessel "at an immoderate rate of speed . . . so as to cripple or cause the death of another[.]" MCL 324.80172.

324.80113(3). See Section 4.3 for more information on local ordinances as they relate to marine vessels.

B. State Civil Infractions

1. Statutory Authority

"A person operating or propelling a vessel upon the waters of this state shall operate it in a careful and prudent manner and at such a rate of speed so as not to endanger unreasonably the life or property of any person." MCL 324.80145.

"A person shall not operate any vessel at a rate of speed greater than will permit him or her, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead." MCL 324.80145.

"The [DNR] may promulgate rules to establish maximum vessel speed limits or to allow unlimited vessel speed on the waters of this state." MCL 324.80146(1).

MCL 324.80146(2) provides:

> On the waters of this state for which a vessel speed limit is not established under [MCL 324.80146(1)], for which the [DNR] has not established an unlimited vessel speed limit, and for which stricter speed restrictions are not established pursuant to another act, the maximum speed limit is 55 miles per hour, except as follows:
>
> > (a) In an emergency as determined by local government authority.
> >
> > (b) For [peace and conservation officers] when engaged in official duties.
> >
> > (c) In the Great Lakes and Lake St. Clair, except for an area within 1 mile of the shoreline measured at a right angle from the shoreline.

"The [DNR] may waive the requirements of [MCL 324.80146] and [MCL 324.80156] for marine events authorized by the [DNR] under [MCL 324.80164]." MCL 324.80146(11).

"Upon receipt of a resolution by the governing body of a local unit of government having jurisdiction over waters of this state requesting a reduction in the maximum speed limit on those waters, the [DNR], pursuant to [MCL 324.80108 and MCL

324.80109 to MCL 324.80113], may establish a maximum speed limit not to exceed 40 miles per hour on those waters." MCL 324.80146(3).

"Upon receipt of a resolution of the governing body of a county or municipality requesting a reduction in the maximum vessel speed limit to protect life and property during emergency conditions, the [DNR] . . . may establish a temporary reduced maximum vessel speed limit on waters of this state located in the county or municipality." MCL 324.80146(4).

"A person shall not operate a vessel on the waters of this state at a speed greater than slow-no wake speed or the minimum speed necessary for the vessel to maintain forward movement when within 100 feet of the shoreline where the water depth is less than 3 feet, as determined by vertical measurement, except in navigable channels not otherwise posted." MCL 324.80146(9).

2. Penalties

"A person who violates [MCL 324.80145] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.80145.

"A person who violates [MCL 324.80146(2) or MCL 324.80146(3)] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00, unless 1 of the following conditions exists:

> (a) The requirements of [MCL 324.80146] have been waived as described in [MCL 324.80146(11)].
>
> (b) The person violates [MCL 324.80146] in a manner that constitutes reckless operation of a vessel as described in [MCL 324.80147]." MCL 324.80146(10).

"A person who violates a temporary speed limit established by the [DNR] under [MCL 324.80146(4)] is responsible for a state civil infraction and subject to a civil fine as specified pursuant to [MCL 324.80146(4)]." MCL 324.80146(5).

3. Local Ordinances

"Local political subdivisions may enact as an ordinance . . . [MCL 324.80145 and MCL 324.80146.]" MCL

324.80113(3). See Section 4.3 for more information on local ordinances as they relate to marine vessels.

4.32 Towing Persons on Water (Waterskiing or Similar Activities)

A. Misdemeanor

1. Statutory Authority

"If a person, while being towed on water skis, a water sled, a surfboard, or a similar contrivance upon the waters of this state, carelessly and heedlessly navigates, steers, or controls himself or herself in disregard of the rights or safety of others or without due caution and circumspection and in a manner that endangers or is likely to endanger a person or property, then that person is guilty of reckless operation of the contrivance that he or she controls [and] is subject to the penalties described in [MCL 324.80147(3)]." MCL 324.80147(2).

2. Penalties

A person who violates MCL 324.80147(2) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80171; MCL 750.504.

3. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- Discretionary order not to operate a vessel for up to two years. See MCL 324.80147(3); MCL 324.80171.
- Mandatory order to participate in and complete a marine safety educational program, following a subsequent conviction. See MCL 324.80147(3).

4. Local Ordinances

"Local political subdivisions may enact as an ordinance . . . [MCL 324.80147]." MCL 324.80113(3). See Section 4.3 for more information on local ordinances as they relate to marine vessels.

B. State Civil Infractions

1. Statutory Authority

"A person operating a vessel shall not have in tow or otherwise be assisting in the propulsion of a person on water skis or on a water sled, surfboard, or other similar contrivance during the period of 1 hour after sunset to 1 hour prior to sunrise." MCL 324.80151(1).

"A person shall not permit himself or herself to be towed on water skis or on a water sled, surfboard, or similar contrivance in violation of [MCL 324.80101 *et seq.*]" MCL 324.80151(2).

"Except as otherwise provided in [MCL 324.80152], a person shall not operate a vessel on the waters of this state while towing or otherwise assisting a person being towed unless both of the following conditions are met:

> (a) A person capable of communicating to the vessel operator the condition and needs of the person being towed or assisted is on board the vessel and positioned to observe the person being towed or assisted.
>
> (b) The person being towed is wearing the proper type I, type II, or type III personal flotation device, as applicable. The wearing of an inflatable personal flotation device does not satisfy this requirement." MCL 324.80152(1).

"A person shall not permit himself or herself to be towed or otherwise assisted by a vessel on the waters of this state unless he or she complies with the conditions listed in [MCL 324.80152(1)]." MCL 324.80152(3).

2. Penalties

"A person who violates [MCL 324.80151] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.80151(3).

"A person who violates [MCL 324.80152(1)] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00." MCL 324.80152(2).

"A person who violates [MCL 324.80152(3)] who is 16 years of age or older is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00." MCL 324.80152(4).

3. Exceptions

"[MCL 324.80152(1) and MCL 324.80152(3)] do not apply to any of the following:

> (a) A person who operates or who is towed by a vessel used by a ski school in the giving of instructions or a vessel used in sanctioned ski tournaments, competitions, expositions, or trials if the vessel is equipped with a 170-degree wide-angle rearview mirror affixed in a manner that will permit the operator to observe the progress of the person being towed.
>
> (b) A person being towed by a motorboat less than 16 feet in length that is actually operated by the person being towed if the vessel is constructed to be incapable of carrying the operator in or on the motorboat.
>
> (c) A vessel operator or the person being towed if the vessel operator is towing a person preparing for a specific water ski tournament and if all of the following conditions are met:
>
> > (*i*) The vessel operator is certified as provided in [MCL 324.80152(6)].
> >
> > (*ii*) The person being towed is certified as provided in [MCL 324.80152(7)].
> >
> > (*iii*) Towing is conducted so that, on average, not more than 1 vessel approaches within 300 feet of the towing vessel during any 5-minute period.
> >
> > (*iv*) The vessel is equipped with all of the following:
> >
> > > (A) A center-mounted tow pylon.

(B) A large clear rearview mirror capable of allowing the vessel operator to distinguish hand signals at a distance of 75 feet.

(C) Markings that identify the vessel as a vessel that is being operated in conformance with this subdivision." MCL 324.80152(5).

4. Local Ordinances

"Local political subdivisions may enact as an ordinance . . . [MCL 324.80151 and MCL 324.80152]." MCL 324.80113(3). See Section 4.3 for more information on local ordinances as they relate to marine vessels.

4.33 Vessel Etiquette

A. Statutory Authority

"Any occupant or operator of any vessel under way on the waters of this state shall not sit, stand, or walk upon any portion of the vessel not specially designed for that purpose, except when immediately necessary for the safe and reasonable navigation or operation of the vessel." MCL 324.80153.

"A person not in a boat shall not intentionally rock, tip, jostle, or otherwise interfere with the operation of any vessel, except under supervised training." MCL 324.80154.

B. Penalties

A person who violates MCL 324.80153 or MCL 324.80154 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $500; or
- both. MCL 324.80171; MCL 750.504.

C. Local Ordinances

"Local political subdivisions may enact as an ordinance . . . [MCL 324.80153]" MCL 324.80113(3). See Section 4.3 for more information on local ordinances as they relate to marine vessels.

Part D—Offenses in the Marine Vessels Act Involving Alcohol and/or Controlled Substances

4.34 Preliminary Chemical Breath Analysis (PBT) & Chemical Tests of Blood, Urine, or Breath

A. Preliminary Chemical Breath Analysis (PBT)

1. Submitting to or Refusing a Preliminary Chemical Breath Analysis Test (PBT)

"A peace officer who has reasonable cause to believe that a person was operating a motorboat on the waters of this state, and that, by the consumption of alcoholic liquor, the person may have affected his or her ability to operate a motorboat, may require the person to submit to a [PBT]." MCL 324.80180(2).

"A person who submits to a [PBT] remains subject to the requirements of [MCL 324.80187–MCL 324.80190] for the purposes of chemical tests described in those sections." MCL 324.80180(2)(d).

"A person who refuses to submit to a [PBT] upon a lawful request by a peace officer is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.80180(2)(e).

2. Admissibility at Trial

"The results of a [PBT] are admissible in a criminal prosecution for a crime described in [MCL 324.80187(1)] or in an administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest." MCL 324.80180(2)(c). "[MCL 324.80180(2)(c)] does not limit the introduction of other competent evidence offered to establish the validity of an arrest." MCL 324.80180(2)(c).

B. Chemical Tests

"A rule relating to a chemical test for alcohol or a controlled substance promulgated under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections [MCL 257.1] to [MCL 257.923] of the Michigan Compiled Laws, applies to a chemical test administered under [MCL 324.80101 *et seq*.]" MCL 324.80181(3).

1. Implied Consent Upon Arrest

"A person who operates a motorboat on the waters of this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in his or her blood in all of the following circumstances:

> (a) The person is arrested for a violation of [MCL 324.80176(1), MCL 324.80176(3), MCL 324.80176(4),MCL 324.80176(5), MCL 324.80176(6), or MCL 324.80176(7)], or a local ordinance substantially corresponding to [MCL 324.80176(1), MCL 324.80176(3), or MCL 324.80176(6)].
>
> (b) The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of a motorboat, and the peace officer had reasonable grounds to believe that the person was operating the motorboat in violation of [MCL 324.80176]." MCL 324.80187(1).

"A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood." MCL 324.80187(2).

"A chemical test described in [MCL 324.80187(1)] shall be administered as provided in [MCL 324.80181 and MCL 324.80182]." MCL 324.80187(3).

2. Advice

"A person arrested for a crime described in [MCL 324.80187(1)] shall be advised of all of the following:

> (*i*) That if the person takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, the person has the right to demand that someone of the person's own choosing administer 1 of the chemical tests; that the results of the test are admissible in a judicial proceeding as provided under [MCL 324.80101 *et seq.*,] and shall be considered with other competent evidence in determining the innocence or guilt of the defendant; and that the person is responsible for obtaining a chemical analysis of a test sample obtained pursuant to the person's own request.[12]

(*ii*) That if the person refuses the request of a peace officer to take a test described in [MCL 324.80181(1)(b)(*i*)], the test shall not be given without a court order, but the peace officer may seek to obtain such a court order.

(*iii*) That the person's refusal of the request of a peace officer to take a test described in [MCL 324.80181(1)(b)(*i*)] will result in issuance of an order that the person not operate a vessel on the waters of this state for at least 6 months." MCL 324.80181(1)(b).

3. Submitting to or Refusing a Chemical Test

"A chemical test described in [MCL 324.80181] shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in [MCL 324.80187(1)]." MCL 324.80182(1).

"A person who takes a chemical test administered at the request of a peace officer, as provided in [MCL 324.80181], shall be given a reasonable opportunity to have someone of the person's own choosing administer 1 of the chemical tests described in [MCL 324.80181] within a reasonable time after the person's detention, and the results of the test are admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by someone of the person's own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample."[13] MCL 324.80182(1).

"If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to [MCL 324.80181 or MCL 324.80182], a test shall not be given without a court order, but the officer may seek to obtain the court order." MCL 324.80188(1).

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[12]However, the defendant cannot choose a specific analyst at the Michigan State Police (MSP) laboratory to administer the chemical test. See *People v Green*, 310 Mich App 249, 255 (2015) (reversing the trial court's order compelling the MSP laboratory to retest evidence at the defendant's request and holding that MCL 257.625a(6), which provides the defendant with an identical right to independent testing in the context of motor vehicles, does not permit a defendant to choose a forensic scientist at the MSP laboratory to administer a chemical test because "there is no indication that the MSP laboratory . . . offers chemical testing services to private individuals or is able to bill for such services[]"). "[T]he trial court lacks authority to compel a state agency to perform services it does not offer." *Green*, 310 Mich App at 255. Further, "MCR 6.201(A)(6) does not provide the trial court with the authority to order the MSP to retest its own evidence. Rather, it merely provides the court with the authority to provide *defendant* with the opportunity to test any tangible physical evidence." *Green*, 310 Mich App at 256-257.

"If a person refuses a chemical test offered pursuant to [MCL 324.80181 or MCL 324.80182], the peace officer who requested the person to submit to the test shall immediately forward a written report to the secretary of state." MCL 324.80188(2). "The report shall state that the officer had reasonable grounds to believe the person committed a crime described in [MCL 324.80187(1)] and that the person refused to submit to the test upon the request of the peace officer and has been advised of the consequences of the refusal." MCL 324.80188(2).

a. Requesting a Hearing

"If a person refuses to submit to a chemical test pursuant to [MCL 324.80181 or MCL 324.80182], the peace officer shall immediately notify the person in writing that within 14 days of the date of the notice the person may request a hearing as provided in [MCL 324.80190]." MCL 324.80189(1). "The notice shall specifically state that failure to request a hearing within 14 days will result in issuance of an order that the person not operate a vessel on the waters of this state." MCL 324.80189(2).

"If a person who refuses to submit to a chemical test under [MCL 324.80181 or MCL 324.80182] does not request a hearing within 14 days of the date of notice under [MCL 324.80189], the secretary of state shall issue an order that the person not operate a motorboat on the waters of this state for 1 year or, for a second or subsequent refusal within 7 years, for 2 years." MCL 324.80190(1).

If the person requests a hearing, MCL 324.80190(2)-(3) govern the procedures for that administrative hearing. "After a hearing, if the person who requested the hearing does not prevail, the secretary of state shall order that the person not operate a motorboat on the waters of this state for 1 year or, for a second or subsequent refusal within 7 years, for 2 years." MCL 324.80190(4).

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[13]However, the defendant cannot choose a specific analyst at the Michigan State Police (MSP) laboratory to administer the chemical test. See *People v Green*, 310 Mich App 249, 255 (2015) (reversing the trial court's order compelling the MSP laboratory to retest evidence at the defendant's request and holding that MCL 257.625a(6), which provides the defendant with an identical right to independent testing in the context of motor vehicles, does not permit a defendant to choose a forensic scientist at the MSP laboratory to administer a chemical test because "there is no indication that the MSP laboratory . . . offers chemical testing services to private individuals or is able to bill for such services[]"). "[T]he trial court lacks authority to compel a state agency to perform services it does not offer." *Green*, 310 Mich App at 255. Further, "MCR 6.201(A)(6) does not provide the trial court with the authority to order the MSP to retest its own evidence. Rather, it merely provides the court with the authority to provide *defendant* with the opportunity to test any tangible physical evidence." *Green*, 310 Mich App at 256-257.

b. Circuit Court Appeals

"The person may file a petition in the circuit court of the county in which the arrest was made to review the order as provided in [MCL 324.80194]." MCL 324.80190(4). "If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under [MCL 324.80188] may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in [MCL 324.80194]." MCL 324.80190(4). See also MCL 324.80194(1).

Generally, the petition for review must be filed within 63 days of the secretary of state's determination. MCL 324.80194(1). However, "for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made." *Id.*

"In reviewing a determination under [MCL 324.80190], the court shall confine its consideration to a review of the record prepared pursuant to [MCL 324.80190] to determine whether the hearing officer properly determined the issues enumerated in [MCL 324.80190]." MCL 324.80194(4).

4. Requirements for Collecting a Sample/Specimen for Chemical Test

"A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician, qualified to withdraw blood and acting in a medical environment, may withdraw blood at the request of a peace officer for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in a person's blood, as provided in [MCL 324.80181(2)]. A qualified person who withdraws or analyzes blood, or assists in the withdrawal or analysis, in accordance with [MCL 324.80101 *et seq.*,] is not liable for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures unless the withdrawal or analysis is performed in a negligent manner." MCL 324.80181(2).

5. Disclosure

"If a chemical test described in [MCL 324.80181 and MCL 324.80182] is administered, the results of the test shall be made

available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court." MCL 324.80183(2). "The prosecution shall furnish the results at least 2 days before the day of trial." *Id*. "The results of the test shall be offered as evidence by the prosecution in that trial." *Id*. "Failure to fully comply with the request bars the admission of the results into evidence by the prosecution." *Id*.

Similarly, where a vessel has been involved in an accident, chemical tests may be taken and must be disclosed as required by statute. See MCL 324.80182(2)-(3). Under MCL 324.80182(2), if a chemical analysis of a vessel operator's blood has been taken pursuant to that provision (taking blood after vessel accident for medical purposes), "[t]he medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure." Under MCL 324.80182(3), a person's blood must be withdrawn "in a manner directed by the medical examiner" following an accident involving a vessel where the operator dies. "The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department." *Id*.

6. Admissibility Issues

"The amount of alcohol or presence of a controlled substance, or both, in an operator's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding." MCL 324.80181(1)(a).

"[T]he results of [a chemical test described in MCL 324.80181] are admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant." MCL 324.80182(1).

"A person's refusal to submit to a chemical test as provided in [MCL 324.80181 and MCL 324.80182] is admissible in a criminal prosecution for a crime described in [MCL 324.80187(1)] only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant." MCL 324.80184. "The jury shall be instructed accordingly." *Id*.

> "The provisions of [MCL 324.80181 and MCL 324.80182] relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether or not a person was impaired by, or under the influence of, alcoholic liquor or a controlled substance, or both, or whether the person had a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or whether the person had any amount of a controlled substance listed in schedule 1 under . . . MCL 333.7212, or a rule promulgated under [MCL 333.7212], or of a controlled substance described in [MCL 333.7214(a)(*iv*)], in his or her body." MCL 324.80183(1).

4.35 Operating a Motorboat While Under the Influence, With an Unlawful Blood Alcohol Content, or With Any Amount of Certain Controlled Substances

A. Statutory Authority

"A person shall not operate a motorboat on the waters of this state if any of the following apply:

> (a) The person is under the influence of alcoholic liquor or a controlled substance, or both.
>
> (b) The person has a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
>
> (c) The person has in his or her body any amount of a controlled substance listed in schedule 1 under . . . MCL 333.7212, or a rule promulgated under [MCL 333.7212], or of a controlled substance described in [MCL 333.7214(a)(*iv*)]." MCL 324.80176(1).

"If a person is charged with violating [MCL 324.80176(1)], a finding of guilty under [MCL 324.80176(3)] may be rendered." MCL 324.80176(3).

B. Procedural Issues

"Before accepting a plea of guilty or nolo contendere under [MCL 324.80176], or a local ordinance substantially corresponding to [MCL 324.80176(1)], the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation, and shall advise the defendant that the maximum possible sanctions that may be

imposed will be based upon the boating record maintained by the secretary of state pursuant to [MCL 324.80130] or other evidence of a prior conviction as provided in [MCL 324.80179]." MCL 324.80185(1).

C. Penalties

"Before imposing sentence, other than court-ordered operating sanctions, for a violation of [MCL 324.80176(1)] or a local ordinance substantially corresponding to [MCL 324.80176(1)], the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs." MCL 324.80185(2). "As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs." *Id*. "The person shall pay for the costs of the screening, assessment, and rehabilitative services." *Id*.

"A person who is convicted of an attempted violation of [MCL 324.80176(1)], or a local ordinance substantially corresponding to [MCL 324.80176(1)], shall be punished as if the offense had been completed." MCL 324.80179(3).

1. No Prior Convictions Within Seven Years

A person convicted of violating MCL 324.80176(1) is guilty of a misdemeanor punishable by one or more of the following:

- community service for not more than 45 days;
- imprisonment for not more than 93 days;
- fine of not less than $100 or more than $500. MCL 324.80177(1)(a).

2. One Prior Conviction Within Seven Years

A person convicted of violating MCL 324.80176(1) within 7 years of a prior conviction is guilty of a misdemeanor punishable by:

- a fine of not less than $200 or more than $1,000 and either of the following:
    - community service for not less than 10 days or more than 90 days, and may be imprisoned for not more than one year; or

- imprisonment for not less than 48 consecutive hours or more than one year, and may be sentenced to community service for not more than 90 days. MCL 324.80177(1)(b).

"A term of imprisonment imposed under [MCL 324.80177(1)(b)(*ii*)] shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program." MCL 324.80177(2).

3. Two or More Prior Convictions

A person convicted of violating MCL 324.80176(1) after two or more prior convictions, regardless of the number of years that have elapsed is guilty of a felony punishable by:

- imprisonment for not less than one year or more than five years;
- fine of not less than $500 or more than $5,000; or
- both. MCL 324.80177(1)(c).

4. Community Service

"A person sentenced to perform service to the community under [MCL 324.80177] shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service." MCL 324.80177(2).

5. Reimbursement for Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.80176(1) or a substantially corresponding local ordinance], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(f). See also MCL 324.80177(3) (authorizing the court to order the person to pay the costs of prosecution).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- Mandatory order not to operate a motorboat (length dependent on specific conviction and criminal history). See MCL 324.80186(b). See also MCL 324.80171 (allowing the court to prohibit the operation of a motorboat for a period of not more than two years). See Section 4.10 for more information on orders not to operate a vessel.

4.36 Operating a Motorboat While Under the Influence, With an Unlawful Bodily Alcohol Content, With Any Amount of Certain Controlled Substances, or While Visibly Impaired Causing Death

A. Statutory Authority

"A person who operates a motorboat on the waters of this state in violation of [MCL 324.80176(1) or MCL 324.80176(3)] and by the operation of that motorboat causes the death of another person is guilty of a felony[.]" MCL 324.80176(4).

"A person may be charged with and convicted of [MCL 324.80176(4)] for each death arising out of the same criminal transaction, and the court may order the terms of imprisonment to be served consecutively to each other[.]" MCL 769.36(1)(c).

B. Procedural Issues

"Before accepting a plea of guilty or nolo contendere under [MCL 324.80176], . . . the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation, and shall advise the defendant that the maximum possible sanctions that may be imposed will be based upon the boating record maintained by the secretary of state pursuant to [MCL 324.80130] or other evidence of a prior conviction as provided in [MCL 324.80179]." MCL 324.80185(1).

C. Penalties

"Before imposing sentence, other than court-ordered operating sanctions, for a violation of [MCL 324.80176(4)] . . . the court shall order the person to undergo screening and assessment by a person

or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs." MCL 324.80185(2). "As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs." *Id*. "The person shall pay for the costs of the screening, assessment, and rehabilitative services." *Id*.

A person who violates MCL 324.80176(4) is guilty of a felony punishable by:

- imprisonment for not more than 15 years;
- fine of not less than $2,500 or more than $10,000; or
- both. MCL 324.80176(4).

"As part of the sentence for a conviction of [a violation or attempted violation of MCL 324.80176(4)], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(f). See also MCL 324.80177(3) (authorizing the court to order the person to pay the costs of prosecution).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- Mandatory order, without expiration, not to operate a motorboat. See MCL 324.80186(a). See Section 4.10 for more information on orders not to operate a motorboat.

4.37 Operating a Motorboat While Under the Influence, With an Unlawful Bodily Alcohol Content, With Any Amount of Certain Controlled Substances, or While

Visibly Impaired Causing Serious Impairment of a Body Function

A. Statutory Authority

"A person who operates a motorboat on the waters of this state in violation of [MCL 324.80176(1) or MCL 324.80176(3)] and by the operation of that motorboat causes a serious impairment of a body function of another person is guilty of a felony[.]" MCL 324.80176(5).

B. Procedural Issues

"Before accepting a plea of guilty or nolo contendere under [MCL 324.80176], . . . the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation, and shall advise the defendant that the maximum possible sanctions that may be imposed will be based upon the boating record maintained by the secretary of state pursuant to [MCL 324.80130] or other evidence of a prior conviction as provided in [MCL 324.80179]." MCL 324.80185(1).

C. Penalties

"Before imposing sentence, other than court-ordered operating sanctions, for a violation of [MCL 324.80176(5)] . . . the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs." MCL 324.80185(2). "As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs." *Id*. "The person shall pay for the costs of the screening, assessment, and rehabilitative services." *Id*.

A person who violates MCL 324.80176(5) is guilty of a felony punishable by:

- imprisonment for not more than 5 years;
- fine of not less than $1,000 or more than $5,000; or
- both. MCL 324.80176(5).

"As part of the sentence for a conviction of [a violation or attempted violation of MCL 324.80176(5)], in addition to any other penalty authorized by law, the court may order the person convicted to

reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(f). See also MCL 324.80177(3) (authorizing the court to order the person to pay the costs of prosecution).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- Mandatory order, without expiration, not to operate a motorboat. See MCL 324.80186(a). See Section 4.10 for more information on orders not to operate a motorboat.

4.38 Operating a Motorboat While Visibly Impaired

A. Statutory Authority

"A person shall not operate a motorboat on the waters of this state when, due to the consumption of an alcoholic liquor or a controlled substance, or both, the person's ability to operate the motorboat is visibly impaired." MCL 324.80176(3).

"If a person is charged with violating [MCL 324.80176(1)], a finding of guilty under [MCL 324.80176(3)] may be rendered." MCL 324.80176(3).

B. Procedural Issues

"Before accepting a plea of guilty or nolo contendere under [MCL 324.80176], or a local ordinance substantially corresponding to [MCL 324.80176(3)], the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation, and shall advise the defendant that the maximum possible sanctions that may be imposed will be based upon the boating record maintained by the secretary of state pursuant to [MCL 324.80130] or other evidence of a prior conviction as provided in [MCL 324.80179]." MCL 324.80185(1).

C. Penalties

"Before imposing sentence, other than court-ordered operating sanctions, for a violation of [MCL 324.80176(3)] or a local ordinance

substantially corresponding to [MCL 324.80176(3)], the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs." MCL 324.80185(2). "As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs." *Id*. "The person shall pay for the costs of the screening, assessment, and rehabilitative services." *Id*.

"A person who is convicted of an attempted violation of [MCL 324.80176(3)], or a local ordinance substantially corresponding to [MCL 324.80176(3)], shall be punished as if the offense had been completed." MCL 324.80179(3).

1. No Prior Convictions Within Seven Years

A person convicted of violating MCL 324.80176(3) is guilty of a misdemeanor punishable by one or more of the following:

- community service for not more than 45 days;
- imprisonment for not more than 93 days;
- fine of not more than $300. MCL 324.80178(1)(a).

2. One Prior Conviction Within Seven Years

A person convicted of violating MCL 324.80176(3) within seven years of a prior conviction is guilty of a misdemeanor punishable by:

- fine of not less than $200 or more than $1,000, and either of the following:
  - community service for not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than one year; or
  - imprisonment for not more than one year, and may be sentenced to community service for not more than 90 days. MCL 324.80178(1)(b).

3. Two or More Prior Convictions

A person convicted of violating MCL 324.80176(3) with two or more prior convictions regardless of the number of years that

have elapsed since any prior conviction, is guilty of a misdemeanor punishable by:

- fine of not less than $200 or more than $1,000, and either of the following:
  - community service for a period of not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than one year; or
  - imprisonment for not more than one year, and may be sentenced to community service for not more than 90 days. MCL 324.80178(1)(c).

4. Community Service

"A person sentenced to perform service to the community under [MCL 324.80178] shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service." MCL 324.80178(3).

5. Reimbursement For Expenses Incurred

"As part of the sentence for a conviction of [violating or attempting to violate MCL 324.80176(3) or a substantially corresponding local ordinance], in addition to any other penalty authorized by law, the court may order the person convicted to reimburse the state or a local unit of government for expenses incurred in relation to that incident including but not limited to expenses for an emergency response and expenses for prosecuting the person[.]" MCL 769.1f(1)(f). See also MCL 324.80178(2) (authorizing the court to order the person to pay the costs of prosecution).

D. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- Mandatory order not to operate a motorboat (length dependent on specific conviction and criminal history). See MCL 324.80186(c). See also MCL 324.80171 (allowing the court to prohibit the operation of a motorboat for a period of not more than two years). See Section 4.10 for more information on orders not to operate a motorboat.

- Discretionary costs of prosecution. See MCL 324.80178(2).

4.39 Knowingly Allowing Another Who is Under the Influence of Alcoholic Liquor and/or a Controlled Substance, Has Unlawful Alcohol Content, or is Visibly Impaired to Operate a Motorboat

A. Statutory Authority

"The owner of a motorboat or a person in charge or in control of a motorboat shall not authorize or knowingly permit the motorboat to be operated on the waters of this state by a person if any of the following apply:

> (a) The person is under the influence of alcoholic liquor or a controlled substance, or both.
>
> (b) The person has a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
>
> (c) The person's ability to operate the motorboat is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance." MCL 324.80176(2).

B. Procedural Issues

"Before accepting a plea of guilty or nolo contendere under [MCL 324.80176], or a local ordinance substantially corresponding to [MCL 324.80176(2)], the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation, and shall advise the defendant that the maximum possible sanctions that may be imposed will be based upon the boating record maintained by the secretary of state pursuant to [MCL 324.80130] or other evidence of a prior conviction as provided in [MCL 324.80179]." MCL 324.80185(1).

C. Penalties

A person convicted of a violation of MCL 324.80176(2) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 93 days;

- fine of not less than $100 or more than $500; or
- both. MCL 324.80177(4).

4.40 The Michigan Medical Marihuana Act and The Michigan Regulation and Taxation of Marihuana Act

"The Michigan Medical Marihuana Act (MMMA) prohibits the prosecution of registered patients who internally possess marijuana, but the act does not protect registered patients who operate a vehicle while 'under the influence' of marijuana." *People v Koon*, 494 Mich 1, 3 (2013). Although the situation in *Koon* involved a motor vehicle and the Motor Vehicle Code's (MVC) zero-tolerance provision, its discussion is included here as potentially relevant to a similar situation involving a motorboat. See MCL 324.80176(1)(c), which contains language similar to MCL 257.625(8), the MVC's zero-tolerance provision. "The [MVC] prohibits a person from driving with any amount of a schedule 1 controlled substance, a list that includes marijuana, in his or her system." *Id*. However, "the MMMA's protection supersedes the [MVC's] prohibition and allows a registered patient to drive when he or she has indications of marijuana in his or her system but is not otherwise under the influence of marijuana." *Id*. Stated another way, "MCL 257.625(8), which is inconsistent with the MMMA, does not apply to the medical use of marijuana." *Koon*, 494 Mich at 7. "[T]he MMMA is inconsistent with, and therefore supersedes, MCL 257.625(8) unless a registered qualifying patient loses immunity because of his or her failure to act in accordance with the MMMA." *Koon*, 494 Mich at 8-9.

Effective December 6, 2018, Initiated Law 1 of 2018, MCL 333.27951 *et seq*., created the Michigan Regulation and Taxation of Marihuana Act (MRTMA), the purpose of which "is to make marihuana legal under state and local law for adults 21 years of age or older, to make industrial hemp legal under state and local law, and to control the commercial production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved." MCL 333.27952.

Similar to the conduct limitations set forth in the MMMA[14], the MRTMA "does not authorize . . . operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while [consuming marihuana or] under the influence of marihuana[.]" MCL 333.27954(1)(a); MCL 333.27954(1)(g). "[S]moking marihuana within the passenger area of a vehicle upon a public way" is also prohibited. MCL 333.27954(1)(g). Notwithstanding,

[14]See MCL 333.26427(b)(4), which provides that the MMMA "does not authorize a person to . . . [o]perate, navigate, or be in actual physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana."

the MRTMA penalty provision does not penalize such conduct. MCL 333.27965.

The NREPA continues to prohibit the operation of a vehicle if the operator has any amount of a schedule 1 substance, which includes marihuana, in his or her body. MCL 324.80176(1)(c); MCL 333.7212(1)(c). It is unclear if violations of the limited conduct set forth in the MRTMA will be pursued under the NREPA. It is equally unclear if the *Koon* holding, which provides that the MMMA supersedes the MVC, will be extended to the MRTMA or to recreational vehicles.[15]

For more general information on the MMMA and the MRTMA, see the Michigan Judicial Institute's *Controlled Substances Benchbook*, Chapter 8.

4.41 Operating a Motorboat With Any Bodily Alcohol Content by a Person Who is Less Than 21 Years of Age

A. Statutory Authority

"A person who is less than 21 years of age, whether licensed or not, shall not operate a motorboat on the waters of this state if the person has any bodily alcohol content." MCL 324.80176(6).

B. Penalties

1. No Prior Convictions Within Seven Years

A person convicted of violating MCL 324.80176(6) is guilty of a misdemeanor punishable by one or more of the following:

- community service for not more than 360 hours;
- fine of not more than $250. MCL 324.80178a(1)(a).

2. One or More Prior Convictions Within Seven Years

A person convicted of violating MCL 324.80176(6) within seven years of a prior conviction, including a prior conviction of MCL 324.80176(6), is guilty of a misdemeanor punishable by:

- community service for not more than 60 days

[15] See SCAO Memorandum dated January 24, 2019, regarding frequently asked questions about the MRTMA.

- fine of not more than $500
- imprisonment for not more than 93 days. MCL 324.80178a(1)(b).

3. Community Service

"A person sentenced to perform community service under [MCL 324.80178a] shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service." MCL 324.80178a(3).

4. Reimbursement for Expenses Incurred

"In addition to imposing the sanctions prescribed under [MCL 324.80178a], the court may order the person to pay the costs of the prosecution under the code of criminal procedure, . . . MCL 760.1 to [MCL 777.69]." MCL 324.80178a.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- Discretionary order not to operate a motorboat on any of the waters of this state for a period of not more than two years. MCL 324.80171.

4.42 Operating a Motorboat in Violation of § 80176(1), (3), (4), (5), or (6) While Another Person Who is Less Than 16 Years of Age is Occupying the Motorboat

A. Statutory Authority

"A person, whether licensed or not, is subject to the following requirements:

> (a) He or she shall not operate a motorboat in violation of [MCL 324.80176(1), MCL 324.80176(3), MCL 324.80176(4), or MCL 324.80176(5)] while another person who is less than 16 years of age is occupying the motorboat.

(b) He or she shall not operate a motorboat in violation of [MCL 324.80176(6)] while another person who is less than 16 years of age is occupying the motorboat." MCL 324.80176(7).

B. Penalties

1. Violation of § 80176(1), (3), (4), or (5) With Occupant Under 16: No Prior Convictions Within Last Seven Years

A person who violates MCL 324.80176(7)(a) by operating a motorboat in violation of MCL 324.80176(1), MCL 324.80176(3), MCL 324.80176(4), or MCL 324.80176(5) while another person who is less than 16 years of age is occupying the motorboat is guilty of a misdemeanor punishable by a fine of not less than $200 or more than $1,000 and one or more of the following:

- Imprisonment for not less than five days or more than one year. Not less than 48 hours of this term of imprisonment must be served consecutively. This term of imprisonment must not be suspended unless the defendant agrees to participate in and successfully completes a specialty court program.

- Community service for not less than 30 days or more than 90 days. MCL 324.80178b(1)(a).

2. Violation of § 80176(1), (3), (4), or (5) With Occupant Under 16: One Prior Conviction Within Seven Years or Two or More Prior Convictions

A person who violates MCL 324.80176(7)(a) by operating a motorboat in violation of MCL 324.80176(1), MCL 324.80176(3), MCL 324.80176(4), or MCL 324.80176(5) while another person who is less than 16 years of age is occupying the motorboat within seven years of a prior conviction or after two or more prior convictions is guilty of a felony punishable by a fine of not less than $500 or more than $5,000, and either of the following:

- Imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than five years.

- Probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this term of

imprisonment must be served consecutively. This term of imprisonment must not be suspended unless the defendant agrees to participate in and successfully completes a specialty court program. MCL 324.80178b(1)(b).

3. Violation of § 80176(1), (3), (4), or (5) With Occupant Under 16: No Prior Convictions Within Seven Years

A person who violates MCL 324.80176(7)(b) by operating a motorboat in violation of MCL 324.80176(6) while another person who is less than 16 years of age is occupying the motorboat is guilty of a misdemeanor punishable by one ore more of the following:

- Community service for not more than 60 days.
- A fine of not more than $500.
- Imprisonment for not more than 93 days. MCL 324.80178b(2)(a).

4. Violation of § 80176(1), (3), (4), or (5) With Occupant Under 16: One Prior Conviction Within Seven Years or Two or More Prior Convictions

A person who violates MCL 324.80176(7)(b) by operating a motorboat in violation of MCL 324.80176(6) while another person who is less than 16 years of age is occupying the motorboat within seven years of a prior conviction or after two or more prior convictions regardless of the number of years that have elapsed shall be sentenced to pay a fine of not less than $200 or more than $1,000 and to one or more of the following:

- Imprisonment for not less than five days or more than one year. This term of imprisonment must not be suspended unless the defendant agrees to participate in and successfully completes a specialty court program.
- Community service for not less than 30 days or more than 90 days. MCL 324.80178b(2)(b).

5. Community Service

"A person sentenced to perform community service under [MCL 324.80178b] shall not receive compensation and shall

reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service." MCL 324.80178b(4).

6. Reimbursement For Expenses Incurred

"In addition to imposing the sanctions prescribed under [MCL 324.80178a], the court may order the person to pay the costs of the prosecution under the code of criminal procedure, . . . MCL 760.1 to [MCL 777.69]." MCL 324.80178a.

C. Sanctions

Only applicable sanctions are listed below; accordingly, if a particular sanction is omitted from this section, it is not applicable to this offense.

- Discretionary order not to operate a motorboat on any of the waters of this state for a period of not more than 2 years. MCL 324.80171.

Chapter 5: Personal Watercrafts (PWC)

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Part A—An Overview of the Personal Watercraft Act

5.1 Introduction

The Personal Watercraft Act is codified as Part 802 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.80201 *et seq*.

The Personal Watercraft Act, MCL 324.80201 *et seq*., "applies to personal watercraft and associated equipment used on the waters of this state." MCL 324.80202(1).

"Except where expressly indicated otherwise, [MCL 324.80201 *et seq*.,] does not apply to a personal watercraft that is all of the following:

> (a) Owned by a state or political subdivision of a state other than [Michigan] and its political subdivisions.
>
> (b) Used principally for governmental purposes.
>
> (c) Clearly marked and identifiable as personal watercraft that is used principally for governmental purposes." MCL 324.80202(2).

"Except as otherwise provided in [MCL 324.80201 *et seq*.], the [Department of Natural Resources (DNR)] is responsible for the administration of [MCL 324.80201 *et seq*.]" MCL 324.80203.

"Except as otherwise provided in [MCL 324.80201 *et seq*.], a personal watercraft operator shall comply with [the Marine Safety Act, MCL 324.80101 *et seq*.[1]]" MCL 324.80222.

5.2 Authority to Enforce the Personal Watercraft Act

"Peace officers shall enforce [MCL 324.80201 *et seq*.]" MCL 324.80221.

5.3 Rulemaking Authority of the DNR

"The [DNR] shall promulgate rules authorized by [MCL 324.80201 *et seq*.,] under [MCL 24.201 to MCL 24.328]." MCL 324.80204. "The [DNR] shall publish the approved rules in a convenient form." *Id*.

[1] See Chapter 4 for more information on the Marine Safety Act.

5.4 General Penalty Provision in the Personal Watercraft Act

Except as otherwise provided, a person who violates the Personal Watercraft Act, MCL 324.80201 *et seq.*, is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $100; or
- both. MCL 324.80219.

"In addition, a person who violates [MCL 324.80201 *et seq.*,] may be required to participate in and complete a boating safety course." MCL 324.80219.

5.5 Costs and Minimum State Costs

MCL 769.1k(1)(b)(*ii*) (allowing the court to impose "[a]ny cost authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty[]") does not provide courts with "the independent authority to impose costs upon criminal defendants." *People v Cunningham (Cunningham II)*, 496 Mich 145, 147 (2014), rev'g 301 Mich App 218 (2013) and overruling *People v Sanders (After Remand)*, 298 Mich App 105 (2012), and *People v Sanders*, 296 Mich App 710 (2012). Rather, it "provides courts with the authority to impose only those costs that the Legislature has separately authorized by statute." *Id.* at 154. Effective October 17, 2014, 2014 PA 352 amended MCL 769.1k in response to the Michigan Supreme Court's holding in *Cunningham II*.[2] In *Cunningham II*, the Court held that MCL 769.1k(1)(b)— which, at the time, provided for the imposition of "[a]ny cost in addition to the minimum state cost"—did "not provide courts with the independent authority to impose 'any cost'"; rather, it "provide[d] courts with the authority to impose only those costs that the Legislature has separately authorized by statute." *Cunningham II*, 496 Mich at 147, 158 (concluding that "[t]he circuit court erred when it relied on [former] MCL 769.1k(1)(b)(*ii*) as independent authority to impose $1,000 in court costs"). 2014 PA 352, in addition to making other revisions to MCL 769.1k, added MCL 769.1k(1)(b)(*iii*) to provide for the imposition of "any cost reasonably related to the actual costs incurred by the trial court[.]"[3] The amendments effectuated by 2014 PA 352 "appl[y] to all

[2]The amended version of MCL 769.1k does not violate a defendant's due process or equal protection rights, nor does it violate the constitutional prohibition on ex post facto punishments or the principle of separation of powers. *People v Konopka (On Remand)*, 309 Mich App 345, 361, 369-370, 376 (2015).

[3] This provision expires on December 31, 2026. See MCL 769.1k(1)(b)(*iii*).

fines, costs, and assessments ordered or assessed under . . . MCL 769.1k[] *before June 18, 2014*, and *after [October 17, 2014]*." 2014 PA 352, enacting section 1 (emphasis supplied)

MCL 769.1k(1)(b)(*iii*) authorizes the imposition of costs independently of the statute for the sentencing offense, and "[a] trial court possessed the authority under MCL 769.1k, as amended by 2014 PA 352, to order [the] defendant to pay court costs." *People v Konopka (On Remand)*, 309 Mich App 345, 350, 358 (2015). "However, although the costs imposed [under MCL 769.1k(1)(b)(*iii*)] . . . need not be separately calculated, . . . the trial court [must] . . . establish a factual basis" demonstrating that "the court costs imposed [are] 'reasonably related to the actual costs incurred by the trial court[.]'" *Konopka (On Remand)*, 309 Mich App at 359-360, quoting MCL 769.1k(1)(b)(*iii*).

"If a defendant is determined to be responsible or responsible 'with explanation' for a state civil infraction, the judge or district court magistrate may order the defendant to pay . . . costs as provided in [MCL 600.8827(3)][.]" MCL 600.8827(2). "In the order of judgment, the judge or district court magistrate may grant a defendant permission to pay . . . costs . . . within a specified period of time or in specified installments." *Id*. "Otherwise, the . . . costs . . . are payable immediately." *Id*.

"If a defendant is ordered to pay a civil fine under [MCL 600.8827(2)], the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the state civil infraction, up to the entry of judgment." MCL 600.8827(3). "Costs of not more than $500.00 must be ordered." *Id*.

"[I]f the court orders a person convicted of an offense to pay any combination of a fine, costs, or applicable assessments, the court shall order that the person pay costs of not less than the following amount, as applicable:

> (a) $68.00, if the defendant is convicted of a felony.
>
> (b) $50.00, if the defendant is convicted of a misdemeanor or ordinance violation." MCL 769.1j(1). See also MCL 600.8381(4).

The costs imposed under MCL 769.1j(1)(a) constitute a tax, and this tax does not violate the separation of powers requirement under Const 1963, art 3, § 2 or the requirement of Const 1963, art 4, § 32 that "[e]very law which imposes, continues or revives a tax shall distinctly state the tax." *People v Shenoskey*, 320 Mich App 80, 83-84 (2017) (applying the analysis of

MCL 769.1k(1)(b)(*iii*) in *People v Cameron*, 319 Mich App 215 (2017) to MCL 769.1j(1)(a) because the statutes are "closely related").

"Payment of the minimum state cost is a condition of probation under [MCL 771.1 *et seq*.]" MCL 769.1j(3). See also MCL 771.3(1)(g) ("[t]he probationer shall pay the minimum state cost prescribed by [MCL 769.1j]").

5.6 Justice System Assessment

"[W]hen fines and costs are assessed by a judge or district court magistrate in a civil infraction action, the defendant shall be ordered to pay the state assessment required by [MCL 600.8727, MCL 600.8827, or MCL 257.907 (Michigan Vehicle Code)]." MCL 600.8381(5).

MCL 600.8727 applies to municipal civil infractions and requires the court to "order the defendant to pay a justice system assessment of $10.00" "in addition to any fine or cost ordered to be paid under [MCL 600.8727(2)]." MCL 600.8727(4).

MCL 600.8827 applies to state civil infractions and requires the court to "order the defendant to pay a justice system assessment of $10.00" "in addition to any fine or cost ordered to be paid under [MCL 600.8827(2) or MCL 600.8827(3).]" MCL 600.8827(4).

5.7 Specified Personal Watercraft Sanctions

"Upon a person's second or subsequent conviction under [MCL 324.80208], the court may issue an order impounding the personal watercraft that the person was operating at the time the person violated [MCL 324.80208(1)] for a period of not more than 1 year, if either of the following conditions exists:

> (a) The person is an owner of the personal watercraft.
>
> (b) The person is the minor child of an owner of the personal watercraft." MCL 324.80208(3).

"The cost of storage for an impoundment ordered under [MCL 324.80208(3)] shall be paid by the owner of the personal watercraft." MCL 324.80208(4).

5.8 Liability of Personal Watercraft Owner for Negligent Operation/Presumption of Consent to Use

"The owner of a personal watercraft is liable for any injury occasioned by the negligent operation of the personal watercraft, whether the negligence consists of a violation of the statutes of [Michigan], or in the failure to observe the ordinary care in the operation that the rules of the common law require." MCL 324.80207.

"The standard of care imposed regarding the operation of personal watercrafts is . . . negligence." *Van Guilder v Collier*, 248 Mich App 633, 637 n 3 (2001).

"The owner is not liable unless the personal watercraft is being used with his or her expressed or implied consent." MCL 324.80207. "It shall be rebuttably presumed that the personal watercraft is being operated with the knowledge and consent of the owner if it is driven at the time of the injury by his or her son, daughter, spouse, father, mother, brother, sister, or other immediate member of the owner's family." *Id*.

5.9 Boating Safety Courses/Boating Safety Certificates

"In order to protect the public interest in the prudent and equitable use of the waters of this state and to enhance the enjoyment of pleasure boating and other recreational water sports on the waters of this state, the [DNR] shall establish and pursue comprehensive educational programs designed to advance boating safety." MCL 324.80211(1).

"The [DNR] shall put into effect a program to train boat operators and shall issue a boating safety certificate to those who satisfactorily complete the program." MCL 324.80211(2). "For the purpose of giving the courses of instruction and awarding boating safety certificates, the [DNR] may designate as its agent any person it considers qualified to act in this capacity." *Id*. "The [DNR] or its agent may offer a video or home study boating safety course." *Id*. "A charge shall not be made for any instruction given or for the award of boating safety certificates by any of the following:

> (a) The [DNR] or another state agency.
>
> (b) A law enforcement agency of [Michigan] or of a political subdivision of [Michigan]." *Id*.

"The [DNR] shall issue a boating safety certificate to each individual who successfully completes a boating safety course as described in [MCL 324.80211] and passes an examination prescribed by the [DNR]." MCL 324.80212(1). See also MCL 324.80212(3).

"A boating safety certificate issued under [MCL 324.80212] is valid, unless revoked, for the life of the person who earned the certificate." MCL 324.80212(3).

"The director may by written authorization modify or suspend the boating safety certificate requirements under [MCL 324.80201 *et seq.*,] if the modification or suspension of those certificate requirements is for individuals engaged in a marine event authorized by the director or for which the director receives a copy of a United States coast guard authorization." MCL 324.80214.

See https://www.michigan.gov/dnr/things-to-do/boating/safety-certificate for more information on boating safety courses.

Part B—Nonmoving Violations in the Personal Watercraft Act

5.10 Boating Safety Certificate Offenses

A. Statutory Authority

"An individual who is required to complete a boating safety course under [MCL 324.80201 *et seq.*,] and who operates a personal watercraft on the waters of this state shall display his or her boating safety certificate or, at the individual's option, an electronic copy, in a format approved by the [DNR], of the boating safety certificate upon the demand of a peace officer who identifies himself or herself as a peace officer." MCL 324.80213(1).

"A peace officer shall not stop a personal watercraft solely for the purpose of determining whether the operator has in his or her possession either of the following:

(a) A boating safety certificate.

(b) An electronic copy of a boating safety certificate in a format approved by the [DNR]." MCL 324.80213(2).

"A person who was born after December 31, 1978 shall not operate a personal watercraft upon the waters of this state unless he or she first obtains a boating safety certificate." MCL 324.80215(3).

B. Penalties

A person who commits a violation of MCL 324.80213 or MCL 324.80215 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $100; or
- both. MCL 324.80219.

"In addition, a person who violates [MCL 324.80201 *et seq.*,] may be required to participate in and complete a boating safety course." MCL 324.80219.

"If a person has received a citation for a violation of a certification requirement prescribed in [MCL 324.80213 or MCL 324.80215], the court shall waive any fine and costs upon receipt, not more than 10 days after the citation is issued, of proof of certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid boating safety certificate, or an electronic copy thereof, in a format approved by the [DNR], that was valid on the date the violation occurred." MCL 324.80221.

C. Exceptions

MCL 324.80215 does not "apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with [MCL 324.80164] under a permit issued by the [DNR] and at the time and place specified in the permit." MCL 324.80215(6).

5.11 Equipment Requirements and Required Personal Flotation Devices

A. Statutory Authority

"A person shall not operate a personal watercraft on the waters of this state unless each person riding on or being towed behind the personal watercraft is wearing a type I, type II, or type III personal flotation device as described in R 281.1234 of the Michigan Administrative Code." MCL 324.80205(1).

"A person shall not operate a personal watercraft on the waters of this state unless each person on board the personal watercraft is wearing a personal flotation device that is not inflatable." MCL 324.80205(2).

"While operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch on the waters of this state, a person shall have the lanyard attached to his or her person, clothing, or personal flotation device as is appropriate for the personal watercraft." MCL 324.80205(4).

B. Penalties

A person who violates MCL 324.80205(1), MCL 324.80205(2), or MCL 324.80205(4) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $100; or
- both. MCL 324.80219.

"In addition, a person who violates [MCL 324.80201 *et seq.*,] may be required to participate in and complete a boating safety course." MCL 324.80219.

C. Exceptions

"[MCL 324.80205] does not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with [MCL 324.80164] under a permit issued by the [DNR] and at the time and place specified in the permit." MCL 324.80205(13).

5.12 Age Restrictions Related to Operation of Personal Watercraft

A. Statutory Authority

"A person shall not operate a personal watercraft on the waters of this state if a child who is under 7 years of age is on board or being towed behind the personal watercraft unless the child is in the company of his or her parent or guardian or a designee of the parent or guardian." MCL 324.80205(3).

"A person who was born after December 31, 1978 shall not operate a personal watercraft upon the waters of this state unless he or she first obtains a boating safety certificate." MCL 324.80215(3).

"Beginning October 1, 2011[4], a person under the age of 16 shall not operate a personal watercraft on the waters of this state unless the

person is not less than 14 years of age and 1 of the following circumstances applies:

> (a) The person is riding the personal watercraft with his or her parent or guardian or an individual 21 years of age or older designated by the parent or guardian.
>
> (b) The person is operating or riding a personal watercraft at a distance of not more than 100 feet from his or her parent or guardian or an individual 21 years of age or older designated by the parent or guardian." MCL 324.80215(4).

"The owner of a personal watercraft or a person having charge over or control of a personal watercraft shall not authorize or knowingly permit the personal watercraft to be operated in violation of [MCL 324.80215]." MCL 324.80215(5).

B. Penalties

A person who violates MCL 324.80205(3) or MCL 324.80215 is guilty a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $100; or
- both. MCL 324.80219.

"In addition, a person who violates [MCL 324.80201 *et seq.*,] may be required to participate in and complete a boating safety course." MCL 324.80219.

"If a person has received a citation for a violation of a certification requirement prescribed in [MCL 324.80215], the court shall waive any fine and costs upon receipt, not more than 10 days after the citation is issued, of proof of certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid boating safety certificate, or an electronic copy thereof, in a format approved by the [DNR], that was valid on the date the violation occurred." MCL 324.80221.

C. Exceptions

Neither MCL 324.80205 nor MCL 324.80215 "apply to a performer engaged in a professional exhibition or a person preparing to

[4]See MCL 324.80215(1)-(2) for information on age-restricted personal watercraft operation that was in effect *until* October 1, 2011.

participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with [MCL 324.80164] under a permit issued by the [DNR] and at the time and place specified in the permit." MCL 324.80205(13); MCL 324.80215(6).

5.13 Dealers of Personal Watercraft

A. Statutory Authority

"A dealer of a new or used personal watercraft shall advise each person who buys a personal watercraft from the dealer of the sources of boating safety courses in the area." MCL 324.80217(1).

"The [DNR] shall create and make available to dealers of personal watercraft both of the following:

> (a) A document that summarizes the laws that pertain exclusively to personal watercraft.
>
> (b) A document that summarizes the safety features of personal watercraft. This document may be a generic document and shall not represent the safety features of a particular style or brand of personal watercraft." MCL 324.80218(1).

"A dealer shall provide a copy of each of the documents described in [MCL 324.80218(1)] to each person who buys a personal watercraft from the dealer." MCL 324.80218(2).

B. Penalties

"A dealer who violates [either MCL 324.80217 or MCL 324.80218(2)] is responsible for a state civil infraction and shall be ordered to pay a civil fine in the amount of $100.00." MCL 324.80217(2); MCL 324.80218(2).

Part C —Moving Violations in the Personal Watercraft Act

5.14 Operation of Personal Watercraft in Restricted Areas

A. Statutory Authority

"A person operating a personal watercraft on the waters of this state shall not cross within 150 feet behind another vessel, other than a

personal watercraft, unless the person is operating the personal watercraft at slow-no wake speed." MCL 324.80205(6).

"A person shall not operate a personal watercraft on the waters of this state where the water depth is less than 2 feet, as determined by vertical measurement, unless 1 or both of the following circumstances exist:

> (a) The personal watercraft is being operated at slow-no wake speed.
>
> (b) The personal watercraft is being docked or launched." MCL 324.80205(7).

"A person shall not operate a personal watercraft on the waters of this state outside of a channel or in an area where aquatic rooted vegetation is visible above the surface of the water in the deltaic wetlands of a lake that is greater than 32 square miles and less than 144 square miles in area." MCL 324.80206(1).

"Except when traveling at slow-no wake speed perpendicular to the shoreline, a person who operates a personal watercraft on 1 of the Great Lakes that is under the jurisdiction of [Michigan] shall maintain a distance of 200 feet from the shoreline." MCL 324.80209(1).

"Except as provided in [MCL 324.80209(4)], a person who operates a personal watercraft or a person who is being towed by a personal watercraft on a water sled, kite, surfboard, parachute, tube, water ski, or similar equipment on the waters of this state shall maintain a distance of not less than 100 feet from a dock, raft, or buoyed or occupied bathing or swimming area, a person in the water or on the water in a personal flotation device, or a vessel moored, anchored, drifting, or sitting in dead water." MCL 324.80209(2).

"A person who operates a personal watercraft or a person who is being towed by a personal watercraft on a water sled, kite, surfboard, parachute, tube, water ski, or similar equipment on the waters of this state shall maintain a distance of not less than 200 feet from a submerged diver, vessel engaged in underwater diving activities, or a flotation device displaying the international diving insignia." MCL 324.80209(3).

B. Penalties

"A person who violates [MCL 324.80205(6)] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.80205(6).

"A person who violates [MCL 324.80205(7)] is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00." MCL 324.80205(8).

"A person who violates [MCL 324.80206(1)] is responsible for a state civil infraction punishable by a fine of $25.00." MCL 324.80206(2).

A person who violates MCL 324.80209 is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $100; or
- both. MCL 324.80219.

"In addition, a person who violates [MCL 324.80201 *et seq.*,] may be required to participate in and complete a boating safety course." MCL 324.80219.

C. Exceptions

"[MCL 324.80205] does not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with [MCL 324.80164] under a permit issued by the [DNR] and at the time and place specified in the permit." MCL 324.80205(13).

"[MCL 324.80209(2)] does not apply under either of the following conditions:

> (a) The personal watercraft being operated or the person being towed is proceeding at a slow-no wake speed.
>
> (b) The personal watercraft being operated or the person being towed is in a navigable channel, canal, river, or stream not otherwise posted." MCL 324.80209(4).

5.15 Operation of Personal Watercraft at Restricted Times

A. Statutory Authority

"A person shall not operate a personal watercraft on the waters of this state during the period that begins at sunset and ends at 8 a.m." MCL 324.80205(5).

B. Penalties

A person who violates MCL 324.80205(5) is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $100; or
- both. MCL 324.80219.

"In addition, a person who violates [MCL 324.80201 *et seq.*,] may be required to participate in and complete a boating safety course." MCL 324.80219.

C. Exceptions

"[MCL 324.80205] does not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with [MCL 324.80164] under a permit issued by the [DNR] and at the time and place specified in the permit." MCL 324.80205(13).

5.16 Reckless Operation of a Personal Watercraft

A. Statutory Authority

"If a person carelessly and heedlessly operates a personal watercraft upon the waters of this state in disregard of the rights or safety of others, without due caution and circumspection, or at a rate of speed or in a manner that endangers or is likely to endanger a person or property, that person is guilty of reckless operation of a personal watercraft and is subject to the penalties described in [MCL 324.80208(2) and MCL 324.80208(3)], or both, as applicable." MCL 324.80208(1).

"A person shall operate a personal watercraft in a reasonable and prudent manner." MCL 324.80205(9). "A maneuver that unreasonably or unnecessarily endangers life, limb, or property, including, but not limited to, all of the following, constitutes reckless operation of a personal watercraft under [MCL 324.80208]:

> (a) Weaving through congested vessel traffic.
>
> (b) Jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed.

> (c) Waiting until the last possible moment before swerving to avoid a collision." MCL 324.80205(9).

"A person shall not operate a personal watercraft on the waters of this state carrying more persons than the personal watercraft is designed to carry." MCL 324.80205(10).

"A violation of [MCL 324.80205(10)] is prima facie evidence of reckless operation of a watercraft under [MCL 324.80208]." MCL 324.80205(11).

"A person operating a personal watercraft in excess of the speeds established under [MCL 324.80101 *et seq.*,] is guilty of reckless operation of a personal watercraft under [MCL 324.80208]." MCL 324.80205(12).

B. Penalties

A person whose actions result in a first-time violation of MCL 324.80208 or who violates MCL 324.80205(9) or MCL 324.80205(10) where the violation does not constitute reckless operation under MCL 324.80208, is guilty of a misdemeanor punishable by:

- imprisonment for not more than 90 days;
- fine of not more than $100; or
- both. MCL 324.80219.

"In addition, a person who violates [MCL 324.80201 *et seq.*,] may be required to participate in and complete a boating safety course." MCL 324.80219.

"Upon a person's conviction under [MCL 324.80208], the court may issue an order prohibiting the person from operating a personal watercraft on the waters of this state for a period of not more than 2 years and shall order the person to participate in and complete a boating safety course." MCL 324.80208(2). "An order issued pursuant to [MCL 324.80208(2)] is in addition to any other penalty authorized under [MCL 324.80219] or [MCL 324.80208(3)]." MCL 324.80208(2).

"A person who violates [MCL 324.80208] twice within a 3-year period is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both." MCL 324.80208(3).

"A person who violates [MCL 324.80208] 3 or more times within a 5-year period is guilty of a misdemeanor punishable by imprisonment

for not more than 90 days or a fine of not more than $2,000.00, or both." MCL 324.80208(3).

"Upon a person's second or subsequent conviction under [MCL 324.80208], the court may issue an order impounding the personal watercraft that the person was operating at the time the person violated [MCL 324.80208(1)] for a period of not more than 1 year, if either of the following conditions exists:

> (a) The person is an owner of the personal watercraft.
>
> (b) The person is the minor child of an owner of the personal watercraft." MCL 324.80208(3).

"The cost of storage for an impoundment ordered under [MCL 324.80208(3)] shall be paid by the owner of the personal watercraft." MCL 324.80208(4).

C. Exceptions

"[MCL 324.80205] does not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with [MCL 324.80164] under a permit issued by the [DNR] and at the time and place specified in the permit." MCL 324.80205(13).

Glossary

A

Airboat

- For purposes of the Marine Safety Act, *airboat* means "a motorboat that is propelled, wholly or in part, by a propeller projecting above the water surface." MCL 324.80101(a).

Alcoholic Liquor

- For purposes of the ORV Act, the Marine Safety Act, and the Snowmobile Act, *alcoholic liquor* means "that term as defined in . . . MCL 257.1d." MCL 324.81101(a). MCL 257.1d defines *alcoholic liquor* as "any liquid or compound, whether or not medicated, proprietary, patented, and by whatever name called, containing any amount of alcohol including any liquid or compound described in . . . MCL 436.1105."[1] See MCL 324.80101(b); MCL 324.81101(a); MCL 324.82101(a). MCL 436.1105(3) defines *alcoholic liquor* as "any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, or patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume that are fit for use for food purposes or beverage purposes as defined and classified by the commission according to alcoholic content as belonging to 1 of the varieties defined in [Chapter 1 of the Michigan Liquor Control Code of 1998]."

[1]The citation to MCL 436.1105(2) in MCL 257.1d has not been amended to MCL 436.1105(3) to reflect the numbering changes made by 2005 PA 320, effective December 27, 2005.

- For purposes of MCL 8.9(10)(c), *alcoholic liquor* means "that term as defined in . . . MCL 436.1105." MCL 8.9(10)(c)(*i*). MCL 436.1105(3) defines *alcoholic liquor* as "any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, or patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume that are fit for use for food purposes or beverage purposes as defined and classified by the commission according to alcoholic content as belonging to 1 of the varieties defined in [Chapter 1 of the Michigan Liquor Control Code of 1998]."

Any Bodily Alcohol Content

- For purposes of MCL 324.80176(6) (Marine Safety Act), MCL 324.81134 (ORV Act), MCL 324.82127(6) (Snowmobile Act), and MCL 777.48, *any bodily alcohol content* means either of the following:

  - An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters or urine, or beginning October 1, 2021, an alcohol content of 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

  - Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as part of a generally recognized religious service or ceremony. MCL 324.80176(6)(a)-(b); MCL 324.81134(6)(a)-(b); MCL 324.82127(6)(a)-(b); MCL 777.48(2).

Article 7 of the PHC

- Article 7 of the PHC means Article 7 of the Public Health Code, MCL 333.7101 *et seq.* Article 7 is the controlled substances article.

Associated equipment

- For purposes of the Marine Safety Act, *associated equipment* means "any of the following that are not radio equipment:

(*i*) An original system, part, or component of a boat at the time that boat was manufactured, or a similar part or component manufactured or sold for replacement.

(*ii*) Repair or improvement of an original or replacement system, part, or component.

(*iii*) An accessory or equipment for, or appurtenance to, a boat.

(*iv*) A marine safety article, accessory, or equipment intended for use by a person on board a boat." MCL 324.80101(d).

- For purposes of the Personal Watercraft Act, *associated equipment* means "any of the following that are not radio equipment:

(*i*) An original system, part, or component of a personal watercraft at the time that boat was manufactured, or a similar part or component manufactured or sold for replacement.

(*ii*) Repair or improvement of an original or replacement system, part, or component.

(*iii*) An accessory or equipment for, or appurtenance to, a personal watercraft.

(*iv*) A marine safety article, accessory, or equipment intended for use by a person on board a boat." MCL 324.80201(a).

ATV

- For purposes of the ORV Act, *ATV* means "a vehicle with 3 or more wheels that is designed for off-road use, has low-pressure tires, has a seat designed to be straddled by the rider, and is powered by a 50cc to 1,000cc gasoline engine or an engine of comparable size using other fuels." MCL 324.81101(b).

B

Boat

- For purposes of the Marine Safety Act, *boat* means "a vessel." MCL 324.80101(e).

Boating safety certificate

- For purposes of the Marine Safety Act, *boating safety certificate* means "any of the following:

(*i*) The document issued by the [DNR] under [MCL 324.80201 *et seq.*,] that certifies that the individual named in the document has successfully completed a boating safety course

and passed an examination approved and administered as required under [MCL 324.80212].

(*ii*) A document issued by the United States coast guard auxiliary or United States power squadron that certifies that the individual named in the document has successfully completed a United States coast guard auxiliary course concerning boating safety.

(*iii*) A written rental agreement provided to an individual named in the rental agreement entered into under [MCL 324.44522] only on the date or dates indicated on the rental agreement while the named individual is operating a personal watercraft leased, hired, or rented from a boat livery." MCL 324.80101(g).

- For purposes of the Personal Watercraft Act, *boating safety certificate* means "either of the following:

(*i*) The document issued by the [DNR] under [MCL 324.80201 *et seq.*,] that certifies that the individual named in the document has successfully completed a boating safety course and passed an examination approved and administered as required under [MCL 324.80211].

(*ii*) A document issued by the United States coast guard auxiliary that certifies that the individual named in the document has successfully completed a United States coast guard auxiliary course concerning boating safety.

(*iii*) A written rental agreement provided to an individual named in the rental agreement entered into under [MCL 324.44522] only on the date or dates indicated on the rental agreement while the named individual is operating a personal watercraft leased, hired, or rented from a boat livery." MCL 324.80201(c).

Boating safety course

- For purposes of the Marine Safety Act, *boating safety course* means "a course that meets both of the following requirements:

(*i*) Provides instruction on the safe operation of a personal watercraft that meets or exceeds the minimum course content for boating or personal watercraft education established by the national association of state boating law administrators education committee (October 1996), a province of the commonwealth of Canada, or another country.

(*ii*) Is approved by the [DNR]." MCL 324.80101(h).

- For purposes of the Personal Watercraft Act, *boating safety course* means "a course that meets both of the following requirements:

(*i*) Provides instruction on the safe operation of a personal watercraft that meets or exceeds the minimum course content for boating or personal watercraft education established by the national association of state boating law administrators education committee (October 1996).

(*ii*) Is approved by the [DNR]." MCL 324.80201(d).

C

Channel

- For purposes of the Personal Watercraft Act, *channel* means "either of the following:

(*i*) The deepest part of a stream, bay, or [strait] through which the main current flows.

(*ii*) The part of a body of water deep enough for navigation through an area otherwise not suitable for navigation that is marked by a single or double line of navigational aids or range markers." MCL 324.80201(e).

Charter boat

- For purposes of MCL 324.80142, *charter boat* means "a vessel other than a nonmotorized raft that is rented or offered for rent to carry passengers for hire if the owner or the owner's agent retains possession, command, and control of the vessel." MCL 324.80142(4); MCL 324.44501(c).

Class C vessel

- For purposes of MCL 324.80142, *class C vessel* means "a vessel, except a sailboat, that carries for hire on inland waters more than 6 passengers." MCL 324.80142(4); MCL 324.44501(f).

Consumer Price Index

- For purposes of MCL 324.82118(1)(c), *Consumer Price Index* means "the most comprehensive index of consumer prices

available for [Michigan] from the Bureau of Labor Statistics of the United States Department of Labor."

Controlled Substance

- For purposes of the ORV act, *controlled substance* means "a drug, substance, or immediate precursor included in schedules 1 to 5 of [MCL 333.7201 *et seq*.]" MCL 333.7104(3); MCL 324.81134(1).

- For purposes of MCL 8.9(10)(c) and the Marine Safety Act, *controlled substance* means "that term as defined in [MCL 333.7104]." MCL 8.9(10)(c)(*ii*); MCL 324.80101(i). MCL 333.7104(3) defines controlled substance as "a drug, substance, or immediate precursor included in schedules 1 to 5 of [MCL 333.7201 *et seq*.]"

Conviction

- For purposes of the Snowmobile Act, *conviction* means "a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt or probate court disposition on a violation of [MCL 324.82101 *et seq*.], regardless of whether the penalty is rebated or suspended." MCL 324.82101(d).

County road

- For purposes of the ORV Act, *county road* means "a county primary road or county local road as described in [MCL 247.655], or a segment thereof." MCL 324.81101(d).

D

dB(A)

- For purposes of MCL 324.80156, *dB(A)* means "decibels on the 'A' scale on a sound meter having characteristics of a general purpose sound meter as defined by American national standards institute S1.4-1983." MCL 324.80156(5).

Dealer

- For purposes of the ORV Act, *dealer* means "a person engaged in the sale, lease, or rental of an ORV as a regular business or, for purposes of selling licenses under [MCL 324.81116], any other person authorized by the [DNR] to

sell licenses or permits, or both, under [MCL 324.81101 *et seq*.]" MCL 324.81101(e).

- For purposes of the Personal Watercraft Act, *dealer* means "a person and an authorized representative of that person who annually purchases from a manufacturer, or who is engaged in selling or manufacturing, 6 or more personal watercraft that require certificates of number under [MCL 324.80101 *et seq*.]" MCL 324.80201(f).

Departure

- For purposes of MCL 769.31 and MCL 769.34, *departure* "means a sentence imposed that is not within the appropriate minimum sentence range established under the sentencing guidelines set forth in [MCL 777.1 *et seq*.]." MCL 769.31(a).

Designated

- For purposes of the ORV Act, *designated*, unless the context implies otherwise, means "posted by the department, with appropriate signs, as open for ORV use." MCL 324.81101(f).

- Mich Admin Code, R 299.921(d) defines *designated* as "listed in a director's order, posted with a sign or signs at the site, or reasonably identified for a particular use[.]"

Designated area

- For purposes of the ORV Act, *designated area* means "an area that has been properly signed on the ground for cross-country ORV use." Mich Admin Code, R 299.921(d)(*i*).

Designated route

- For purposes of the ORV Act, *designated route* means "any road that has been properly signed on the ground for ORV use." Mich Admin Code, R 299.921(d)(*v*).

Designated trail

- For purposes of the ORV Act, *designated trail* means "a path or way which is capable of travel by a 2- to 4-wheel vehicle not more than 50 inches in width and properly signed on the ground for ORV use." Mich Admin Code, R 299.921(d)(*vi*).

Director

- For purposes of the Personal Watercraft Act, *director* means "the director of the [DNR]." MCL 324.80201(h).

E

Event

- For purposes of the ORV Act, *event* means "a single, structured, organized, consolidated, scheduled meeting or occurrence on state-owned land and to which 1 or both of the following apply: (*i*) [a] fee or donation is required for participation[;] (*ii*) [t]he number of people involved is 20 or more individuals." Mich Admin Code, R 299.921(e).

F

Felony in which a snowmobile was used

- For purposes of MCL 324.82157(5) and MCL 324.82157(7), *felony in which a snowmobile was used* means "a felony during the commission of which the person operated a snowmobile and while operating the snowmobile presented real or potential harm to persons or property and 1 or more of the following circumstances existed:

  (a) The snowmobile was used as an instrument of the felony.

  (b) The snowmobile was used to transport a victim of the felony.

  (c) The snowmobile was used to flee the scene of the felony.

  (d) The snowmobile was necessary for the commission of the felony." MCL 324.82157(4).

Felony in which a vessel was used

- For purposes of MCL 324.80131(5) and MCL 324.80131(7), *felony in which a vessel was used* means "a felony during the commission of which the person operated a vessel and while operating the vessel presented real or potential harm to persons or property and 1 or more of the following circumstances existed:

(a) The vessel was used as an instrument of the felony.

(b) The vessel was used to transport a victim of the felony.

(c) The vessel was used to flee the scene of a felony.

(d) The vessel was necessary for the commission of a felony." MCL 324.80131(4).

Forest road

- For purposes of the ORV Act, *forest road* means "a hard surfaced road, gravel or dirt road, or other route capable of travel by a 2-wheel drive, 4-wheel conventional vehicle designed for road use. Forest road does not include a street, county road, or highway." MCL 324.81101(h). See also Mich Admin Code, R 299.921(g).

Forest trail

- For purposes of the ORV Act, *forest trail* means "a designated path or way that is not a route." MCL 324.81101(i).

G

Gross negligence

- As used in MCL 324.81131(15), *gross negligence* means "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."

H

Highway

- For purposes of the ORV Act, *highway* means "a state trunk line highway or a segment of a state trunk line highway." MCL 324.81101(j).

- For purposes of the Snowmobile Act, *highway* means "the entire width between the boundary lines of every way publicly maintained if any part of it is open to public use for vehicular travel." MCL 324.82101(h).

Historic snowmobile

- For purposes of the Snowmobile Act, *historic snowmobile* means "a snowmobile that is over 25 years old and that is owned solely as a collector's item and for occasional use and for participation in club activities, exhibitions, tours, parades, and similar uses, including mechanical testing." MCL 324.82101(i).

Historic vessel

- For purposes of MCL 324.80124, *historic vessel* means "[a] vessel that is 30 years of age or older and not used other than in club activities, exhibitions, tours, parades, and other similar activities[.]" MCL 324.80124(21).

I

Industrial hemp

- For purposes of Article 7 of the PHC, *industrial hemp* "means that term as defined in . . . MCL 333.27953." MCL 333.7106(2).

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *industrial hemp* "means any of the following:

  (i) A plant of the genus Cannabis, whether growing or not, with a THC concentration of 0.3% or less on a dry-weight basis.

  (ii) A part of a plant of the genus Cannabis, whether growing or not, with a THC concentration of 0.3% or less on a dry-weight basis.

  (iii) The seeds of a plant of the genus Cannabis with a THC concentration of 0.3% or less on a dry-weight basis.

  (iv) If it has a THC concentration of 0.3% or less on a dry-weight basis, a compound, manufacture, derivative, mixture, preparation, extract, cannabinoid, acid, salt, isomer, or salt of an isomer of any of the following:

    (A) A plant of the genus Cannabis.

    (B) A part of a plant of the genus Cannabis.

(v) A product to which 1 of the following applies:

(A) If the product is intended for human or animal consumption, the product, in the form in which it is intended for sale to a consumer, meets both of the following requirements:

(I) Has a THC concentration of 0.3% or less on a dry-weight or per volume basis.

(II) Contains a total amount of THC that is less than or equal to the limit established by the cannabis regulatory agency under [MCL 333.27958(1)(n)].

(B) If the product is not intended for human or animal consumption, the product meets both of the following requirements:

(I) Contains a substance listed in subparagraph (i), (ii), (iii), or (iv).

(II) Has a THC concentration of 0.3% or less on a dry-weight basis." MCL 333.27953(f).[2]

Ingestion

- For purposes of MCL 8.9(10)(c), *ingestion* "means to have eaten, drunk, ingested, inhaled, injected, or topically applied, or to have performed any combination of those actions, or otherwise introduced into the body." MCL 8.9(10)(c)(*iii*).

Intoxicated or impaired

- For purposes of MCL 8.9, *intoxicated or impaired* "includes, but is not limited to, a condition of intoxication resulting from the ingestion of alcoholic liquor, a controlled substance, or alcoholic liquor and a controlled substance." MCL 8.9(10)(c).

Issuing authority

- For purposes of the Marine Safety Act, *issuing authority* means "the United States coast guard or a state that has a

[2]For purposes of the Michigan Regulation and Taxation of Marihuana Act, THC "means any of the following: (i) Tetrahydrocannabinolic acid. (ii) Unless excluded by the cannabis regulatory agency under section 8(2)(c), a tetrahydrocannabinol, regardless of whether it is artificially or naturally derived. (iii) A tetrahydrocannabinol that is a structural, optical, or geometric isomer of a tetrahydrocannabinol described in subparagraph (ii)." MCL 333.27953(aa)(i)-(iii).

numbering system approved by the United States coast guard." MCL 324.80102(c).

L

Law of another state

- For purposes of the Marine Safety Act, ORV Act, and Snowmobile Act, *law of another state* means "a law or ordinance enacted by any of the following:

(*i*) Another state.

(*ii*) A local unit of government in another state.

(*iii*) Canada or a province or territory of Canada.

(*iv*) A local unit of government in a province or territory of Canada." MCL 324.80102(d); MCL 324.81101(m); MCL 324.82101(k).

Lifeboat

- For purposes of the Marine Safety Act, *lifeboat* means "a small boat designated and used solely for lifesaving purposes, and does not include a dinghy, tender, speedboat, or other type of craft that is not carried aboard a vessel for lifesaving purposes." MCL 324.80102(e).

Local unit of government

- For purposes of the ORV Act, *local unit of government* means "a county, township, or municipality." MCL 324.81101(n).

M

Maintained portion

- For purposes of the ORV Act, *maintained portion* means "the roadway and any shoulder of a street, county road, or highway." MCL 324.81101(o).

Manufacturer

- For purposes of the Marine Safety Act, *manufacturer* means "a person engaged in any of the following:

(*i*) The manufacture, construction, or assembly of boats or associated equipment.

(*ii*) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(*iii*) The importation of a boat or associated equipment into the state for sale." MCL 324.80103(a).

- For purposes of the ORV Act, *manufacturer* means "a person, partnership, corporation, or association engaged in the production and manufacture of ORVs as a regular business." MCL 324.81101(p).

- For purposes of the Personal Watercraft Act, *manufacturer* means "a person engaged in any of the following:

(*i*) The manufacture, construction, or assembly of personal watercraft or associated equipment.

(*ii*) The manufacture or construction of components for personal watercraft and associated equipment to be sold for subsequent assembly.

(*iii*) The importation of a personal watercraft or associated equipment into the state for sale." MCL 324.80201(i).

Marijuana/Marihuana

- For purposes of Article 7 of the PHC, the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, and the Marihuana Tracking Act, *marijuana* or *marihuana* "means that term as defined in . . . MCL 333.27953." MCL 333.7106(4); MCL 333.26423(e); MCL 333.27102(k); MCL 333.27902(d).

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *marijuana* or *marihuana* "means any of the following:

(i) A plant of the genus Cannabis, whether growing or not.

(ii) A part of a plant of the genus Cannabis, whether growing or not.

(iii) The seeds of a plant of the genus Cannabis.

(iv) Marihuana concentrate.

(v) A compound, manufacture, salt, derivative, mixture, extract, acid, isomer, salt of an isomer, or preparation of any of the following:

(A) A plant of the genus Cannabis.

(B) A part of a plant of the genus Cannabis.

(C) The seeds of a plant of the genus Cannabis.

(D) Marihuana concentrate.

(vi) A marihuana-infused product.

(vii) A product with a THC concentration of more than 0.3% on a dry-weight or per volume basis in the form in which it is intended for sale to a consumer.

(viii) A product that is intended for human or animal consumption and that contains, in the form in which it is intended for sale to a consumer, a total amount of THC that is greater than the limit established by the cannabis regulatory agency under [MCL 333.27958(1)(n)]." MCL 333.27953(h).

Marihuana "does not include any of the following:

(*i*) The mature stalks of the plant of the genus Cannabis.

(*ii*) Fiber produced from the mature stalks of a plant of the genus Cannabis.

(*iii*) Oil or cake made from the seeds of a plant of the genus Cannabis.

(*iv*) A compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks of a plant of the genus Cannabis.

(*v*) Industrial hemp.

(*vi*) An ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.

(*vii*) A drug for which an application filed in accordance with 21 USC 355 is approved by the Food and Drug Administration." MCL 333.27953(i).

Marihuana concentrate

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *marihuana concentrate* "means the resin extracted from any part of a plant of the genus Cannabis." MCL 333.27953(k).

Marihuana-infused product

- For purposes of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), *marihuana-infused product* "means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana and other ingredients and that is intended for human consumption." MCL 333.27953(n).

Marine law

- For purposes of the Marine Safety Act, *marine law* means "[MCL 324.80101 *et seq*.], a local ordinance adopted in conformity with [MCL 324.80101 *et seq*.], or a rule promulgated under [MCL 324.80101 *et seq*.]" MCL 324.80103(b).

Marine safety act

- For purposes of the Marine Safety Act, *marine safety act* means "former Act No. 303 of the Public Acts of 1967." MCL 324.80103(c).

Marine safety program

- For purposes of the Marine Safety Act, *marine safety program* means "marine law enforcement, search and rescue operations, water safety education, recovery of drowned bodies, and boat livery inspections." MCL 324.80103(d).

Motorboat

- For purposes of the Marine Safety Act, *motorboat* means "a vessel propelled wholly or in part by machinery." MCL 324.80103(f).

Municipality

- For purposes of the ORV Act, *municipality* means "a city or village." MCL 324.81101(q).

O

Off-road vehicle account

- For purposes of the ORV Act, *off-road vehicle account* means "the off-road vehicle account of the Michigan conservation and recreation legacy fund established in [MCL 324.2015]." MCL 324.81101(r).

Operate

- For purposes of the Marine Safety Act, *operate* means "to be in control of a vessel while the vessel is under way and is not secured in some manner such as being docked or at anchor." MCL 324.80103(g). However, for purposes of MCL 324.80176 in the Marine Safety Act, *operate* means "to be in control of a vessel propelled wholly or in part by machinery while the vessel is underway and is not docked, at anchor, idle, or otherwise secured." MCL 324.80176(8).

- For purposes of the ORV Act, *operate* means "to ride in or on, and be in actual physical control of, the operation of an ORV." MCL 324.81101(s).

- For purposes of the Personal Watercraft Act, *operate* means "to be in control of a personal watercraft while the personal watercraft is under way and is not docked or at anchor or secured in another way." MCL 324.80201(j).

- For purposes of the Snowmobile Act, *operate* means "to ride in or on and be in actual physical control of the operation of a snowmobile." MCL 324.82101(l). However, for purposes of MCL 324.82126 in the Snowmobile Act and "[n]otwithstanding [MCL 324.82101]," *operate* means "to cause to function, run, or manage." MCL 324.82126(6).

Operator

- For purposes of the Marine Safety Act, *operator* means "the person who is in control or in charge of a vessel while that vessel is underway." MCL 324.80103(h).

- For purposes of the ORV Act, *operator* means "an individual who operates or is in actual physical control of the operation of an ORV." MCL 324.81101(t).

- For purposes of the Personal Watercraft Act, *operator* means "the person who is in control or in charge of a personal

watercraft while that vessel is under way." MCL 324.80201(k).

- For purposes of the Snowmobile Act, *operator* means "any individual who operates a snowmobile." MCL 324.82101(m).

ORV

- For purposes of the ORV Act, *ORV*, or, unless the context implies a different meaning, *vehicle* means "a motor driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. A multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel vehicle, a vehicle with 3 or more wheels, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation may be an ORV. An ATV is an ORV. ORV or vehicle does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a vehicle owned and operated by a utility company or an oil or gas company when performing maintenance on its facilities or on property over which it has an easement, a construction or logging vehicle used in performance of its common function, or a registered aircraft." MCL 324.81101(u). See also Mich Admin Code, R 299.921(h).[3]

ORV Safety Certificate

- For purposes of the ORV Act, *ORV safety certificate* means "an ORV safety certificate issued under [MCL 324.81130] or, except as used in [MCL 324.81130], a comparable safety certificate issued under the authority of another state or province of Canada." MCL 324.81101(v).

Owner

- For purposes of the ORV Act, *owner* means any of the following:

"(*i*) A vendee or lessee of an ORV that is the subject of an agreement for the conditional sale or lease of the ORV, with the right of purchase upon performance of the conditions

[3] Available here.

stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee.

(*ii*) A person renting an ORV, or having the exclusive use of an ORV, for more than 30 days.

(*iii*) A person who holds legal ownership of an ORV." MCL 324.81101(w).

- For purposes of the Snowmobile Act, *owner* means any of the following:

"(*i*) A person that holds the legal title to a snowmobile.

(*ii*) A vendee or lessee of a snowmobile that is the subject of an agreement for conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee.

(*iii*) A person renting a snowmobile or having the exclusive use of a snowmobile for more than 30 days." MCL 324.82101(n).

- For purposes of the Marine Safety Act, *owner* means "a person who claims or is entitled to lawful possession of a vessel by virtue of that person's legal title or equitable interest in a vessel." MCL 324.80103(i). See also *Williams v Kennedy*, 316 Mich App 612, 617-619 (2016) (holding that a seller of a boat is not an *owner* under MCL 324.80103(i) "during the period after a seller delivers the certificate of title to a purchaser but before the transfer of title has been registered with the Secretary of State[,]" because at that time the seller never claimed, nor was he entitled to, lawful possession by virtue of legal title or equitable interest after receiving full payment for the boat and delivering the certificate of title to the purchaser).

- For purposes of the Personal Watercraft Act, *owner* means "a person who claims or is entitled to lawful possession of a personal watercraft by virtue of that person's legal title or equitable interest in a personal watercraft." MCL 324.80201(l).

P

Passenger

- For purposes of the Marine Safety Act, *passenger* means "an individual carried on board, attached to, or towed by a vessel, other than the operator." MCL 324.80104(b).

Peace officer

- For purposes of the Marine Safety Act, *peace officer* means any of the following:

"(*i*) A sheriff.

(*ii*) A sheriff's deputy.

(*iii*) A deputy who is authorized by a sheriff to enforce [MCL 324.80101 *et seq.*,] and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to [MCL 324.80101 *et seq*.]

(*iv*) A village or township marshal.

(*v*) An officer of the police department of a municipality.

(*vi*) An officer of the department of state police.

(*vii*) The director and conservation officers employed by the [DNR]." MCL 324.80104(c).

- For purposes of the ORV Act, *peace officer* means any of the following:

"*(i)* A sheriff.

(ii) A sheriff's deputy.

(iii) A deputy who is authorized by a sheriff to enforce [MCL 324.81101 *et seq*.] and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to [MCL 324.81101 *et seq*.]

(iv) A village or township marshal.

(v) An officer of the police department of a municipality.

(vi) An officer of the department of state police.

(vii) The director and conservation officers employed by the [DNR]." MCL 324.81101(*x*).

- For purposes of the Personal Watercraft Act, *peace officer* means "1 or both of the following:

(*i*) A law enforcement officer as that term is defined in [MCL 28.602].

(*ii*) A deputy who is authorized by a sheriff to enforce [MCL 324.80201 *et seq*.,] and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to [MCL 324.80201 *et seq*.]" MCL 324.80201(m).

- For purposes of the Snowmobile Act, *peace officer* means any of the following:

"(*i*) A sheriff.

(*ii*) A sheriff's deputy.

(*iii*) A deputy who is authorized by a sheriff to enforce [MCL 324.82101 *et seq*.,] and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to [MCL 324.82101 *et seq*.]

(*iv*) A village or township marshal.

(*v*) An officer of the police department of any municipality.

(*vi*) An officer of the Michigan state police.

(*vii*) The director and conservation officers employed by the [DNR].

(*viii*) A law enforcement officer who is certified under the commission on law enforcement standards act, [MCL 28.601 to MCL 28.615], and is policing within his or her jurisdiction." MCL 324.82101(o).

Person

- For purposes of the Personal Watercraft Act, *person* means "an individual, corporation, limited liability company, partnership, association, governmental entity, or other legal entity." MCL 324.80201(n).

Person with a disability

- For purposes of the ORV Act, *person with a disability* means an individual who has 1 or more of the following physical characteristics:

"(*i*) Blindness.

(*ii*) Inability, during some time of the year, to ambulate more than 200 feet without having to stop and rest.

(*iii*) Loss of use of 1 or both legs or feet.

(*iv*) Inability to ambulate without prolonged use of a wheelchair, walker, crutches, braces, or other device required to aid mobility.

(*v*) A lung disease from which the individual's expiratory volume for 1 second, measured by spirometry, is less than 1 liter, or from which the individual's arterial oxygen tension is less than 60 mm/hg of room air at rest.

(*vi*) A cardiovascular disease that causes the individual to measure between 3 and 4 on the New York heart classification scale, or that results in a marked limitation of physical activity by causing fatigue, palpitation, dyspnea, or anginal pain.

(*vii*) Other diagnosed disease or disorder including, but not limited to, severe arthritis or a neurological or orthopedic impairment that creates a severe mobility limitation." MCL 324.81101(y).

Personal assistive mobility device

- For purposes of the ORV Act, *personal assistive mobility device (PAMD)* means "any device, including one that is battery-powered, that is designed solely for use by an individual with mobility impairment for locomotion and is considered as an extension of the individual. An individual whose disability requires use of a wheelchair or PAMD may use such equipment that meets this definition anywhere foot travel is allowed." Mich Admin Code, R 299.921(l).

Personal watercraft

- For purposes of the Personal Watercraft Act, *personal watercraft* "means a vessel that meets all of the following requirements:

  (i) Uses a motor-driven propeller or an internal combustion engine powering a water jet pump as its primary source of propulsion.

  (ii) Is designed without an open load carrying area that would retain water.

(iii) Is designed to be operated by 1 or more persons positioned on, rather than within, the confines of the hull." MCL 324.80201(o).

Plant

For purposes of the Michigan Medial Marihuana Act and the Medical Marihuana Facilities Licensing Act, *plant* "means any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material." MCL 333.26423(j); MCL 333.27102(u).

Political subdivision

- For purposes of the Marine Safety Act, *political subdivision* means "a county, metropolitan authority, municipality, or combination of those entities in [Michigan]." MCL 324.80104(f). "If a body of water is located in more than 1 political subdivision, all of the subdivisions shall act individually in order to comply with [MCL 324.80101 *et seq*.], except that if the problem is confined to a specific area of the body of water, only the political subdivision in which the problem waters lie shall act." MCL 324.80104(f).

- For purposes of the Personal Watercraft Act, *political subdivision* means "a county, metropolitan authority, municipality, or combination of those entities in [Michigan]." MCL 324.80201(p).

Port

- For purposes of the Marine Safety Act, *port* means "left, and reference is to the port side of a vessel or to the left side of the vessel." MCL 324.80104(g).

Prior conviction

- For purposes of the Marine Safety Act, *prior conviction* means "a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

  (*i*) A violation or an attempted violation of [MCL 324.80176(1), MCL 324.80176(3), MCL 324.80176(4), MCL 324.80176(5), MCL 324.80176(6), or MCL 324.80176(7)], except that only 1 violation or attempted

violation of [MCL 324.80176(6)], a local ordinance substantially corresponding to [MCL 324.80176(6)], a law of another state substantially corresponding to [MCL 324.80176(6)], or a law of the United States substantially corresponding to [MCL 324.80176(6)] may be used as a prior conviction other than for enhancement purposes as provided in [MCL 324.80178a(1)(b)].

(*ii*) Negligent homicide, manslaughter, or murder resulting from the operation of a vessel or an attempt to commit any of those crimes.

(*iii*) Former section 73, 73b, or 171(1) of the Marine Safety Act." MCL 324.80104(h).

- For a violation of MCL 750.479a while operating a vessel, *prior conviction* means "the person had a previous conviction for a violation of [MCL 750.479a] while operating a vessel." MCL 750.479a(9)(a)(*ii*).

- For purposes of the ORV Act, *prior conviction* means "a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

  (*i*) A violation or an attempted violation of [MCL 324.81134(1), MCL 324.81134(3), MCL 324.81134(4), MCL 324.81134(5), MCL 324.81134(6), or MCL 324.81134(7)], except that only 1 violation or attempted violation of [MCL 324.81134(6)], a local ordinance substantially corresponding to [MCL 324.81134(6)], a law of another state substantially corresponding to [MCL 324.81134(6)], or a law of the United States substantially corresponding to [MCL 324.81134(6)] may be used as a prior conviction other than for enhancement purposes as provided in [MCL 324.81134(11)(b)].

  (*ii*) Negligent homicide, manslaughter, or murder resulting from the operation of an ORV, or an attempt to commit any of those crimes.

  (*iii*) Former section 81135." MCL 324.81101(aa).

- For purposes of the Snowmobile Act, *prior conviction* means "a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding

to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

- (*i*) A violation or an attempted violation of [MCL 324.82127(1), MCL 324.82127(3), MCL 324.82127(4), MCL 324.82127(5), MCL 324.82127(6), or MCL 324.82127(7)], except that only 1 violation or attempted violation of [MCL 324.82127(6)], a local ordinance substantially corresponding to [MCL 324.82127(6)], or a law of another state substantially corresponding to [MCL 324.82127(6)], or a law of the United States substantially corresponding to [MCL 324.82127(6)] may be used as a prior conviction other than for enhancement purposes as provided in [MCL 324.82129a(1)(b)].

- (*ii*) Negligent homicide, manslaughter, or murder resulting from the operation of a snowmobile or an attempt to commit any of those crimes.

- (*iii*) Former section 15a(1), (3), (4), or (5) of 1968 PA 74.

- (*iv*) Former section 15a." MCL 324.82101(q).

Properly signed on the ground

- For purposes of the ORV Act, *properly signed on the ground* means "that signs have been posted by the department to mark the location or boundary of a designated trail, route, or area." Mich Admin Code, R 299.921(m).

Probate court disposition

- For purposes of the Snowmobile Act, *probate court disposition* means "the entry of a probate court order of disposition . . . for a child found to be within the provisions of [MCL 712A.1-MCL 712A.32]." MCL 324.82101(r).

Prosecuting attorney

- For purposes of the Marine Safety Act, *prosecuting attorney* "unless the context requires otherwise, means the attorney general, prosecuting attorney of a county, or attorney representing a political subdivision of government." MCL 324.80104(j).

R

Right-of-way

- For purposes of the Snowmobile Act, *right-of-way* means "that portion of a highway or street not including the roadway and any shoulder." MCL 324.82101(u).

Roadway

- For purposes of the ORV Act, *roadway* means "the portion of a street, county road, or highway improved, designed, or ordinarily used for travel by vehicles registered under the code. Roadway does not include the shoulder." MCL 324.81101(cc).

- For purposes of the Snowmobile Act, *roadway* means "that portion of a highway or street improved, designated, or ordinarily used for vehicular travel. If a highway or street includes 2 or more separate roadways, the term roadway refers to any roadway separately, but not to all of the roadways collectively." MCL 324.82101(v).

Route

- For purposes of the ORV Act, *route* means "a forest road or other road that is designated for purposes of [MCL 324.81101 *et seq.*,] by the [DNR]." MCL 324.81101(dd).

S

Serious impairment of a body function

- For purposes of MCL 324.80134a (Marine Safety Act), MCL 324.80176(5) (Marine Safety Act), MCL 324.81134(5) (ORV Act), and MCL 324.82127(5) (Snowmobile Act), *serious impairment of a body function* "means that term as defined in . . . MCL 257.58c." Under MCL 257.58c, *serious impairment of a body function* means:

"(a) Loss of a limb or loss of use of a limb.

(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.

(c) Loss of an eye or ear or loss of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ."

Serious impairment of bodily function

- For purposes of MCL 324.82126c, *serious impairment of bodily function* "includes, but is not limited to, 1 or more of the following:

(a) Loss of a limb or use of a limb.

(b) Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.

(c) Loss of an eye or ear or use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain damage or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma."

Serious misdemeanor

- For purposes of MCL 769.5, *serious misdemeanor* "means that term as defined in . . . MCL 780.811." MCL 769.5(7).

Shoulder

- For purposes of the ORV Act, *shoulder* means "that portion of a street, county road, or highway contiguous to the roadway and generally extending the contour of the roadway, not designed for vehicular travel but maintained for the temporary accommodation of disabled or stopped motor vehicles otherwise permitted on the roadway." MCL 324.81101(ff).

- For purposes of the Snowmobile Act, *shoulder* means "that portion of a highway or street on either side of the roadway that is normally snowplowed for the safety and convenience of vehicular traffic." MCL 324.82101(w).

Slow-no wake speed

- For purposes of the Marine Safety Act, *slow-no wake speed* means "a very slow speed whereby the wake or wash created by the vessel would be minimal." MCL 324.80104(*l*).

- For purposes of the Personal Watercraft Act, *slow-no wake speed* means "the use of a vessel at a very slow speed so that the resulting wake or wash is minimal." MCL 324.80201(q).

Snowmobile

- For purposes of the Snowmobile Act, *snowmobile* means "any motor-driven vehicle that is designed for travel primarily on snow or ice and that utilizes sled-type runners or skis, an endless belt tread, or any combination of these or other similar means of contact with the surface upon which it is operated, but is not a vehicle that must be registered under the [MVC]." MCL 324.82101(x).

Specialty court program

- For purposes of the Marine Safety Act, the ORV Act, and the Snowmobile Act, *specialty court program* "means a program under any of the following:

  (*i*) A drug treatment court as defined in . . . MCL 600.1060, in which the participant is an adult.

  (*ii*) A DWI/sobriety court, as defined in . . . MCL 600.1084.

  (*iii*) A hybrid of the programs under subparagraphs (*i*) and (*ii*).

  (*iv*) A mental health court as defined in . . . MCL 600.1090.

  (*v*) A veterans treatment court, as defined in . . . MCL 600.1200." MCL 324.80104(m); MCL 324.81101(hh); MCL 324.82101(aa).

Starboard

- For purposes of the Marine Safety Act, *starboard* means "right, and reference is to the starboard side of a vessel or to the right side of the vessel." MCL 324.80104(n).

Street

- For purposes of the ORV Act, *street* means "a city or village major street or city or village local street as described in [MCL 247.659], or a segment thereof." MCL 324.81101(ii).

- For purposes of the Snowmobile Act, *street* means "the entire width between the boundary lines of every way publicly maintained if any part of it is open to public use for vehicular travel." MCL 324.82101(h).

Sunset

- For purposes of MCL 324.80205(5), *sunset* means "that time as determined by the National Weather Service." MCL 324.80205(5).

T

Tournament

- For purposes of the Marine Safety Act, *tournament* means "an organized water event of limited duration that is conducted according to a prearranged schedule." MCL 324.80104(k).

Traffic lane

- For purposes of the ORV Act, *traffic lane* means "a clearly marked lane on a roadway." MCL 324.81101(jj).

Trailway municipal civil infraction

- For purposes of the RJA, *trailway municipal civil infraction* means "a municipal civil infraction involving the operation of a vehicle on a recreational trailway at a time, in a place, or in a manner prohibited by ordinance." MCL 600.113(1)(g).

Type I personal flotation device

- "[A]n approved device designed to turn an unconscious person in the water from a face downward position to a vertical or slightly backward position, and to have more than 20 pounds of buoyancy." Mich Admin Code, R 281.1234(1)(a).

Type II personal flotation device

- "[A]n approved device designed to turn an unconscious person in the water from a face down position to a vertical or slightly backward position and to have at least 15.5 pounds of buoyancy." Mich Admin Code, R 281.1234(1)(b).

Type III personal flotation device

- "[A]n approved device designed to keep a conscious person in a vertical or slightly backward position and to have at least 15.5 pounds of buoyancy." Mich Admin Code, R 281.1234(1)(c).

Type IV personal flotation device

- "[A]n approved device designed to be thrown to a person in the water and not worn." Mich Admin Code, R 281.1234(1)(d). "It is designed to have at least 16.5 pounds of buoyancy." *Id*.

U

Undocumented vessel

- For purposes of the Marine Safety Act, *undocumented vessel* means "a vessel that does not have, and is not required to have, a valid marine document issued by the United States Coast Guard or federal agency successor to the United States Coast Guard." MCL 324.80104(q).

Unmaintained portion

- For purposes of the ORV Act, *unmaintained portion* means "the portion of a street, county road, or highway that is not the maintained portion." MCL 324.81101(kk).

Use

- For purposes of the Marine Safety Act, *use* means "operate, navigate, or employ." MCL 324.80104(s).

V

Vessel

- For purposes of the Marine Safety Act, *vessel* means "every description of watercraft used or capable of being used as a means of transportation on water." MCL 324.80104(t).
- For purposes of MCL 750.479a, *vessel* means that term as defined in MCL 324.80104. MCL 750.479a(9)(c).
- For purposes of the Personal Watercraft Act, *vessel* means "every description of watercraft used or capable of being used as a means of transportation on water." MCL 324.80201(s).

Visual supervision

- For purposes of the ORV Act, *visual supervision* means "the direct observation of the operator with the unaided or normally corrected eye, where the observer is able to come to the immediate aid of the operator." MCL 324.81101(*ll*).

W

Waters of this state

- For purposes of the Marine Safety Act, *waters of this state* means "any waters within the territorial limits of this state, and includes those waters of the Great Lakes that are under the jurisdiction of this state." MCL 324.80104(u).
- For purposes of the Personal Watercraft Act, *waters of this state* means "any waters within the territorial limits of this state, and includes those waters of the Great Lakes that are under the jurisdiction of this state." MCL 324.80201(t).

Z

Zone

- For purposes of the Snowmobile Act, *Zone 1* consists of all of the Upper Peninsula and *Zones 2 and 3* consist of the Lower Peninsula. MCL 324.82101(bb)-MCL 324.82101(dd).

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