



## Michigan Supreme Court

State Court Administrative Office

### Trial Court Services Division

Michigan Hall of Justice

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### MEMORANDUM

DATE: January 24, 2019

TO: District Court Judges  
District Court Magistrates  
District Court Administrators

FROM: Bobbi Morrow, Management Analyst  
Michele Muscat, Management Analyst

RE: Michigan Regulation and Taxation of Marihuana Act (MRTMA)

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Effective December 6, 2018, the recreational use and possession of marihuana was legalized.<sup>1</sup> Despite the language outlining the limits of legal use and possession of marihuana in the statutes, many questions remain regarding the application of the new laws. Until the legislation is clarified through amendment, courts will have to exercise judicial discretion in the application and interpretation of the new laws.

In the meantime, following are some frequently asked procedural questions (FAQ) and our recommended responses:

- Q: How will law enforcement, prosecuting attorneys, or courts know whether it is a first, second, or third violation?**
- A:** MRTMA does not currently require courts to abstract the civil infractions to the Department of State (SOS) or report the misdemeanor offenses to the Criminal History Records division of the Michigan State Police because they are not printable offenses. Therefore, law enforcement, prosecuting attorneys, and courts will have to utilize information located within other systems such as the court's case management system or the Judicial Data Warehouse (JDW) in order to determine the appropriate level of the violation. See MCL 333.27965 for more information on the penalties for violations of MRTMA.

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<sup>1</sup> MCL 333.27951 – 333.27967

**Q: Who is responsible for monitoring the completion of drug education/counseling or community service for persons under 21 years of age?**

**A:** If the court orders drug education/counseling or community service as provided in MCL 333.27965(3), the court would be responsible for monitoring the completion of these requirements. However, this penalty is discretionary and not required under the statute.

**Q: Can a court place a person on nonreporting probation in order to monitor the completion of drug education/counseling or community service?**

**A:** A person can only be placed on a term of probation (including nonreporting) if he/she has been found guilty of a crime and the court determines that they are a candidate for probation. See MCL 771.1. Civil infractions are not considered crimes. Where the defendant has not committed a crime but, rather, a civil infraction, probation cannot be imposed. *People v. Greenlee*, 133 Mich App 734 (1984). Because a civil infraction case is often closed when the fine has been paid in full, courts that order drug education/counseling or community service may need to develop a procedure for monitoring this. For example, the court could set a due date for proof of completion to be submitted and if not, set for a show cause hearing. Failure to comply with the court's order for drug education/counseling or community service may constitute contempt of court. See the [Contempt of Court Benchbook](#) for more information.

**Q: How do the courts handle juveniles, 16 years old or younger?**

**A:** Cases involving juveniles (16 and under), will follow a process similar to the MIP cases where the court must determine whether it wants to keep these cases or waive jurisdiction<sup>2</sup> over civil infractions committed by juveniles and allow the district court to process. If the family division chooses to handle those cases, they will be treated like any other juvenile case that is a civil infraction.

**Q: Can the court *require* a person to appear in person for a civil infraction case if the person is admitting responsibility?**

**A:** Depending on the nature of the violation and on the procedure appropriate to the violation, a defendant may appear in person, by representation, or by mail. See MCR 4.101. Currently, the Uniform Law Citation advises a person if they want to admit responsibility by mail to contact the court and obtain the amount of their fine and costs. A person can admit responsibility for an MRTMA civil infraction by mail and is not required to make a personal appearance. For a person under 21 years of age, if the court chooses to require drug education/counseling or community service, the court may establish a procedure of advising the person of the additional requirements such as completing the Civil Infraction Judgment ([CIA 02](#)) under "Other".

**Q: What type of misdemeanor offense is contemplated by MCL 333.27965(4)?**

**A:** It would be considered a 90-day misdemeanor, but not subject to imprisonment. MCL 333.27965(4) specifically designates the crime as a misdemeanor not subject to imprisonment. Accordingly, MCL 750.504 indicates that if a person is convicted of a crime designated under the Michigan Penal Code or in any other act of this state to be a misdemeanor for which no

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<sup>2</sup> MCL 712A.2e; A model local administrative order is available for use by the court and may be accessed at <https://courts.michigan.gov/Administration/SCAO/Resources/LAOs/lao12%20-%20model.rtf>.

punishment is specially prescribed, the person is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

**Q: What is the case type code for a civil infraction written under MCL 333.27965?**

**A:** The civil infraction offenses are nontraffic civil infractions and the case type code would be SN (statute civil infraction) or ON (ordinance civil infraction). If the individual is a juvenile and the case is processed by the family division of the circuit court, the case type code would be DL (delinquency proceeding).

**Q: What is the fine for a civil infraction written under MCL 333.27965, and can the court impose any other financial assessments?**

**A:** The statute lists a number of marihuana civil infraction offenses with varying fine amounts. The court may assess a fine of not more than what is listed under each offense.

The marihuana civil infraction offenses are not traffic, state, or municipal civil infractions, so there is no authority to impose court costs or the justice system assessment. Neither minimum state costs nor crime victim's rights assessments are assessed on civil infractions.

Further, there is no authority for the court to assess a cost to compel on these civil infractions. The authority for imposing a cost to compel is for offenses under the motor vehicle code, state civil infraction or municipal civil infraction statutes. See MCL 257.729, 600.8735, 600.8835. Since the marihuana civil infraction is not a traffic, state or municipal civil infraction, those authorities do not apply.

The 20 percent late fee does apply to these non-traffic civil infractions pursuant to MCL 600.4803.

**Q: Are these offenses abstractable to the Secretary of State?**

**A:** No. These are not abstractable to the Secretary of State and there are no SOS codes pertaining to the non-traffic civil infractions or the misdemeanor offenses written under MRTMA.

**Q: Can a magistrate conduct the informal hearing on civil infraction cases written under MCL 333.27965?**

**A:** No. A magistrate does not have authority to conduct an informal hearing on any civil infraction written under the MRTMA. MCL 600.8512(1) grants district court magistrates the authority to conduct informal hearings only in civil infraction actions under section 746 of the Michigan vehicle code, 1949 PA 300, MCL 257.746, or section 8719 or section 8819 of the Revised Judicature Act, as applicable.

**Q: What are the new PACC codes for the MRTMA misdemeanor offenses?**

**A:** See the following:

- **333.279652—REGULATION AND TAXATION OF MARIHUANA ACT—**  
Possession/Cultivation/Delivery without remuneration/Possession with intent to deliver not more than twice the legal limit
- **333.279654—REGULATION AND TAXATION OF MARIHUANA ACT—**  
Possession/Cultivation/Delivery without remuneration more than twice the legal limit

**333.279654A—REGULATION AND TAXATION OF MARIHUANA ACT—**

Possession/Cultivation/Delivery without remuneration more than twice the legal limit for commercial purpose or violence involved

**Note:** Most courts have their own system for formatting or creating CI charge codes in their case management system. Also, there is no SOS offense code for these offenses.

**Q: Is use of marihuana by a person under 21 years of age still a misdemeanor?**

**A:** MCL 333.27965(3) does not include use, only possession. Therefore, possession of marihuana by a person under 21 years of age would be a civil infraction under MRTMA, but use of marihuana by a person under 21 years of age would fall outside of the Act and appears to remain a misdemeanor offense.

**Q: How are courts handling individuals that have marihuana on their person when they come to court?**

**A:** Despite the allowance of marihuana use and possession under MRTMA, marihuana use and possession remains illegal under federal law, and courts are still subject to the Drug-Free Workplace Act of 1988. Employees, officials, contractors, or court users who violate court policy prohibiting the use or possession of illegal drugs on court property will continue to be subject to legal and/or disciplinary action.

If you have questions regarding procedure, please contact [TrialCourtServices@courts.mi.gov](mailto:TrialCourtServices@courts.mi.gov) or Bobbi Morrow at 517-373-2373 or Michele Muscat at 517-373-3756.