

TITLE: Compendium of State Privacy and Security Legislation: 1997
Overview - MICHIGAN; CHAPTER 28 Revised Statutes Annotated

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DOCUMENT #: 170064

DATE: 1997 PAGE: 71 p
ORIG: United States LANG: English
SUBJECT: Legislation/policy descriptions

ANNOTATION: This is a 1997 overview of State law pertinent to the
privacy and security of criminal justice information.

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MICHIGAN COMPILED LAWS ANNOTATED

Chapter 28

Michigan State Police

28.241. State police central records division; responsibility for criminal identification and records; materials

Sec. 1. The central records division of the department of state police shall be responsible for criminal identification and records ***. The division shall be supplied with the necessary apparatus and materials for collecting, filing, and preserving criminal records filed with the division.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.241a. Definitions

Sec. 1a. As used in this act:

(a) "Commanding officer" means the department of state police employee in charge of the central records division.

(b) "Criminal history record information" means name, date of birth, fingerprints; photographs, if available; personal descriptions, including physical measurements, identifying marks, scars, amputations, and tattoos; aliases and prior names; social security and driver's license numbers and other identifying numbers; information on misdemeanor convictions; and felony arrests and convictions.

(c) "Division" means the central records division of the department of state police.

(d) "Felony" means a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year, or an offense expressly designated by law to be a felony.

(e) "Juvenile history record information" means name; date of birth; fingerprints; photographs, if available; personal descriptions, including physical measurements, identifying marks, scars, amputations, and tattoos; aliases and prior names; social security and driver's license numbers and other identifying numbers; and information on juvenile offense arrests and adjudications.

(f) "Juvenile offense" means A VIOLATION OR ATTEMPTED VIOLATION BY A JUVENILE OF A LAW OF THIS STATE, WHICH IF COMMITTED BY AN ADULT WOULD BE A FELONY OR A MISDEMEANOR.

(g) "Misdemeanor" means either of the following:

(i) A violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.

(ii) A violation of a local ordinance that substantially

' corresponds to state law.

have been *** convicted within the state of a felony or *** a misdemeanor ***, or both ***.

(2) The commanding officer shall provide all reporting officials with forms, numerical identifiers, and instructions which specify in detail the nature of the information required, the time it is to be forwarded, the method of classifying, and other matters to facilitate criminal history record information collection and compilation. ***

(3) The commanding officer shall file *** the fingerprint impressions and photographs, if available, of all persons confined in a prison or other state correctional facility.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.243. Fingerprints, forwarding to state police; return of information upon release or finding of not guilty

Sec. 3. (1) The police department of each city or village, any duly constituted police department of a township, the sheriff's department of each county, the department of state police, and any other governmental law enforcement agency in the state, immediately upon the arrest of any person for a felony or for a misdemeanor for which the maximum possible penalty exceeds 92 days imprisonment or a fine of \$500.00, or both, shall take the person's fingerprints *** in duplicate and forward the fingerprints to the department of state police within 72 hours of arrest. One set of fingerprints shall be sent to the division on forms furnished by the commanding officer and 1 set of fingerprints shall be furnished to the director of the federal bureau of investigation on forms furnished by the director ***.

(2) The police department of each city or village, any duly constituted police department of a township, the sheriff's department of each county, the department of state police, and any other governmental law enforcement agency in the state may take 1 set of fingerprints of a person who is arrested for a misdemeanor punishable by imprisonment for not more than 92 days, or a fine of not more than \$500.00, or both, and who fails to produce satisfactory evidence of identification as required by section 1 of Act No. 44 of the Public Acts of 1961, being section 780.581 of the Michigan Compiled Laws. These fingerprints shall be forwarded to the department of state police immediately. Upon completion of the identification process by the department of state police, the fingerprints shall be returned to the arresting agency.

Sec. 3. (1) The police department of a city or village, the police department of a township, the sheriff's department of a county, the department of state police, and any other governmental law enforcement agency in the state, immediately upon the arrest of a person for a felony, —or— for a misdemeanor, for which the maximum possible penalty exceeds 92 —days— DAYS' imprisonment or a fine of \$1,000.00, or both, or for a juvenile offense, shall take the person's fingerprints in duplicate and forward the fingerprints to the department of state police within 72 hours after the arrest. One set of fingerprints shall be sent

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to the division on forms furnished by the commanding officer, and 1 set of fingerprints shall be furnished to the director of the federal bureau of investigation on forms furnished by the director.

(2) -(3)- The police department of a city or village, the police department of a township, the sheriff's department of a county, the department of state police, and any other governmental law enforcement agency in the state, upon the arrest of a person for a misdemeanor, may take the person's fingerprints on forms furnished by the commanding officer, ~~but~~ AND may ~~not~~ forward the fingerprints to the department.

THE ARRESTING AGENCY SHALL NOTIFY
2 THE COURT WHEN FINGERPRINTS HAVE BEEN FORWARDED TO THE DIVISION
3 FOR A MISDEMEANOR ARREST.

4 (3) -(4)- If a petition is not authorized for a juvenile
5 accused of a juvenile offense or if a person arrested for having
6 committed a felony or a misdemeanor is released without a charge
7 made against him or her, the official taking or holding the
8 person's fingerprints, arrest card, and description shall immedi-
9 ately return this information to the person without the necessity
10 of a request OR DESTROY THIS INFORMATION ALONG WITH ANY CORRE-
11 SPONDING ELECTRONIC RECORD. If this information is not returned
12 AND HAS NOT BEEN DESTROYED, the person shall have the absolute
13 right to demand and receive its return at any time after the
14 person's release and without need to petition for court action.
15 The local police agency shall notify the commanding officer in

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16 writing that no petition was authorized against the juvenile or
17 that no charge was made against the arrested person if the
18 juvenile's or arrested person's fingerprints were forwarded to
19 the department.

20 (4) —(5) If a juvenile is adjudicated and found not to be
21 within the provisions of section 2(a)(1) of Act No. 288 of the
22 Public Acts of 1939, being section 712A.2 of the Michigan
23 Compiled Laws, or if an accused is found not guilty of the
24 offense, the arrest card, the fingerprints, and description shall
25 be returned to him or her OR DESTROYED ALONG WITH THE CORRESPOND-
26 ING ELECTRONIC RECORD by the official holding this information.
27 If for any reason the official holding the information does not

1 return OR DESTROY the information within 60 days of the
2 adjudication or the finding of not guilty, the accused shall have
3 the right to obtain an order from the court having jurisdiction
4 over the case for the return of the information. If the order of
5 return is not complied with, the accused shall have the right to
6 petition the juvenile division of the probate court of the county
7 where the original petition was filed or the circuit court of the
8 county where the original charge was made for a preemptory writ
9 of mandamus to require issuance of the order of return. Upon
10 final disposition of the charge against the accused, the clerk of
11 the court entering the disposition shall notify the commanding
12 officer of any finding of not guilty or not guilty by reason of
13 insanity, dismissal, or nolle prosequi —, if it appears that the
14 accused was initially arrested for a felony or a misdemeanor
15 —punishable by imprisonment for more than 90 days— or of any

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16 Finding that a juvenile accused of a juvenile offense is not
17 within the provisions of section 2(a)(1) of Act No. 288 of the
18 Public Acts of 1939.

19 (5) -(6)- Upon final disposition of the charge against the
20 accused, the clerk of the court entering the disposition shall
21 immediately advise the commanding officer of the final disposi-
22 tion of the arrest for which the accused was fingerprinted if a
23 juvenile was adjudicated to have committed a juvenile offense or
24 if the accused was convicted of a felony or a misdemeanor. With
25 regard to any adjudication or conviction, the clerk shall trans-
26 mit to the commanding officer information as to any adjudication
27 or finding of guilty or guilty but mentally ill; any plea of
1 guilty, nolo contendere, or guilty but mentally ill; the offense
2 of which the accused was convicted; and a summary of any deposi-
3 tion or sentence imposed. The summary of the sentence shall
4 include any probationary term; any minimum, maximum, or alterna-
5 tive term of imprisonment; the total of all fines, costs, and
6 restitution ordered; and any modification of sentence. If the
7 sentence is imposed under any of the following sections, the
8 report shall so indicate:

9 (a) Section 7411 of the public health code, Act No. 368 of
10 the Public Acts of 1978, being section 333.7411 of the Michigan
11 Compiled Laws.

12 (b) Sections 11 to 15 of chapter II of the code of criminal
13 procedure, Act No. 175 of the Public Acts of 1927, being sections
14 762.11 to 762.15 of the Michigan Compiled Laws.

15 (c) Section 4a of chapter IX of the code of criminal proce-
16 dure, Act No. 175 of the Public Acts of 1927, being section
17 769.4a of the Michigan Compiled Laws.

18 (d) Section 350a(4) of the Michigan penal code, Act No. 328
19 of the Public Acts of 1931, being section 750.350a of the
20 Michigan Compiled Laws.

21 (6) ~~(7)~~ The commanding officer shall record the disposi-
22 tion of each charge and shall inform the director of the federal
23 bureau of investigation of the final disposition of the felony or
24 misdemeanor arrest.

25 (7) ~~(8)~~ The commanding officer shall compare the finger-
26 prints and description received with those already on file and if
27 the commanding officer finds that the person arrested has a

1 criminal record, the commanding officer shall immediately inform
2 the arresting agency and prosecuting attorney of this fact.

3 (8) ~~(9)~~ UNLESS A JUDGE OF A COURT OF RECORD ORDERS THE
4 RETURN OR DESTRUCTION BY AN EXPRESS ORDER ENTERED ON THE RECORD,
5 THE provisions of this section requiring the return OR
6 DESTRUCTION of the fingerprints, arrest card, and description
7 shall not apply in the following cases:

8 (a) The person arrested was charged with the commission or
9 attempted commission, or if the person arrested is a juvenile,
10 was charged with an offense which if committed by an adult would
11 constitute the commission or attempted commission, of a crime
12 with or against a child under 16 years of age or the crime of
13 criminal sexual conduct in any degree, rape, sodomy, gross inde-
14 cency, indecent liberties, or child abusive commercial
15 activities.

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16 (b) The person arrested has a prior conviction other than a
17 misdemeanor traffic offense. ~~, unless a judge of a court of~~
18 ~~record, except the probate court, by express order entered on the~~
19 record, orders the return.

20 (9) ~~(+0)~~ Subsection (3) does not permit the forwarding to
21 the department of the fingerprints of a person accused and con-
22 victed under the Michigan vehicle code, Act No. 300 of the Public
23 Acts of 1949, being sections 257.1 to 257.923 of the Michigan
24 Compiled Laws, or under a local ordinance substantially corre-
25 sponding to a provision of Act No. 300 of the Public Acts of
26 1949, unless the offense is punishable upon conviction by
27 imprisonment for more than 92 days or is an offense which would

1 be punishable by imprisonment for more than 92 days as a second
2 conviction.

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28.243a. Refusing to allow fingerprinting; advising that refusal constitutes misdemeanor

Sec. 3a. Any person required to have his or her fingerprints taken under section 3¹ who refuses to allow or resists the taking of his or her fingerprints is guilty of a misdemeanor. Such person must be advised that his or her refusal constitutes a misdemeanor.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

¹ Section 28.243.

28.244. Cooperation with state bureaus, federal bureau of investigation, and United States justice department

Sec. 4. The commanding officer shall cooperate with the bureaus in other states and with the federal bureau of investigation and the United States justice department * * *, to develop and carry on a complete interstate, national, and international system of criminal identification and records * * *.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.245. Cooperation; local bureaus

Sec. 5. The commanding officer shall offer assistance and when practicable, instruction, to county sheriffs, chiefs of police, and other peace officers in establishing an efficient local bureau of identification in their districts.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.245a. Random performance audits; report of information not supplied

Sec. 5a. (1) The commanding officer may perform random performance audits of the criminal history record information required under this act.

Deletions from text indicated by asterisks * * *

(2) If the commanding officer finds during a performance audit that criminal history record information is not being supplied as required under this act, the commanding officer shall report this fact to the attorney general.

P.A.1925, No. 289, § 5a, added by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.246. Neglect or refusal to report or perform acts required; penalties; nonfeasance

Sec. 6. Neglect or refusal of any of the officers or officials mentioned in sections 2, 3, and 7¹ to * * * report as required under this act or to * * * perform any other act required to be * * * performed by him or her under this act shall constitute a misdemeanor, punishable by a fine of not less than \$25.00 nor more than \$100.00, or by imprisonment * * * for * * * not more than 60 days, or * * * both * * *. Such neglect or refusal shall also constitute nonfeasance in office and subject the official or officer to removal from office.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

¹ Sections 28.242, 28.243, and 28.247.

28.247. Reports of sexually motivated crimes and crimes involving sexual conduct; confidential filing system; violation of confidentiality, penalties

Sec. 7. The sheriff of every county and the chief executive officer of the police department of every city, village, and township shall make * * * reports of accused persons against whom a warrant has been issued and the disposition thereof in sexually motivated crimes and crimes involving sexual conduct verified as such and the disposition of cases resulting from such charges. The department of state police shall provide the forms necessary for reporting such information and the department shall file the reports or copies thereof in a separate confidential filing system. The reports shall be available for examination only by the attorney general, any prosecuting attorney, any court of record, the director of the state police, county sheriffs, * * * the chief executive officer of the police department of any city, village, or township and their authorized officers. The reports shall be held confidential except for official use. Any person who violates any of the confidential provisions of this section shall be guilty of a misdemeanor, punishable by imprisonment * * * for not more than 1 year, or by a fine of not more than \$500.00, or both.

Amended by P.A.1986, No. 231, § 1, Eff. June 1, 1987.

28.248, 28.249. Repealed by P.A.1986, No. 231, § 2, Eff. June 1, 1987

Substantive changes in text indicated by underline

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Chapter 762

Code of Criminal Procedure - Courts

762.14 Effect of assignment to status of youthful trainee; conviction; civil disability; proceedings closed to public inspection

Sec. 14. An assignment of a youth to the status of youthful trainee, as provided in this chapter, shall not be deemed to be a conviction of crime and such person shall suffer no civil disability, right or privilege following his release from such status because of such assignment as a youthful trainee. Unless such person shall be later convicted of the crime alleged to have been committed, referred to in section 1,¹ all proceedings relative to the disposition of the criminal charge and to the assignment as youthful trainee shall be closed to public inspection, but shall be open to the courts of the state, the department of corrections, the department of social services and law enforcement personnel in the performance of their duties and such information may only be used for the performance of such duties.

¹ Section 762.1.

762.15 Applicability of act to certain youths over 15

Sec. 15. The provisions of this chapter may also be applied to a youth over the age of 15 years whose jurisdiction has been waived under the provisions of section 27 of chapter 4 of this act.¹

¹ Section 764.27.

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Chapter 764

Code of Criminal Procedure - Arrest

764.29. Arraignment for felony or certain misdemeanor complaints; fingerprints

Sec. 29. (1) At the time of arraignment of a person on a complaint for a felony or a misdemeanor punishable by imprisonment for more than 92 days, the magistrate shall examine the court file to determine if the person has had fingerprints taken as required by section 3 of Act No. 289 of the Public Acts of 1925, being section 28.243 of the Michigan Compiled Laws.

(2) If the person has not had his or her fingerprints taken prior to the time of arraignment for the felony or the misdemeanor punishable by imprisonment for more than 92 days, upon completion of the arraignment, the magistrate shall do either of the following:

(a) Order the person to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the person so that the person's fingerprints can be taken.

(b) Order the person committed to the custody of the sheriff for the taking of the person's fingerprints.

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Chapter 769

Code of Criminal Procedure - Judgment and Sentence

CHAPTER IX. JUDGMENT AND SENTENCE		Section
		769.16a.
Section 769.1a.	Order of restitution; authority of court; enforcement [New].	Final disposition for felonies and misdemeanors complaints; report to state police, content, form; exceptions; fingerprints. [New]

769.1. Authority of court to pronounce judgment and pass sentence; fingerprints

Sec. 1. (1) A judge of a court having jurisdiction is authorized and empowered to pronounce judgment against and pass sentence upon a person convicted of an offense in a court held by that judge. The sentence shall not be in excess of the sentence prescribed by law.

(2) The sentencing of a person convicted of a felony or a misdemeanor punishable by imprisonment for more than 92 days shall not occur until the court has examined the court file and has determined that the fingerprints of the person have been taken.

Amended by P.A.1986, No. 232, § 1, Eff. June 1, 1987.

769.4a Conditional sentence; deferral of proceedings, probation; counseling program; discharge and dismissal of proceedings; limits on discharges and dismissals of proceedings

Sec. 4a. (1) When a person, who has not been convicted previously of a violation of section 81 or 81a of Act No. 328 of the Public Acts of 1931, as amended, being sections 750.81 and 750.81a of the Michigan Compiled Laws, and the victim of the assault is the offender's spouse, former spouse, or a person residing or having resided in the same household as the victim, pleads guilty to, or is found guilty of, a violation of section 81 or 81a of Act No. 328 of the Public Acts of 1931, as amended, the court, without entering a judgment of guilt, and with the consent of the accused, may defer further proceedings and place the accused on probation as provided in this section. Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided in this chapter.

(2) An order of probation entered under subsection (1) may require the accused to participate in a mandatory counseling program. The court may order the accused to pay the reasonable costs of the program.

(3) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(4) There may be only 2 discharges and dismissals under this section with respect to any person. The department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action under section 81 or 81a of Act No. 328 of the Public Acts of 1931, as amended, has already once availed himself or herself of this section.

Amended by P.A.1980, No. 471, § 1, Eff. March 31, 1981.

769.16a. Final disposition for felonies and misdemeanor complaints; report to state police, content, form; exceptions; fingerprints

Sec. 16a. (1) Except as otherwise provided in subsection (3), upon final disposition of an original charge against a person of a felony or a misdemeanor punishable by imprisonment for more than 92 days, the clerk of the court entering the disposition shall immediately advise the department of state police of the final disposition of the charge on forms approved by the state court administrator. The report to the department of state police shall include information as to the finding of the judge or jury, including a finding of guilty, guilty but mentally ill, not guilty, or not guilty by reason of insanity, or the person's plea of guilty, nolo contendere, or guilty but mentally ill; if the person was convicted, the offense of which the person was convicted; and a summary of any sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. If the sentence is imposed under any of the following sections, the report shall so indicate:

(a) Section 7411 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7411 of the Michigan Compiled Laws.

(b) Sections 11 to 15 of chapter II of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 762.11 to 762.15 of the Michigan Compiled Laws.

(c) Section 4a of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 769.4a of the Michigan Compiled Laws.

(2) Except as otherwise provided in subsection (3), upon sentencing of a person convicted of a misdemeanor or of a violation of a local ordinance substantially corresponding to state law, the clerk of the court imposing sentence immediately shall advise the department of state police of the conviction on forms approved by the state court administrator. The clerk of a court is not required to report a conviction under this subsection if the clerk is required to report the conviction under subsection (1).

(3) The clerk of a court is not required to and shall not, unless ordered by a judge of the court, report a conviction of a misdemeanor offense if either of the following apply:

(a) The conviction is under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or under a local ordinance substantially corresponding to a provision of Act No. 300 of the Public Acts of 1949, unless the offense is punishable by imprisonment for more than 92 days or is an offense which would be punishable by more than 92 days as a second conviction.

(b) A sentence of imprisonment is not imposed, except as an alternative sentence, and any fine and costs ordered total less than \$100.00.

(4) As part of the sentence for a conviction of an offense described in subsection (2), the court shall order that the fingerprints of the person convicted be taken and forwarded to the department of state police if fingerprints have not already been taken.

P.A.1927, No. 506, c. IX, § 16a, added by P.A.1986, No. 232, § 1, Eff. June 1, 1987.

Chapter 780

Criminal Procedure Setting Aside Convictions

780.621 Application for order setting aside conviction; setting aside of certain convictions prohibited; time and contents of application; submitting application and fingerprints to department of state police; report; application fee; contest of application by attorney general or prosecuting attorney; affidavits and proofs; court order. [M.S.A. 28.1274(101)]

Sec. 1. (1) Except as provided in subsection (2), a person who is convicted of not more than 1 offense may file an application with the convicting court for the entry of an order setting aside the conviction.

(2) A person shall not apply to have set aside, nor may a judge set aside, a conviction for a felony for which the maximum punishment is life imprisonment or a conviction for a traffic offense.

(3) An application shall not be filed until the expiration of 5 years following imposition of the sentence for the conviction which the applicant seeks to set aside or 5 years following completion of any term of imprisonment for that conviction, whichever occurs later.

(4) The application shall contain the following information and shall be signed under oath by the person whose conviction is to be set aside:

(a) The full name and current address of the applicant.

(b) A certified record of the conviction which is to be set aside.

(c) A statement that the applicant has not been convicted of an offense other than the one which is sought to be set aside as a result of this application.

(d) A statement as to whether the applicant has previously filed an application to set aside this or any other conviction and, if so, the disposition of the application.

(e) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(f) A consent to the use of the nonpublic record created under section 3, to the extent authorized by section 3.

(5) The applicant shall submit a copy of the application and a complete set of fingerprints to the department of state police, which shall compare those fingerprints with the records of the department, including the nonpublic record created under section 3, and shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of conviction of the applicant, and the setting aside of any conviction of the applicant. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(6) The copy of the application submitted to the department of state police pursuant to subsection (5) shall be accompanied by a fee of \$15.00 payable to the state of Michigan which shall be used by the department of state police to defray the expenses incurred in processing the application.

(7) A copy of the application shall be served upon the attorney general and upon the office of the prosecuting attorney who prosecuted the crime, and an opportunity shall be given to the attorney general and to the prosecuting attorney to contest the application.

(8) Upon the hearing of the application the court may require the filing of such affidavits and the taking of such proofs as it considers proper.

(9) If the court determines that the circumstances and behavior of the applicant from the date of the applicant's conviction to the filing of the application warrant setting aside the conviction and that setting aside the conviction is consistent with the public welfare, the court may enter an order setting aside the conviction. The setting aside of a conviction under this act is a privilege and conditional and is not a right.

780.621a Definitions. [M.S.A. 28.1274(101a)]

Sec. 1a. As used in this act:

(a) "Conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere, or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

(b) "Traffic offense" means a violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially corresponding to that act, which violation involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

780.622 Entry of order; effect. [M.S.A. 28.1274(102)]

Sec. 2. (1) Upon the entry of an order as provided for in section 1, the applicant, for purposes of the law, shall be considered not to have been previously convicted, except as provided in this section and section 3.

(2) The applicant shall not be entitled to the remission of any fine, costs, or other sums of money paid as a consequence of a conviction which is set aside.

(3) This act shall not affect the right of the applicant to rely upon the conviction to bar subsequent proceedings for the same offense.

(4) This act shall not affect the right of a victim of a crime to prosecute or defend a civil action for damages.

(5) This act shall not be construed to create a right to commence an action for damages for incarceration under the sentence which the applicant served before the conviction is set aside pursuant to this act.

780.623 Sending copy of order to arresting agency and department of state police; retention and availability of nonpublic record of order and other records; providing copy of nonpublic record to person whose conviction set aside; fee; nonpublic record exempt from disclosure; prohibited conduct; misdemeanor. [M.S.A. 28.1274(103)]

Sec. 3. (1) Upon the entry of an order pursuant to section 1(9), the court shall send a copy of the order to the arresting agency and the department of state police.

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(2) The department of state police shall retain a nonpublic record of the order setting aside a conviction and of the record of the arrest, fingerprints, conviction, and sentence of the applicant in the case to which the order applies. Except as provided in subsection (3), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) For consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) To show that a person, who has filed an application to set aside a conviction, has previously had a conviction set aside pursuant to this act.

(c) For the court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense which is punishable as a felony or by imprisonment for more than 1 year.

(d) For consideration by the governor, if a person whose conviction has been set aside applies for a pardon for another offense.

(3) A copy of the nonpublic record created under subsection (2) shall be provided to the person whose conviction is set aside under this act, upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of Act No. 442 of the Public Acts of 1976, being section 15.234 of the Michigan Compiled Laws.

(4) The nonpublic record maintained under subsection (1) shall be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(5) A person, other than the applicant, who knows or should have known that a conviction was set aside under this section, who divulges, uses, or publishes information concerning a conviction set aside under this section, except as provided in subsection (2), is guilty of a misdemeanor.

780.624 Setting aside of convictions; limitation. [M.S.A. 28.1274(104)]

Sec. 4. A person may have only 1 conviction set aside under this act.

Approved December 31, 1982.

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Chapter 750

The Penal Code

Public Records

750.491 Public records; removal, mutilation or destruction; penalty.

Sec. 491. All official books, papers or records created by or received in any office or agency of the state of Michigan or its political subdivisions, are declared to be public property, belonging to the people of the state of Michigan. All books, papers or records shall be disposed of only as provided in section 13c of Act No. 51 of the Public Acts of the First Extra Session of 1948, as added, being section 18.13c of the Compiled Laws of 1948, section 5 of Act No. 271 of the Public Acts of 1913, as amended, being section 399.5 of the Compiled Laws of 1948 and sections 2137 and 2138 of Act No. 236 of the Public Acts of 1961, being sections 600.2137 and 600.2138 of the Compiled Laws of 1948.

Any person who shall wilfully carry away, mutilate or destroy any of such books, papers, records or any part of the same, and any person who shall retain and continue to hold the possession of any books, papers or records, or parts thereof, belonging to the aforesaid offices and shall refuse to deliver up such books, papers, records, or parts thereof to the proper officer having charge of the office to which such books, papers, or records belong, upon demand being made by such officer or, in cases of a defunct office, the Michigan historical commission, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison not more than 2 years or by a fine of not more than \$1,000.00.

750.492 Public records; inspection, use, copying, removal.

Sec. 492. Any officer having the custody of any county, city or township records in this state who shall when requested fail or neglect to furnish proper and reasonable facilities for the inspection and examination of the records and files in his office and for making memoranda of transcripts therefrom during the usual business hours, which shall not be less than 4 hours per day, to any person having occasion to make examination of them for any lawful purpose shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by a fine of not more than \$500.00. The custodian of said records and files may make such reasonable rules with reference to the inspection and examination of them as shall be necessary for the protection of said records and files, and to prevent interference with the regular discharge of the duties of such officer. The officer shall prohibit the use of pen and ink in making copies or notes of records and files in his office. No books, records and files shall be removed from the office of the custodian thereof, except by the order of the judge of any court of competent jurisdiction, or in response to a subpoena duces tecum issued therefrom, or for audit purposes conducted pursuant to Act No. 71 of the Public Acts of 1919, as amended, being sections 21.41 to 21.53 of the Compiled Laws of 1948, Act No. 52 of the Public Acts of 1929, being sections 14.141 to 14.145 of the Compiled Laws of 1948 or Act No. 2 of the Public Acts of 1968, being sections 141.421 to 141.433 of the Compiled Laws of 1948 with the permission of the official having custody of the records if the official is given a receipt listing the records being removed.

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Chapter 752

The Penal Code

**MAINTAINING AND SUPPLYING OF INFORMATION; LAW
ENFORCEMENT AGENCIES**

Caption editorially supplied

P.A.1980, No. 201, § 1

AN ACT to regulate the maintenance and supplying of information by a law enforcement agency to an interstate law enforcement intelligence organization; to regulate membership by a law enforcement agency in interstate law enforcement intelligence organizations; and to prescribe penalties.

The People of the State of Michigan enact:

752.1. Definitions

Sec. 1. As used in this act:

(a) "File" means all information about an individual recorded and retained by a law enforcement intelligence organization regardless of how the information is stored.

(b) "Freedom of information act" means an act which provides that members of the public have a right to inspect and copy certain records of governmental agencies, which for this state is Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(c) "Individual" means a natural person or a parent or guardian of a natural person who is less than 18 years of age, unless the person who is less than 18 years of age indicates otherwise.

(d) "Interstate law enforcement intelligence organization" means any intelligence gathering organization whose purpose is to promote the gathering, recording, and interstate exchange of confidential information not available through regular police channels and which provides a central clearinghouse for information dissemination to its membership. Interstate law enforcement intelligence organization includes, but is not limited to, the intelligence gathering organization registered as a charitable trust in the state of California with its principal offices located in Sacramento, California.

(e) "Law enforcement agency" means a state or local police department, a sheriff's department, a county prosecutor's office, the department of attorney general, or any other department or agency which enforces the laws of this state or the ordinances of a county, township, city, or village.

P.A.1980, No. 201, § 1, Imd. Eff. July 18.

752.2. Maintaining and supplying information; conditions

Sec. 2. A law enforcement agency may not supply information to or maintain files supplied by an interstate law enforcement intelligence organization unless 1 of the following conditions is met:

(a) The organization is the El Paso intelligence center.

(b) The interstate law enforcement intelligence organization is established by an act of congress.

(c) The interstate law enforcement intelligence organization is established within a federal investigative agency and membership is with the concurrence of the governor of this state.

(d) The interstate law enforcement intelligence organization is created by an act of the legislature in the state where the organization is located and by the legislature of this state.

P.A.1980, No. 201, § 2, Imd. Eff. July 18.

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752.3. Maintaining and supplying information; membership in interstate law enforcement intelligence organization; conditions

Sec. 3. (1) Except as provided in section 2,¹ a law enforcement agency shall not maintain membership, supply information to, or maintain files supplied by an interstate law enforcement intelligence organization unless all of the following conditions are met by the interstate law enforcement intelligence organization:

- (a) The organization is governed by a citizen oversight body which has the authority to periodically review the files maintained by the organization.
- (b) The files maintained by an organization are relevant to a criminal investigation or pertinent to and within the scope of an authorized law enforcement activity.
- (c) The organization does not maintain a record describing how an individual exercises rights guaranteed by the first amendment of the constitution of the United States.
- (d) The organization has established guidelines which provide for the review of files at regular intervals to insure the accuracy and legality of the file information.
- (e) The organization has established guidelines which provide for the destruction of outdated or inaccurate information.
- (f) The organization permits its files located in a state with a freedom of information act to be accessible to the public in accordance with that act.

(2) This section shall take effect July 1, 1983.

P.A.1980, No. 201, § 3, Eff. July 1, 1983.

¹ Section 752.2.

752.4. Notice of membership

Sec. 4. A law enforcement agency which is a member of an interstate law enforcement intelligence organization shall notify the legislature and the governor of its membership not later than February 1 of each year.

P.A.1980, No. 201, § 4, lmd. Eff. July 18.

752.5. Exchange of information

Sec. 5. This act shall not be construed to prohibit the exchange of information through regular police channels between a law enforcement agency in this state and a law enforcement agency in another state, the District of Columbia, or the federal government.

P.A.1980, No. 201, § 5, lmd. Eff. July 18.

752.6. Violations

Sec. 6. A person who knowingly violates this act is guilty of a misdemeanor.

P.A.1980, No. 201, § 6, lmd. Eff. July 18.

Former § 752.6:

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Chapter 15

Public Officers and Employees
Freedom of Information Act

15.231 Short title; public policy.

Sec. 1. (1) This act shall be known and may be cited as the "freedom of information act".

(2) It is the public policy of this state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

15.232 Definitions.

Sec. 2. As used in this act:

(a) "Person" means an individual, corporation, partnership, firm, organization, or association.

(b) "Public body" means:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(c) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. This act separates public records into 2 classes: (i) those which are exempt from disclosure under section 13, and (ii) all others, which shall be subject to disclosure under this act.

(d) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or

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paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

15.233 Public records; right to inspect, copy, or receive; subscriptions; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.

Sec. 3. (1) Upon an oral or written request which describes the public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of a public record of a public body, except as otherwise expressly provided by section 13. A person has a right to subscribe to future issuances of public records which are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable.

(2) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.

(3) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

This act does not require a public body to create a new public record, except as required in sections 5 and 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

(5) The custodian of a public record shall, upon request, furnish a requesting person a certified copy of a public record.

15.234 Fees; waiver or reduction; affidavit; deposit; calculation of costs; provisions inapplicable to certain public records; review by bipartisan joint committee; appointment of members.

Sec. 4. (1) A public body may charge a fee for providing a copy of a public record. Subject to subsection (3), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. Copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because furnishing copies of the public record can be considered as primarily benefiting the general public. A copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request, to an individual who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

(2) At the time the request is made, a public body may request a good faith deposit from the person requesting the public record or series of public records, if the fee provided in subsection (1) exceeds \$50.00. The deposit shall not exceed 1/2 of the total fee.

(3) In calculating the costs under subsection (1), a public body may not attribute more than the hourly wage of the lowest paid, full-time, permanent clerical employee of the employing public body to the cost of labor incurred in duplication and mailing and to the cost of examination, review, separation, and deletion. A public body shall utilize the most economical means available for providing copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. A public body shall establish and publish procedures, and guidelines to implement this subsection.

(4) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or where the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

(5) Three years after the effective date of this act a bipartisan joint committee of 3 members of each house shall review the operation of this section and recommend appropriate changes. The members of the house of representatives shall be appointed by the speaker of the house of representatives. The members of the senate shall be appointed by the majority leader of the senate.

15.235 Request to inspect or receive copy of public record; response to request; failure to respond; court order to disclose or provide copies; damages; contents of notice denying request; signing notice of denial; notice extending period of response; grounds for commencement of action.

Sec. 5. (1) A person desiring to inspect or receive a copy of a public record may make an oral or written request for the public record to the public body.

(2) When a public body receives a request for a public record it shall immediately, but not more than 5 business days after the day the request is received unless otherwise agreed to in writing by the person making the request, respond to the request by 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

(3) Failure to respond to a request as provided in subsection (2) constitutes a final decision by the public body to deny the request. If a circuit court, upon an action commenced pursuant to section 10, finds that a public body has failed to respond as provided in subsection (2), and if the court orders the public body to disclose or provide copies of the public record or a portion thereof, then the circuit court shall assess damages against the public body as provided in section 10(5).

(4) A written notice denying a request for a public record in whole or in part shall constitute a final determination by the public body to deny the request or portion thereof and shall contain:

- (a) An explanation of the basis under this act or other statute for the determination that the public record, or the portion thereof, is exempt from disclosure, if that is the reason for denying the request or a portion thereof.
 - (b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion thereof.
 - (c) A description of a public record or information on a public record which is separated or deleted as provided in section 14, if a separation or deletion is made.
 - (d) A full explanation of the requesting person's right to seek judicial review under section 10. Notification of the right to judicial review shall include notification of the right to receive attorneys' fees and damages as provided in section 10.
- (5) The individual designated in section 6 as responsible for the denial of the request shall sign the written notice of denial.
- (6) If a public body issues a notice extending the period for a response to the request, the notice shall set forth the reasons for the extension and the date by which the public body shall do 1 of the following:
- (a) Grant the request.
 - (b) Issue a written notice to the requesting person denying the request.
 - (c) Grant the request in part and issue a written notice to the requesting person denying the request in part.
- (7) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion thereof, the requesting person may commence an action in circuit court, as provided in section 10.

15.236 Persons responsible for approving denial of request for public record.

Sec. 6. (1) For a public body which is a city, village, township, county, or state department, or under the control thereof, the chief administrative officer of that city, village, township, county, or state department, or an individual designated in writing by that chief administrative officer, shall be responsible for approving a denial under section 5(4) and (5). In a county not having an executive form of government, the chairperson of the county board of commissioners shall be considered the chief administrative officer for purposes of this subsection.

(2) For all other public bodies, the chief administrative officer of the respective public body, or an individual designated in writing by that chief administrative officer, shall be responsible for approving a denial under section 5(4) and (5).

15.240 Action to compel disclosure of public records; commencement; orders; jurisdiction; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10. (1) If a public body makes a final determination to deny a request or a portion thereof, the requesting person may commence an action in the circuit court to compel disclosure of the public records. If the court determines that the public records are not exempt from disclosure, the court shall order the public body to cease withholding or to produce a public record or a portion thereof wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant

resides or has his principal place of business, or the circuit court for the county in which the public record or an office of the public body is located shall have jurisdiction to issue the order. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(2) An action under this section arising from the denial of an oral request may not be commenced unless the requesting person confirms the oral request in writing not less than 5 days before commencement of the action.

(3) An action commenced pursuant to this section and appeals therefrom shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(4) If a person asserting the right to inspect or to receive a copy of a public record or a portion thereof prevails in an action commenced pursuant to this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person prevails in part, the court may in its discretion award reasonable attorneys' fees, costs, and disbursements or an appropriate portion thereof. The award shall be assessed against the public body liable for damages under subsection (5).

(5) In an action commenced pursuant to this section, if the circuit court finds that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall, in addition to any actual or compensatory damages, award punitive damages in the amount of \$500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body, not an individual, pursuant to whose public function the public record was kept or maintained.

15.241 Matters required to be published and made available by state agencies; form of publications; effect on person of matter not published and made available; exception; action to compel compliance by state agency; order; attorneys' fees, costs, and disbursements; jurisdiction; definitions.

Sec. 11. (1) A state agency shall publish and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements which implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person shall not in any manner be required to resort to, or be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records which are exempt from disclosure under section 13.

(5) A person may commence an action in the circuit court to compel a state agency to comply with this section. If the court determines that the state agency has failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The circuit court for the county in which the state agency is located shall have jurisdiction to issue the order.

(6) As used in this section, "state agency", "contested case", and "rules" shall have the same meanings as ascribed to those terms in Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

15.243 Exemptions from disclosure; withholding of information.

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act:

- (a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
 - (i) Interfere with law enforcement proceedings.
 - (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.
 - (iii) Constitute an unwarranted invasion of personal privacy.
 - (iv) Disclose the identity of a confidential source, or if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
 - (v) Disclose law enforcement investigative techniques or procedures.
 - (vi) Endanger the life or physical safety of law enforcement personnel.
- (c) A public record which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.
- (d) Records or information specifically described and exempted from disclosure by statute.
- (e) Information the release of which would prevent the public body from complying with 20 U.S.C. section 1232g.
- (f) A public record or information described in this section which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.
- (g) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:
 - (i) The information is submitted upon a promise of confidentiality by the public body.
 - (ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision shall not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(h) Information or records subject to the attorney-client privilege.

(i) Information or records subject to the physician-patient, psychologist-patient, minister, priest or Christian science practitioner, or other privilege recognized by statute or court rule.

(j) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the time for the receipt of bids or proposals has expired.

(k) Appraisals of real property to be acquired by the public body until (i) an agreement is entered into; or (ii) 3 years has elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(l) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(m) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.

(n) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under Act No. 336 of the Public Acts of 1947, as amended, being sections 423.201 to 423.216 of the Michigan Compiled Laws.

(o) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, which if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(p) Information which would reveal the exact location of archeological sites. The secretary of state may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to provide for the disclosure of the location of archeological sites for purposes relating to the preservation or scientific examination of sites.

(q) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision shall not apply after 1 year has elapsed from the time the public body completes the testing.

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- (r) Academic transcripts of an institution of higher education established under sections 5, 6 or 7 of article 8 of the state constitution of 1963, where the record pertains to a student who is delinquent in the payment of financial obligations to the institution.
- (s) Records of any campaign committee including any committee that receives monies from a state campaign fund.
- (t) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a police or sheriff's agency or department, the release of which would do any of the following:
 - (i) Identify or provide a means of identifying an informer.
 - (ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.
 - (iii) Disclose the personal address or telephone number of law enforcement officers or agents or any special skills that they may have.
 - (iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of law enforcement officers or agents.
 - (v) Disclose operational instructions for law enforcement officers or agents.
 - (vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.
 - (vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.
 - (viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informer.
 - (ix) Disclose personnel records of law enforcement agencies.
 - (x) Identify or provide a means of identifying residences which law enforcement agencies are requested to check in the absence of their owners or tenants.

(2) This act shall not authorize the withholding of information otherwise required by law to be made available to the public, or to a party in a contested case under Act No. 306 of the Public Acts of 1969, as amended.

15.243a Salary records of employee or other official of institution of higher education, school district, intermediate school district, or community college available to public on request.

Sec. 13a. Notwithstanding section 13, an institution of higher education established under section 5, 6, or 7 of article 8 of the state constitution of 1963; a school district as defined in section 6 of Act No. 451 of the Public Acts of 1976, being section 380.6 of the Michigan Compiled Laws; an intermediate school district as defined in section 4 of Act No. 451 of the Public Acts of 1976, being section 380.4 of the Michigan Compiled Laws; or a community college established under Act No. 331 of the Public Acts of 1966, as amended, being sections 389.1 to 389.195 of the Michigan Compiled Laws shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or community college.

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15.244 Separation of exempt and nonexempt material; design of public record; description of material exempted.

Sec. 14. (1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

15.245 Repeal of §§ 24.221, 24.222, and 24.223.

Sec. 15. Sections 21, 22 and 23 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.221, 24.222 and 24.223 of the Michigan Compiled Laws, are repealed.

15.246 Effective date.

Sec. 16. This act shall take effect 90 days after being signed by the governor.

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Chapter 37

Elliott-Larsen Civil Rights Act

Article 2. Employees, Employment Agencies and Labor Organizations

37.2205a. Employer, employment agency, or labor organization prohibited from making record of arrest, detention or disposition of violation not resulting in conviction

Sec. 205a. (1)¹ An employer, employment agency, or labor organization, other than a law enforcement agency of the state or a political subdivision of the state, shall not in connection with an application for employment, personnel, or membership, or in connection with the terms, conditions, or privileges of employment, personnel, or membership request, make, or maintain a record of information regarding an arrest, detention, or disposition of a violation of law in which a conviction did not result. A person shall not be held guilty of perjury or otherwise giving a false statement by failing to recite or acknowledge information the person has a civil right to withhold by this section. This section shall not apply to information relative to a felony charge before conviction or dismissal.

Amended by P.A. 1982, No. 45, § 1, Eff. March 30, 1983.

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Chapter 333

Health - Public Health Code

Part 74. Offenses and Penalties

333.7411. Probation without judgment of guilt; violation of probation; discharge and dismissal; instruction or program on drug misuse

Sec. 7411. (1) When an individual who has not previously been convicted of an offense under this article or under any statute of the United States or of any state relating to narcotic drugs, coca leaves, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 7403(2)(a)(iv), (b), (c), or (d),¹ or of use of a controlled substance under section 7404,² or possession or use of an imitation controlled substance under section 7341³ for a second time, the court, without entering a judgment of guilt with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 7413.⁴ There may be only 1 discharge and dismissal under this section as to an individual. The records and identifications division of the department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action involving the possession or use of a controlled substance, or an imitation controlled substance as defined in section 7341, covered in this article has already once utilized this section. For purposes of this section, a person subjected to a civil fine for a first violation of section 7341(4)⁵ shall not be considered to have previously been convicted of an offense under this article.

(2) Except as provided in subsection (3), if an individual is convicted of a violation of this article, other than a violation of section 7401(2)(a)(i) to (iii) or section 7403(2)(a)(i) to (iii),⁶ the court as part of the sentence, during the period of confinement or the period of probation, or both, may require the individual to attend a course of instruction or rehabilitation program approved by the department on the medical, psychological, and social effects of the misuse of drugs. The court may order the individual to pay a fee, as approved by the director, for the instruction or program. Failure to complete the instruction or program shall be considered a violation of the terms of probation.

(3) If an individual is convicted of a second violation of section 7341(4), before imposing sentence under subsection (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 and alcohol or drug treatment programs. As part of the sentence imposed under subsection (1), the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services. Failure to complete a program shall be considered a violation of the terms of the probation.

Amended by P.A.1984, No. 347, § 1, Eff. March 29, 1985.

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750.350a Taking or retaining child by adoptive or natural parent; intent; violation as felony; penalty; restitution for financial expense; effect of pleading or being found guilty; probation; discharge and dismissal; nonpublic record; defense. [M.S.A. 28.582(1)]

Sec. 350a. (1) An adoptive or natural parent of a child shall not take that child, or retain that child for more than 24 hours, with the intent to detain or conceal the child from any other parent or legal guardian of the child who has custody or visitation rights pursuant to a lawful court order at the time of the taking or retention, or from the person or persons who have adopted the child, or from any other person having lawful charge of the child at the time of the taking or retention.

(2) A person who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 1 year and 1 day, or a fine of not more than \$2,000.00, or both.

(3) A person who violates this section, upon conviction, in addition to any other punishment, may be ordered to make restitution to the other parent, legal guardian, the person or persons who have adopted the child, or any other person having lawful charge of the child for any financial expense incurred as a result of attempting to locate and having the child returned.

(4) When a person who has not been convicted previously of a violation of section 349, 350, or this section, or under any statute of the United States or of any state related to kidnapping, pleads guilty to, or is found guilty of, a violation of this section, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the person on probation with lawful terms and conditions. Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings against the person. Discharge and dismissal under this subsection shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including any additional penalties imposed for second or subsequent convictions. The department of state police shall retain a nonpublic record of an arrest and discharge and dismissal under this section. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action has already availed himself or herself of this section.

(5) It shall be a complete defense under this section if an adoptive or natural parent proves that his or her actions were taken for the purpose of protecting the child from an immediate and actual threat of physical or mental harm, abuse, or neglect.

CHAPTER XIIA

**712A.11 Preliminary inquiry; petition; effect of child attaining
seventeenth birthday; fingerprints; amendment of petition or other
court record; offer of court services. [M.S.A. 27.3178(598.11)]**

Sec. 11. (1) If a person gives information to the juvenile division of the probate court that a child is within section 2(a)(2) to (6), (b), (c), or (d) of this chapter, a preliminary inquiry may be made to determine whether the interests of the public or of the child require that further action be taken. If it appears that formal jurisdiction should be acquired, the court shall authorize a petition to be filed. Only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a child allegedly within section 2(a)(1) of this chapter. If the prosecuting attorney submits a petition requesting the court to take jurisdiction of a child allegedly within section 2(a)(1) of this chapter and it appears that formal jurisdiction should be acquired, the court shall authorize a petition to be filed.

(2) The petition described in subsection (1) shall be verified and may be upon information and belief. The petition shall set forth plainly the facts that bring the child within this chapter and shall contain all of the following information:

- (a) The name, birth date, and address of the child.
- (b) The name and address of the child's parents.
- (c) The name and address of the child's legal guardian, if there is one.
- (d) The name and address of each person having custody or control of the child.
- (e) The name and address of the child's nearest known relative, if no parent or guardian can be found.

(3) If any of the facts required by subsection (2) are not known to the petitioner, the petition shall so state. If the child attains his or her seventeenth birthday after the filing of the petition, the jurisdiction of the court shall continue beyond the child's seventeenth birthday, and the court shall have authority to hear and dispose of the petition in accordance with this chapter.

(4) At the time a petition is authorized, the court shall examine the court file to determine if a child has had fingerprints taken as required by section 3 of Act No. 289 of the Public Acts of 1925, being section 28.243 of the Michigan Compiled Laws. If a child has not had his or her fingerprints taken, the court shall do either of the following:

(a) Order the child to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the child so the child's fingerprints can be taken.

(b) Order the child committed to the custody of the sheriff for the taking of the child's fingerprints.

(5) A petition or other court record may be amended at any stage of the proceedings, as the ends of justice require.

(6) If the juvenile diversion act is complied with and it appears that court services can be used in the prevention of delinquency without formal jurisdiction, the court may offer court services to children without a petition being authorized as provided in section 2(e) of this chapter.

712A.18 Orders of disposition; reimbursement; hearing; guidelines and model schedule; condition of probation; restitution; community service; fingerprints; report to state police.
[M.S.A. 27.3178(598.18)]

Sec. 18. (1) If the court finds that a child concerning whom a petition has been filed is not within this chapter, the court shall enter an order dismissing the petition. Except as otherwise provided in subsection (15), if the court finds that a child is within this chapter, the court may enter any of the following orders of disposition which is appropriate for the welfare of the child and society in view of the facts proven and ascertained:

(a) Warn the child or the child's parents, guardian, or custodian and dismiss the petition.

(b) Place the child on probation, or under supervision in the child's own home or in the home of an adult who is related to the child. As used in this subdivision "related" means any of the following relationships, by marriage, blood, or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt. The probation or supervision shall be upon such terms and conditions, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as designed for the physical, mental, or moral well-being and behavior of the child, as the court determines.

(c) Place the child in a suitable foster home, which if a home of persons not related to the child, shall be licensed as provided by law.

(d) Place the child in or commit the child to a private institution or agency approved or licensed by the state department of social services for the care of children of similar age, sex, and characteristics.

(e) Commit the child to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive children of similar age, sex, and characteristics. In a placement under subdivision (d) or a commitment under this subdivision, except to a state institution, the religious affiliation of the child shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available. The court, in every order of commitment under this subdivision to a state institution or agency described in the youth rehabilitation services act, Act No. 150 of the Public Acts of 1974, as amended, being sections 803.301 to 803.309 of the Michigan Compiled Laws or in Act No. 220 of the Public Acts of 1935, as amended, being sections 400.201 to 400.214 of the Michigan Compiled Laws, shall name the superintendent of the institution to which the child is committed as a special guardian to receive benefits due the child from the government of the United States, and the benefits shall be used to the extent necessary to pay for the portions of the cost of care in the institution which the parent or parents are found unable to pay.

(f) Provide the child with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere, maintaining as much as possible a local physician-patient relationship, and with clothing and other incidental items as the court considers necessary.

(g) Order the parents, guardian, custodian, or any other person to refrain from continuing conduct which, in the opinion of the court, has caused or tended to cause the child to come within or to remain under this chapter, or which obstructs placement or commitment of the child pursuant to an order under this section.

(2) An order of disposition placing a child in or committing a child to care outside the child's own home and under state or court supervision shall contain a provision for the reimbursement by the child, parent, guardian, or custodian to the court for the cost of care or service. The order shall be reasonable, taking into account both the income and resources of the child, parent, guardian, or custodian. The amount may be based upon the guidelines and model schedule created under subsection (6). The reimbursement provision shall apply during the entire period the child remains in care outside of the child's own home and under state or court supervision, unless the child is in the permanent custody of the court. The court shall provide for the collection of all amounts ordered to be reimbursed, and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a child is released or discharged from care outside the child's own home and under state or court supervision. Twenty-five percent of all amounts collected pursuant to an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected pursuant to an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the child's own home and under state or court supervision. The court may also collect benefits paid for the cost of care of a court ward from the government of the United States. Money collected for children placed with or committed to the state department of social services shall be accounted for and reported on an individual child basis.

(3) An order of disposition placing a child in the child's own home under subsection (1)(b) may contain a provision for the reimbursement by the child, parent, guardian, or custodian to the court for the cost of service. If an order is entered under this subsection, amounts due shall be determined and treated in the same manner provided for an order entered under subsection (2).

(4) An order directed to a parent or a person other than the child shall not be effectual and binding on the parent or other person unless opportunity for hearing has been given pursuant to issuance of summons or notice as provided in sections 12 and 13 of this chapter, and until a copy of the order, bearing the seal of the court, is served on the parent or other person, personally or by first class mail, to the parent's or other person's last known address, as provided in section 13 of this chapter.

(5) If the court appoints an attorney to represent a child, parent, guardian, or custodian, an order entered under this section may require the child, parent, guardian, or custodian to reimburse the court for attorney fees.

(6) The office of the state court administrator, under the supervision and direction of the supreme court and in consultation with the state department of social services and the Michigan probate and juvenile court judges association, shall create guidelines and a model schedule which may be used by the court in determining the ability of the child, parent, guardian, or custodian to pay for care and any costs of service ordered under subsection (2) or (3). The guidelines and model schedule shall take into account both the income and resources of the child, parent, guardian, or custodian.

(7) If the court finds that a child has violated any municipal ordinance or state or federal law, and the court has placed the child on probation, the court may, as a condition of probation, require the child to do either of the following:

(a) Both of the following:

(i) Pay restitution to the victim.

(ii) Engage in community service or with the victim's consent perform service for the victim.

(b) Seek and maintain paid part-time or full-time employment and pay restitution to the victim from the earnings of that paid part-time or full-time employment.

(8) If the court imposes restitution as part of a sentence of probation, the following shall apply:

(a) The court shall not require a child to pay restitution unless the child is or will be able to pay all or part of the restitution during the term of his or her probation. In determining the amount and method of payment of restitution, the court shall take into account the financial resources of the child and the burden that the payment of restitution will impose, with due regard to any other moral or legal financial obligations that the child may have.

(b) The amount of restitution a court orders a child to pay under subsection (7)(c) shall not exceed 30% of the net income per pay period from the child's paid part-time or full-time employment.

(c) A child who is required to pay restitution and who is not in intentional default of the payment of restitution may petition the court, or an adult acting on the child's behalf may petition the court, for a modification of the amount of restitution owed or for a cancellation of any unpaid portion of the restitution.

(d) The court shall cancel all or part of the amount of restitution due if it appears to the satisfaction of the court that payment of the amount due will impose a manifest hardship on the child.

(e) If the court cancels all or a part of the amount of restitution, the court may modify the terms and conditions of probation to require the child to engage in community service.

(9) If a child is required to pay restitution as part of the sentence of probation, the court shall provide for payment to be made in specified installments and within a specified period of time.

(10) If the court finds that the child is in intentional default of the payment of restitution, a court may revoke or alter the terms and conditions of probation for nonpayment of restitution.

(11) If a child who is ordered to engage in community service intentionally refuses to perform the required community service, the court may revoke or alter the terms and conditions of probation.

(12) If the child is unable to pay all of the restitution ordered, after notice to the child's custodial parent and an opportunity for the parent to be heard, the court may order the custodial parent to pay all or part of the unpaid portion of the restitution ordered. The amount of restitution the parent is ordered to pay under this subsection shall not exceed \$2,500.00.

(13) If the court orders the custodial parent to pay restitution under subsection (12), the court shall take into account the financial resources of the parent and the burden that the payment of restitution will impose, with due regard to any other moral or legal financial obligations that the parent may have. If a parent is required to pay restitution under subsection (12), the court shall provide for payment to be made in specified installments and within a specified period of time.

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(14) A parent who has been ordered to pay restitution under subsection (12) may petition the court for a modification of the amount of restitution owed or for a cancellation of any unpaid portion of the restitution. The court shall cancel all or part of the amount of restitution due, if it appears to the satisfaction of the court that payment of the amount due will impose a manifest hardship on the parent.

(15) The court shall not enter an order of disposition for a juvenile offense as defined in section 1a of Act No. 289 of the Public Acts of 1925, being section 28.241a of the Michigan Compiled Laws, until the court has examined the court file and has determined that the child's fingerprints have been taken as required by section 3 of Act No. 289 of the Public Acts of 1925, being section 28.243 of the Michigan Compiled Laws. If a child has not had his or her fingerprints taken, the court shall do either of the following:

(a) Order the child to submit himself or herself to the police agency that arrested or obtained the warrant for the arrest of the child so the child's fingerprints can be taken.

(b) Order the child committed to the custody of the sheriff for the taking of the child's fingerprints.

(16) Upon disposition or dismissal of a juvenile offense, the clerk of the court entering the disposition or dismissal shall immediately advise the department of state police of the disposition or dismissal on forms approved by the state court administrator. The report to the department of state police shall include information as to the finding of the judge or jury and a summary of the disposition imposed.

712A.18e Application for entry of order setting aside adjudication; filing; contents; submitting copy of application and complete set of fingerprints to department of state police; comparing fingerprints; report; fee; serving copy of application on attorney general and prosecuting attorney; contesting application; hearing; affidavits; proofs; entry of order; setting aside adjudication as privilege and conditional; violation of § 750.413; effect of entering order; sending copy of order to arresting agency and department of state police; nonpublic record of order and record; availability of nonpublic record; fee; exemption of nonpublic record from disclosure; divulging, using, or publishing information as misdemeanor.

[M.S.A. 27.3178(598.18e)]

Sec. 18e. (1) Except as provided in subsection (2), a person who has been adjudicated of not more than 1 juvenile offense and who has no felony convictions may file an application with the adjudicating court for the entry of an order setting aside the adjudication. A person may have only 1 adjudication set aside under this section.

(2) A person shall not apply to have set aside, nor may a judge set aside, an adjudication for an offense which if committed by an adult would be a felony for which the maximum punishment is life imprisonment or an adjudication for a traffic offense under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or a local ordinance substantially corresponding to that act, which violation involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

(3) An application shall not be filed until the expiration of 5 years following imposition of the disposition for the adjudication which the applicant seeks to set

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aside, or 5 years following completion of any term of detention for that adjudication, or when the person becomes 24 years of age, whichever occurs later.

(4) The application shall contain the following information and shall be signed under oath by the person whose adjudication is to be set aside:

(a) The full name and current address of the applicant.

(b) A certified record of the adjudication that is to be set aside.

(c) A statement that the applicant has not been adjudicated of a juvenile offense other than the one that is sought to be set aside as a result of this application.

(d) A statement that the applicant has not been convicted of any felony offense.

(e) A statement as to whether the applicant has previously filed an application to set aside this or any other adjudication and, if so, the disposition of the application.

(f) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(g) A consent to the use of the nonpublic record created under subsection (13), to the extent authorized by subsection (13).

(5) The applicant shall submit a copy of the application and a complete set of fingerprints to the department of state police. The department of state police shall compare those fingerprints with the records of the department, including the nonpublic record created under subsection (13), and shall report to the court in which the application is filed the information contained in the department's records with respect to any pending charges against the applicant, any record of adjudication or conviction of the applicant, and the setting aside of any adjudication or conviction of the applicant. The court shall not act upon the application until the department of state police reports the information required by this subsection to the court.

(6) The copy of the application submitted to the department of state police pursuant to subsection (5) shall be accompanied by a fee of \$15.00 payable to the state of Michigan. The department of state police shall use the fee to defray the expenses incurred in processing the application.

(7) A copy of the application shall be served upon the attorney general and, if applicable, upon the office of the prosecuting attorney who prosecuted the offense. The attorney general and the prosecuting attorney shall have an opportunity to contest the application.

(8) Upon the hearing of the application, the court may require the filing of such affidavits and the taking of such proofs as it considers proper.

(9) Except as provided in subsection (10), if the court determines that the circumstances and behavior of the applicant from the date of the applicant's adjudication to the filing of the application warrant setting aside the adjudication and that setting aside the adjudication is consistent with the public welfare, the court may enter an order setting aside the adjudication. Except as provided in subsection (10), the setting aside of an adjudication under this section is a privilege and conditional, and is not a right.

(10) Notwithstanding subsection (9), the court shall set aside the adjudication of a person who was adjudicated for an offense which if committed by an adult would be a violation or an attempted violation of section 413 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.413 of the Michigan Compiled Laws, if the person files an application with the court and otherwise meets the requirements of this section.

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(11) Upon the entry of an order under this section, the applicant, for purposes of the law, shall be considered not to have been previously adjudicated, except as provided in subsection (13) and as follows:

(a) The applicant shall not be entitled to the remission of any fine, costs, or other sums of money paid as a consequence of an adjudication that is set aside.

(b) This section does not affect the right of the applicant to rely upon the adjudication to bar subsequent proceedings for the same offense.

(c) This section does not affect the right of a victim of an offense to prosecute or defend a civil action for damages.

(d) This section shall not be construed to create a right to commence an action for damages for detention under the disposition which the applicant served before the adjudication is set aside pursuant to this section.

(12) Upon the entry of an order under this section, the court shall send a copy of the order to the arresting agency and the department of state police.

(13) The department of state police shall retain a nonpublic record of the order setting aside an adjudication and of the record of the arrest, fingerprints, adjudication, and disposition of the applicant in the case to which the order applies. Except as provided in subsection (14), this nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the following purposes:

(a) For consideration in a licensing function conducted by an agency of the judicial branch of state government.

(b) For consideration by a law enforcement agency if a person whose adjudication has been set aside applies for employment with the law enforcement agency.

(c) To show that a person who has filed an application to set aside an adjudication has previously had an adjudication set aside pursuant to this section.

(d) For the court's consideration in determining the sentence to be imposed upon conviction for a subsequent offense that is punishable as a felony or by imprisonment for more than 1 year.

(e) For consideration by the governor, if a person whose adjudication has been set aside applies for a pardon for another offense.

(14) A copy of the nonpublic record created under subsection (13) shall be provided to the person whose adjudication is set aside under this section upon payment of a fee determined and charged by the department of state police in the same manner as the fee prescribed in section 4 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.234 of the Michigan Compiled Laws.

(15) The nonpublic record maintained under subsection (13) shall be exempt from disclosure under Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(16) A person, other than the applicant, who knows or should have known that an adjudication was set aside under this section, who divulges, uses, or publishes information concerning an adjudication set aside under this section, except as provided in subsection (13), is guilty of a misdemeanor.

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Regulations

CRIMINAL JUSTICE DATA CENTER

LAW ENFORCEMENT INFORMATION NETWORK

(By authority conferred on the law enforcement information network policy council by section 4 of Act No. 163 of the Public Acts of 1974, being §28.214 of the Michigan Compiled Laws)

PART 1. GENERAL PROVISIONS

R 28.5101 Definitions; A to C.

Rule 101. As used in these rules:

(a) "Act" means Act No. 163 of the Public Acts of 1974, being §28.211 et seq. of the Michigan Compiled Laws, and known as the L.E.I.N. policy council act of 1974.

(b) "Administration of criminal justice" means the performance of any of the following activities:

(i) Detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(ii) Identification of criminals.

(iii) Collection, storage, and dissemination of criminal history record information.

(c) "Agreement" means a contract between the executive agent of the criminal justice data center, the law enforcement information network policy council, and a terminal or non-terminal user agency or a satellite computer system which identifies the responsibilities of the criminal justice data center, the LEIN council, and the user agency.

(d) "Bit" means a unit of computer information.

(e) "Computerized criminal history," known as CCH, means information which is collected on individuals by criminal justice agencies, which is maintained in LEIN and NCIC computer files, and which consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and any dispositions arising therefrom.

(f) "Convenience terminal" means an additional computer terminal which is installed in a user agency for the convenience of the user, but which is not required to handle an expanded workload in message traffic.

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(g) "Criminal history record information," known as CIHRI, means information which is collected on individuals by criminal justice agencies and which consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and any dispositions arising therefrom, such as sentencing, correctional supervision, or release.

(h) "Criminal history record information system" means a system for the collection, processing, preservation, or dissemination of criminal history record information, including the equipment, facilities, procedures, agreements, and organizations thereof.

(i) "Criminal justice agency" means either of the following:

(i) A court.

(ii) A governmental agency, or any subunit thereof, which engages in the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget for the administration of criminal justice.

(j) "Criminal justice computer system" means a computer system, communications switcher, or any other device through which LEIN data passes or is processed and which is operated by, and under the exclusive management control of, either a criminal justice agency or a governing board where a majority of the board's members represent criminal justice agencies.

(k) "Criminal justice data center," known as CJDC, means the Michigan data center established by section 5a of Act No. 51 of the Public Acts of the First Extra Session of 1948, as amended, being §18.5a of the Michigan Compiled Laws, state of Michigan Executive Directive 1971-6, and Executive Reorganization Order No. 1972-3, being §10.112 of the Michigan Compiled Laws.

R 28.5102 Definitions: D to L.

Rule 102. As used in these rules:

(a) "Direct access" means access to the LEIN through a computer terminal which is either connected directly to the LEIN computer or is connected through a computer terminal which is linked to a satellite computer system.

(b) "Executive agent, CJDC" means the director of the Michigan state police as established by the state of Michigan Executive Directive 1971-6.

(c) "Full participation" means that a user agency has access to all LEIN and NCIC data and is authorized, where applicable, to enter, modify, and cancel records in the LEIN and NCIC, either directly or through a servicing terminal agency.

(d) "High-speed terminal" means a computer terminal that transmits data at a rate of 1200 or more bits per second.

(e) "Indirect access" means access to the LEIN by a non-terminal agency which receives service through a terminal agency.

(f) "Law enforcement information network," known as LEIN, means the Michigan law enforcement computer system and the series of computer terminal locations which allow criminal justice agencies to put in, and have access to, data.

(g) "LEIN council" means the council created by the act to provide for the establishment of policy and the promulgation of rules governing the use of the LEIN.

(h) "LEIN data" means data that is available either from or through the LEIN computer and includes all of the following:

(i) Wanted and missing person records.

(ii) Stolen and missing license plate records.

(iii) Stolen and wanted vehicle records.

(iv) Criminal history record information.

(v) Michigan department of state vehicle registrations and driver records.

(vi) Vehicle registration and driver records of other states.

(vii) Provision for an intrastate and interstate message switching service to allow the delivery and receipt of administrative messages which are related to criminal justice matters.

(i) "Limited participation" means that a user agency shall have only restricted access to certain LEIN and NCIC data, as approved by the council.

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R 28.5103 Definitions; M to O.

Rule 103. As used in these rules:

(a) "Management control" means the authority to set and enforce all of the following:

- (i) Priorities.
- (ii) Standards for the selection, supervision, and termination of personnel.
- (iii) Policy governing the operation of computers which are used to process criminal history record information insofar as the equipment is used to process, store, transmit criminal history record information and includes the supervision of equipment, systems design, programming, and operating procedures necessary for the development and implementation of the computerized criminal history program.

(b) "Microwave data link system" means a microwave system which is maintained by the Michigan state police and which, with council approval, is interfaced to the LEIN.

(c) "Mobile digital terminal" means a device which is installed in a vehicle and which has the capability to send digital messages or receive digital messages, or both.

(d) "National crime information center," known as NCIC, means the nationwide criminal justice data center which is located in Washington, D.C., and which is administered by the U.S. department of justice. The authority for the NCIC program is derived from 28 C.F.R. §534 (1976).

(e) "National law enforcement telecommunications system," known as NLETS means a national computerized message delivery system located in Phoenix, Arizona.

(f) "NCIC advisory policy board" means that board established by 28 C.F.R. §20.25 (1976), to make recommendations to the director of the federal bureau of investigation on general policy with respect to the philosophy, concept, and operational principles of NCIC.

(g) "NCIC data" means data that are available from the NCIC computer and includes all of the following:

- (i) Wanted and missing person records.
- (ii) Stolen and missing license plate records.
- (iii) Stolen and wanted vehicle records.
- (iv) Stolen gun, security, article, and boat records.
- (v) Criminal history record information.

(h) "Noncriminal justice computer system" means a computer system, communications switcher, or any other device that is operated by a noncriminal justice agency and through which LEIN or NCIC data pass or are processed.

(i) "Non-terminal agency" means a criminal justice agency that is authorized to have indirect access to LEIN and its satellite computers through a terminal agency.

(j) "Originating agency identifier," known as ORI, means a 9 character code which is assigned by LEIN or NCIC, or both, and which is used to identify an agency for message transaction purposes.

R 28.5104 Definitions; P to U.

Rule 104. As used in these rules:

(a) "Private person" means an individual, partnership, association, corporation, governmental subdivision, or public or private organization of any kind that does not qualify for access to the LEIN.

(b) "Regional communications system" means a cooperative effort which is entered into by political subdivisions in a geographic area for the purpose of providing consolidated dispatch services for police, fire, and rescue services.

(c) "Satellite computer system" means a computer system that is directly interfaced to the LEIN.

(d) "Self-pay agency" means an agency that is authorized by the council to have direct access to the LEIN through equipment which shall be paid for by the user agency. The equipment may be either of the following:

(i) A terminal and related communication links which are procured through the CJDC.

(ii) A terminal with related communication links which is connected to an approved satellite computer system which is interfaced to the LEIN.

(e) "Standard LEIN terminal" means a teletype terminal which transmits data at a rate of 100 or less bits per second.

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(f) "State-funded agency" means an agency that is authorized by the council to have direct access to LEIN data and services through a state-funded standard LEIN terminal.

(g) "Terminal agency" means either of the following:

(i) A criminal justice agency in which a LEIN terminal is physically located.

(ii) An agency that has access to LEIN through a terminal connected to an authorized satellite computer.

(h) "User agency" means an authorized criminal justice agency or any other agency that is authorized to have either direct or indirect access to the LEIN.

R 28.5105 Adoption of federal standards.

Rule 105. The following federal standards are incorporated by reference in these rules:

(a) "Criminal Justice Information Systems," 28 C.F.R. part 20 (1976). Copies of these regulations may be inspected at the offices of the criminal justice data center, department of state police. Copies may be obtained without charge from the Federal Bureau of Investigation, Washington, D.C. 20535, and from the Department of State Police, 714 S. Harrison Road, E. Lansing, Michigan 48823.

(b) NCIC rules and procedures governing the utilization of the federal computerized criminal history programs which are published in a department of justice document entitled, "Computerized Criminal History Program, Background, Concept, and Policy," dated June 14, 1979. This publication may be obtained without charge at the offices of the Criminal Justice Data Center, Department of State Police, 714 S. Harrison Road, E. Lansing, Michigan 48823, or from the National Crime Information Center Section, Federal Bureau of Investigation, Washington, D.C. 20535.

R 28.5106 LEIN council; meetings; quorum; alternates.

Rule 106. (1) The council shall meet quarterly in January, April, July, and October and at other times as the chairman deems necessary.

(2) A quorum is required for the conduct of council business.

(3) A quorum of the council shall be a majority of council members.

(4) When a member of the council is unable to attend a meeting, he or she may designate a person who is not a member to act as his or her alternate. Written designation of the alternate shall be delivered to the executive secretary of the council before the commencement of the meeting. Alternates shall exercise the same voting privilege as that of the absent member.

(5) Meetings of the council shall be called by the chairman. Meeting announcements shall be mailed to the business address of each member not less than 7 days before the meeting.

(6) Meetings of the council shall be conducted pursuant to the "Roberts' Rules of Order."

(7) Council meetings shall be conducted in compliance with Act No. 267 of the Public Acts of 1976, as amended, being §15.261 et seq. of the Michigan Compiled Laws, and known as the open meetings act.

R 28.5107 LEIN council; committees.

Rule 107. (1) The chairman may establish committees of the council, appoint members, and designate chairpersons.

(2) Committees shall be comprised of not less than 3 members of the council.

(3) Committee reports and meeting minutes shall be submitted to the council in writing.

R 28.5108 LEIN council; officers; election; removal from office; powers and duties.

Rule 108. (1) The officers of the council shall consist of a chairman, vice-chairman, and an executive secretary.

(2) The officers, except the executive secretary, shall be elected by a majority vote of the council.

(3) Officers shall be elected at the regular July meeting of the council, shall serve for 1 year, and may succeed themselves.

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(4) The elected officers of the council shall serve at the pleasure of the council and may be removed by an affirmative vote of 2/3 of the council.

(5) When a vacancy occurs in any office by reason of death, incapacity, resignation, or removal, a special election shall be held to select a council member to complete the unexpired term of the vacated office.

(6) The chairman shall be the chief executive officer of the council, shall preside at all meetings, and shall execute instruments for, and on behalf of, the council.

(7) The vice-chairman shall, in the absence or disability of the chairman, perform all duties and exercise all powers of the chairman and shall perform such other duties as may be assigned to him or her by the chairman.

(8) The executive secretary, subject to the recommendation of the council, shall be appointed by the director of the department of state police and shall hold office at the pleasure of the council. The executive secretary shall perform all of the following duties:

(a) Serve as the council's representative in the day-to-day administration of the LEIN.

(b) Prepare council meeting agendas, give notice of all meetings of the council, and maintain a written record of the proceedings of such meetings.

(c) Maintain custody of all documents of the council and provide for their safe-keeping.

(d) Insure that all policies and rules that are established by council action are promulgated as required by Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws, and known as the administrative procedures act of 1969.

(e) Serve as an ex-officio, non-voting member of all committees of the council.

R 28.5109 ORI assignment and construction for Michigan law enforcement agencies.

Rule 109. (1) A user agency that has access to the LEIN shall be assigned an ORI.

(2) State police, sheriff department, and local law enforcement agency ORIs shall be constructed as follows:

(a) The first 2 characters shall be the abbreviation for the state. Each state shall have a 2-character alphabetic code identification. For example, Michigan's code is MI.

(b) The third and fourth characters shall be a 2-digit number identifying the county. These digits are derived from listing the 83 counties of Michigan alphabetically from Alcona to Wexford, then numbering them consecutively.

(c) The fifth, sixth, and seventh characters shall be a 3-digit number identifying a specific jurisdiction within a county and indicating the type of law enforcement agency, as follows:

(i) State police agencies 001 to 099.

(ii) Sheriff departments 100 to 183.

(iii) Municipal, township, or other police departments 200 to 999.

(d) The eighth and ninth characters shall be used to explicitly identify internal divisions, units, or subunits within larger departments which have multiple terminals. The eighth character may be a letter or a number. The ninth character shall be a number.

R 28.5110 ORI assignment and construction for other Michigan criminal justice agencies and regional communication systems.

Rule 110. ORIs shall be assigned to authorized Michigan courts, prosecuting attorneys, parole and probation agencies, correctional institutions, pretrial service agencies, and regional communications systems. These ORIs shall be constructed as follows:

(a) The first 2 characters shall be the abbreviation for the state.

(b) The third and fourth characters shall identify the county.

(c) The fifth, sixth, and seventh characters shall identify a specific agency within the county.

(d) The eighth character shall identify the governmental level of the agency, as follows:

(i) A local or municipal agency is 1.

(ii) A county agency is 3.

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- (iii) A state agency is 5.
- (iv) A federal agency is 7.
- (e) The ninth character shall identify the type of agency, as follows:
 - (i) A prosecuting, district, or city attorney or the attorney general is A.
 - (ii) A pretrial service agency is B.
 - (iii) A correctional institution, including a jail, prison, detention or treatment center, or halfway house, is C.
 - (iv) A probation or parole agency is G.
 - (v) A court is J.
 - (vi) A medical examiner, coroner, or custodial facility in a medical or psychiatric institution is M.
 - (vii) A regional communication system is N.
 - (viii) A miscellaneous agency that is statutorily classified as a criminal justice agency is Y.

R 28.5111 LEIN ORI assignment; criteria.

Rule 111. (1) To qualify for a LEIN ORI assignment, an agency shall meet both of the following criteria:

- (a) The agency shall be a governmental agency.
- (b) The agency shall qualify as a criminal justice agency, as defined in R 28.5101.
- (2) A nongovernmental agency may qualify for a LEIN ORI assignment if it meets both of the following criteria:
 - (a) The agency is statutorily vested with arrest powers.
 - (b) The agency is engaged primarily in the administration of criminal justice.

R 28.5112 NCIC ORI assignment; criteria.

Rule 112. (1) To qualify for an NCIC ORI assignment, an agency shall meet both of the following criteria:

- (a) The agency shall be a governmental agency.
- (b) The agency shall qualify as a criminal justice agency as defined in R 28.5101.
- (2) An agency that does not meet the qualifications of a criminal justice agency may qualify for an NCIC ORI assignment if it meets the definition of an agency under the management control of a criminal justice agency.

R 28.5113 NCIC ORI assignment; unqualified agencies.

Rule 113. The following agencies do not qualify for an ORI assignment:

- (a) A court that hears civil cases only.
- (b) A correctional facility that houses only juveniles who are orphaned or declared incorrigible but who are not involved in the criminal justice process.
- (c) Private school police.
- (d) Railroad police.

R 28.5114 ORI assignment; request for issuance.

Rule 114. A request for the issuance of an ORI assignment shall be made on a form provided by the council and shall be accompanied by the statute, executive order, or other documentation which establishes the agency as a criminal justice agency or an agency under the management control of a criminal justice agency. Forms are available from the Executive Secretary, LEIN Policy Council, 714 S. Harrison Road, E. Lansing, Michigan 48823.

R 28.5115 ORI assignment and maintenance; responsibility.

Rule 115. The executive secretary of the council is responsible for assigning ORI numbers to all authorized agencies and shall maintain records of all assignments, additions, deletions, or corrections to ORI numbers.

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R 28.5116 LEIN or NCIC entries; use of ORIs required.

Rule 116. A user agency shall use its assigned ORI on all records entered into the LEIN or NCIC.

R 28.5117 Cities and townships; ORI assignment.

Rule 117. A city or township that requires an elected or appointed constable to perform both statutory criminal and civil duties is eligible for an ORI assignment if the constable satisfies all of the following criteria:

(a) Complies with the minimum employment standards as established by the law enforcement training council pursuant to section 9 of Act No. 203 of the Public Acts of 1965, as amended, being §28.609 of the Michigan Compiled Laws.

(b) Has unrestricted arrest powers of a peace officer as defined in section 15 of Act No. 84 of the Public Acts of 1935, as amended, being §764.15 of the Michigan Compiled Laws.

(c) Is employed by the city or township as a full-time peace officer.

R 28.5118 Public hearings; applicable law.

Rule 118. Public hearings conducted by the LEIN council pursuant to the act shall be in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws.

R 28.5119 Contested cases; applicable law.

Rule 119. LEIN council administrative procedures in contested cases and judicial review shall be in accordance with and subject to sections 71 to 87 and 101 to 106 of Act No. 306 of the Public Acts of 1969, as amended, being §§24.271 to 24.287 and 24.301 to 24.306 of the Michigan Compiled Laws.

R 28.5120 Special programming requests from a user agency.

Rule 120. A request received by the CJDC from a user agency for special programming or other special work which is of benefit only to the requestor shall be processed as follows:

(a) The request shall be submitted in writing to the executive secretary of the LEIN council and shall include all of the following information:

- (i) A description of the special programming or work desired.
- (ii) The purpose or reason for the request.
- (iii) When the special programming or other work is needed.

(b) When a request is received, the executive secretary shall forward a letter to the user agency acknowledging receipt thereof.

(c) The executive secretary shall determine if the request requires LEIN council approval. If so, he or she shall forward the request to the appropriate committee of the LEIN council for review. The committee shall determine if there are any budgetary requirements and shall recommend approval or disapproval to the LEIN council.

(d) If the request is approved by the LEIN council, the executive secretary shall notify the user agency in writing.

(e) A request from a user agency for special programming or special work that does not require LEIN council review and approval shall be forwarded to the director of the CJDC by the executive secretary for further processing.

PART 2. ACCESS, ELIGIBILITY, AND DATA DISSEMINATION PROVISIONS

R 28.5201 LEIN access: authorized agencies.

Rule 201. Access to LEIN data shall be restricted to the following agencies:

(a) A criminal justice agency.

(b) A nongovernmental agency that is statutorily vested with arrest powers and whose primary function is the administration of criminal justice.

(c) A regional or local organization which is established pursuant to a statute, ordinance, resolution, or executive order, which has as its primary function the collecting and processing of criminal justice information, and whose governing board has, as a majority of its members, persons who represent criminal justice agencies.

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(d) A governmental agency that maintains vehicle registration and driver records as 1 of its primary functions.

R 28.5202 NCIC access: authorized agencies.

Rule 202. Access to NCIC data shall be restricted to the following agencies:

(a) A criminal justice agency.

(b) Agencies at all government levels that have, as a principal function, the collection and provision of fingerprint identification information.

(c) A regional or local organization which is established pursuant to a statute, ordinance, resolution, or executive order, which has as its primary function the collecting and processing of criminal justice information, and whose governing board has, as a majority of its members, persons who represent criminal justice agencies.

(d) A government agency that maintains vehicle registration and driver records as 1 of its primary functions.

R 28.5203 Criminal justice agency; participation in LEIN and NCIC; criteria.

Rule 203. (1) A criminal justice agency may qualify for either full or limited participation in the LEIN and NCIC.

(2) To qualify for full participation in the LEIN and NCIC systems, a criminal justice agency shall comply with all of the following:

(a) Complete an agreement with the executive agent, CJDC, and the LEIN policy council.

(b) Insure that computers, terminals, other related equipment that is used to gain access to these systems, and all personnel either operating or having access to such equipment are under the management control of either of the following:

(i) A criminal justice agency administrator.

(ii) A governing board that is established by a statute, ordinance, resolution, or executive order. The majority of the governing board's membership shall be representatives of criminal justice agencies.

(c) Establish procedures to insure that, upon inquiry, all records that are entered into either the LEIN or NCIC files can be promptly confirmed as valid. A terminal agency shall either maintain a 24-hours-a-day, 7-days-a-week operation or shall establish an alternative records verification procedure. This verification procedure shall require council approval before implementation.

(3) In addition to the requirements of subrule (2) of this rule, a law enforcement agency shall meet both of the following criteria:

(a) Be vested with the power of arrest as defined in Act No. 175 of the Public Acts of 1927, as amended, being §764.15 et seq. of the Michigan Compiled Laws.

(b) A local, county, or state law enforcement agency shall establish an interim bond procedure as outlined in Act No. 157 of the Public Acts of 1970, as amended, being §780.581 et seq. of the Michigan Compiled Laws.

R 28.5204 Regional communications systems; participation in LEIN and NCIC; criteria.

Rule 204. (1) To qualify for participation in the LEIN and NCIC systems, a regional communications system shall comply with all of the following:

(a) Complete an agreement with the executive agent, CJDC, and the LEIN policy council.

(b) Insure that computers, terminals, other related equipment that is used to gain access to these systems, and all personnel either operating or having access to such equipment are under the management control of either of the following:

(i) A criminal justice agency administrator.

(ii) A governing board that is established by a statute, ordinance, resolution, or executive order. The majority of the governing board's membership shall be representatives of criminal justice agencies.

(c) Establish procedures to insure that, upon inquiry, all records entered into either the LEIN or NCIC files can be promptly confirmed as valid. A regional communications system shall either maintain a 24-hours-a-day, 7-days-a-week operation or shall establish an alternative records verification procedure. The verification procedure shall require council approval before implementation.

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(2) Unless specifically approved by the council, regional communications systems shall not be authorized to have access to either computerized or manually maintained criminal history record information.

R 28.5205 Nongovernment agency; limited participation in LEIN; criteria.

Rule 205. To qualify for limited participation in the LEIN, a nongovernment agency shall comply with all of the following:

- (a) Be statutorily vested with the powers of arrest and have, as its primary function, the administration of criminal justice.
- (b) Complete an agreement with the executive agent, CJDC, and the LEIN policy council.
- (c) Insure that computers, terminals, and other related equipment that is used to gain access to LEIN files are under the management control of the user agency administrator.
- (d) Establish procedures to insure that, upon inquiry, all records entered into the LEIN can be promptly confirmed as valid. A terminal agency shall either maintain a 24-hours-a-day, 7-days-a-week operation or shall establish an alternative records verification procedure. The verification procedure shall require council approval before implementation.

R 28.5206 Criminal justice agency serviced through a noncriminal justice computer system: participating in LEIN; criteria.

Rule 206. To qualify to participate in the LEIN, a criminal justice agency that is serviced by a noncriminal justice computer system shall comply with both of the following requirements:

- (a) Exercise management control over the operation of all hardware at the non-criminal justice computer center which is used to process, store, or forward either LEIN or NCIC data.
- (b) Complete a written agreement with the noncriminal justice agency that operates the computer center. The agreement shall give the criminal justice agency all of the following rights and powers:
 - (i) A guarantee that the criminal justice agency network shall receive the highest priority in the areas of maintenance, support, and assignment of personnel and hardware resources.
 - (ii) The right to final approval in the selection of all software used to communicate with the LEIN.
 - (iii) The right to approve all employees who will have access to hardware which connects to the LEIN.
 - (iv) The authority to make any necessary audits to insure system security.
 - (v) The authority to review management output records to ensure that the criminal justice agency's guaranteed priority agreement is being honored.

R 28.5207 Agencies participating in LEIN; change in status.

Rule 207. The council shall be notified in writing in advance of any proposed changes in the status of an agency participating, or approved for participation, in the LEIN. Continued participation in the LEIN is subject to review of the new status by the council to determine if all eligibility requirements are met. Changes in status include, but are not limited to, all of the following situations:

- (a) A single jurisdiction LEIN user planning to join a regional communications system.
- (b) A change in the management structure of a criminal justice computer system or a regional communications system.
- (c) A change in the management structure of a noncriminal justice computer system or data center which services criminal justice agencies.
- (d) A noncriminal justice computer system or data center planning to discontinue or alter service to a criminal justice agency.

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R 28.5208 LEIN data dissemination generally.

Rule 208. (1) Except as outlined in R 28.5210 and R 28.5211, data received through the LEIN shall only be disseminated to a criminal justice agency or an agency that is statutorily authorized to have access to such data.

(2) Data, either computerized or manually processed, that are received by a user agency through the LEIN shall be used for criminal justice purposes only. This includes data received from any of the following systems:

- (a) The LEIN.
- (b) The NCIC.
- (c) The Michigan department of state.
- (d) The national law enforcement telecommunications system.
- (e) Any other agency or system from which information is received and forwarded to a user agency through the LEIN.

(3) The LEIN, or information received through the LEIN, shall not be used for personal reasons.

(4) A user agency shall not sell or disseminate any information obtained through the LEIN to any individual, group of individuals, organization, governmental agency, or corporation which is not legally authorized to have access to this information.

R 28.5209 LEIN data dissemination; CJDC release to user agency.

Rule 209. (1) Except as prescribed in subrule (2) of this rule, a user agency's message transactions into, through, or from the LEIN shall not be released by the CJDC to another user agency without the written consent of the administrative head of the agency whose message transactions are being requested.

(2) The CJDC may release a user agency's message transactions to another agency under any of the following conditions:

- (a) Upon written request from a local, county, state, or federal prosecuting attorney who shall specify that the information required is for a valid criminal justice purpose.
- (b) A court order.
- (c) A request made under Act No. 442 of the Public Acts of 1976, as amended, being §15.231 et seq. of the Michigan Compiled Laws, and known as the freedom of information act. The CJDC or the executive secretary of the council shall notify the administrative head of a user agency when that agency's message transactions have been released to a private person as a result of a request made under this act.

R 28.5210 Criminal history record information; user agency dissemination to private person prohibited; request from private person to review information; obtaining information by private person.

Rule 210. (1) A user agency shall not disseminate criminal history record information received through the LEIN to a private person.

(2) A private person, upon request, satisfactory verification of his or her identity by fingerprint comparison, and payment of any required processing fee, may review the criminal history record maintained about him or her in the files of the Central Records Division, Department of State Police, 7150 Harris Drive, Lansing, Michigan 48913.

(3) To obtain criminal history record information, a private person may appear at a user agency and request that his or her fingerprints be taken on an applicant or noncriminal fingerprint card. The user agency shall return the card to the private person who may then forward the fingerprint card and a letter of request to the central records division of the department of state police. The central records division of the department of state police shall search its files and shall mail the criminal history record information and fingerprints to the person making the request.

R 28.5211 Warrant or stolen property information; receipt of verbal information by a private person; request for written information by a private person.

Rule 211. (1) A private person may receive verbal information as to whether or not a warrant ordering his or her arrest has been issued by a court and entered into either LEIN or NCIC files, if he or she appears in person at a law enforcement user agency and is properly identified.

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(2) A private person may receive verbal information as to whether or not vehicle, a vehicle part, or other stolen property has been entered into either LEIN or NCIC files. If he or she appears at a law enforcement user agency, is properly identified, and satisfactorily explains to the user agency the purpose or need for the information.

(3) If a private person requests a terminal-prepared or other printed or written record of the information, he or she may be referred to the court that issued the warrant or, in the case of a stolen vehicle, vehicle part, or other stolen property, to the law enforcement agency that is responsible for the original entry into either the LEIN or NCIC file.

R 28.5212 LEIN access; non-terminal user agency.

Rule 212. (1) A user agency that accepts the installation of a LEIN terminal which is either partially or fully funded by state allocated funds shall agree to provide LEIN access to an authorized non-terminal user agency which is assigned to it by the CJDC. When an assignment for service is to be made, the CJDC shall consider all of the following factors:

- (a) Radio frequency compatibility between the involved agencies.
- (b) Geographical location of the terminal and non-terminal agencies.
- (c) Ability of the terminal agency to provide normal services to a non-terminal agency based on reasonable requests from the non-terminal agency.

(2) A terminal agency shall provide all of the following services to an authorized non-terminal agency:

- (a) Entry, inquiry, modification, or cancellation services for wanted and missing persons records, stolen and wanted vehicles, and stolen property records.
- (b) Inquiry service to computerized or manually stored criminal history record information which is maintained in either the Michigan department of state police files or in similar files in other local, state, or federal agencies.
- (c) Inquiry service to computerized or manually stored vehicle registration and driver records which are maintained in either the Michigan department of state files or in similar files in other states.
- (d) Intrastate and interstate administrative message service.
- (e) Any other LEIN services which are or may become available and which are authorized by the council.

(3) A terminal agency shall not charge a non-terminal agency any fees for LEIN access without the approval of the council.

R 28.5213 LEIN use by user agency authorized to examine applicants for operator and chauffeur licenses.

Rule 213. A user agency that is authorized to conduct examinations of applicants for operator and chauffeur licenses, as prescribed in section 309 of Act No. 300 of the Public Acts of 1949, as amended, being §257.309 of the Michigan Compiled Laws, may use the LEIN to gain access to the secretary of state's driver files for record clearance purposes if such use does not impede or interfere with the ability of the LEIN to adequately serve the needs of the law enforcement community.

R 28.5214 Criminal history record information; dissemination by radio devices prohibited.

Rule 214. Radio devices, whether digital or voice, shall not be used to transmit criminal history record information beyond that information which is necessary to effect an immediate identification to insure adequate safety for a law enforcement officer or the general public where such information was originally transmitted over the LEIN to a radio broadcasting device or location.

PART 3. TERMINALS AND EQUIPMENT

R 28.5301 LEIN access; terminal or computer system; council approval.

Rule 301. A terminal or computer system shall not have direct access to the LEIN without the prior approval of the council.

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R 28.5302 Terminal installation; application; changes, additions, or corrections; processing.

Rule 302. (1) An application for the installation of a terminal shall be made on a form prescribed by the council and shall be filed with the executive secretary of the council. The application shall indicate if the request is for a state-funded or self-pay terminal.

(2) An applicant shall answer all questions on the application truthfully and shall not misrepresent any material fact on the application.

(3) Changes, additions, or corrections to the original application, including, but not limited to, changes in business address or officers shall be filed with the executive secretary of the council within 10 days after the changes are made.

(4) When an application for a terminal is received, the executive secretary of the council shall process the application as follows:

(a) Review for completeness and chronologically number each application received.

(b) Forward a letter to the applicant agency acknowledging receipt of the application.

(c) Forward a copy of each application to the council for review and approval or disapproval.

(5) The council shall review all pending applications not less than 4 times yearly.

R 28.5303 State-funded terminal installation application; council review.

Rule 303. An application for the installation of a state-funded terminal shall be reviewed by the council on a comparative basis with other such applications and consideration shall be given to each of following factors:

(a) The population of the area served by the applicant agency.

(b) The number of patrol units that will be serviced by the terminal if the applicant agency is a law enforcement agency.

(c) The applicant agency's workload requiring LEIN data and services.

(d) The number of records entered or to be entered in LEIN and NCIC files.

(e) The geographical location of the applicant agency.

(f) The current accessibility to the LEIN.

(g) The compatibility in radio frequencies between the involved agencies.

(h) The emergency needs of the applicant agency.

R 28.5304 Self-pay terminal installation application; council review; approval.

Rule 304. (1) An application for the installation of a self-pay terminal shall be individually reviewed by the council and shall not be compared with pending applications for state-funded terminals.

(2) The council may approve a terminal installation for a self-pay agency if both of the following criteria are met:

(a) The CJDC has sufficient computer equipment to provide satisfactory LEIN data and service.

(b) Installation does not reduce the ability of the CJDC to furnish adequate service to existing LEIN terminal agencies.

R 28.5305 State funding of terminal installations generally.

Rule 305. (1) The council shall approve the installation of a LEIN terminal, consistent with the availability of state funds, if the applicant agency meets the minimum criteria as established by the council.

(2) The council shall periodically review and audit the operation of a LEIN terminal agency and may remove state funding support when the established minimum criteria are not met.

(3) A self-pay agency shall be considered for state funding when new or additional state funds are allocated for LEIN terminals if both of the following criteria are met:

(a) The self-pay agency meets the minimum criteria as established by the council.

(b) The relative ranking of the self-pay agency in respect to other self-pay agencies warrants removal of the self-pay status.

(4) LEIN terminals that are installed in Michigan department of state facilities shall be state-funded consistent with the availability of state funds.

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R 28.5306 Federal criminal justice agency; access to LEIN data; criteria.

Rule 306. A federal criminal justice agency shall be authorized to have direct access to LEIN data if such agency complies with both of the following criteria:

- (a) The agency pays the costs for the terminal, its installation, and related communications links.
- (b) The agency executes an agreement with the executive agent, CJDC, and the council.

R 28.5307 State-funded agency; terminal upgrading.

Rule 307. (1) A state-funded agency may upgrade its standard LEIN terminal to a high-speed terminal. The high-speed terminal shall be procured through the CJDC.

(2) The maximum amount of state funds that may be credited toward the upgrading of terminal equipment shall not exceed the average cost of a standard LEIN terminal and its related communication links.

R 28.5308 State-funded agency; return of state-funded terminal equipment; credit.

Rule 308. A state-funded agency which upgrades its LEIN data access either through its own or a shared noncriminal justice computer and which returns its state-funded terminal equipment may be credited with either of the following:

- (a) The average cost of a standard LEIN terminal and its related communication links.
- (b) The line costs to interface the satellite computer system to the LEIN.

R 28.5309 CJDC responsibilities to a state-funded agency.

Rule 309. The CJDC, with respect to a state-funded agency and contingent upon the availability of state funds appropriated for such purposes, shall do all of the following:

- (a) Place all orders for the installation, relocation, or removal of terminals, communication links, and other related equipment.
- (b) Make all technical service arrangements that are related to the installation, maintenance, relocation, and removal of equipment.
- (c) Perform the system analysis, design, and programming which is required at the CJDC.
- (d) Provide a standard terminal and related communications equipment.
- (e) Provide the necessary computers and related resources at the CJDC to insure access to the LEIN.

R 28.5310 CJDC responsibilities to a self-pay agency.

Rule 310. (1) The CJDC shall provide a self-pay agency which uses terminal and related communications equipment which is procured through the CJDC with the same access to the LEIN as is provided to a state-funded agency.

(2) If a self-pay agency elects to obtain its own equipment which is not identical to equipment offered through the CJDC, the CJDC responsibilities shall be limited to all of the following:

- (a) Providing technical information as to the communications disciplines and message structures which are required for successful interface to the LEIN.
- (b) Providing access to the LEIN in the same manner and format as is provided to a state-funded user agency.
- (c) Placing orders for the installation, relocation, or removal of communications lines and other related communications equipment.
- (d) Performing required programming at the CJDC which is identical to that provided to state-funded participant agencies.
- (e) Providing the necessary computers and related equipment at the CJDC to insure access to LEIN data and services.
- (f) Providing reference manuals, publications, and bulletins in the identical language and formats as are furnished to a state-funded agency.
- (g) Correcting those problems which are determined to be related to the CJDC or to related communication links. The CJDC is not responsible for the correction of any problem that is associated with the user agency's equipment.

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(3) The CJDC shall not provide training to user agencies in the operation of equipment which differs from equipment procured through the CJDC.

R 28.5311 Self-pay user agency: responsibilities.

Rule 311. (1) A self-pay user agency is responsible for the procurement of, and payment for, all consumable supplies which are required for the terminal or computer, or both.

(2) A self-pay agency which uses equipment that is not identical to equipment offered through the CJDC is responsible for all of the following:

(a) Compliance with the data transmission rates and communication disciplines established by the CJDC.

(b) Payment of the cost of the communication line link to the CJDC.

(c) Payment of the cost of connecting the communication line to the transmission control unit at the CJDC.

(d) Providing for the training of personnel in the use of terminal equipment.

(e) Insuring that the user agency's system will provide access to all authorized data as performed on state-funded terminals.

(f) Payment of the costs for reprogramming or equipment modifications, or both, which become necessary as a result of changes made at the CJDC.

R 28.5312 Non-law enforcement criminal justice agency; terminal installation; criteria for council approval.

Rule 312. The installation of a terminal in a non-law enforcement criminal justice agency shall be approved by the council if all of the following criteria are met:

(a) The applicant agency pays the installation, terminal leasing, and communication equipment costs.

(b) The installation does not reduce the ability of the LEIN to provide satisfactory service to law enforcement agencies.

(c) The applicant agency executes an agreement with the executive agent, CJDC, and the council.

R 28.5313 Emergency terminal installation.

Rule 313. (1) The commanding officer of the operations division of the Michigan state police or the director of the CJDC may order the installation of a terminal under emergency circumstances.

(2) If a terminal is installed for emergency purposes, the chairman of the LEIN council shall be immediately notified by the CJDC.

(3) The emergency installation of a terminal is subject to the subsequent review and approval of the council.

R 28.5314 Convenience terminals; payment of installation costs.

Rule 314. All costs associated with the installation of a convenience terminal, including the costs for leasing a terminal and the communications link, shall be paid by the applicant agency.

R 28.5315 Microwave data links; interface to LEIN; serviced terminals; council approval.

Rule 315. (1) Each microwave data link system interface to the LEIN shall be approved by the council.

(2) A terminal that is serviced through the microwave data link system shall be approved by the council.

R 28.5316 State microwave link to LEIN; written request; criteria for approval.

Rule 316. (1) A user agency that wishes to have direct access to the LEIN through a state microwave link shall submit a written request to the council which shall include all of the following information:

(a) Details of the agency plan for use of the microwave link.

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- (b) The type of terminal, computer, and other related equipment which the agency plans to use.
- (c) Information as to whether the interface request is for state funding support or is on a self-pay basis.
- (2) The council may approve a request from an agency for a microwave interface to the LEIN if all of the following criteria are met:
 - (a) The applicant agency is geographically located within the area that is serviced by existing state microwave equipment.
 - (b) A channel on the state microwave system is available for use by the applicant agency.
 - (c) The communications division of the department of state police approves the use of the channel for LEIN data transmission.
 - (d) The agency workload justifies the microwave interface.

R 28.5317 Installation of mobile terminal having access to LEIN; council approval.

Rule 317. (1) The installation of a mobile terminal having access to the LEIN shall be subject to the approval of the council.

- (2) The applicant agency that requests approval shall notify the council in writing and shall provide all of the following information:
 - (a) The fact that a mobile terminal system is planned.
 - (b) The type of mobile terminal.
 - (c) The number of mobile terminals planned for installation.
 - (d) The date or dates of installation.
- (3) The agency shall insure that all mobile terminals are secure from use by unauthorized personnel.

R 28.5318 Terminal environment; location and security.

Rule 318. All of the following constraints that pertain to terminal environment, location, and security shall be binding on a terminal agency:

- (a) The terminal shall be located in a safe, clean, and dry environment.
- (b) Each user agency shall provide electric service and controlled temperature and humidity levels specified by the terminal manufacturer.
- (c) In a law enforcement agency, the principal terminal shall be located within, or adjacent to, the communications equipment control console to insure continuous monitoring of the printer or terminal screen, or both.
- (d) The terminal shall be placed in a secure location which is under the direct control and supervision of authorized personnel of the user agency. The terminal shall be inaccessible to the public or to other persons who are not qualified or authorized to operate, view, or possess data transmitted or received by the LEIN.

R 28.5319 State-funded terminal agency; termination of LEIN access through a satellite computer system; application for LEIN terminal.

Rule 319. A state-funded terminal agency which elects to have access to the LEIN through a satellite computer system, which returns its state-funded terminal to the CJDC, and which subsequently terminates its LEIN access through the satellite system may apply for a LEIN terminal by submitting an application as prescribed in R 28.5302.

PART 4. RECORDS

R 28.5401 Records responsibility generally.

Rule 401. A user agency is responsible for the accuracy and completeness of any record it enters into the LEIN and NCIC files. Each record in the file shall be identified with the agency that entered the record.

R 28.5402 Law enforcement user agency; entry of wanted persons and stolen vehicle and property records.

Rule 402. (1) A law enforcement user agency shall enter, into either the LEIN or NCIC files, the records of all persons wanted by the agency and all vehicles or other property stolen in the agency's primary police jurisdiction.

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(2) The entry shall be made as soon as possible after the investigating department either ascertains that a vehicle or other property is stolen or obtains a warrant for an individual's arrest. In no case shall this time be more than 12 hours after the user agency determines that it has grounds to believe that a vehicle or other property is stolen or that a wanted person should be taken into custody.

(3) All record entries shall be made pursuant to the procedures and codes published in the LEIN operations manual and the NCIC operating manual.

R 28.5403 Terminal agency; continuous terminal operation required; council waiver.

Rule 403. (1) A terminal agency that enters records into either the LEIN or NCIC files shall insure that its terminal is operated on a 24-hours-per-day, 7-days-a-week basis by competent, trained operators.

(2) The council may waive the requirement of operating a terminal on a 24-hours-per-day, 7-days-a-week basis, if an acceptable alternative is available to insure that the agency's record can be immediately confirmed.

R 28.5404 Record and broadcast message cancellation; CJDC record removal.

Rule 404. (1) A user agency shall promptly cancel a record from both the LEIN and NCIC files when a wanted person is arrested or returned, property is recovered, or in any other circumstance where the record is no longer valid.

(2) A user agency that initiates a broadcast message which is disseminated through the LEIN and which requests that a person be arrested or that property be recovered shall insure that the broadcast message is cancelled when it is no longer valid.

(3) The CJDC, with the approval of the council, may remove a record from the LEIN or NCIC file if a substantial question exists concerning the record's validity or accuracy. Immediately upon the removal of any record, the CJDC shall notify the entering agency of the action taken.

R 28.5405 Record inquiry; confirmation of validity.

Rule 405. (1) If, following an inquiry, a positive response is received from the LEIN or NCIC which indicates that a person is wanted or that property is stolen, the inquiring agency shall immediately confirm the validity of the record with the entering agency.

(2) If technically possible, an inquiry which is directed to the entering agency and which requests record confirmation shall be by means of a terminal-transmitted message. A response to such an inquiry shall be returned by means of a terminal message.

(3) A user agency shall respond promptly to an inquiry from another authorized agency which is relative to the validity and currentness of both its LEIN and NCIC record entries.

R 28.5406 Positive response to inquiry; retention of computer printout.

Rule 406. (1) If an operational computer inquiry concerning an individual or property results in a valid, positive response, the original copy of the terminal-produced printout which shows the record on file in either the LEIN or NCIC shall be retained for use in documenting probable cause for the detention of a missing person, the arrest of a wanted person, or the seizure of property.

(2) The printout shall be retained for as long as the possibility exists that a person will challenge an arrest, search, or any other law enforcement action taken, based on information contained in the printout.

R 28.5407 Active records file; maintenance.

Rule 407. A user agency shall maintain complete and accurate files of all active records which are entered into the LEIN or NCIC, or both, and shall insure that the files are readily accessible to the terminal operator or to any other person who is responsible for confirming the validity of records upon inquiry.

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R 28.5408 Regional communications systems; maintenance of active records file.

Rule 408. (1) A regional communications system that is authorized to enter records into the LEIN files or NCIC files, or both, for multiple member agencies shall maintain separate, active records for each agency serviced.

(2) If a member agency that participates in a regional communications system has access to the LEIN via another terminal located within its own department in addition to the terminal or terminals at the regional communications system, the member agency shall select 1 location, either the agency location or the communications center, that shall enter and maintain the records of that agency.

R 28.5409 LEIN record validation programs; records listing; data comparison; cancellation or removal of inaccurate or invalid records; written certification of record's accuracy and validity; retention of current validation listing; failure to comply with validation and certification requirements; validation time extension.

Rule 409. (1) A LEIN user agency that enters records into the LEIN and NCIC files shall participate in the LEIN record validation programs.

(2) The CJDC shall periodically prepare a listing of each record entered into the LEIN and NCIC files and shall forward the listing to the responsible agency. The responsible agency shall do all of the following:

(a) Compare the data in each record that appears in the listing with the information in its record case files to verify that the data is valid and accurate.

(b) If possible, determine from the complainant or court if the record information is still current and valid.

(c) Take the necessary steps to immediately cancel or remove a record from the LEIN which is determined to be inaccurate or invalid. A non-terminal agency shall insure that when a record is no longer valid it is promptly cancelled by the agency's servicing terminal.

(d) Within 45 days of the receipt of the listing, have the agency head or his or her designated representative provide written certification, on forms provided by the CJDC, that the records which appear on the listing are accurate and valid. The completed form shall be returned to the CJDC within the prescribed period.

(e) Retain the most current copy of each validation listing until the next listing is received from the CJDC.

(3) A user agency that fails to comply with the validation and certification requirements within the prescribed time period shall have its records removed from the LEIN and NCIC files.

(4) A user agency that requires more than 45 days to validate its records shall submit a written request to the council for a reasonable time extension. The council chairman or the executive secretary of the council shall grant such extensions when warranted.

R 28.5410 Records retention periods.

Rule 410. A record shall be automatically purged from the computerized files of the LEIN or NCIC, or both, when the maximum retention period, as indicated in the following, has been exceeded:

(a) An unrecovered stolen vehicle record that does not include a vehicle identification number shall be retained for 90 days after entry.

(b) An unrecovered felony vehicle record shall be retained for 90 days after entry.

(c) An unrecovered stolen vehicle record that contains a vehicle identification number and a stolen vehicle part record shall be retained for the year of entry plus 4 years.

(d) An unrecovered stolen license plate record, whether or not associated with a stolen vehicle, shall be retained for 90 days after the license plate has expired.

(e) A non-expiring license plate record shall be retained for the year of entry plus 4 years.

(f) An unrecovered stolen or missing gun record shall be retained indefinitely or until action is taken by the originating agency to cancel it.

(g) A recovered gun record shall be retained for the year of entry plus 2 years.

(h) An unrecovered stolen, embezzled, counterfeited, or missing securities record, other than a traveler's check or a money order, shall be retained for the year of entry plus 4 years.

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- (i) A stolen or missing traveler's check or money order record shall be retained for the year of entry plus 2 years.
- (j) An unrecovered stolen boat record shall be retained for the year of entry plus 4 years.
- (k) An unrecovered stolen article record shall be retained for the year of entry plus 1 year.
- (l) A warrant record shall be retained indefinitely unless cancelled by the entering agency.
- (m) A felony record that is entered before the issuance of a warrant by a court shall be retained for 48 hours from the time of entry.
- (n) A missing person record, other than a juvenile missing person record, shall be retained indefinitely.
- (o) A juvenile missing person record shall be retained until the juvenile has reached the age of 17 years.

R 28.5411 Out-of-state license plate data; purge procedures.

Rule 411. Out-of-state license plate information that is included on a LEIN wanted or missing person or vehicle record entry shall be purged in accordance with either of the following:

- (a) One year after the license plate has expired.
- (b) When requested by the state of registry, either directly or through NCIC.

R 28.5412 Wanted person record entry into NCIC; extradition rules.

Rule 412. (1) Before entering a wanted person record into the NCIC files, the user agency shall, to the maximum extent possible, determine if extradition will be authorized by the prosecuting attorney if the wanted individual is located in another state.

(2) If an agency is certain that a wanted person will not be extradited, the record shall not be entered into the NCIC.

(3) If a prosecuting attorney establishes limits on extradition to within a certain distance or from certain states, the limitations shall be defined and included when the record is entered into the NCIC files.

(4) In some instances extradition cannot be forecast at the time a wanted person record is entered in the NCIC files. When it is determined that the person will not be extradited, the record shall be immediately cancelled from the NCIC files.

R 28.5413 Parking violation arrest warrants; entry and inquiry provisions.

Rule 413. (1) An arrest warrant that is issued by a court for violation of a parking statute or ordinance may be entered into the LEIN files if the violator was either personally served with the citation or has received 25 or more parking citations.

(2) A user agency shall not use the LEIN between the hours of 8 a.m. and 3 a.m. the following day for the purpose of obtaining vehicle registration information to record on a parking violation citation.

R 28.5414 Warrants or orders for arrest of a member of the military forces charged with desertion or absence without leave; entry into LEIN prohibited.

Rule 414. A warrant or any other order which is issued by a branch of the United States military services and which directs the arrest of a member of the military forces who is charged with desertion or absence without authorized leave, AWOL, shall not be entered into the LEIN computer files. It is the responsibility of the military service concerned to enter such warrants or orders into the NCIC computer files through specific federal terminals designated for this purpose.

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STATE OF MICHIGAN

JAMES J. BLANCHARD
GOVERNOR

EXECUTIVE ORDER

1990-10

PROVISION FOR DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

WHEREAS, the Policy Council of the Law Enforcement Information Network (LEIN) has adopted the Code of Federal Regulations, Title 28, Chapter I, Part 20 within administrative rule R28.3103 to regulate access and dissemination of criminal history record information (CHRI) available within this network; and

WHEREAS, Section 20.21b(2) of Title 28 states that non-criminal justice agencies and individuals may obtain nonconviction information for purposes "authorized by statute, ordinance, executive order, or court rule, decision, or order..."; and

WHEREAS, there are non-criminal justice agencies with a defined responsibility needing access to nonconviction data, whether directly or through an intermediary; and

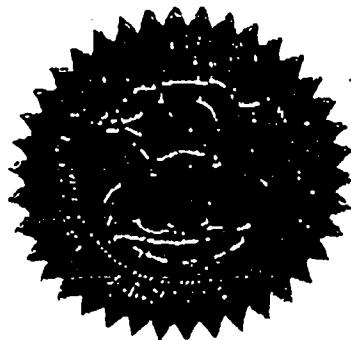
WHEREAS, these non-criminal justice agencies must have authority to access the criminal history record data base, whether directly or through an intermediary;

NOW, THEREFORE, I, JAMES J. BLANCHARD, Governor of the State of Michigan, pursuant to the powers vested in me by the Michigan Constitution of 1963 and the laws of the State of Michigan, do hereby Order that the non-criminal justice agencies listed in Appendix A shall have authority to receive conviction and nonconviction criminal history record information whether directly or through an authorized intermediary.

IT IS FURTHER ORDERED that before any information is released, user agreements which establish requirements and procedures for accessing the criminal history record information must be entered into with the Michigan Department of State Police.

IT IS FURTHER ORDERED that the use of the criminal history record information shall be limited to the purposes stated in the aforementioned appendix. Each agency shall also have the authority to require fingerprinting for the purpose of checking the state offender file to meet the required responsibility.

IT IS FURTHER ORDERED that this Executive Order shall take effect 60 days from the date of signing hereof.



Given under my hand and the Great Seal of the State of Michigan, this 30th day of May In the Year of Our Lord, One Thousand Nine Hundred Ninety, and of the Commonwealth, One Hundred Fifty-Four.

GOVERNOR

BY THE GOVERNOR:

RICHARD H. AUSTIN
SECRETARY OF STATE

R E C E I V E D

MAY 31 1990

LEIN FIELD SERVICE

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STATE OF MICHIGAN

JAMES J. BLANCHARD
GOVERNOR

PROVISION FOR DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

APPENDIX A

The following is a list of non-criminal justice agencies and their responsibility for which nonconviction data is required. These agencies are provided with the authority to receive nonconviction criminal history record information pursuant to Executive Order 1990-10.

- I. Authorized persons within the Office of the Governor who are responsible for determining the propensity on the part of a person to serve the public in a fair, honest, and open manner.
- II. Authorized persons within the Department of Social Services who are responsible for the licensing and regulation of child or adult care homes, facilities or institutions.
- III. Authorized persons within the Department of Social Services who are responsible for the protection, care, or placement of children in the custody of the court or the state.
- IV. Authorized persons within the Department of Education who are responsible for the issuance of teacher's certificates.
- V. Authorized persons within any administrative agency of state government who are responsible for the enforcement and compliance with state regulated occupational or professional licenses or certificates.

Page two of two pages

R E C E I V E D

MAY 31 1990

MI-51

THE REVISED SCHOOL CODE (Act 451 of 1976)

380.1230 Offer of employment as teacher, school administrator, substitute teacher, or position requiring state board approval; criminal history check; employment as conditional employee; conditions; voiding contract and terminating employment; report received by another district; consent; request; conducting criminal history check; report; use; disclosure; violation as misdemeanor; penalty; definitions.

Sec. 1230. (1) Beginning with hiring for the 1993-94 school year and subject to subsections (2), (4), and (5), upon an offer of initial employment being made by the board of a school district, local act school district, or intermediate school district or the governing body of a public school academy or nonpublic school to an individual for a position as a teacher or a school administrator or for a position requiring state board approval, the district, public school academy, or nonpublic school shall request from the criminal records division of the department of state police a criminal history check on the individual and, before employing the individual as a regular employee, shall have received from the department of state police the report described in subsection (8).

(2) If the board of a school district, local act school district, or intermediate school district or the governing body of a public school academy or nonpublic school determines it necessary to employ an individual for a position described in subsection (1) for a particular school year during that school year or within 30 days before the beginning of that school year, the board or governing body may employ the individual as a conditional employee under this subsection without first receiving the report described in subsection (8) if all of the following apply:

(a) The board or governing body requests the criminal history check required under subsection (1) before conditionally employing the individual.

(b) The individual signs a statement that identifies all crimes for which he or she has been convicted, if any, and agreeing that, if the report described in subsection (8) is not the same as the individual's statement, his or her employment contract will be voidable at the option of the board or governing body. Not later than July 28, 1993, the department shall develop and distribute to districts and nonpublic schools a model form for the statement required under this subdivision. The department shall make the model form available to public school academies. A district, public school academy, or nonpublic school shall use the model form for the purposes of this subsection.

(3) If an individual is employed as a conditional employee under subsection (2) and the report described in subsection (8) is not the same as the individual's statement under subsection (2), the board or governing body may void the individual's employment contract. If an employment contract is voided under this subsection, the individual's employment is terminated, a collective bargaining agreement that would otherwise apply to the individual's employment does not apply to the termination, and the

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district, public school academy, or nonpublic school or the board or governing body is not liable for the termination.

(4) For an applicant for a position as a substitute teacher, instead of requesting a criminal history check under subsection (1), a school district, local act school district, intermediate school district, public school academy, or nonpublic school may use a report received by another district, public school academy, or nonpublic school or maintained by the department to confirm that the individual does not have any criminal history. If that confirmation is not available, subsection (1) applies to an applicant for a position as a substitute teacher.

(5) If an applicant for a position described in subsection (1) is being considered for employment in such a position by more than 1 school district, local act school district, intermediate school district, public school academy, or nonpublic school and if the applicant agrees in writing to allow a district, public school academy, or nonpublic school to share the report described in subsection (8) with another district, public school academy, or nonpublic school, a district, public school academy, or nonpublic school may satisfy the requirements of subsection (1) by obtaining a copy of the report described in subsection (8) from another district, public school academy, or nonpublic school.

(6) An applicant for a position described in subsection (1) shall give written consent at the time of application for the criminal records division of the department of state police to conduct the criminal history check required under this section.

(7) A school district, local act school district, intermediate school district, public school academy, or nonpublic school shall make a request to the criminal records division of the department of state police for a criminal history check required under this section on a form and in a manner prescribed by the criminal records division of the department of state police.

(8) Within 30 days after receiving a proper request by a school district, local act school district, intermediate school district, public school academy, or nonpublic school for a criminal history check on an applicant under this section, the criminal records division of the department of state police shall conduct the criminal history check and, after conducting the criminal history check and within that time period, provide a report of the results of the criminal history check to the district, public school academy, or nonpublic school. The report shall contain any criminal history record information on the applicant maintained by the criminal records division of the department of state police.

(9) Criminal history record information received from the criminal records division of the department of state police under subsection (8) shall be used by a school district, local act school district, intermediate school district, public school academy, or nonpublic school only for the purpose of evaluating an applicant's qualifications for employment in the position for which he or she has applied and for the purposes of subsection (3). A member of the board of a district or of the

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governing body of a public school academy or nonpublic school or an employee of a district, public school academy, or nonpublic school shall not disclose the report or its contents except any felony conviction or a misdemeanor conviction involving sexual or physical abuse to any person who is not directly involved in evaluating the applicant's qualifications for employment. However, for the purposes of subsection (4), a person described in this subsection may confirm to an employee of another district, public school academy, or nonpublic school that a report under subsection (8) has revealed that an individual does not have any criminal history or may disclose that no report under subsection (8) has been received concerning the individual, and for the purposes of subsection (5), a person described in this subsection may provide a copy of the report under subsection (8) concerning the individual to an appropriate representative of another district, public school academy, or nonpublic school. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00, but is not subject to the penalties under section 1804.

(10) As used in this section:

(a) "Criminal history record information" means that term as defined in section 1a of Act No. 289 of the Public Acts of 1925, being section 28.241a of the Michigan Compiled Laws.

(b) "State board approval" means that term as defined in section 1539b.

History: Add. 1992, Act 99, Imd. Eff. June 23, 1992;--Am. 1993, Act 68, Eff. June 21, 1993;--Am. 1993, Act 284, Eff. Apr. 1, 1994.

MCL 380.1230a

THE REVISED SCHOOL CODE (Act 451 of 1976)

380.1230a Criminal records check through federal bureau of investigation; employment as conditional employee; voiding contract and terminating employment; application as substitute teacher; obtaining copy of results from another district, public school academy, or nonpublic school; consent; form and manner of request; use and disclosure of results; violation as misdemeanor; penalty; initiation of criminal records check by department of state police; "state board approval" defined.

Sec. 1230a. (1) In addition to the criminal history check required under section 1230, the board of a school district, local act school district, or intermediate school district or the governing body of a public school academy or nonpublic school shall request the department of state police to conduct a criminal records check through the federal bureau of investigation on an applicant for, or an individual who is hired for, a position as a teacher or a school administrator or a position requiring state board approval. Except as provided in subsection (2), a board or governing body shall not employ an individual in a position described in this subsection until after the board or governing body receives the results of the criminal records check. A board or governing body requesting a criminal records check under this section shall require the

applicant or individual to submit his or her fingerprints to the department of state police for that purpose. The department of state police may charge a fee for conducting the criminal records check. A board or governing body shall require an individual to submit his or her fingerprints for the purposes of this section only at the time the individual initially applies for employment with the board or governing body or is initially employed by the board or governing body.

(2) If the board of a school district, local act school district, or intermediate school district or the governing body of a public school academy or nonpublic school determines it necessary to employ an individual for a position described in subsection (1) for a particular school year during that school year or within 30 days before the beginning of that school year, the board or governing body may employ the individual as a conditional employee under this subsection without first receiving the results of the criminal records check under subsection (1) if all of the following apply:

(a) The board or governing body requests the criminal records check under subsection (1) before conditionally employing the individual.

(b) The individual signs a statement that identifies all crimes for which he or she has been convicted, if any, and agreeing that, if the results of the criminal records check under subsection (1) reveal information that is inconsistent with the individual's statement, his or her employment contract will be voidable at the option of the board or governing body. Not later than September 30, 1995, the department shall develop and distribute to districts and nonpublic schools a model form for the statement required under this subdivision. The department shall make the model form available to public school academies. A district, public school academy, or nonpublic school shall use the model form for the purposes of this subsection.

(3) If an individual is employed as a conditional employee under subsection (2) and the results of the criminal records check under subsection (1) reveal information that is inconsistent with the individual's statement under subsection (2), the board or governing body may void the individual's employment contract. If an employment contract is voided under this subsection, the individual's employment is terminated, a collective bargaining agreement that would otherwise apply to the individual's employment does not apply to the termination, and the district, public school academy, or nonpublic school or the board or governing body is not liable for the termination.

(4) For an applicant for a position as a substitute teacher, instead of requesting a criminal records check under subsection (1), a school district, local act school district, intermediate school district, public school academy, or nonpublic school may use results received by another district, public school academy, or nonpublic school or maintained by the department to confirm that the individual does not have any criminal history. If that confirmation is not available, subsection (1) applies to an applicant for a position as a substitute teacher.

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(5) If an applicant for a position described in subsection (1) is being considered for employment in such a position by more than 1 school district, local act school district, intermediate school district, public school academy, or nonpublic school and if the applicant agrees in writing to allow a district, public school academy, or nonpublic school to share the results of the criminal records check with another district, public school academy, or nonpublic school, then a district, public school academy, or nonpublic school may satisfy the requirements of subsection (1) by obtaining a copy of the results of the criminal records check from another district, public school academy, or nonpublic school.

(6) An applicant for a position described in subsection (1) shall give written consent at the time of application for the criminal records division of the department of state police to conduct the criminal records check required under this section.

(7) A school district, local act school district, intermediate school district, public school academy, or nonpublic school shall make a request to the department of state police for a criminal records check under this section on a form and in a manner prescribed by the department of state police.

(8) The results of a criminal records check under this section shall be used by a school district, local act school district, intermediate school district, public school academy, or nonpublic school only for the purpose of evaluating an individual's qualifications for employment in the position for which he or she has applied and for the purposes of subsections (3), (4), and (5). A member of the board of a district or of the governing body of a public school academy or nonpublic school or an employee of a district, public school academy, or nonpublic school shall not disclose those results, except any felony conviction or a misdemeanor conviction involving sexual or physical abuse, to any person who is not directly involved in evaluating the individual's qualifications for employment. However, for the purposes of subsections (4) and (5), a person described in this subsection may provide a copy of the results under subsection (1) concerning the individual to an appropriate representative of another district, public school academy, or nonpublic school. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00, but is not subject to the penalties under section 1804.

(9) Within 30 days after receiving a proper request by a school district, local act school district, intermediate school district, public school academy, or nonpublic school for a criminal records check on an individual under this section, the criminal records division of the department of state police shall initiate the criminal records check. After conducting the criminal records check for a school district, local act school district, intermediate school district, or public school academy, the criminal records division of the department of state police shall provide the results of the criminal records check to the district or public school academy. After conducting the criminal records check for a nonpublic school, the criminal records division of the department of state police shall notify the nonpublic school of whether or not the criminal records check disclosed any criminal history that is not disclosed in the

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report on the individual provided to the nonpublic school under section 380.

(10) As used in this section, "state board approval" means that term as defined in section 1539b.

History: Add. 1995, Act 83, Eff. Aug. 1, 1995.

MCL 380.1535a

THE REVISED SCHOOL CODE (Act 451 of 1976)

380.1535a Conviction of teacher for certain crimes; notice of right to hearing; suspension of teaching certificate; applicability of subsection (1); summary suspension; reinstatement, continued suspension, or permanent revocation of teaching certificate; effect of reversal of conviction on final appeal; notice of conviction; notice of release; evidence of conviction; construction of section; rules; definitions.

Sec. 1535a. (1) Subject to subsection (2), if a person who holds a teaching certificate that is valid in this state is convicted of a crime described in this subsection, the state board shall notify the person in writing that his or her teaching certificate may be suspended because of the conviction and of his or her right to a hearing before the state board. If the person does not avail himself or herself of this right to a hearing within 30 working days after receipt of this written notification, the teaching certificate of that person shall be suspended. If a hearing takes place, the state board may suspend the person's teaching certificate based upon the issues and evidence presented at the hearing. This subsection applies to any of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(iv) A misdemeanor violation of section 7410 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7410 of the Michigan Compiled Laws.

(v) A violation of section 115, 141a, 145a, or 359 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.115, 750.141a, 750.145a, and 750.359 of the Michigan Compiled Laws, or a misdemeanor violation of section 81, 81a, or 145c of Act No. 328 of the Public Acts of 1931, being sections 750.81, 750.81a, and 750.145c of the

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Michigan Compiled Laws.

(vi) A misdemeanor violation of section 33 of the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being section 436.33 of the Michigan Compiled Laws.

(2) If a person who holds a teaching certificate that is valid in this state is convicted of a crime described in this subsection, the state board shall find that the public health, safety, or welfare requires emergency action and shall order summary suspension of the person's teaching certificate under section 92 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.292 of the Michigan Compiled Laws. However, if a person convicted of a crime described in this subsection is incarcerated in a state correctional facility, the state board may delay ordering the summary suspension until not later than 10 work days after the person is released from secure confinement. This subsection does not limit the state board's ability to order summary suspension of a person's teaching certificate for a reason other than described in this subsection. This subsection applies to conviction of any of the following crimes:

(a) Criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, or an attempt to commit criminal sexual conduct in any degree.

(b) Felonious assault on a child, child abuse in any degree, or an attempt to commit child abuse in any degree.

(c) Cruelty, torture, or indecent exposure involving a child.

(d) A violation of section 7401(2)(a)(i), 7403(2)(a)(i), 7410, or 7416 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7401, 333.7403, 333.7410, and 333.7416 of the Michigan Compiled Laws.

(e) A violation of section 83, 89, 91, 316, 317, or 529 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.83, 750.89, 750.91, 750.316, 750.317, and 750.529 of the Michigan Compiled Laws.

(3) After the completion of a person's sentence, the person may request a hearing before the state board on reinstatement of his or her teaching certificate. Based upon the issues and evidence presented at the hearing, the state board may reinstate, continue the suspension of, or permanently revoke the person's teaching certificate.

(4) All of the following apply to a person described in this section whose conviction is reversed upon final appeal:

(a) The person's teaching certificate shall be reinstated upon his or her notification to the state board of the reversal.

(b) If the suspension of the person's teaching certificate under this section was the sole cause of his or her discharge from employment, the

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person shall be reinstated, upon his or her notification to the appropriate local or intermediate school board of the reversal, with full rights and benefits, to the position he or she would have had if he or she had been continuously employed.

(5) The prosecuting attorney of the county in which a person who holds a teaching certificate was convicted of a crime described in subsection (1) shall notify the state board, and any public school, school district, intermediate school district, or nonpublic school in which the person is employed, of that conviction and of the sentence imposed on the person. The prosecuting attorney of each county shall inquire of each person convicted in the county of a crime described in subsection (1) whether the person holds a teaching certificate.

(6) If the superintendent of a school district or intermediate school district, the chief administrative officer of a nonpublic school, the president of the board of a school district or intermediate school district, or the president of the governing board of a nonpublic school is notified by a prosecuting attorney or learns through an authoritative source that a person who holds a teaching certificate and who is employed at the time by the school district, intermediate school district, or nonpublic school has been convicted of a crime described in subsection (1), the superintendent, chief administrative officer, or board president shall notify the state board of that conviction.

(7) If a person convicted of a crime described in subsection (2) is incarcerated in a state correctional facility and the state board delays [redacted]ary suspension as described in subsection (2), the state board shall contact the department of corrections and request to be notified before the person is released from secure confinement. Upon receipt of that request, the department of corrections shall notify the state board at least 30 work days before the person is released from secure confinement.

(8) For the purposes of this section, a certified copy of the court record is conclusive evidence of conviction of a crime described in this section. For the purposes of this section, conviction of a crime described in this subsection is considered to be reasonably and adversely related to the ability of the person to serve in an elementary or secondary school and is sufficient grounds for suspension or revocation of the person's teaching certificate.

(9) This section does not do any of the following:

(a) Prohibit a person who holds a teaching certificate from seeking monetary compensation from a school board or intermediate school board if that right is available under a collective bargaining agreement or another statute.

(b) Limit the rights and powers granted to a school district or intermediate school district under a collective bargaining agreement, this act, or another statute to discipline or discharge a person who holds a teaching certificate.

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(c) Exempt a person who holds a teaching certificate from the operation of section 1539a if the person also holds a school administrator's certificate.

(10) The state board may promulgate, as necessary, rules to implement this section pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(11) As used in this section:

(a) "Conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

(b) "State correctional facility" means a correctional facility under the jurisdiction of the department of corrections.

History: Add. 1987, Act 61, Eff. Mar. 30, 1988;--Am. 1990, Act 35, Imd. Eff. Mar. 22, 1990;--Am. 1992, Act 99, Imd. Eff. June 23, 1992;--Am. 1994, Act 144, Imd. Eff. June 2, 1994;--Am. 1995, Act 97, Imd. Eff. June 22, 1995;--Am. 1995, Act 289, Eff. July 1, 1996.

MCL 380.1536

THE REVISED SCHOOL CODE (Act 451 of 1976)

380.1536, 380.1536a Repealed. 1995, Act 289, Eff. July 1, 1996.

Compiler's note: The repealed sections pertained to school administrator certificate and positions requiring valid school administrator certificate.

MCL 380.1538

THE REVISED SCHOOL CODE (Act 451 of 1976)

380.1538 Fees for evaluation of application; validity of certificate, permit, authorization, endorsement, approval, or certain renewals.

Sec. 1538. (1) An applicant shall pay to the department of education, as a condition of having the application evaluated for conformance with the application requirements, the following fees:

	In-State Applicant	Out-of-State Applicant
(a) Original application fee		
(i) Provisional teaching certificate....	\$125.00	\$175.00
(ii) Continuing teaching certificate....	125.00	
(iii) Professional teaching certificate.	125.00	
(iv) Vocational temporary authorization.....	125.00	
(v) Full vocation authorization.....	125.00	

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(vi) Occupational education certificate.	125.00
(vii) Additional teaching certificate endorsement.....	50.00
(viii) Substitute teacher permit.....	25.00
(ix) Full-year teacher permit.....	25.00
(x) Emergency permit.....	25.00
(xi) Annual vocational authorization....	25.00
(xii) Duplicate certificate or authorization.....	10.00
(xiii) School psychologist certificate..	125.00
(xiv) Parent cooperative preschool certificate.....	50.00
(xv) Temporary special education approval.....	50.00
(xvi) School administrator certificate for persons eligible for certificate on July 1, 1988.....	75.00
(xvii) School administrator certificate for persons eligible for certificate after July 1, 1988.....	125.00
(xviii) School administrator endorsement	50.00
(xix) School administrator permit.....	125.00
	In-State Applicant
(b) Renewal or reinstatement application fee	
(i) Provisional teaching certificate.....	\$ 75.00
(ii) Continuing teaching certificate.....	125.00
(iii) Continuing teaching certificate reinstatement.....	50.00
(iv) Professional teaching certificate.....	125.00
(v) Vocational temporary authorization.....	75.00
(vi) Full vocational authorization.....	125.00
(vii) Occupational education certificate.....	125.00
(viii) School psychologist certificate.....	125.00
(ix) School administrator certificate.....	125.00

(2) Except as otherwise provided by an administrative rule in effect on October 1, 1988, or as otherwise provided by law, a certificate, permit, authorization, endorsement, or approval, and the renewal of a certificate, certificate reinstatement, or authorization issued pursuant to subsection (1) is valid for 5 years.

History: Add. 1988, Act 339, Imd. Eff. Oct. 18, 1988.

MCL 380.1539

THE REVISED SCHOOL CODE (Act 451 of 1976)

380.1539 Teacher-administrator preparation and certification fund; establishment; administration; deposit of fees; receipt of revenue; expenditures; carryover of unexpended money.

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Sec. 1539. (1) A teacher-administrator preparation and certification fund is established in the department of treasury to be administered by the department of education.

(2) The department of education shall receive and forward to the state treasurer for deposit in the teacher-administrator preparation and certification fund all fees collected under section 1538. The teacher-administrator preparation and certification fund may receive as revenue money from any other source, as appropriated by the legislature.

(3) The revenue in the teacher-administrator preparation and certification fund shall be expended only for the operation of the teacher preparation and certification program and the administrator preparation and certification program.

(4) Money in the teacher-administrator preparation and certification fund that is unexpended at the end of the state fiscal year shall be carried over to the succeeding state fiscal year, shall not revert to the general fund, and shall be expended as provided in subsection (3).

History: Add. 1988, Act 339, Imd. Eff. Oct. 18, 1988.

MCL 380.1539a

THE REVISED SCHOOL CODE (Act 451 of 1976)

.1539a Conviction of school administrator for certain crimes; notice of right to hearing; suspension of school administrator's certificate; applicability of subsection (1); summary suspension; reinstatement, continued suspension, or permanent revocation of certificate; effect of reversal of conviction on final appeal; notice of conviction; evidence of conviction; construction of section; rules; definitions.

Sec. 1539a. (1) Subject to subsection (2), if a person who holds a school administrator's certificate that is valid in this state is convicted of a crime described in this subsection, the state board shall notify the person in writing that his or her school administrator's certificate may be suspended because of the conviction and of his or her right to a hearing before the state board. If the person does not avail himself or herself of this right to a hearing within 30 working days after receipt of this written notification, the school administrator's certificate of that person shall be suspended. If a hearing takes place, the state board may suspend the person's school administrator's certificate based upon the issues and evidence presented at the hearing.

This subsection applies to any of the following crimes:

- (a) Any felony.
- (b) Any of the following misdemeanors:

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- (i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.
 - (ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.
 - (iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.
 - (iv) A misdemeanor violation of section 7410 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7410 of the Michigan Compiled Laws.
 - (v) A violation of section 115, 141a, 145a, or 359 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.115, 750.141a, 750.145a, and 750.359 of the Michigan Compiled Laws, or a misdemeanor violation of section 81, 81a, or 145c of Act No. 328 of the Public Acts of 1931, being sections 750.81, 750.81a, and 750.145c of the Michigan Compiled Laws.
 - (vi) A misdemeanor violation of section 33 of the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being section 436.33 of the Michigan Compiled Laws.
- (2) If a person who holds a school administrator's certificate that is valid in this state is convicted of a crime described in this subsection, the state board shall find that the public health, safety, or welfare requires emergency action and shall order summary suspension of the person's school administrator's certificate under section 92 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.292 of the Michigan Compiled Laws. However, if a person convicted of a crime described in this subsection is incarcerated in a state correctional facility, the state board may delay ordering the summary suspension until not later than 10 work days after the person is released from secure confinement. This subsection does not limit the state board's ability to order summary suspension of a person's school administrator's certificate for a reason other than described in this subsection. This subsection applies to conviction of any of the following crimes:
- (a) Criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, or an attempt to commit criminal sexual conduct in any degree.
 - (b) Felonious assault on a child, child abuse in any degree, or an attempt to commit child abuse in any degree.
 - (c) Cruelty, torture, or indecent exposure involving a child.
 - (d) A violation of section 7401(2)(a)(i), 7403(2)(a)(i), 7410, or 7416 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7401, 333.7403, 333.7410, and 333.7416 of the Michigan Compiled Laws.

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(e) A violation of section 83, 89, 91, 316, 317, or 529 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.83, 750.89, 750.91, 750.316, 750.317, and 750.529 of the Michigan Compiled Laws.

(3) After the completion of the person's sentence, the person may request a hearing before the state board on reinstatement of his or her school administrator's certificate. Based upon the issues and evidence presented at the hearing, the state board may reinstate, continue the suspension of, or permanently revoke the person's school administrator's certificate.

(4) All of the following apply to a person described in this section whose conviction is reversed upon final appeal:

(a) The person's school administrator's certificate shall be reinstated upon his or her notification to the state board of the reversal.

(b) If the suspension of the person's school administrator's certificate under this section was the sole cause of his or her discharge from employment, the person shall be reinstated, upon his or her notification to the appropriate local or intermediate school board of the reversal, with full rights and benefits, to the position he or she would have had if he or she had been continuously employed.

(5) The prosecuting attorney of the county in which a person who holds a school administrator's certificate was convicted of a crime described in subsection (1) shall notify the state board, and any public school, school district, intermediate school district, or nonpublic school in which the person is employed, of that conviction and of the sentence imposed on the person. The prosecuting attorney of each county shall inquire of each person convicted in the county of a crime described in subsection (1) whether the person holds a school administrator's certificate.

(6) If the superintendent of a school district or intermediate school district, the chief administrative officer of a nonpublic school, the president of the board of a school district or intermediate school district, or the president of the governing board of a nonpublic school is notified by a prosecuting attorney or learns through an authoritative source that a person who holds a school administrator's certificate and who is employed at the time by the school district, intermediate school district, or nonpublic school has been convicted of a crime described in subsection (1), the superintendent, chief administrative officer, or board president shall notify the state board of that conviction.

(7) If a person convicted of a crime described in subsection (2) is incarcerated in a state correctional facility and the state board delays summary suspension as described in subsection (2), the state board shall contact the department of corrections and request to be notified before the person is released from secure confinement. Upon receipt of that request, the department of corrections shall notify the state board at least 30 work days before the person is released from secure confinement.

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(8) For the purposes of this section, a certified copy of the court record is conclusive evidence of conviction of a crime described in this section. For the purposes of this section, conviction of a crime described in this subsection is considered to be reasonably and adversely related to the ability of the person to serve in an elementary or secondary school and is sufficient grounds for suspension or revocation of the person's school administrator's certificate.

(9) This section does not do any of the following:

(a) Prohibit a person who holds a school administrator's certificate from seeking monetary compensation from a school board or intermediate school board if that right is available under a collective bargaining agreement or another statute.

(b) Limit the rights and powers granted to a school district or intermediate school district under a collective bargaining agreement, this act, or another statute to discipline or discharge a person who holds a school administrator's certificate.

(c) Exempt a person who holds a school administrator's certificate from the operation of section 1535a.

(10) The state board may promulgate, as necessary, rules to implement this section pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(11) As used in this section:

(a) "Conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

(b) "State correctional facility" means a correctional facility under the jurisdiction of the department of corrections.

History: Add. 1990, Act 35, Imd. Eff. Mar. 22, 1990;--Am. 1992, Act 99, Imd. Eff. June 23, 1992;--Am. 1994, Act 144, Imd. Eff. June 2, 1994;--Am. 1995, Act 97, Imd. Eff. June 22, 1995;--Am. 1995, Act 289, Eff. July 1, 1996.

MCL 380.1539b

THE REVISED SCHOOL CODE (Act 451 of 1976)

380.1539b Conviction of person holding board approval for certain crimes; notice of right to hearing; suspension of state board approval; applicability of subsection (1); summary suspension; reinstatement, continued suspension, or permanent revocation of state board approval; effect of reversal of conviction on final appeal; notice of conviction;

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evidence of conviction; construction of section; rules; definitions.

Sec. 1539b. (1) Subject to subsection (2), if a person who holds state board approval is convicted of a crime described in this subsection, the state board shall notify the person in writing that his or her state board approval may be suspended because of the conviction and of his or her right to a hearing before the state board. If the person does not avail himself or herself of this right to a hearing within 30 working days after receipt of this written notification, the person's state board approval shall be suspended. If a hearing takes place, the state board may suspend the person's state board approval, based upon the issues and evidence presented at the hearing. This subsection applies to any of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(iv) A misdemeanor violation of section 7410 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7410 of the Michigan Compiled Laws.

(v) A violation of section 115, 141a, 145a, or 359 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.115, 750.141a, 750.145a, and 750.359 of the Michigan Compiled Laws, or a misdemeanor violation of section 81, 81a, or 145c of Act No. 328 of the Public Acts of 1931, being sections 750.81, 750.81a, and 750.145c of the Michigan Compiled Laws.

(vi) A misdemeanor violation of section 33 of the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being section 436.33 of the Michigan Compiled Laws.

(2) If a person who holds state board approval is convicted of a crime described in this subsection, the state board shall find that the public health, safety, or welfare requires emergency action and shall order summary suspension of the person's state board approval under section 92 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.292 of the Michigan Compiled Laws. However, if a person convicted of a crime described in this subsection is incarcerated in a state correctional facility, the state board may delay ordering the summary suspension until not later than 10 work days after the person is released from secure confinement. This subsection does not limit the state board's ability to order summary suspension of a person's state board approval for a reason other than described in this subsection.

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This subsection applies to conviction of any of the following crimes:

(a) Criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, or an attempt to commit criminal sexual conduct in any degree.

(b) Felonious assault on a child, child abuse in any degree, or an attempt to commit child abuse in any degree.

(c) Cruelty, torture, or indecent exposure involving a child.

(d) A violation of section 7401(2)(a)(i), 7403(2)(a)(i), 7410, or 7416 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7401, 333.7403, 333.7410, and 333.7416 of the Michigan Compiled Laws.

(e) A violation of section 83, 89, 91, 316, 317, or 529 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.83, 750.89, 750.91, 750.316, 750.317, and 750.529 of the Michigan Compiled Laws.

(3) After the completion of the person's sentence, the person may request a hearing before the state board on reinstatement of his or her state board approval. Based upon the issues and evidence presented at the hearing, the state board may reinstate, continue the suspension of, or permanently revoke the person's state board approval.

(4) All of the following apply to a person described in this section whose conviction is reversed upon final appeal:

(a) The person's state board approval shall be reinstated upon his or her notification to the state board of the reversal.

(b) If the suspension of the state board approval was the sole cause of his or her discharge from employment, the person shall be reinstated upon his or her notification to the appropriate local or intermediate school board of the reversal, with full rights and benefits, to the position he or she would have had if he or she had been continuously employed.

(5) The prosecuting attorney of the county in which a person who holds state board approval was convicted of a crime described in subsection (1) shall notify the state board, and any public school, school district, intermediate school district, or nonpublic school in which the person is employed, of that conviction and of the sentence imposed on the person. The prosecuting attorney of each county shall inquire of each person convicted in the county of a crime described in subsection (1) whether the person holds state board approval. The state board shall make available to prosecuting attorneys a list of school occupations that commonly require state board approval.

(6) If the superintendent of a school district or intermediate school district, the chief administrative officer of a nonpublic school, the president of the board of a school district or intermediate school district, or the president of the governing board of a nonpublic school is

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notified by a prosecuting attorney or learns through an authoritative source that a person who holds state board approval and who is employed at the time by the school district, intermediate school district, or nonpublic school has been convicted of a crime described in subsection (1), the superintendent, chief administrative officer, or board president shall notify the state board of that conviction.

(7) If a person convicted of a crime described in subsection (2) is incarcerated in a state correctional facility and the state board delays summary suspension as described in subsection (2), the state board shall contact the department of corrections and request to be notified before the person is released from secure confinement. Upon receipt of that request, the department of corrections shall notify the state board at least 30 work days before the person is released from secure confinement.

(8) For the purposes of this section, a certified copy of the court record is conclusive evidence of conviction of a crime described in this section. For the purposes of this section, conviction of a crime described in this subsection is considered to be reasonably and adversely related to the ability of the person to serve in an elementary or secondary school and is sufficient grounds for suspension or revocation of the person's state board approval.

(9) This section does not do any of the following:

(a) Prohibit a person who holds state board approval from seeking monetary compensation from a school board or intermediate school board if right is available under a collective bargaining agreement or another statute.

(b) Limit the rights and powers granted to a school district or intermediate school district under a collective bargaining agreement, this act, or another statute to discipline or discharge a person who holds state board approval.

(c) Exempt a person who holds state board approval from the operation of section 1535a or 1539a, or both, if the person holds a certificate subject to 1 or both of those sections.

(d) Limit the ability of a state licensing body to take action against a person's license or registration for the same conviction.

(10) The state board may promulgate, as necessary, rules to implement this section pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(11) As used in this section:

(a) "Conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

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(b) "State board approval" means a license, certificate, endorsement, permit, approval, or other evidence of qualifications to hold a particular position in a school district or intermediate school district or in a nonpublic school, other than a teacher's certificate subject to section 1535a or a school administrator's certificate subject to section 1539a, that is issued to a person by the state board under this act or a rule promulgated under this act.

(c) "State correctional facility" means a correctional facility under the jurisdiction of the department of corrections.

History: Add. 1992, Act 99, Imd. Eff. June 23, 1992;--Am. 1994, Act 144, Imd. Eff. June 2, 1994;--Am. 1995, Act 97, Imd. Eff. June 22, 1995;--Am. 1995, Act 289, Eff. July 1, 1996.

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MCL 380.1851

THE REVISED SCHOOL CODE (Act 451 of 1976)

380.1851 Repeal of acts and parts of acts.

Sec. 1851. The following acts and parts of acts are repealed:

(a) Act No. 169 of the Public Acts of 1927, being sections 388.131 to 388.134 of the Compiled Laws of 1970.

(b) Act No. 81 of the Public Acts of 1931, being sections 388.351 to 388.353 of the Compiled Laws of 1970.

(c) Sections 1 and 3 of Act No. 205 of the Public Acts of 1931, being sections 388.371 and 388.373 of the Compiled Laws of 1970.

(d) Act No. 238 of the Public Acts of 1939, being sections 388.321 and 388.322 of the Compiled Laws of 1970.

(e) Act No. 223 of the Public Acts of 1941, being sections 388.881 to 388.884 of the Compiled Laws of 1970.

(f) Act No. 254 of the Public Acts of 1945, being section 388.701 of the Compiled Laws of 1970.

(g) Act No. 19 of the Public Acts of the First Extra Session of 1946, being section 388.751 of the Compiled Laws of 1970.

(h) Act No. 269 of the Public Acts of 1955, as amended, being sections 340.1 to 340.984 of the Compiled Laws of 1970.

(i) Act No. 244 of the Public Acts of 1969, as amended, being sections 388.171a to 388.183 of the Compiled Laws of 1970.

(j) Act No. 242 of the Public Acts of 1970, being sections 388.391 to 388.394 of the Compiled Laws of 1970.

History: 1976, Act 451, Imd. Eff. Jan. 13, 1977.

MCL 380.1851a

THE REVISED SCHOOL CODE (Act 451 of 1976)

380.1851a Rules prohibited; condition.

Sec. 1851a. If the Michigan supreme court rules that sections 45 and 46 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.245 and 24.246 of the Michigan Compiled Laws, are unconstitutional, and a statute requiring legislative review of administrative rules is not enacted within 90 days after the Michigan supreme court ruling, the state board or the department shall not

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promulgate rules under this act.

History: Add. 1995, Act 289, Eff. July 1, 1996.

MCL 380.1852

THE REVISED SCHOOL CODE (Act 451 of 1976)

380.1852 Effective date.

Sec. 1852. This act shall take effect January 1, 1977.

History: 1976, Act 451, Imd. Eff. Jan. 13, 1977.