



MICHIGAN STATE POLICE LEGAL UPDATE

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CRIMINAL LAW AND PROCEDURE MANUAL

The third edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is now available for purchase in print and eBook formats.

The manual is published by [Kendall Hunt Publishing Co.](http://www.kendallhunt.com/michigan_criminal_law/) Copies may be ordered online at https://www.kendallhunt.com/michigan_criminal_law/ or by calling Kendall Hunt Customer Service at (800) 228-0810.

STATUTES

Provisions of the Michigan Vehicle Code relating to operating a vehicle while intoxicated amended

Public Act 315 of 2014, effective January 12, 2015, amended various sections of the Michigan Vehicle Code relating to operating a vehicle while intoxicated. The amendments included replacing previous provisions for a “preliminary chemical breath analysis” with provisions for a “preliminary roadside analysis” and authorizing a police officer to require a person to submit to a preliminary roadside analysis under certain circumstances.

Preliminary Roadside Analysis

MCL 257.43a was added to define the term “preliminary roadside analysis” to mean the on-site taking of a preliminary breath test from the breath of a person **or** the performance and observation of a field sobriety test for the purpose of detecting the presence of any of the following within the person’s body:

1. Alcoholic liquor.
2. A controlled substance as defined in MCL 333.7104.
3. Any other intoxicating substance as defined in MCL 257.625.
4. Any combination of above substances.

MCL 257.625a(2) was amended to authorize a peace officer to require a person to submit to a preliminary roadside analysis if any of the following exist:

1. The officer has reasonable cause to believe that a person was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including parking areas, and the person’s ability to operate a vehicle may have been affected by the consumption of alcoholic liquor,

a controlled substance, or other intoxicating substance or a combination of them.

2. The officer has reasonable cause to believe that a person was operating a commercial motor vehicle within this state while the person’s blood, breath, or urine contained any measurable amount of alcohol, a controlled substance or any other intoxicating substance or while the person had any detectable presence of alcoholic liquor.
3. The officer has reasonable cause to believe that a person who is less than 21 years of age was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state while the person had any bodily alcohol content as that term is defined in MCL 257.625(6).

The results of a preliminary roadside analysis are admissible in a criminal prosecution or administrative hearing for the purposes set forth in MCL 257.625a(2)(b).

MCL 257.625a(2)(d) was amended to provide that a person who refuses to submit to a preliminary roadside analysis upon a lawful request by a peace officer is responsible for a civil infraction; however, under MCL 257.625a(5), if the person was operating a commercial motor vehicle at the time, the person is guilty of a 93-day misdemeanor.

MCL 257.625a(4) was amended to require that a person operating a commercial motor vehicle be advised that refusing a peace officer’s request to submit to a required preliminary roadside analysis is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both, and will result in the issuance of a 24-hour out-of-service order.

Officers should note that MCL 257.625a(2) only requires a person to submit to one preliminary roadside analysis. Officers may continue to *request* that a person take more than one preliminary roadside analysis, but a person cannot be cited or arrested for failing to submit to more than one.

Chemical Tests and Analysis of a Person’s Blood, Urine, or Breath other than a Preliminary Roadside Analysis

MCL 257.625g was amended to require the peace officer who requested the person to submit to the chemical test to immediately do the following:

If a person refuses a chemical test.

1. Confiscate the person's license or permit to operate a vehicle and, if the person is otherwise eligible for a license or permit, issue a temporary license or permit to the person.
2. Forward a copy of the written report of the person's refusal to submit to a required chemical test to the Secretary of State (SOS).
3. Notify the SOS through the Law Enforcement Information Network (LEIN) that a temporary license or permit was issued.
4. Destroy the person's license or permit.

If a person submits to a chemical test or a chemical test is performed under a court order and the test reveals an unlawful alcohol content, or the presence of a controlled substance or other intoxicating substance or a combination of any of them:

1. Confiscate the person's license or permit to operate a vehicle and, if the person is otherwise eligible for a license or permit, issue a temporary license or permit to the person.
2. Notify the SOS through the Law Enforcement Information Network (LEIN) that a temporary license or permit was issued.
3. Destroy the person's license or permit.

If a person submits to a chemical test that requires an analysis of blood or urine and the results are not immediately available:

1. Confiscate the person's license or permit to operate a vehicle and, if the person is otherwise eligible for a license or permit, issue a temporary license or permit to the person.
2. Notify the SOS through the Law Enforcement Information Network (LEIN) that a temporary license or permit was issued and indicate in the notice that a subsequent chemical test is pending.
3. Upon receipt of a report that reveals an unlawful alcohol content, or the presence of a controlled substance or other intoxicating substance, or any combination of them, destroy the person's license or permit.
4. Upon receipt of a report that does not reveal an unlawful alcohol content, or the presence of a controlled substance or other intoxicating substance, or any combination of them, notify the person of the test results and return the person's license or permit by first-class mail to the address provided at the time of arrest.

Code of Criminal Procedure amended to authorize conditional release of a person who submitted to a preliminary roadside analysis under certain circumstances when a subsequent chemical test is pending

Public Act 316 of 2014, effective January 12, 2015, amended MCL 765.6b of the Code of Criminal Procedure to allow a judge or district court magistrate to release a defendant subject to conditions reasonably necessary for the protection of the public if the defendant submitted to a preliminary roadside analysis that detected the presence of alcohol, a controlled substance, or other intoxicating substance, or any combination of them and a subsequent chemical test is pending. The judge or district court magistrate shall inform the defendant of both of the following:

1. As a condition of release, he or she shall not operate a motor vehicle under the influence of alcohol, a controlled substance, or another intoxicating substance, or any combination of them.
2. If he or she violates the above condition of release, he or she will be subject to arrest without a warrant, shall have his or her bail forfeited or revoked, and shall not be released from custody prior to arraignment.

The judge or district court magistrate must immediately direct the issuing court or a law enforcement agency within the court's jurisdiction to enter the conditional release order or an amended conditional release order into LEIN. If the order or amended order is rescinded, the judge or district court magistrate must immediately order the issuing court or a law enforcement agency to remove the order or amended order from LEIN. The issuing court or law enforcement agency shall immediately enter or remove the order or amended order.

As a result of these amendments, a person who is found operating a motor vehicle under the influence of alcohol, a controlled substance, or another intoxicating substance, or any combination of them in violation of a conditional release order will be subject to warrantless arrest and shall not be released from custody until the person is arraigned.

Officers are reminded that the duties of a peace officer who makes a warrantless arrest for a violation of a condition of release imposed under MCL 765.6b are detailed in [MCL 764.15e](#).

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